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EXEMPT FROM FEES PER  
GOVERNMENT CODE §6103

13 *Attorneys for Plaintiffs John Tos, Town of Atherton,*  
14 *County of Kings, Morris Brown, Patricia Louise*  
15 *Hogan-Giorni, Anthony Wynne, Community*  
16 *Coalition on High-Speed Rail, Transportation*  
17 *Solutions Defense and Education Fund, and*  
18 *California Rail Foundation*

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22 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23  
24 **IN AND FOR THE COUNTY OF SACRAMENTO**

25 JOHN TOS, TOWN OF ATHERTON, a  
26 municipal corporation, COUNTY OF KINGS, a  
27 subdivision of the State of California, MORRIS  
28 BROWN, PATRICIA LOUISE HOGAN-  
29 GIORNI, ANTHONY WYNNE, COMMUNITY  
30 COALITION ON HIGH-SPEED RAIL, a  
31 California nonprofit corporation,  
32 TRANSPORTATION SOLUTIONS DEFENSE  
33 AND EDUCATION FUND, a California  
34 nonprofit corporation, and CALIFORNIA RAIL  
35 FOUNDATION, a California nonprofit  
36 corporation,

Plaintiffs

vs.

37 CALIFORNIA HIGH SPEED RAIL  
38 AUTHORITY, a public entity, BOARD OF  
39 DIRECTORS OF THE CALIFORNIA HIGH-  
40 SPEED RAIL AUTHORITY, and DOES 1-20  
41 inclusive,

Defendants

No.

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

[Code of Civil Procedure §§ 526a, 1060]

1 As causes of action against Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
2 (“CHSRA”) and the Board of Directors of CHSRA (“Board”), Plaintiffs JOHN TOS (“TOS”),  
3 TOWN OF ATHERTON (“ATHERTON”), COUNTY OF KINGS (“COUNTY”), MORRIS  
4 BROWN (“BROWN”), PATRICIA LOUISE HOGAN-GIORNI (“GIORNI”), ANTHONY  
5 WYNNE (“WYNNE”), COMMUNITY COALITION ON HIGH-SPEED RAIL (“CC-HSR”),  
6 TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND (“TRANSDEF”) and  
7 CALIFORNIA RAIL FOUNDATION (“CRF” and the foregoing, collectively, “PLAINTIFFS”)  
8 hereby allege as follows:

9 **INTRODUCTION**

10 1. This action challenges Defendants CHSRA and its Board in two respects: First, CHSRA,  
11 relying upon Streets & Highways Code §2704.78<sup>1</sup>, enacted by the Legislature in 2016 as AB 1889,  
12 has prepared and issued two second Funding Plans, purportedly pursuant to §2704.08(d), for two  
13 segments of its proposed high-speed rail system. Plaintiffs allege that the enactment of §2704.78  
14 violated the California Constitution in that it attempts to materially modify a voter-approved state  
15 general obligation bond measure without gaining voter approval for the modification, in violation  
16 of Article XVI Section 1, as do the two Funding Plans that rely on it for compliance with  
17 requirement of §2704.08(d). Plaintiffs ask the Court to declare §2704.78 unconstitutional and  
18 therefore void, and any Funding Plans relying on it to comply with §2704.08(d), noncompliant.

19 2. In addition, and regardless of the application of §2704.78, Plaintiffs assert that the two  
20 Funding Plans, and their accompanying consultant reports, fail to meet the requirements set in  
21 §2704.08(d). Plaintiffs therefore seek the Court’s declaration that these Funding Plans and  
22 consultant reports are deficient and can neither be adopted by CHSRA nor approved by the  
23 Director of Finance.  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise indicated, all further statutory references herein are to the California Streets &  
Highways Code.

1 3. Second, Plaintiffs allege that CHSRA has been, is, and intends to continue illegally  
2 expending public funds in ways that violate provisions of a California general obligation state  
3 bond act, the Safe, Reliable High-Speed Passenger Train Bond Act for the Twenty-First Century,  
4 approved by California voters in November 2008 as Proposition 1A (hereinafter, “Prop. 1A”).

5 4. CHSRA is using public funds to prepare and issue the two funding plans, purportedly  
6 pursuant to California Streets & Highways Code §2704.08(d), for segments of its proposed high-  
7 speed rail system. However, those funding plans will violate requirements set by Prop. 1A  
8 because the “usable segments” to which they apply do not meet requirements set in Prop. 1A,  
9 making the expenditures illegal, improper, wasteful, and in violation of Article XVI Section 1 of  
10 the California Constitution as well as the requirements of §2704.08(d).

