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EXEMPT FROM FEES PER GOVERNMENT CODE §6103

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AND COUNTY OF KINGS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

JOHN TOS, AARON FUKUDA, and COUNTY OF KINGS,
Plaintiffs

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY *et al.*,
Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR JUDGMENT.

Date: February 11, 2016

Time: 9:00 AM
Dept.: 31
Judge: Hon. Michael P. Kenny
Trial Date: February 11, 2016

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INTRODUCTION

Defendants' Opposition to Petition for Writ of Mandate (hereinafter, "Opposition") displays a fundamental misunderstanding and misinterpretation of the nature of Proposition 1A ("Prop. 1A" or "Measure"). The Measure was not just about the issuance of bonds, nor was it a "blank check". Aware of the skepticism of voters about such a "big ticket" project, the Legislature incorporated in Prop 1A provisions intended to ensure that the voters knew what they would be getting, and could be confident that they would get what they were promised. This lawsuit arose because those promises went unfulfilled. Defendants' misinterpretations lead them to make a series of argument against Plaintiffs' Motion for Judgment, but those arguments are unavailing.

Defendants argue that Proposition 1A was a bond measure and nothing more; that all of Proposition 1A's provisions apply exclusively to the authorization of, and conditions placed on the issuance and expenditure of those bond funds. In fact, however, like Proposition 116, which was at issue in *Shaw v. People ex rel Chiang* (2009) 175 Cal.App.4th 577, Proposition 1A did not concern itself solely with a specific general obligation bond. It also made concomitant changes in state law. Those changes addressed the high-speed rail system ("System") that Defendant California High-Speed Rail Authority ("CHSRA") had already been tasked with planning and constructing (*see*, California High-Speed Rail Act, Stats. 1996, Ch. 796, Sec. 1, codified as Public Utilities Code §§185000 et seq.), regardless of the source of funds used for those activities.

As in *Shaw*, it is those statutory provisions, rather than a pending expenditure of bond funds, that are the focus of Plaintiffs' claims. Properly construed, Proposition 1A fully supports those claims, and the evidence in the record shows beyond doubt that Defendants, including both CHSRA and the Legislature, are in violation of the California Constitution by attempting to violate or substantially change the Measure's provisions without getting the approval of California voters. For that reason, Plaintiffs are entitled to judgment in their favor, as well as to a permanent injunction against illegal and wasteful expenditures under Code of Civil Procedure §526a, declaratory relief addressing the Legislature's unlawful acts, and a writ of mandate requiring CHSRA to rescind its illegal actions.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE RIPE FOR ADJUDICATION DESPITE THE LACK OF A FINAL FUNDING PLAN UNDER §2704.08(d).

A. PROPOSITION 1A'S REQUIREMENTS ARE NOT LIMITED TO THE USE OF BOND FUNDS IN CHSRA'S HIGH-SPEED RAIL SYSTEM.

The central premise of Defendants' arguments is that Proposition 1A concerned itself solely with the $9.95 billion in bond funds that it authorized and how those funds could be used. However, the plain language of the measure does not support that narrow interpretation.

As already explained in Plaintiffs' Opening Brief (at p. 6), the very first substantive provision of the measure, Streets & Highways Code §2704.04[1], stated the Legislature's, and the voters', intent that the measure was intended to, "...initiate the construction of a high-speed rail system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers... ." The measure went on to require that the system so constructed be " … consistent with the authority's certified [program] environmental impact reports of November 2005 and July 9, 2008."

Defendants argue that, despite the specific direction given about the nature of the system being authorized for construction, that direction only applied to the use of the bond funds designated for the system. (Opposition at 2:22-24.) Nothing in §2704.04, or elsewhere in the measure, supports that narrow interpretation. Indeed, the measure is rife with provisions that go well beyond the use of bond funds, such as requiring that CHSRA seek and obtain funding outside of the bonds being authorized,[2] and that such outside funding constitute at least half of the funding for constructing any corridor or usable segment of the high-speed rail project.[3]

Defendants also argue that, because §2704.09 speaks of the high-speed rail system "to be constructed pursuant to this chapter," it only addresses the characteristics of the system "to be built with bond funds." (Opposition at 2:24.)[4] Defendants are again wrong. If the Legislature

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[1] Unless otherwise indicated, all statutory citations are to the Streets & Highways Code.

[2] §2704.07, "*shall* pursue and obtain"[emphasis added].

[3] §2704.08(a). Nothing in Proposition 1A requires that a segment, or even a corridor, involve the use of *any* bond funds.

[4] Defendants also argue that provisions of §2704.09 are not requirements, but merely "parameters for design characteristics. (Opposition at pp. 29-30 fn. 26.) The plain language of the section indicates otherwise. In particular, the use of "shall" generally indicates a mandatory requirement. (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542.)

had intended the provisions of §2704.09 to apply only to the use of bond funds, it could have easily used the words suggested by Defendants; something it had already done in §2704.08. The fact that it chose to use different language is a strong indication of a different meaning.

> When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning. *(People v. Trevino* (2001) 26 Cal.4th 237, 242 [quoting from *People v. Drake* (1977) 19 Cal.3d 749, 755].)

