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7 *Attorneys for Petitioners and Plaintiffs*  
8 *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 THE STATE OF CALIFORNIA, *et al.*,  
Respondents and Defendants

No. 34-2016-00204740 Filed 12/13/16

Assigned for all purposes to  
Department 28, Hon. Richard Sueyoshi

PETITIONERS' OBJECTIONS TO  
RESPONDENTS' REQUEST FOR  
JUDICIAL NOTICE IN OPPOSITION TO  
MOTION FOR JUDGMENT ON THE  
PLEADINGS

15  
16  
17 Date: October 26, 2018  
18 Time: 11:00 AM  
19 Dept.: 28  
Judge: Hon. Richard Sueyoshi  
Trial Date: Not yet set

20 Respondents have asked the Court to take judicial notice of four documents, two of which  
21 are the remaining portions of documents for which Petitioners have requested judicial notice of  
22 excerpts. Petitioners acknowledge that all of the documents are, by their nature, potentially subject  
23 to judicial notice under one or another provision of Evidence Code Section 452. However,  
24 Respondents pay scant attention to the second requirement for the Court to grant judicial notice:  
25 the document or fact must be relevant to a material issue pending before the Court. (*Mangini v. R.*  
26 *J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1061.)

1                   **A.     The text of the San Francisco to San Jose Peninsula Corridor Funding Plan is**  
2                   **not relevant to any material issue for this motion.**

3                   This motion asks the Court to find that AB 1889 is facially unconstitutional for violation of  
4                   Article XVI, Section 1 of the California Constitution. The basis for the motion is that AB 1889  
5                   constituted a partial repeal of the provisions of Proposition 1A, a voter-approved general  
6                   obligation bond measure. While a specific funding plan might be relevant to the question of  
7                   whether AB 1889, as applied, was constitutional, the question before the Court is whether AB  
8                   1889 is unconstitutional *as a matter of law*. The specific provisions of a particular funding plan  
9                   are immaterial to that purely legal question. (*Del Oro Hills v. City of Oceanside* (1995) 31  
10                  Cal.App.4th 1060, 1076 [“Generally, a facial challenge presents an issue of law and case-specific  
11                  factual inquiry is not required.”].) In fact, Respondents’ opposition brief only mentions the San  
12                  Francisco to San Jose Funding Plan briefly (and erroneously) in its “Background” section.<sup>1</sup>  
13                  Consequently, the request for judicial notice should be denied for lack of relevancy.

14                   **B.     The 2012 Legislative Counsel’s opinion letter regarding the legislative intent of**  
15                   **Proposition 1A should be denied as irrelevant.**

16                  As was noted in Petitioners’ Opening Brief (at p. 22) and is explained in greater detail on  
17                  page 13 of Petitioners’ reply brief (footnote 11), an interpretation made in 2012 of a ballot measure  
18                  approved by the voters in 2008 can be given little, if any, weight. It is certainly not part of what  
19                  was before the voters when they approved the measure, nor can it provide any insight into the  
20                  intent of the 2008 Legislature when it placed the measure on the ballot. Consequently, judicial  
21                  notice should be denied because the document is irrelevant.

22                  \_\_\_\_\_  
23                  <sup>1</sup> That mention references a statement in the funding plan that upon completion of construction  
24                  under the funding plan, both Caltrain and high-speed rail trains would be able to run on the  
25                  corridor. (Opposition at p. 11:7-8.) However, judicial notice does not include acceptance of the  
26                  truth of matters stated in a document if they are reasonably disputed. (See, citations in  
27                  Respondents’ Objections to Petitioners’ Request for Judicial Notice at p. 2:14-24.) As explained  
28                  in Petitioners’ reply brief (at pp. 5-6 fn. 3), Respondents’, and the exhibit’s, assertion is  
29                  contradicted by the Authority’s own 2012 Business Plan (Exhibit M to Petitioners’ Request for  
30                  Judicial Notice at p. 2-2). Based on that contradiction, the truth of this fact, although asserted in  
31                  the Funding Plan, is not subject to judicial notice.

1           **C.     The Court should deny judicial notice of the items in paragraphs 3 and 4 for**  
2           **lack of relevance.**

3           Petitioners have requested judicial notice of a portion of the ballot materials for Prop. 1, the  
4           ballot measure that was replaced on the November 2008 ballot by Proposition 1A, including the  
5           text of the measure, and a portion of the May Revision to the Governor's 2008-2009 budget as  
6           communicated to the Legislature – the portion addressed to funding for the Authority.

7           Respondents ask that the remainder of these two items also be subject to judicial notice.  
8           Again, however, neither Respondents' Request for Judicial Notice nor their opposition brief  
9           provides any explanation of how or why the additional information would be relevant to an issue  
10          before the Court. There does not appear to be any. Judicial notice requires that the document or  
11          fact be relevant to a material issue before the court. For that reason, Petitioners ask that the Court  
12          to deny judicial notice of these materials for lack of relevancy.

13                  Dated: September 24, 2018

14    Respectfully submitted,

15    Michael J. Brady

16    Stuart M. Flashman

17    Attorneys for Petitioners and Plaintiffs

18    by: Stuart M. Flashman