11 5. PLAINTIFFS seek this Court’s declaratory order under Code of Civil Procedure §1060 that  
12 the Legislature’s enactment of §2704.78, CHSRA’s use of public funds to produce the aforesaid  
13 funding plans, and any funding plans so produced, violate the California Constitution and state law  
14 as will be set forth in greater detail below. PLAINTIFFS also seek injunctive relief under Code of  
15 Civil Procedure §526a to halt CHSRA’s illegal, improper, wasteful, and unconstitutional use of  
16 public funds and to require CHSRA to restore to the State Treasury all funds involved in these  
17 illegal, improper, and/or wasteful expenditures. Plaintiffs also seek their costs of suit and their  
18 reasonable attorneys’ fees under Code of Civil Procedure §1021.5 or other applicable authority in  
19 pursuing this legal action in the public interest.

20 **PARTIES**

21 6. Plaintiffs JOHN TOS, MORRIS BROWN, PATRICIA LOUISE HOGAN-GIORNI, and  
22 ANTHONY WYNNE are California citizens, voters and taxpayers who, during the preceding year,  
23 have paid taxes to the State of California that would be used to repay and/or pay interest on the  
24 funds that PLAINTIFFS allege are being illegally and unconstitutionally used by CHSRA. Under  
25 Code of Civil Procedure § 526a, they have standing to seek relief against CHSRA.  
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1       7. Plaintiff TOWN OF ATHERTON is a municipal corporation, organized and existing under  
2 the general laws of the State of California. ATHERTON has a direct and beneficial interest in  
3 seeing that funds of the State of California are not used illegally and unconstitutionally.  
4 ATHERTON would also be directly and adversely affected by the illegal expenditures at issue  
5 herein in that funds would be expended by CHSRA on projects that would harm ATHERTON and  
6 its citizens.

7       8. Plaintiff COUNTY OF KINGS is a political subdivision of the State of California,  
8 organized and existing under the laws of the State of California. COUNTY has a direct and  
9 beneficial interest in seeing that funds of the State of California are not used illegally and  
10 unconstitutionally. COUNTY would also be directly and adversely affected by the illegal  
11 expenditures at issue herein in that funds might be expended by CHSRA on projects that would  
12 harm COUNTY and its citizens.

13       9. Plaintiffs COMMUNITY COALITION ON HIGH-SPEED RAIL, CALIFORNIA RAIL  
14 FOUNDATION, and TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND  
15 are California nonprofit corporations organized and existing under the laws of the State of  
16 California. They, and/or their members, have paid taxes to the State of California during the  
17 preceding year. In addition, each of these plaintiffs has a direct and beneficial interest in seeing  
18 that the Constitution and laws of the State of California are obeyed. In addition, each of these  
19 plaintiffs would be directly and adversely affected by the illegal expenditures at issue herein in that  
20 the funds would be expended by CHSRA on projects that would directly harm their interests.

21       10. Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY is an agency existing within  
22 the executive branch of the State of California. As such, CHSRA has a mandatory duty to follow  
23 the California Constitution. CHSRA is governed by a nine-member Board of Directors  
24 (“BOARD”)

25       11. The BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL  
26 AUTHORITY (“BOARD”) is the governing body of CHSRA. It is responsible for approving or  
27

1 authorizing all expenditures by CHSRA and for ensuring that CHSRA obeys the California  
2 Constitution and its statutes, including specifically voter-approved bond measures.

3 12. PLAINTIFFS are unaware of the true names and capacities of Defendants and Respondents  
4 DOES 1 through 20, inclusive, and therefore sue those Defendants and Respondents under  
5 fictitious names. PLAINTIFFS will amend their Complaint to show their true names and  
6 capacities when the Respondents and Defendants have been identified and their capacities  
7 ascertained. Each of the Respondents and Defendants is the agent, employee, or both of every  
8 other Respondent and Defendant, and each performed acts on which this action is based within the  
9 course and scope of such Respondent's and Defendant's agency, employment, or both.  
10 PLAINTIFFS are informed and believe, and therefore allege, that each Respondent and Defendant  
11 is legally responsible in some manner for the events and happenings referred to herein.

#### 11 **GENERAL ALLEGATIONS**

12 13. PLAINTIFFS have exhausted their administrative remedies. Some of the PLAINTIFFS or  
13 their authorized representatives submitted oral and/or written comments to the Legislature prior to  
14 the enactment of AB 1889 warning of its unconstitutionality. Those same PLAINTIFFS or their  
15 authorized representatives also submitted a written letter to CHSRA, through the chair of its board  
16 of directors, as well as to other public officials involved with the handling of Prop 1A bond funds,  
17 shortly after the final legislative passage of AB 1889 warning them of the unconstitutionality of  
18 AB 1889 as approved. A true and correct copy of that letter is attached hereto as Exhibit A and is  
19 incorporated herein by this reference.

20 14. PLAINTIFFS have provided a copy of this Complaint to the California Attorney General.  
21 A copy of the accompanying notice and proof of service are attached hereto as Exhibit B.