In going beyond authorizing and restricting the use of bond funds, Prop. 1A is similar to Proposition 116, the ballot measure involved in *Shaw, supra*. In *Shaw*, the voters had approved an initiative bond measure, Proposition 116, which authorized nearly $2 billion in general obligation bonds, primarily for passenger and commuter rail infrastructure. (*Shaw, supra*, 175 Cal.App.4th at p.588.) The measure also modified how the state dealt with some of the revenue from sales tax on gasoline and diesel fuel. That money had been deposited into a Public Transportation Account ("PTA") within the state transportation fund. (*Id*.) Prop. 116 converted the PTA into a trust account and specified the purposes for which PTA funds could be used. (*Id*.) It allowed the Legislature to specify allowable uses, so long as those uses were consistent with and furthered the purposes specified in the initiative. (*Id.* at p. 589.)

To make a long story short, in 2007, the Legislature created other funds and transferred gas tax revenue that would have otherwise gone to the PTA into these other funds. (*Id*. at pp.592-593.) The Legislature also used money in the PTA to fund other legislatively–specified uses, including transport of disabled people, school transportation services, and payment of debt on other transportation general obligation bonds. (*Id*. at p. 594.)

All these expenditures were challenged as violating the measure's provisions, because the legislative amendments were not consistent with and did not further the measure's purposes. The court of appeal agreed. It held that "consistent with and furthers" was language of limitation and restricted the uses to which the legislature could put funds otherwise subject to the measure. (*Id.* at pp. 600-601.) It concluded that because the new uses did not further transportation planning or mass transportation, the purposes of the section and the measure, the Legislature's actions violated the measure and were therefore invalid.

As in *Shaw,* the chapter added by Prop. 1A gave the voters' direction on more than just bond funds and their use. Indeed, Prop. 1A contains no requirement that any of the corridors described in §2704.09 involve the use of <u>any</u> bond funds. Thus the requirements of §2704.09, and of §2704.04(a), apply regardless of whether a decision has been made to use bond funds.

Further, any attempt to construct a system inconsistent with either §2704.04(a) or any of §2704.09's requirements would, like the Legislature's actions in *Shaw*, violate the Measure and the constitution and be subject to declaratory, injunctive, and mandamus relief.

B. PLAINTIFFS' CLAIMS OF VIOLATION OF PROP. 1A ARE RIPE FOR JUDICAL REVIEW.

Relying on their flawed interpretation of Proposition 1A, Defendants argue that none of the requirements of the Measure can ripen until CHSRA has submitted and received approval of a second funding plan for a usable segment. (Opposition at 13:8-9.) To the extent that Plaintiffs might choose to challenge whether CHSRA has met the requirements set forth in §2704.08 subd. (d), Plaintiffs would agree. That was the Court of Appeal's conclusion in *California High-Speed Rail Authority v. Superior Court ("Cal. HSRA")* (2014) 228 Cal.App.4th 676, and is now law of the case.[5] However, as Plaintiffs have already explained, Proposition 1A was about more than simply the authorization of bonds for the high-speed rail system and conditions on those bonds' expenditure. It also defined the nature of that system and criteria that had to be satisfied if CHSRA was to construct that system. (§2704.04(a), §2704.09.)

Regardless of whether CHSRA has made a final decision to expend bond funds, Defendants' decisions, including appropriating and expending federal grant funds, have committed CHSRA to building a system that will not comply with the requirements of the Measure and therefore violate both the Measure and Article XVI Sect.1 of the California Constitution. Moving forward to expend public funds on such a system makes Plaintiffs' claims sufficiently ripe to subject Defendants to both injunctive and declaratory relief, as well as potentially to mandamus relief.

II. THE BLENDED SYSTEM, AND THE LEGISLATURE'S ACTIONS IN MANDATING THAT SYSTEM, VIOLATED BOTH PROPOSITION 1A AND PROVISIONS OF THE CALIFORNIA CONSTITUTION.

The first of Plaintiffs' objections to Defendants' proposed system is that the blended system, an essential part of CHSRA's system that the Legislature has now essentially locked in place, violates Prop. 1A, and hence also the California Constitution. Defendants raise multiple

[5] To the extent the Court of Appeal went further and asserted that construction could not begin [regardless of the source of funds] and financial viability of the system could not be determined until a second funding plan was issued, those conclusions were unnecessary to deciding the issues that were then before the court. They were therefore dicta and carry little or no legal weight. (*Application Group, Inc. v. Hunter Group, Inc*. (1998) 61 Cal.App.4th 881, 908 fn.21.)

defenses for CHSRA's blended system. First, Defendants argue that Plaintiffs' challenge has been waived because it does not exactly track the language used in Plaintiffs' letter outlining the issues to be raised in Part II of this case. Second, they argue that Proposition 1A's language is, in itself, consistent with the blended system. Third and finally, they argue that even if it were not consistent with the ballot measure, the ballot measure and the California Constitution give the Legislature the power to amend the ballot measure to substitute the blended system for the four-track "true high-speed rail" system identified in the November 2005 and July 7, 2008 certified program EIRs. Defendants are wrong on all points.

A. PLAINTIFFS' OBJECTIONS TO THE BLENDED SYSTEM ARE CONSISTENT BETWEEN THE STIPULATION ON ISSUES AND THE OPENING BRIEF.

Defendants argue (Opposition at pp. 6-7) that Plaintiffs' objections to the blended system are a new issue not preserved for the Court's review. Defendants acknowledge that in the issue stipulation that Defendants signed off on, Plaintiffs raised the issue:

> The currently proposed 'blended system' is substantially different from the system whose required characteristics were described in Proposition 1A, and the legislative appropriation towards constructing this system is therefore an attempt to modify the terms of that ballot measure in violation of article XVI, section 1 of California Constitution and therefore must be declared invalid [hereinafter "blended system claim"].

