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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

**JOHN TOS, AARON FUKUDA; AND
COUNTY OF KINGS, A POLITICAL
SUBDIVISION OF THE STATE OF
CALIFORNIA,**

Plaintiffs,

v.

**CALIFORNIA HIGH SPEED RAIL
AUTHORITY; JEFF MORALES, CEO OF
THE CHSRA; GOVERNOR JERRY
BROWN; STATE TREASURER, BILL
LOCKYER; DIRECTOR OF FINANCE,
ANA MATASANTOS; SECRETARY
(ACTING) OF BUSINESS,
TRANSPORTATION AND HOUSING,
BRIAN KELLY; STATE CONTROLLER,
JOHN CHIANG; AND DOES I-V,
INCLUSIVE,**

Defendants.

Case No. 34-2011-00113919
**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' "PART II" TRIAL BRIEF
AND SUPPORTING EVIDENCE**

Date: May 31, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Hon. Michael P. Kenny

Trial Date: May 31, 2013
Action Filed: November 14, 2011

1 Defendants object to the court's consideration of any part of plaintiffs' "Part II" trial brief
2 and evidence purporting to address claims for declaratory and injunctive relief. Plaintiffs filed a
3 57-page "Part II" trial brief, 15 declarations, a request for judicial notice of 144 "non-
4 environmental" documents, and a second request for judicial notice of 17 more documents
5 referred to in the declaration of Jason Holder, who is one of the 15 declarants. Defendants object
6 to the "Part II" brief and evidence on four grounds: (1) the brief and evidence are premature in
7 advance of a ruling on plaintiffs' writ claims; (2) the brief and evidence set forth extra-record
8 evidence that contradicts evidence in the record which is inadmissible in a writ proceeding; (3)
9 plaintiffs cannot litigate claims challenging already-made agency decisions in a civil proceeding
10 for declaratory and injunctive relief; and (4) plaintiffs cannot re-litigate claims determined in the
11 writ proceedings in a civil proceeding for declaratory and injunctive relief.

12 There are ten claims in the second amended complaint alleging violations of statutory
13 duties in Proposition 1A (hereinafter "bond act"). (Second Amended Complaint [hereinafter
14 "SAC"].) Plaintiffs seek a writ for each and every one of those ten claims. (See Defs'
15 Memorandum of Points and Authorities in Opposition to Plaintiffs "Part I" Brief (hereinafter
16 "Defs' Opp"), pp. 13-15 [documenting each writ sought].) Those claims encompassed within the
17 first through sixth and eleventh causes of action are brought for violations of statutory duties in
18 the bond act, and seek writ relief, declaratory relief, or a combination of both. (SAC, pp. 14-24.)
19 Those claims encompassed within the seventh through tenth and twelfth causes of action are also
20 brought for violations of statutory duties but they seek declaratory and injunctive relief to prevent
21 any illegal expenditure of public funds, in addition to writ relief. (*Id.*, pp. 24-31.) The twelfth
22 cause of action in particular seeks to prevent any spending of bond funds as a result of *all* the
23 violations of the bond act alleged in the SAC. (*Id.*, ¶¶ 87-91.) Thus, the twelfth cause of action
24 itself replicates and incorporates the substance of each of the ten claims in the SAC for which
25 writs are sought.

26 At a case management conference, the parties agreed to try the writ claims first, on May 31,
27 2013. The parties discussed whether the claims for declaratory and injunctive relief authorized a
28 jury trial which plaintiffs sought. Plaintiffs argued that some claims were legal but others were

1 factual, authorizing a jury trial. Defendants argued that all the claims challenged already-made
2 decisions of the agency, and those decisions could only be challenged by mandamus. The court
3 decided to hear the action's writ claims on May 31, 2013, and deferred ruling on the viability of
4 the claims for declaratory and injunctive relief in the action until after the writ hearing. The
5 parties executed a stipulation setting a briefing schedule that stated explicitly on the cover that the
6 hearing related to plaintiffs' claims for writs of mandate.

7 Despite these events, plaintiffs filed the "Part II" trial brief and supporting evidence for a
8 *civil trial* which they assume would start on May 31, immediately after the court's ruling on the
9 writ claims. Plaintiffs argue they are entitled to a jury trial (or at least an advisory jury trial) as to
10 those claims in the SAC that present mixed legal issues or questions of fact in a civil action for
11 declaratory and injunctive relief. ("Part II" Brief, pp. 3:1-4:7, 5:11-6:13.) Defendants object to
12 the court's consideration of any part of "Part II" brief and evidence in this writ proceeding.