22 15. PLAINTIFFS have no plain, speedy or adequate remedy in the ordinary course of law.  
23 Unless this Court grants the requested relief, CHSRA's illegal expenditures will continue and it  
24 will enact Finding Plans that violate both the state constitution and a voter-approved bond act.

25 16. If CHSRA is not enjoined from moving forward on its illegal, improper, wasteful, and  
26 unconstitutional expenditures and from undertaking acts in furtherance thereof, PLAINTIFFS will  
27 suffer irreparable harm for which there is no adequate remedy at law in that CHSRA will have

1 violated the express intent of California’s voters in approving Prop. 1A and will have expended  
2 those public funds inappropriately and illegally on projects that are not qualified for those  
3 expenditures under Prop. 1A’s requirements.

#### 4 **BACKGROUND**

5 17. In 1996, the Legislature created CHSRA and charged it with directing and implementing an  
6 intercity high-speed rail service within California, including specifically preparing a plan for the  
7 construction and operation of a high-speed rail network. CHSRA was granted the exclusive right  
8 to plan, construct, and operate all rail facilities operating at speeds in excess of 125 miles per hour.

9 18. In 2008, the Legislature enacted and the voters approved Prop. 1A, a \$9.9 billion general  
10 obligation bond act, to help CHSRA fund construction of a high-speed rail system. The bond  
11 measure included \$9 billion specifically allocated for the planning and construction of the high-  
12 speed rail system.

13 19. Prop. 1A included numerous conditions and requirements that were required to be met in  
14 order for the bond funds to be used, especially for construction activities.

15 20. The Legislature was presumably aware of Governor’s Schwarzenegger’s May 2008 Budget  
16 Message, in which he stated, in regard to the proposed California high-speed rail system, that  
17 “Before any construction or equipment purchase contracts can be signed for a portion of the  
18 system, there must be a complete funding plan that provides assurance that all funding needed to  
19 provide service on that portion of the system is secured.”

20 21. The Legislature was also aware, as shown by the Legislative Analyst’s analysis of Prop. 1A  
21 in the Supplemental Voter Quick-Reference Guide for the November 2008 election, that voters  
22 needed assurance that there would be accountability and oversight of CHSRA’s use of the bond  
23 proceeds.

24 22. In particular, the Legislature inserted into Prop. 1A provisions, included in §2704.08,  
25 requiring that, before Prop. 1A bond funds could be used towards the construction of the high-  
26 speed rail system, or any corridor or usable segment thereof, CHSRA was required to prepare and

1 approve two successive funding plans for the corridor or usable segment thereof that was to be  
2 constructed using Prop. 1A bond funds. These conditions and requirements were characterized by  
3 the Third District Court of Appeal, in *California High-Speed Rail Authority v. Superior Court*  
4 (2014) 228 Cal.App.4th 676, as a “financial straitjacket.”

5 23. Even more specifically, Prop. 1A required that the second of the two funding plans include  
6 or demonstrate that:

- 7 a. The funds would be used to construct a usable segment containing at least  
8 two stations, and providing the full projected cost of constructing that  
9 segment;
- 10 b. Funds had been identified, including their expected time of availability, to  
11 allow completion of the usable segment;

12 24. In addition, along with the second funding plan, CHSRA was required to provide a report  
13 prepared by one or more independent consultants that would demonstrate:

- 14 a. That construction of the usable segment could be completed as proposed in  
15 the second funding plan;
- 16 b. That, if completed, the usable segment would be suitable and ready for high-  
17 speed train operation;
- 18 c. That the train service on the usable segment provided by CHSRA or  
19 pursuant to its authority would not require an operating subsidy.

20 25. CHSRA has defined its “Phase I” high-speed rail system corridor as running from Anaheim  
21 to Los Angeles (Union Station) to Burbank, to Palmdale, to Bakersfield, to Fresno, To Merced  
22 and/or San Jose, and to San Francisco, with a northern terminus at the Transbay Transit Center.

23 26. In its Final 2016 Business Plan, CHSRA redefined its “Initial Operating Segment” (“IOS”)  
24 as running from north of Bakersfield, starting at or in the vicinity of Wasco, to San Jose and  
25 including a station in Merced.

## THE CENTRAL VALLEY SEGMENT

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27. While CHSRA currently defines its IOS as running from Wasco to San Jose, in its Revised 2012 Business Plan CHSRA identified a segment of its high-speed rail system running from Madera to Bakersfield as its “Initial Construction Section” (“ICS”). It proposed to fund construction of the ICS through a combination of approximately \$3.24 billion in Federal Railroad Administration grant funds and approximately \$2.6 billion of Prop. 1A bond funds. However, those bond funds, while appropriated by the Legislature in 2012, have not been utilized because no second funding plan encompassing the ICS has been prepared and approved.