Defendants now claim that, by objecting to CHSRA's current plans for the blended system, rather than specifically to the legislative appropriation for that system[6], Plaintiffs have abandoned their blended system claim. Defendants attempt to dispose of the claim by this sort of hypertechnical nit picking should be rejected.

It is obvious from reading the blended system claim and the blended system segment of Plaintiffs Opening Brief that both address the same issue – the violation of Proposition 1A, and, as in *Shaw, supra*, 175 Cal.App.4th at p. 602, of the California Constitution's requirement that statutes enacted by the voters, including bond measures, only be amended by the voters unless the voters specifically provide otherwise. (*Shaw, supra*, 175 Cal.App.4th at p.597.)

CHSRA's 2012 and 2014 Business Plans approving a blended system that would run CHSRA trains and Caltrain trains along a common set of tracks between San Jose and San Francisco, as well as the legislative appropriation to build that system and the Legislature's

[6] Of course, that appropriation was specifically requested by CHSRA to implement its plans.

added provisions in the Chapter enacted by Proposition 1A to both legitimize and "lock in" that blended system, all rise or fall on the question of whether they are consistent with Proposition 1A or, conversely, impermissibly attempt to modify that voter-approved measure in violation of the California Constitution. The issue joined is the same as in the issue stipulation.

B. THE REFERENCE TO EIRS IN §2704.04(a) SHOULD BE CONSTRUED DIFFERENTLY FROM THE REFERENCE IN §2704.06.

Defendants argue that the Court should read into the reference to the November 2005 and July 9, 2008 certified EIRs in §2704.04(a) the additional language, "as subsequently modified pursuant to environmental studies conducted by the authority," found at the end of §2704.06. (Opposition at p.9 and fn.7.) From this, they argue that CHSRA's certification of the 2012 Partially Revised Program EIR, which for the first time included an option for a blended system, made the current system consistent with Prop 1A.

Defendants argue the equivalence of the two references based on a claim that both are in the same overall context of regulating bond fund expenditures, and that the reference in §2704.06, as the more specific, must control. (Opposition at p. 9.) To the contrary, the contexts for the two references are quite different, as are their meanings. While §2704.04(a) described the general legislative intent underlying the Measure, §2704.06 specifically focused on what projects the bond funds could be applied to. Flexibility was required in §2704.06 to allow the bond funds to be spent on specific improvements that could not yet be identified at the program level. There was no need for such flexibility in §2704.04(a). To the contrary, its very purpose as a statement of legislative intent was to lock in the nature and scope of the project.

As Defendants point out (Opposition at p. 10), both the 2005 and 2008 EIRs were programmatic EIRs. They laid out the general nature of the system being proposed, but did not go into the specific details. For example, neither the 2005 nor 2008 EIR defined the final vertical alignment of the system in any specific area, nor the specific location or design of stations. Those decisions were left to be determined in project-level EIRs. (H7.014414-014415, H7.014675, H7.016069; *see also, Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 346 [program EIR for high-speed rail system properly deferred detailed analysis of vertical alignment to project level].) Unless §2704.06 encompassed decisions made based on future project-level environmental analysis, bond funds would not be available for projects, including tunnels, viaducts, and stations, that were not specified in the two program EIRs.

It should also be noted that Proposition 1A was written in the spring and summer of 2008 (see AG000017) and received final senate approval on August 7, 2008. (*Id.*) The judicial challenge to the July 9, 2008 program EIR was not filed until August 8, 2008 (H7.015707), when the final text of Proposition 1A had already been approved by the senate. Consequently, when Proposition 1A refers to subsequent modification pursuant to environmental studies, it could only be referring to the additional detail expected in follow-up project-level environmental studies, defining specific construction needs for the bond funds. It would not have been referring to changes in the overall system or its Program EIRs, which had, at that point, already been finalized.

§2704.04(a), by contrast, did not limit itself to the use of bond funds. Rather, its statement of legislative intent allowed the Legislature to provide the voters with a clear indication of what kind of high-speed rail system would be built. What that encompassed was explained to the voters by reference to the certified 2005 and 2008 EIRs, which laid out, at a program level, the essential characteristics of the system.

Unlike §2704.06, the legislative intent expressed in §2704.04(a) did not need detailed project-level information. The voters could tell from the descriptions in the two certified program EIRs what type of system they were authorizing. They would have neither expected nor wanted that information to change without their further approval.

Finally, *ejusdem generis*, the canon of statutory interpretation cited by Defendants, does not apply here. Instead, a different canon of statutory construction applies. As discussed earlier, in *People v. Trevino, supra*, the California Supreme Court explained that where the Legislature uses different language in addressing the same or closely related subjects, the inference is that different meanings are intended. That canon applies here. (*See also, Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1012 [direct indication of legislative intent overrides application of *ejusdem generis*].) As already explained, the Legislature, and the voters, intended different meanings from their references to the two certified program EIRs in §2704.04(a) and in §2704.06. While the two subjects are related, §2704.04(a) dealt with general legislative intent, while §2704.06 dealt much more specifically with restrictions on the use of bond funds. The different wording is consistent with the differing intents of the two sections.

C. NEITHER THE LEGISLATURE NOR THE VOTERS INTENDED PROPOSITION 1A TO APPROVE A BLENDED SYSTEM.

Defendants argue that Proposition 1A, as written by the Legislature and approved by the voters, fully allowed the approval and construction of a blended system. They are wrong. As

already explained, Proposition 1A stated the clear intent of the Legislature, and of the voters, that the high-speed rail system to be built must be consistent with what was set forth in the certified Final EIRs November 2005 and July 7, 2008.

