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Authority*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11  
12 **JOHN TOS, QUENTIN KOPP, TOWN OF**  
13 **ATHERTON, a municipal corporation,**  
14 **COUNTY OF KINGS, a subdivision of the**  
15 **State of California, MORRIS BROWN,**  
16 **PATRICIA LOUISE HOGAN-GIORNI,**  
17 **ANTHONY WYNNE, COMMUNITY**  
18 **COALITION ON HIGH-SPEED RAIL, a**  
19 **California nonprofit corporation,**  
20 **TRANSPORTATION SOLUTIONS**  
21 **DEFENSE AND EDUCATION FUND, a**  
22 **California nonprofit corporation, and**  
23 **CALIFORNIA RAIL FOUNDATION, a**  
24 **California nonprofit corporation,**

25 Plaintiffs,

26 v.

27 **CALIFORNIA HIGH SPEED RAIL**  
28 **AUTHORITY, a public entity, BOARD OF**  
**DIRECTORS OF THE CALIFORNIA**  
**HIGH-SPEED RAIL AUTHORITY, and**  
**DOES 1-20 inclusive,**

Defendants.

Case No. 34-2016-00204740

**DEFENDANT'S OBJECTION TO  
PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE IN OPPOSITION  
TO DEFENDANT'S DEMURRER AND  
MOTION TO STRIKE ALLEGATIONS**

Date: April 18, 2017  
Time: 9:00 a.m.  
Dept: 54  
Judge: Raymond M. Cadei  
Trial Date: None set  
Action Filed: December 13, 2017

1           1. Plaintiff California High-Speed Rail Authority (the “Authority”) objects to **Exhibit C** to  
2 Plaintiffs’ Request For Judicial Notice in Opposition to Defendant’s Demurrer and Motion To  
3 Strike Allegations (“Plaintiffs’ RJN”) on the grounds it is not relevant to either motion. (*City of*  
4 *Palo Alto v. Public Employment Relations Board* (2016) 5 Cal.App.5th 1271, 1300, fn. 8  
5 [declining to take judicial notice of material not relevant to the issues before the court].) The  
6 document, an excerpt from a revised budget proposed budget (not the budget as actually passed)  
7 contains a brief mention of amendments that the “Administration will be proposing” to Assembly  
8 Bill 3037 [Reg. Sess. 2007-2008], the Safe Reliable High-Speed Passenger Train Bond Act for  
9 the 21st Century. Plaintiffs have cited no authority for the proposition that Executive Branch  
10 statements about amendments to pending legislation that the Executive Branch contemplates  
11 presenting to the Legislature are properly part of the legislative history of a statute. (*Cf. Kaufman*  
12 *& Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-37  
13 [listing documents constituting cognizable legislative history].) Nor have plaintiffs presented any  
14 evidence that the document was considered by the Legislature in connection with its passage of  
15 the Bond Act. (See *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 168,  
16 fn. 2 [holding that documents are not judicially noticeable as legislative history where there is no  
17 indication the documents were considered by the Legislature].) Therefore, *assuming arguendo*  
18 that the content of the excerpt of the draft budget could be deemed an official executive act, it is  
19 not subject to judicial notice of the Legislature’s intent in enacting AB 3034.

20           Further, even if the document were properly part of the legislative history of AB 3034, and  
21 it is not, the excerpt is wholly irrelevant to the issues in defendant’s demurrer and defendants’  
22 motion to strike, (*City of Palo Alto, supra*, 5 Cal.App.5th at p. 1300, fn. 8), which is not the  
23 Legislature’s intent in enacting AB 3034, as plaintiffs argue (Plaintiffs’ Request for Judicial  
24 Notice at 3), but whether plaintiffs’ complaint was filed prematurely, whether plaintiffs’ Second  
25 Cause of Action fails to state a cause of action upon which relief may be granted because  
26 plaintiffs’ sole remedy is via petition for writ of mandamus, and whether plaintiffs’ requests for  
27 injunctive relief should be stricken.  
28


1           2. The Authority objects to **Exhibit E** to Plaintiffs' RJN on the grounds it is not relevant to  
2 the pending motions. (*City of Palo Alto, supra*, Cal.App.5th at 1300, fn. 8.) Plaintiff's FAC  
3 seeks an injunction relating to two Authority funding plans, the Central Valley Funding Plan and  
4 the Peninsula Funding Plan, even though neither plan had been submitted to or approved by the  
5 Director of Finance at the time the action was filed. Exhibit E, a March 3, 2017 letter from the  
6 Director of Finance to the California High-Speed Rail Authority approving the Central Valley  
7 Funding Plan, was not in existence on December 13, 2016, the date on which this action was filed,  
8 and reflects an action taken by the Director of Finance months later. It therefore is irrelevant to  
9 whether plaintiffs' action was premature when filed. At most, the document would support an  
10 order allowing plaintiffs to file a further amended or supplemental complaint, a course of action  
11 plaintiffs have rejected. The parties met and conferred with respect to this demurrer on March 7,  
12 2017, after the issuance of Exhibit E, and plaintiffs declined to file a further amended complaint  
13 or to dismiss this case and bring a new action, but instead chose to stand on the FAC as then  
14 pleaded. (Declaration of Sharon L. O'Grady in Support of Demurrer to Verified First Amended  
15 Complaint, ¶ 2.)

16           Notwithstanding, if the Court decides to take judicial notice of Exhibit E, the Authority  
17 respectfully requests that the Court also take judicial notice of Exhibit 5 to Defendant's Request  
18 for Judicial Notice, filed herewith. Exhibit 5 to Defendant's Request for Judicial Notice is a copy  
19 of a corresponding letter from the Director of Finance to the California High-Speed Rail  
20 Authority reflecting his decision to defer action on the Peninsula Funding Plan.

21 Dated: April 11, 2017

Respectfully Submitted,

22 XAVIER BECERRA  
23 Attorney General of California  
24 TAMAR PACHTER  
25 Supervising Deputy Attorney General

26   
27 SHARON L. O'GRADY  
28 Deputy Attorney General  
Attorneys for Respondents  
California High-Speed Rail Authority

SA2016104863

**DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER**

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority**  
No.: **34-2016-00204740**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **[GOLDEN STATE OVERNIGHT]**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.


On April 11, 2017, I served the attached **DEFENDANT'S OBJECTION TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO DEFENDANT'S DEMURRER AND MOTION TO STRIKE ALLEGATIONS** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 11, 2017, at San Francisco, California.

Susan Chiang  
Declarant

  
Signature