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28. Instead, CHSRA has used proceeds of the auction of greenhouse gas “Cap & Trade” auction funds, pursuant to a continuing legislative appropriation, to sustain itself and provide a partial match to the federal funds being used for construction. The Central Valley Segment draft Funding Plan proposes to use \$2.234 billion of Cap & Trade auction proceeds as part of the funding for that segment, and the San Francisco – San Jose Peninsula Corridor draft Funding Plan proposes to use up to \$133 million of Cap & Trade auction proceeds in that project.

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29. While, at the moment, Cap & Trade auction funds are being allocated to CHSRA’s high-speed rail project, the legislative authorization for collecting Cap & Trade auction funds expires in 2020, and the Legislature has repeatedly refused to extend that deadline. Thus Cap & Trade auction proceeds cannot reasonably be anticipated to fund CHSRA’s high-speed rail project construction, or any other project or purpose, beyond 2020.

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30. The amount of funds generated by the Cap & Trade auctions has been extremely variable. While the first couple of auctions were quite successful, other more recent auctions have generated far smaller amounts of funds. Consequently, the prospect for obtaining significant funding for CHSRA’s high-speed rail construction, or other uses of Cap & Trade auction proceeds, remains highly speculative, even prior to 2020.

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31. At the moment, CHSRA has begun construction of two portions of the ICS, identified as CP 1 and CP 2-3. CP 2 and CP 3 were initially proposed as separate portions, but they have now been merged. Construction of CP 1 began in 2015, and that of CP 2-3 in 2016, but neither segment has been completed, nor have the last two phases, CP 4 and CP 5, begun construction.



## THE CALTRAIN ELECTRIFICATION SEGMENT

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2 32. As part of the Legislature’s 2012 appropriation of Prop. 1A funds towards high-speed rail,  
3 it appropriated \$1.1 billion towards construction in the two “bookend” segments – between  
4 Merced and San Francisco on the north and between the San Fernando Valley and Los Angeles on  
5 the south – for improvements that would culminate in a complete high-speed rail system. This  
6 was in spite of the fact that CHSRA had not prepared a first funding plan for either bookend  
7 segment.

8 33. In the northern bookend segment, the 2012 appropriation included \$705 million<sup>2</sup> to assist  
9 Caltrain in funding its electrification project, which was intended to also provide electric power for  
10 the San Jose – San Francisco high-speed rail segment. This was confirmed by a series of  
11 memoranda of understandings between the Peninsula Corridor Joint Powers Board (“PCJPB”),  
12 Caltrain’s governing body, and CHSRA.

13 34. In 2015, the PCJPB certified an Environmental Impact Report for its electrification project  
14 and approved the project, which was projected to cost roughly \$2.1 billion. Even with the \$705  
15 million contribution from CHSRA, the electrification project was not fully funded.

16 35. While the electrification would provide a power source for high-speed rail between San  
17 Jose and the 4th and King Street San Francisco Caltrain station, it would not electrify the tracks  
18 between the 4th Street station and the Transbay Transit Center, the actual legal terminus of the  
19 high-speed rail line.

20 36. In addition, the Caltrain Electrification Project would neither address sharp turns in the  
21 Caltrain alignment that are inconsistent with the requirements for high-speed train operation nor  
22 current Caltrain station configurations, including those at the Caltrain Atherton and Broadway-  
23 Burlingame stations, that are both inconsistent with high-speed train operation and would be  
24 unsafe for passengers using Caltrain if high-speed train operations were allowed. For these  
25 reasons as well, the Caltrain Electrification Project does not qualify as a usable segment under  
26 Prop. 1A, and more specifically under the requirements set by §2704.08(c) and (d) for a usable  
27 segment that could use Prop. 1A bond funds towards its construction.

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28 <sup>2</sup> \$600 million was allocated from Prop 1A high-speed rail construction funds, while \$105 million  
29 was appropriated from Prop. 1A “connectivity” funds – to improve transit facilities connecting to  
30 the high-speed rail system.

**THE TOS V. CHSRA LITIGATION**

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2 37. In November of 2011, CHSRA approved a “first funding plan” for a usable segment, which  
3 it defined as running either from San Jose to Bakersfield (“IOS – North”), or from Merced to the  
4 San Fernando Valley (“IOS – South”).

5 38. Shortly after that initial approval, TOS, COUNTY, and other plaintiffs filed suit against  
6 CHSRA as well as numerous California state officials, challenging that approval as being in  
7 violation of Prop. 1A and the California Constitution and involving the illegal expenditure of  
8 public funds.

9 39. The case was assigned to Judge Michael Kenny in Sacramento County Superior Court.

10 40. In April, 2012, CHSRA approved a Revised 2012 Business Plan. That Business Plan  
11 identified the IOS to be completed as IOS – South.