1. THE TERM "CONSISTENT" IN §2704.04(a) NEEDS NO INTERPRETATION, AS IT IS CLEAR ON ITS FACE.

Defendants claim that the blended system is consistent with Proposition 1A despite the consistency requirement in §2704.04(a). They do so on two bases: first, that provisions of the Measure encouraging sharing of resources and making existing systems compatible with the new high-speed rail system allow for the blended system, and second, that the consistency requirement in §2704.04(a) should be read to only require compatibility.

On the former, nothing about sharing resources or making existing systems compatible with the new high-speed rail system says anything one way or the other about a blended system where Caltrain and CHSRA trains would share a single common track system. Both the 2005 and 2008 EIRs specifically envisaged the high-speed rail system tracks sharing a right of way with Caltrain, and both EIRs expected that the high-speed rail stations on the Peninsula, including the San Francisco Transbay Terminal and San Jose Diridon station, would be shared and compatible between Caltrain and CHSRA systems. However, compatible and consistent are not synonyms. Compatible simply means that two things can co-exist in harmony or without conflict. (See, e.g., Merriam-Webster On-line Dictionary definition of compatible.) Consistent means something more – it means that the two things are in agreement. Thus, for example, a requirement that a room be painted in a warm color and that it be painted in a pastel color are compatible – both can be satisfied at the same time. They are not, however, necessarily consistent – in agreement. Bright orange is definitely a warm color, but could not be considered a pastel color. There are many ways to make the high-speed rail system compatible with Caltrain's existing system, including having a shared right of way with separate tracks, as the 2005 and 2008 EIRs describe. However, running both Caltrain and high-speed rail trains on the same single set of tracks is not consistent with the system described in the 2005 and 2008 EIRs.

2. EVEN IF "CONSISTENT" REQUIRES INTERPRETATION, A MORE STRINGENT MEANING FITS WITH THE PURPOSE OF §2704.04(a).

Defendants also try to argue that consistent should mean the same as it does for projects being consistent with a general plan. The contexts are entirely different. A general plan is a planning document created by a local government to guide its own future development. As such,

the local government is given great deference in interpreting its general plan and determining consistency with it. (*See, e.g., Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142.) Here, however, the consistency requirement was imposed by the Legislature to provide the voters with some confidence about what they were approving for bond funding – that they would not be "buying a pig in a poke." In that context, consistent must be given a meaning that fits with the Legislature's intent, including the purpose of the provision being considered. (*Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd*. (2010) 189 Cal.App.4th 101, 109-110.) That purpose, providing the voters with certainty and a sense of comfort in what they were approving, requires giving it a stringent meaning.

3. BOTH THE 2005 AND 2008 EIRS CALLED FOR SEPARATE HIGH-SPEED RAIL TRACKS, NOT A BLENDED SYSTEM.

While the 2005 and 2008 EIRs may both have been programmatic, they were clear in defining a system where the high-speed rail trains ran on separate dedicated tracks whenever possible. The 2005 EIR stated that separate, dedicated high-speed rail tracks would be the rule:

> Sharedtrack [*sic*] operations would use existing rail infrastructure in areas where construction of new separate HST facilities *would not be feasible*. (H7.000068 [emphasis added].)

Neither the 2008 EIR, nor even the 2010 or 2012 revisions to that EIR, ever identified a four-track system along the Peninsula with separate tracks for the high-speed rail trains (and higher speed Caltrain express trains) as being infeasible. (See, e.g., H7.018268 [four-track Pacheco Pass alignment identified as preferred alternative in certified 2012 Partially Revised FEIR].) As already explained in Plaintiffs' Opening Brief at p.7, the July 7, 2008 certified Program EIR for the Bay Area to Central Valley High-Speed Train Project specifically called for a four-track system in the Caltrain right of way. (H7.012998.) Thus, neither the November 2005 Final EIR nor the July 7, 2008 Final EIR, relied upon by the voters in November 2008, even mentioned the idea of a primarily two-track blended system on the Peninsula.

4. AS OF THE APPROVAL DATE OF THE FINAL 2014 BUSINESS PLAN, THE VERY CHARACTERISTICS OF THE BLENDED SYSTEM SHOWED IT WAS INCONSISTENT WITH THE SYSTEM THE VOTERS INTENDED.

As a further buttress to Plaintiffs' claim of the impropriety of the blended system, Plaintiffs' Opening Brief (pp. 9-11) pointed out that, as of the "snapshot" date of April 10, 2014, neither its nonstop travel time nor its minimum headway would meet the requirements of

§2704.09. Defendants' Opposition (pp.20, 21, 26) treats these as if they were impermissible independent new claims. They are not. Nor, under this Court's ruling, does the possibility that future (post 4-11-14) changes to the system might make the system compliant save it from a present noncompliance.

On the travel time issue, Defendants make two arguments: that it was appropriate to measure travel time from the Caltrain 4th and King St. Station rather than from the Transbay Terminal (now Transbay Transit Center) (Opposition at pp. 21, 26), and that the trip time could take into account future system improvements such as curve straightening and banking (Opposition at p. 26.) The arguments are contrary to Proposition 1A and to this Court's rulings.