13 First, the "Part II" brief and evidence are premature in advance of a ruling on plaintiffs' ten
14 claims for writs of mandate. No matter who prevails, most of the claims involve statutory
15 construction of the bond act presenting *pure* questions of law, e.g., whether the bond act
16 authorizes construction of the train system in sections smaller than a corridor or usable segment
17 thereof as those terms are defined in the bond act. A ruling on those legal issues in the context of
18 the writ claims will dispose of those claims for all purposes, including those claims for which
19 plaintiffs seek ancillary declaratory and injunctive relief. Further, the idea that a civil trial could
20 begin on May 31 is absurd: there has been no trial setting conference setting the action's
21 purported civil claims for trial, and consequently, there has been no motion practice cut-off date,
22 no ordinary and expert discovery cut-off date, no alternative dispute resolution, no settlement
23 conference, all of which must occur before a civil action may be tried. Instead, plaintiffs have
24 unilaterally set a trial of their purported civil claims and presented their evidence which
25 defendants have had no opportunity to confront.

26 Second, much of plaintiffs' "Part II" brief and evidence contradicts evidence in the record
27 and seeks to prove that the agency's decisions are incorrect. The court may not consider any of
28 the offered argument or evidence to establish facts in this mandamus proceeding that conflict with

1 facts in the administrative record of the underlying proceeding. (*Western States Petroleum Ass'n*
2 *v. Superior Court* (1995) 9 Cal.4th 559, 575, 579 [extra-record evidence can never be admitted to
3 contradict evidence upon which the agency relied or to raise questions regarding the wisdom of
4 the quasi-legislative decision]; *San Joaquin County Local Agency Formation Comm'n v. Superior*
5 *Court* (2008) 162 Cal.App.4th 159, 169 [same].) Quasi-legislative decisions are reviewed only
6 for abuse of discretion based on a record of the underlying proceedings which is a highly
7 deferential standard of review. (*Id.* at p. 167.) The "Part II" brief and evidence are thus
8 inadmissible in the mandamus proceeding.

9 Third, the court should not consider the civil claims for declaratory and injunctive relief at
10 all because plaintiffs cannot use these causes of action to challenge an agency's decision as a
11 matter of law. The California Supreme Court has held that declaratory relief is *not* an appropriate
12 method of review of a public agency decision or order. (*State v. Superior Court (Veta Co.)*
13 (1974) 12 Cal.3d 237, 249; accord, *Los Angeles v. State Dep't of Public Health* (1958) 158
14 Cal.App.2d 425, 443.)

15 Finally, plaintiffs cannot use the civil claims to relitigate the writ claims. Where a ruling on
16 a writ resolves allegations central to the mandate claim, that ruling necessarily resolves the related
17 demand for declaratory and injunctive relief based on the same legal issues and
18 allegations. (*Grist v. Fair Political Practices Comm'n* (2001) 25 Cal.4th 688, 699-700; *Cnty. of*
19 *Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.) Plaintiffs' attempt to avoid
20 the deferential standard of review applicable when challenging an agency determination is
21 unavailing. Their failure to litigate the writ claims in the writ proceeding should be considered a
22 waiver of those claims and judgment should be entered for the state; and any attempt to relitigate
23 those adjudged claims as causes of action for declaratory and injunctive relief should be rejected.
24 Code of Civil Procedure section 526a gives taxpayers standing to sue (in mandamus, or for
25 injunctive or declaratory relief, as appropriate) without having to prove they are injured by a
26 violation of law. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268.) Section 526a does not trump
27 the standard of review applicable to public agency decision, or provide plaintiffs with a second
28 opportunity to challenge an agency decision following mandamus review of that decision.


1 In *Van Atta v. Scott* (1980) 27 Cal.3d 424, 449, the California Supreme Court stated that
2 taxpayers suits under section 526a seeking mandamus, declaratory relief and injunctive relief, and
3 damages are permitted to provide taxpayers broad remedies for actual or threatened illegal
4 expenditures of public funds. The precise remedy available, however, is not determined by
5 section 526a, but by the nature of the relief sought. Here, plaintiffs seek first, to overturn or
6 invalidate the agency's funding plan, and second, to prevent the expenditure of bond funds to
7 construct the project described in the funding plan. To invalidate the agency's funding plan,
8 plaintiffs must seek a writ of mandamus. To restrain spending of bond funds, plaintiffs must seek
9 declaratory or injunctive relief. But once litigated in a mandamus proceeding, section 526a does
10 not authorize a second suit to relitigate legal or factual issues resolved in the mandamus
11 proceeding because an action to overturn an agency decision can only be by mandamus.

12 For these reasons, defendants request that the court sustain its objections to plaintiffs' "Part
13 II" brief and all supporting evidence, and that the court disregard the brief and evidence in ruling
14 on plaintiffs' claims for writs of mandate.

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16 Dated: April 15, 2013

Respectfully Submitted,

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