12 41. In July 2012, at the request of CHSRA and based on its first Funding Plan and the Revised  
13 2012 Business Plan, the Legislature appropriated funds towards the construction of CHSRA’s IOS,  
14 as well as funds to be used for improvements to the “bookend” segments of the Phase I high-speed  
15 rail system. The latter appropriation was not supported by a first Funding Plan, but was  
16 conditioned on the preparation and approval of a second Funding Plan for each usable segment  
17 involved, as well as completion of all project-level environmental clearances necessary to proceed  
18 with construction.

19 42. In May of 2013, the allegations of noncompliance with the requirements of §2704.08(c) of  
20 CHSRA’s first Funding Plan for its IOS were heard in the trial court. In November of that same  
21 year, the trial court issued its ruling that CHSRA’s first Funding Plan was inadequate and invalid  
22 and ordered the rescission of CHSRA’s approval of that plan.

23 43. CHSRA filed a petition for writ of mandate with the California Supreme Court challenging  
24 the trial court’s ruling on this and other related matters. That petition was transferred to the Third  
25 District Court of Appeal. The Third District Court of Appeal ordered full briefing, and after  
26 briefing and oral argument, granted the petition, holding that the approval of a first Funding Plan  
27 was not a final action subject to legal challenge, and that only approval of a final second Funding  
28 Plan could be subjected to legal challenge.

**AB 1889**

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2 44. During the summer of 2016, the PCJPB convinced State Assembly Member Mullin to take  
3 AB 1889, a bill he had authored that had already passed the Assembly, and replace its body with  
4 new language purporting to amend provisions of Proposition 1A by adding a new section to the  
Streets & highways Code, §2704.78.

5 45. As first proposed by PCJPB and Assembly Member Mullin, the bill would have made  
6 conclusive CHSRA’s determination that a corridor or usable segment thereof would be suitable  
7 and ready for high-speed train operation. As a result, not only would a funding plan’s review by  
8 an independent expert under §2704.08(d) become a nullity, but the funding plan, once approved by  
CHSRA, would not be subject to judicial review.

9 46. An attorney representing several of the Plaintiffs herein submitted a letter to the Senate  
10 Transportation Committee, which was considering the amended bill, pointing out that the bill  
11 attempted to materially modify the provisions of Prop. 1A, requiring that it be approved by  
12 California voters before it could become effective.

13 47. The Senate Transportation Committee nonetheless approved the bill, which then went to  
14 the Senate Appropriations Committee. That Committee, however, voted to place the bill in the  
suspense file, preventing it from moving forward to the Senate floor.

15 48. Assembly Member Mullin then further amended AB 1889 so that, rather than make  
16 conclusive CHSRA’s approval of a usable segment as “suitable and ready for high-speed train  
17 operation”, it “clarified” the meaning of that phrase, so that instead of requiring that the usable  
18 segment be suitable and ready for high-speed train operation when the fully-funded construction  
19 was complete, the requirement that the segment be suitable and ready for high-speed train  
20 operation would be satisfied if, at some later date, it would become suitable and ready for high-  
21 speed train operation after further improvements had been funded and constructed.

22 49. The revised bill was removed from the suspense file and brought to the Senate floor for  
consideration.

23 50. The attorney representing several of the Plaintiffs then submitted a second letter, directed  
24 to the author of the Senate floor analysis of the bill, pointing out that the revised bill also  
25 materially altered the requirements approved by the voters in Prop. 1A, and therefore also needed  
26 to be placed before the California voters.

1           51. Nevertheless, and despite strong objections from some senators, the bill was approved by  
2 the Senate, then reapproved by the Assembly, and signed by the Governor.

3   **THE DECEMBER 2016 FUNDING PLANS**

4           52. In the Fall of 2016, CHSRA began preparation of two second Funding Plans, purportedly  
5 pursuant to §2704.08(d).

6           53. On or about December 8, 2016, CHSRA released to the public two draft second Funding  
7 Plans, one for what it called the “Central Valley Segment” (“CV Segment”) and one for what it  
8 called the “San Francisco to San Jose Peninsula Corridor” (“SF-SJ Corridor”).

9           54. The CV Segment is defined in its Funding Plan as extending from approximately adjacent  
10 to the Madera Amtrak station to Poplar Avenue in Shafter. It would include two stations, Fresno  
11 and Kings/Tulare, and would include electrification. This segment had previously been identified  
12 in the Revised 2012 Business Plan as the Initial Construction Section, and had not been called a  
13 usable segment.

14           55. In fact, at an open Board meeting session in or about 2011, a Deputy Attorney General  
15 opined that, because high-speed train operation on that section would require a public subsidy, it  
16 could not qualify for Prop. 1A bond funding under §2704.08.