There are multiple reasons for rejecting Defendants attempt to substitute the S.F. Caltrain station for the Transbay Terminal as the San Francisco terminus. First, §2704.04(a) specifically references the Transbay Terminal as the San Francisco terminus of the system. By contrast, the Measure makes no mention of the S.F. Caltrain station. There is no basis for assuming that the San Francisco terminus for travel time would be other than the system terminus. Secondly, both the 2005 and 2008 EIRs indicate the Transbay Terminal as the San Francisco high-speed rail station. (H7.000918, H7.012998.) CHSRA cannot substitute another station for travel time measurements.

Defendants' hand-waving reference to future potential system improvements must also be rejected. As this Court has made clear, consistency determinations are to be based on the system as it was designated by CHSRA as of April 10, 2014. While future changes could be the subject of future litigation, the Court was unwilling to speculate about possibilities unless they could be reduced to certainties. Future curve straightening and banking improvements that have neither been designed nor approved[7] are clearly in this category.[8]

On the headway requirement, Defendants argue, based on an unsubstantiated interpretation of the Measure, that it referred to all trains, not just high-speed rail trains.[9] Yet

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[7] Approvals by CHSRA, Caltrain, and Union Pacific Railroad would all be needed.

[8] It appears that some undefined set of curve straightening and other potential alignment modifications were included in the data used for the modeling used in the Vacca memo. (AG 017560.) To the extent this is the case, those modeling results must be rejected as based on conjectures about future decisions.

[9] Defendants reference a Legislative Counsel opinion as supporting their interpretation. (Opposition at p. 21 fn.20 [referencing AG 2387].) The opinion, an after-the-fact interpretation,

nowhere in the Measure is there any indication that the system tracks will carry non-high-speed rail trains, nor was this contemplated in the 2005 or 2008 EIRs.[10] The Court should therefore reject Defendants' self-serving interpretation. However, even if, arguendo, that interpretation were correct, Defendants' argument would still fail.

By Defendants' own admission, Caltrain's analysis of blended system operations showed that only ten trains an hour could be run. (Opposition at p. 21:18-19.) Defendants go on to claim that headways will be trimmed to three minutes by the integration of Caltrain's CBOSS Positive Train Control ("PTC") system with CHSRA's own separate and different PTC system. (AR 13044-13045.) Yet the analysis done by Caltrain's consultant assumed the CBOSS system was fully operational. (AG 013044.) While a simulation showed 3:15 headways possible with two trains using an identical stopping pattern, that will not be the case with a mixture of CHSRA, Caltrain express, and Caltrain local trains. The ten trains per hour maximum took that into account. Further, as the Executive Director of Caltrain expressly admitted, the study was no more than a "proof of concept" – a *simulated* demonstration that integration of Caltrain and CHSRA train services, including the two PTC systems, on the same tracks – i.e., a blended system – is *theoretically* possible. (AG 013023.) That admission acknowledges that "additional studies and dialogue with stakeholders" [including both Caltrain's and HCSRA's governing boards] would be needed before a blended system could be approved and implemented.

Of particular significance in this respect are comments from CHSRA's own Peer Review Group ("PRG") in conjunction with CHSRA's approval of its Final 2014 Business Plan. The PRG commented that Caltrain had already committed itself to its CBOSS system, while CHSRA might find that system unsuitable for its needs and choose a different system. (AG 011133.) That, in turn, could result in "compromising the performance of the system." (*Id.*) In other words, not only is the 3:15 headway only achievable with two trains with identical stopping patterns, incompatibilities between the two signaling systems could reduce performance below

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is not entitled to deference. (*See, e.g., Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [Legislative Counsel's analysis considered "cursory"].)

[10] The Legislative Counsel's interpretation points to the fact that §2704.08(c) call for the tracks to be used by one or more passenger service providers, without specifying that it be high-speed rail service. It is well understood that conventional [diesel] rail and high-speed rail services, having very different characteristics (e.g., engine weights, track pressure, rail parameter tolerances, etc), are not generally compatible. It is far more likely to indicate shared use between public and private high-speed rail trains.

even ten trains per hour. Given that the choices needed to assure successful integration of the Caltrain and CHSRA PTC systems had not been made as of April 10, 2014, Defendants cannot depend on future decisions and system improvements to assert that the required minimum headway can be achieved. Instead, the six-minute headway achievable based on the current CBOSS system must be used. As with possible future track improvements, at some future date changes might reduce the inconsistencies between a blended system and the requirements of Proposition 1A, but for now, those inconsistencies are overwhelming.

C. NEITHER PROPOSITION 1A NOR THE CONSTITUTION ALLOWS THE LEGISLATURE OR CHSRA TO INSERT A BLENDED SYSTEM WITHOUT RETURNING TO THE VOTERS FOR APPROVAL.

In a last vain attempt to save the blended system, Defendants argue that the Legislature was allowed to substitute a two-track blended system for the four-track system called for in the 2005 and 2008 EIRs. First, they argue that the Measure itself allowed such a change. Then they argue that the Constitution allows it. Neither argument can succeed.

Defendants argue that the provision allowing the Legislature to impose conditions and criteria on appropriations of bond funds allowed conversion of the Peninsula to the blended system. This sophistry deserves little consideration. Conditions or criteria can be used to restrict what might otherwise be allowable under the Measure, but it cannot allow something that is otherwise outside the Measure's limits.

As for Defendants' argument that the Constitution allowed the Legislature to modify the Measure's provisions, the very case they cite shows why their argument must fail. In *Veterans of Foreign War v. State of California ("VFW")* (1974) 36 Cal.App.3d 688, 693, the court noted that the California Constitution's Article XVI, Section 1 "prevent the Legislature from making substantial changes in the scheme or design which induced voter approval."

