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8 *Attorneys for Petitioners and Plaintiffs John Tos et al.*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS *et al.*,
Petitioners and Plaintiffs
13 vs.
14 STATE OF CALIFORNIA *et al.*,
Respondents and Defendants

No. 34-2016-00204740
Assigned for all purposes to Hon. Richard K.
Sueyoshi, Department 28
PETITIONERS' AND PLAINTIFFS'
OPPOSITION TO RESPONDENTS'
REQUEST FOR JUDICIAL NOTICE

15 Date: February 16, 2018
16 Time: 10:00 AM
17 Department: 28
18 Judge: Hon. Richard K. Sueyoshi
Action filed: December 13, 2016
Trial Date: Not Yet Set

19 Respondents have submitted to the Court a 355-page request for judicial notice consisting of
20 various court documents from this case and two previous trial court cases, one in Sacramento County and
21 one in Contra Costa County. Respondents assert that, in addition to being court documents subject to
22 judicial notice under Evidence Code § 452(d), the documents are relevant to the motion before the court,
23 a motion to bifurcate, “to show the potential severe harm to the public interest if the Court were to issue
24 an order preventing the Authority from spending bond funds for the projects currently being constructed
25 in the Central Valley and the San Francisco – San Jose Peninsula.” (Respondents’ Request for Judicial
26 Notice in Opposition to Motion to Bifurcate at p. 3:4-6.)

1 Yet the motion before the court is not a request for an order to cut off the use of bond funds
2 anywhere. All that is before the Court is a motion to bifurcate the first cause of action in the case – for
3 declaratory relief – to allow it to move forwards on its own, rather than wait for the other slower-moving
4 causes of action to be ready for the Court’s consideration.

5 Further, contrary to the claims made in Respondents’ Opposition to Motion to Bifurcate, the
6 cause of action for declaratory relief, the only cause of action before the Court in the motion, does not
7 involve consideration of the public interest. Rather, in this case it is purely a matter of statutory and
8 constitutional interpretation. (*See, e.g., Shaw v. People Ex Rel. Chiang* (2009) 175 Cal.App.4th 577, 616
9 [action for declaratory relief finding that certain legislative enactments violated Article II Section 10
10 subdivision(c) of the California Constitution by attempting to modify a voter-approved initiative bond
11 measure without voter ratification].)

12 The only case cited by Respondents as requiring consideration of the public interest, *Cota v.*
13 *County of Los Angeles* (1980) 105 Cal.App.3d 282, did not even involve declaratory relief. Instead it
14 involved a reverse validation action under Code of Civil Procedure § 863 and injunctive relief under
15 Code of Civil Procedure § 526a. There is no supporting authority for considering the public interest in
16 determining whether to grant declaratory relief, and certainly not for considering it in a motion to
17 bifurcate to allow a claim for declaratory relief to be considered separately from the other causes of action
18 in the petition and complaint.

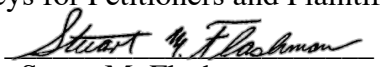
19 As a consequence, none of the documents submitted by Respondent have any relevance to the
20 motion currently before the court, and Respondents’ Request for Judicial Notice must be denied.
21 (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062 [judicial notice is always confined
22 to matters relevant to the issue at hand].)

23 Dated: February 8, 2018

Respectfully submitted,

24 Michael J. Brady
25 Stuart M. Flashman

Attorneys for Petitioners and Plaintiffs

26 by: 
27 Stuart M. Flashman