17           56. The Funding Plan asserts that, when completed, the CV Segment would be suitable and  
18 ready for high-speed train operation. However, the Funding Plan does not propose any  
19 commercial operation of this segment for high-speed rail passenger service, but only as a “test  
20 track.” The Funding Plan also indicated that, if completion of the IOS was delayed, the CV  
21 Segment could, with additional capital outlay, be utilized by Amtrak for its San Joaquin service.

22           57. The Funding Plan provided no ridership/revenue information for operation of the CV  
23 Segment, but only for a completed IOS – North. No second Funding Plan has been completed for  
24 IOS – North; nor has it been fully funded or designed; nor have all project level environmental  
25 clearances for the totality of that segment necessary to proceed to construction been obtained.

26           58. The SF-SJ Corridor is defined in its Funding Plan as extending from the Caltrain San  
27 Francisco station at Fourth and King Streets to the San Jose Diridon Station. It intends to provide  
28 \$600 million of Prop. 1A high-speed rail construction funds for Caltrain’s Peninsula Corridor  
29 Electrification Project (“PCEP”), which the Funding Plan estimates will cost a total of \$1.98  
30 billion.

1 59. The PCEP would provide the facilities to electrify the Caltrain right of way between the  
2 San Francisco 4th and King Street Caltrain Station and Diridon Station in San Jose. It would not  
3 include Caltrain station improvements, track straightening, or other improvements necessary to run  
4 high-speed rail trains between Diridon Station and San Francisco, which improvements have  
5 neither been fully designed nor funded; nor would it include the improvements, including  
6 construction of a major tunnel under Downtown San Francisco, needed to connect to the Transbay  
7 Transit Center, the northern terminus of the California High-Speed Rail System; nor have project-  
8 level environmental clearances necessary to proceed to construction been obtained for any portion  
9 of the high-speed rail facilities for this corridor.

10 60. The two Funding Plans are currently only available as draft documents. The Board does  
11 not plan to give final approval to either Funding Plan at its December 13th meeting. Rather, the  
12 Board intends to authorize CHSRA's Chief Executive Officer ("CEO") to finalize both Funding  
13 Plans after January 1, 2017, when AB 1889 becomes effective, and submit them to the Director of  
14 Finance for his consideration and approval.

### 15 **CHARGING ALLEGATIONS**

#### 16 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF** 17 (violation of Article XVI Section 1 of the California Constitution)

18 61. Plaintiffs reallege and incorporate by this reference the allegations contained in Paragraphs  
19 1 through 60 of this complaint.

20 62. As an agency of the State of California CHSRA has a duty to follow the requirements set in  
21 the California Constitution. In particular, CHSRA has a duty to follow the requirements of Article  
22 XVI Section 1 regarding the use of the proceeds of a voter-approved bond measure.

23 63. More specifically, in approving a second Funding Plan for a Usable Segment of its high-  
24 speed rail system for the use of Prop. 1A bond funds in constructing that segment, CHSRA must  
25 comply with the requirements set by §2704.08(d) for such Funding Plans.

26 64. There are present controversies between Plaintiffs and CHSRA raised by CHSRA's  
27 preparation and proposed adoption of two second Funding Plans, purportedly in accordance with  
28 the requirements of §2704.08(d): a CV Segment Funding Plan and a SF – SJ Peninsula Corridor  
29 Funding Plan.

1 65. §2704.08(d) requires that a second Funding Plan must include a projected ridership and  
2 revenue report for the usable segment for which the Funding Plan has been prepared.

3 66. The draft second Funding Plan for the CV Segment includes no ridership or revenue report  
4 or ridership or revenue data for the usable segment extending from the Madera Amtrak station to  
5 Poplar Avenue in Shafter. Instead, it includes a ridership and revenue report for the completed  
6 IOS, extending from San Jose to Bakersfield and for conventional rail Amtrak San Joaquin service  
7 along this segment. It therefore does not meet a basic requirement of Streets & Highways Code  
8 §2704.08(d).

9 67. The draft second Funding Plan for the SF-SJ Corridor does not contain a ridership and  
10 revenue report for high-speed train service on this usable segment. Instead, it contains a ridership  
11 and revenue report for Caltrain service along this segment. It therefore does not meet a basic  
12 requirement of Streets & Highways Code §2704.08(d).

13 68. §2704.08 requires that the independent consultant report to accompany a second Funding  
14 Plan determine that: 1) the proposed usable segment can be successfully constructed as proposed  
15 in the Funding Plan; 2) the proposed usable segment, when constructed with the funding identified  
16 in the Funding Plan, would be suitable and ready for high-speed train operation, b) one or more  
17 passenger service providers could begin using the tracks or stations of the usable segment for  
18 passenger rail service, and c) the planned passenger train service on the usable segment, to be  
19 provided by CHSRA or pursuant to its authority, would not require a public operating subsidy.