There can be little doubt that the statement of intent contained in §2704.04(a) of the Measure, including specifically the requirement that the system to be constructed be consistent with the 2005 and 2008 certified EIRs for the system, was a significant component of the "scheme or design which induced voter approval." As has been explained previously, that scheme or design called for dedicated high-speed rail tracks wherever feasible, including specifically within the Caltrain right of way between San Jose and San Francisco's Transbay Terminal. A switch to a shared-track blended system cannot be seen as other than a substantial change to that scheme or design, and would constitute an implied repeal of the provision

requiring consistency with the 2005 and 2008 certified Final EIRs, contrary to the Constitution. (*See, VFW, supra*, 36 Cal.App.3d at p. 693.)[11]

Of course, in writing the Measure, the Legislature could have made its provisions less stringent, or could have allowed them to be altered by the Legislature. (*See, Shaw, supra*.) It chose not to; presumably, as with the Measure's "financial straitjacket" provisions (*See, Cal. HSRA, supra,* 228 Cal.App.4th at p. 706) to reassure the voters that they were not approving open-ended funding for a potential boondoggle. (*Id.* at p.709.) Once the voters had approved the Measure, however, those provisions, no matter how Draconian, had to be respected. (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349.)

If the Legislature wished to change that provision, the Constitution required it to get voter approval. Not having done so, as in *Shaw, supra*, the change, whether made by CHSRA or the Legislature (*see, Cal. HSRA, supra*, 228 Cal.App.4th at p. 708 [neither legislative body or administrative agency can materially alter bond measure after its approval by voters]), must be declared invalid and any expenditures in support of that illegal change must be permanently enjoined unless/until the change receives voter approval.

III. DESPITE NOT HAVING CHOSEN A DEFINITIVELY FINAL ALIGNMENT, CHSRA'S DECISIONS, BOTH FORMAL AND INFORMAL, COMMITTED IT TO A SYSTEM THAT CANNOT MEET THE REQUIREMENTS OF §2704.09.

Aside from their argument about the lack of a final funding plan, Defendants also claim that Plaintiffs' challenges are premature because CHSRA has not yet chosen final alignments. (Opposition at p.15.) However, the question is not whether CHSRA has chosen a definitively final alignment, but whether it has made decisions, either formal or informal, that have committed it to constructing a system that fails to satisfy the requirements of Prop 1A. As Plaintiffs have already laid out in their Opening Brief and Supplemental Brief, CHSRA's decisions have indeed resulted in such a commitment, making further expenditures on that noncompliant system illegal and subject to permanent injunction under C.C.P.§526a.

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[11] Defendants also cite to *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510 and *City of San Diego v. Millan* (1932) 127 Cal.App. 521, 535 as support for the Legislature's ability to modify a bond measure. *Cullen* allowed modification to plans which the voters understood to be preliminary (*see also, Mills v. S.F. Bay Area Rapid Transit Dist*. (1968) 261 Cal.App.2d 666, 668-669 [preliminary plans not included in ballot measure did not bind agency]), but did not modify the intent of the measure. *Millan* does not stand for an agency's general authority to modify a voter-approved measure, but for the ability to modify a bond if following the voters' direction had been prohibited based on health and safety concerns.

A. CHSRA'S DECISIONS HAVE COMMITTED IT TO A SYSTEM THAT CANNOT MEET THE 2 HOUR 40 MINUTE NONSTOP SERVICE TRAVEL TIME REQUIREMENT.

Regardless of CHSRA's remaining alignment decisions, the decisions it has already made have committed it to a noncompliant system in terms of the 2 hour 40 minute nonstop service travel time requirement of §2704.09(b)(1). Defendants argue that CHSRA might choose a final alignment through the Tehachapis that would decrease travel distance. (Opposition at p. 15.) However, the one example Defendants provide shows the fallacy underlying this claim.

Defendants point to an alignment ("Oak Creek," AG 027511-027513) that could cut two miles off the travel distance. However, that alignment would include 8.8 miles at a grade of 3.50%. (*Id.*) That is far more than what CHSRA's mandatory design guidelines allow. It would require approval of a variance from those guidelines. That variance has not been granted. Even if it were to be granted, slower travel speeds would be required in both uphill and downhill directions (the latter to maintain safe braking – See Opening Brief at p. 17.) As a result, any decrease in travel distance would likely be more than offset by the speed reductions.[12] Unless and until Defendants can show an alignment that overcomes the system's current noncompliant travel time, under the Court's "snapshot" approach further expenditures on the noncompliant system must be enjoined. In short, as discussed in the Supplemental Brief, Defendants' choice to travel through the Tehachapis, necessitated by the long-standing basic Bakersfield-Palmdale routing decision, makes the current system noncompliant for both costs and travel time.

1. INTERPRETATIONS OF BOND MEASURE PROVISIONS BY CHSRA'S "EXPERTS" ARE ENTITLED TO NO DEFERENCE AND DO NOT REFLECT THE VOTERS' INTENT.