20 69. The CV Segment draft second Funding Plan asserts that available funding will allow  
21 construction of the complete CV Segment, including right of way, trackage, signaling, and all  
22 other necessary infrastructure. The independent consultant report agrees that the construction can  
23 be successfully completed. However, neither the Funding Plan nor the consultant report address  
24 the uncertainty surrounding the \$2.234 billion of Cap & Trade auction funding identified in the  
25 Funding Plan and presumed available in the consultant report. There are no authorizations or  
26 assurances that \$2.234 billion will be available from Cap & Trade auction proceeds by 2020. It is  
27 highly questionable whether anything approaching that amount of funding will be provided to  
28 CHSRA from Cap & Trade auction proceeds by 2020, when the legislative authorization of the cap  
29 & trade auctions expires, especially when recent auction results have fluctuated wildly, from  
30 amounts consistent with that total to amounts that would fall far below that total.

1 70. While the SF-SJ Corridor Funding Plan alleges that full funding is available for the PCEP,  
2 that funding includes \$647 million from a Federal Transit Administration Core Capacity Program  
3 grant. However, as of the date, in early January 2017, when the Funding Plan is expected to be  
4 approved, that grant will, in all likelihood, not have been awarded, and therefore cannot be  
5 considered to have any authorization, allocation, or other assurance of its availability. In addition,  
6 the Funding Plan's funding also relies on the use of Cap & Trade auction proceeds, which, as  
7 explained in the previous paragraph, cannot be relied upon as an authorization or assurance of  
8 available funding. Thus, even the PCEP, which is not a usable segment that complies with  
§2704.08(d)'s other requirements, is not fully funded, as required under §2704.08(d).

9 71. The CV Segment draft second Funding Plan asserts that the segment will, when  
10 constructed, will be suitable and ready for high-speed train operation. The independent consultant  
report also asserts that this is the case.

11 72. The CV Segment draft second Funding Plan, while it includes right of way, trackage,  
12 electrical supply, signaling, and two station platforms, does not include purchase of any trainsets.  
13 It is therefore not suitable and ready for high-speed train operation because there will be no trains  
14 to operate on it. Likewise, the SF-SJ Corridor does not include high-speed rail trainsets to operate  
15 on that corridor. Nor will that corridor, upon completion of the PCEP, be suitable and ready for  
16 high-speed rail operation, because the stations on the corridor and the trackage would both need  
17 significant, and as yet unfunded, additional capital improvements before high-speed rail trains  
18 could use that corridor.<sup>3</sup> Thus, neither segment satisfies the requirement of §2704.08(d) that, when  
19 the funded construction is complete, the usable segment will be suitable and ready for high-speed  
train operation.

20 73. For the CV Segment, the consultant report points to the eventual use of the CV Segment as  
21 part of the IOS – North, but no second Funding Plan has been approved for that segment, nor is it  
22 fully designed, funded, or environmentally cleared. The consultant report also point to the possible  
23 use of the CV Segment by Amtrak, but that would require further improvements to make that

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24 <sup>3</sup> In addition, both the California Environmental Quality Act and the provisions of SB 1029, the  
25 bill that appropriated funds for the bookends segments, require that the before construction of a  
26 San Francisco – San Jose high-speed rail segment can begin, it must have received all necessary  
project-level environmental clearances. Thus far, that high-speed rail segment has not yet received  
any project-level environmental clearances.

1 connection, which are not included in the funding for the CV Segment. Therefore, that  
2 requirement of §2704.08(d) is also unsatisfied.

3 74. In addition, §2704.08(d) requires the consultant report to confirm that high-speed rail  
4 service along the usable segment will not require a public subsidy.

5 75. The consultant reports acknowledge that neither Funding Plan will result in *any*  
6 commercial high-speed rail service in the readily foreseeable future, and therefore conclude that it  
7 is impossible to predict whether such service, when provided, would require a public subsidy.  
8 Because the reports cannot satisfy this requirement of §2704.08(d), neither Funding Plan is  
9 adequate under that section.

10 76. While the CV Segment Funding Plan does not propose to establish scheduled, revenue-  
11 generating, passenger service, it does propose to run high-speed passenger train service on the  
12 segment as a test track. However, this test track high-speed rail passenger train service will not  
13 generate any operating revenue, yet will incur operating and maintenance costs. Therefore,  
14 contrary to the consultant's report, this test track passenger train service will require a public  
15 subsidy, making it ineligible for use of Prop. 1A bond funds.

16 77. CHSRA asserts, in both of its draft Funding Plans, that any deficiencies in complying with  
17 the requirements of §2704.08(d) are addressed and cured by the Legislature's adoption of AB  
18 1889, which provides that a usable segment is to be considered suitable and ready for high-speed  
19 train operation so long as, with the addition of future capital improvements, whether or not  
20 currently funded, it would then become suitable and ready for high-speed train operation.