Defendants argue that CHSRA was entitled to rely upon the opinions of its experts. (Opposition at p. 17:15-16.) That may be true for technical analyses, *if* they are supported by facts and evidence (*see, e.g.*, Public Resources Code §21082 subd. (c) [substantial evidence includes expert opinion supported by facts]; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422-1423), but an expert opinion unsupported by facts is not substantial evidence and carries no weight. (*People v. $47,050* (1993) 17 Cal.App.4th 1319, 1325.) Further, a technical expert's expertise does not extend to

[12] Even the Vacca Memo itself acknowledged that it would require future unspecified improvements over currently available braking systems to allow the speeds used in the memo's analysis. (AG 017436; see also AG 024866 [exceeding maximum gradient in design guidelines would require speed reductions adversely affecting travel time].)

interpretation of statutes, especially voter-approved measures, where the intent of the voters is determinative. (*Wunderlich v. County of Santa Cruz* (2009) 178 Cal.App.4th 680, 694.) That is a matter best left to the courts, and such "expert opinion" is entitled to no deference. (*See, generally, Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8 [weight attached to non-judicial interpretation of statute depends on circumstances and the persuasive power of the reasoning underlying the interpretation].)

Defendants state that their experts construed §2704.09 as indicating only "system capacity," rather than actual commercial passenger operation. (Opposition at p. 18:23-25.) They provide no justification for this construction, which ignores the word "service". Instead, they argue, again without further explanation, that "service" indicates that the analysis should include "actual, real world conditions" including rider comfort. (Opposition at p. 19:3.) They call their experts' construct "pure run time" and point to its acceptance by the PRG. (*Id*. at l.20-22; see, AG 011143.) However, the PRG's interpretation of the meaning of §2704.09's provision is likewise not entitled to any deference. Plaintiffs' interpretation of §2704.09 (Opening Brief at p. 15) more accurately reflects the voters' intent.

2. THE EVIDENCE IN THE RECORD DOES NOT SUPPORT THE ANALYSIS CONTAINED IN THE "VACCA MEMO".

Defendants assert that Plaintiffs have ignored the evidence in the record supporting Defendants' position. (Opposition at p. 18.) Not so. Plaintiffs have pointed out the evidence supposedly supporting Defendants' claim that CHSRA's proposed system will satisfy the travel time requirement of §2704.09(b)(1). (See, Opening Brief at pp.15-18.) What Plaintiffs' brief argues, however, is that this evidence, and the analysis based on it, fails to take into account factors that invalidate the analysis and its results. When these factors are properly considered, including the unrebutted evidence in the record supporting that consideration, Defendants' travel time conclusions cannot stand.

a. Defendants' S.F. - L.A. travel time analysis fails to take into account the need to limit downhill grades or speeds.

As already explained in the Opening Brief, the Vacca memo unjustifiably used a downhill travel speed through the Tehachapis of 220 mph. (See, e.g., AG 017438, 017439 [train performance curves showing 220 mph speed on steep downhill slopes]; AG 13544:15-16 [acknowledging that train accelerates to 220 mph on downhill slope].) The evidence in the record shows that such speeds would be unsafe. That is why the design guidelines set a

maximum safe grade. Contrary to Defendants' claims (Opposition at p. 25), the computer model runs used to show compliance with the trip time requirements did not account for the required downhill speed reductions.[13]

b. CHSRA's representations of reduced travel speed included urban areas in the Central Valley.

CHSRA gave multiple public presentations, both in Southern California and in the Central Valley. (See, AG 02236 [presentation at Fresno Industry Forum].) In all these presentations, CHSRA presenters used the same PowerPoint slide showing 1) A statement that operating speeds would be 90-125 mph in urban areas, and 2) a map identifying urban areas in yellow, including both Southern California and Central Valley Cities.[14] Defendants argue that the urban areas were only meant to include those in Southern California and the Bay Area. Perhaps the maps shown to the public were the result of inartful drawing, but they nevertheless represented the urban areas to include cities in the Central Valley, and those living in the Central Valley would have reasonably concluded that their urban areas would also have train operating speeds (i.e., civil speed limits) of 125 mph or less.[15]

c. Plaintiffs' use of shortest distance routings, rather than CHSRA's specific current alignments, does not invalidate Plaintiffs' conclusion that CHSRA's analyses were defective.

Finally, Defendants carp that Plaintiffs' travel time analyses are not based on CHSRA's specific current chosen alignments. Defendants themselves acknowledge that the alignments currently being used by CHSRA, and used in its travel time modeling runs, are subject to change. Rather than use those ever-changing specific alignments, Plaintiffs simplified their analyses by using shortest straight-line distances, for example through urban areas. If anything, this benefits Defendants by underestimating actual travel time. As already explained, regardless of the exact routing through steep mountainous areas, the constraints due to tradeoffs between steep slopes

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[13] The runs did show speed reductions in the uphill direction, but that is because maintaining a 220 mph uphill on steep slopes would require more power than the system or its trains could provide.

[14] The urban areas were determined based on the U.S. Census Bureau's determinations of urban area boundaries. Those same urban areas were used by Caltrans to create its database of California urban areas, which was then depicted on Google Maps using software that Caltrans had licensed. While the license expired at the end of 2015, the Census Bureau data and the Caltrans database continue to exist.

[15] There is nothing contradictory between CHSRA saying that trains would travel at 220 mph for long stretches [between cities] in the Central Valley and its representation that trains would slow to below 125 mph in the urban areas around those cities. (See map at AG 022236.)

and extended switchbacks would remain. Thus if anything Plaintiffs' simplifying assumptions gave Defendants the benefit of the doubt in travel time calculations.