21 78. Plaintiffs assert, to the contrary, that AB 1889 attempts to materially alter the provisions of  
22 Prop. 1A without having been approved by the voters of California, and therefore violates Article  
23 XVI Section 1 of the California Constitution. Consequently, Plaintiffs assert that any Funding  
24 Plan that relies of AB 1889 to meet the requirements of §2704.08(d) is also in violation of that  
25 Constitutional provision.

26 79. Plaintiffs seek the Court's declaratory order determining the constitutionality of AB 1889  
27 and the validity of any Funding Plan adopted in reliance on the provisions AB 1889.

28 80. In addition, CHSRA claims that both its Central Valley Segment Funding Plan and its SF –  
29 SJ Peninsula Corridor Funding Plan will meet the requirements set by §2704.08(d), while Plaintiffs  
30 assert as detailed above, that both Funding Plans, and their accompanying consultant reports, are  
deficient and fail to meet the requirements of §2704.08(d). Plaintiffs seek the Court's declaratory



1 order determining the adequacy of the two Funding Plans and their accompanying consultant  
2 reports.

3 **SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF**

4 Code of Civil Procedure §526a – illegal expenditure of public funds

5 81. Plaintiffs reallege and incorporate by this reference the allegations of paragraphs 1-80  
6 inclusive.

7 82. CHSRA has been and is continuing to expend public funds towards the preparation and  
8 approval of Funding Plans in reliance on the validity of AB 1889.

9 83. Because AB 1889 attempts to materially alter the provisions and requirements of Prop. 1A,  
10 a voter-approved general obligation bond measure of the State of California, it violates Article  
11 XVI Section 1 of the California Constitution.

12 84. Any Funding Plan that relies on the provisions of AB 1889 to meet the requirements of  
13 §2704.08(d) is, in fact, invalid and in violation of the provisions of Prop. 1A.

14 85. Therefore, any expenditure of public funds towards the preparation or approval of such a  
15 Funding Plan is an illegal expenditure of public funds subject to being enjoined under Code of  
16 Civil Procedure §526a.

17 **FURTHER CLAIMS**

18 86. At such time as CHSRA and the Director of Finance may grant formal approval to either or  
19 both of the Funding Plans at issue herein, Plaintiffs intend to file supplemental claims for  
20 mandamus challenging such approvals.

21 **WHEREFORE**

22 Plaintiffs pray for relief as follows:

23 1. For this Court’s declaratory order declaring that AB 1889 violates Article XVI Section 1 of  
24 the California Constitution and is therefore invalid and void.

25 2. For this Court’s declaratory order declaring that any Funding Plan that relies on the  
26 provisions of AB 1889 to find compliance with the requirements of Prop. 1A is, in fact, not in  
27 compliance with those requirements and is therefore invalid.

1 3. For this Court's temporary restraining order, preliminary injunction, and permanent  
2 injunction preventing CHSRA from expending any public funds toward the approval of a Funding  
3 Plan that relies on AB 1889 to find compliance with the requirements of Prop. 1A, or that fails for  
4 any other reason to fully meet the requirements of §2704.08(d).

5 4. For this Court's temporary restraining order, preliminary injunction, and permanent  
6 injunction preventing CHSRA from expending any Prop. 1A high-speed rail construction bond  
7 funds towards the construction of any Usable Segment of its proposed high-speed rail system  
8 based on a second Funding Plan that relies upon AB 1889 to find compliance with the  
9 requirements of Streets & Highways Code §2704.08(d) or that otherwise fails to fully comply with  
10 those requirements.

11 5. For the recovery and restoration to the California State Treasury of any funds that CHSRA  
12 has illegally, improperly, or wastefully spent towards the preparation and/or approval of  
13 improper/noncompliant Funding Plans, and of any Prop. 1A funds illegally spent in reliance upon  
14 such improper and/or illegal Funding Plans.

15 6. For an award of attorneys fees to Plaintiffs in the public benefit under Code of Civil  
16 Procedure §1021.5 or any other applicable provision.

17 7. For Plaintiffs' costs of suit herein.

18 8. For such other and further relief as the Court may find just and proper.

19 December 12, 2016

20 Michael J. Brady

21 Stuart M. Flashman

22 Attorneys for Plaintiffs

23 by 

**VERIFICATION**

1  
2 I, David Schonbrunn, am the President of the Transportation Solutions Defense and  
3 Education Fund, which is a plaintiff in this action and has authorized me to sign this verification  
4 on its behalf. I have read the foregoing complaint and am familiar with the matters alleged therein.  
5 All of the facts stated therein are true of my own knowledge, except as to matters alleged based on  
6 information and belief, and as to such matter I am informed and believe that the matters stated  
7 therein are true. I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct and that this Verification was executed on December 13, 2016 at  
9 Oakland, California.

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