B. CHSRA'S DETERMINATION UNDER §2704.09(g) THAT ITS SYSTEM IS FINANCIALLY VIABLE IS UNSUPPORTED AND HENCE INVALID.

1. FINANCIAL VIABILITY IS A REQUIREMENT OF PROP. 1A.

Defendants begin by asserting that Prop. 1A contains no financial viability requirement at all. (Opposition at p. 22.) They claim, instead, that all it requires is that CHSRA consider "the relative costs of different alignments." (*Id*.) This grossly distorts the plain meaning of the Measure's words. When the Measures states that the alignment for the high-speed train system, "shall be financially viable," it did not merely mean that the cost of different alignments must be weighed. What if all the possible alignments were financially infeasible? Should CHSRA go ahead with construction anyhow? The plain language says, "no." As will be shown, this is not an idle question, and CHSRA's failure to give it proper consideration is lethal.

2. WHILE THE STANDARD SET UNDER §2704.09(g) IS LENIENT, IT IS STILL MEANINGFUL, AND CHSRA FAILED TO MEET IT.

Plaintiffs freely admit that §2704.09(g) gave CHSRA a wide leeway in finding that the system alignment it proposed to build was financially viable. All it needed to provide was substantial evidence to support that determination. Yet CHSRA's determination fails even that lenient test. Contrary to Defendants' assertions, Plaintiffs have not disregarded the evidence in the administrative record. The Opening Brief looked at the evidence in the record and concluded that the evidence simply did not and could not support CHSRA's determination that its chosen alignment will be financially viable.

a. There is no evidence in the record to show that the IOS-South can be successfully constructed as a usable high-speed rail segment.

Defendants' Opposition never comes to grips with the fact that there is insufficient funding to build its first usable segment, the IOS-South. Instead, Defendants argue that, because CHSRA has not prepared and submitted a final funding plan for that segment, the adequacy of funding for IOS-South is not yet at issue. These are two separate requirements. Yes, for the second funding plan provided for in §2704.08(d), CHSRA must show that sufficient funds have been committed, authorized, allocated, or otherwise assured to complete the usable segment involved. As Defendants point out, that issue is not yet ripe, as no second funding plan has yet been prepared. However, financial viability is a separate, though related, requirement. All it requires is that there be some evidence demonstrating that CHSRA

will eventually be able to amass sufficient funds to complete a usable high-speed rail segment. As the Opening Brief points out, if that low threshold cannot be reached, financial viability is an impossibility.

If Defendants had stuck to the idea of a close-knit public-private partnership to build the entire project (see, e.g., AG 004869 [legislative report just preceding writing of Prop. 1A]), there would not be an issue. That, however, has not happened. (See, AG 05406 [SNCF presentation pointing out problems with CHSRA's plans].) The fact is, however, that, as of April 10, 2014, CHSRA's funding situation was unchanged from 2012 and 2013. It had a little more than $3 billion in federal grants and $9 billion in state bond funds, although the availability of those funds was contingent on satisfactory completion of a second funding plan. (See, AG 011099 [chart showing $20.934 billion in "Uncommitted Funds" – i.e., funds for which no source was known].)

By contrast, the cost to complete the IOS-South had, if anything, significantly increased. Even the 2014 Business Plan indicated a slight increase, presumably due to inflation. (*Id.*)[16] However, as Plaintiffs' Supplemental Brief points out, the evidence from CHSRA's own prime consultant shows an increase in costs for the IOS-South of nearly $10 billion, leading to a total cost of roughly $40 billion. Defendants assert that this presentation was "simply a draft presentation." (Opposition at p. 23 fn. 23.) Yet Defendants provide no evidence to rebut the evidence contained in that presentation, or evidence showing that the presentation's facts were later changed or withdrawn. Certainly, it would seem that when an agency's prime consultant flags a major cost increase, even if in a "draft presentation",[17] there needs to be at least some evidence on the other side to justify ignoring what would otherwise seem to be a compelling need to revise the cost estimate. Defendants point to no such evidence, and Plaintiffs are unaware of any in the record.

With no evidence of anything that could reasonably be seen as a possibility of full funding, and a cost that appeared to be even more out of reach, the evidence in the record can only be said to show that the IOS-South cannot be completed, and consequently CHSRA's high-speed rail system, and its alignment, could not be determined to be financially viable.

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[16] Defendants point to 'an updated analysis" in the 2014 BP. (Opposition, p.23 fn.23; see, AG 11080 [table of IOS capital costs].) They cite to no supporting documentation for that analysis. While there is documentation for the 50 year lifecycle replacement cost (AG 0111986 et seq.), there is no analogous documentation for the capital cost analysis.

[17] Many of CHSRA's documents are labeled as "draft", even when they are clearly final.

b. Defendants have failed to rebut the conclusion that the IOS-South, even if completed, will not be financially viable.

In addition to being unbuildable, the evidence in the record shows that the IOS-South will not be financially viable to operate. While CHSRA provided what it claimed were credible estimates of that system's ridership and revenue, examination of those figures showed they were not supported by substantial evidence. Lacking anything like a comparable high-speed rail system from which to estimate future ridership, CHSRA resorted to "stated preference" surveys to estimate the likelihood of travelers using the IOS. However, the stated preference survey was based, not on the IOS-South, but on the completed Phase I system. Yet the full Phase I system would have very different characteristics than the IOS-South for travel between Los Angeles and the San Francisco Bay Area, generally acknowledged to be the source of most of the system's ridership.

Defendants note that CHSRA's ridership-revenue modeling had been reviewed by both its own ridership peer review panel and the Government Accountability Office. However, both groups had reviewed the overall ridership-revenue modeling, not its application to IOS-South. It might be that the ridership model could give adequate numbers for the built-out full Phase I system, but that says nothing about the credibility of the ridership numbers of IOS-South as part of a multi-transfer system including not just high-speed rail but also buses and conventional rail, and which would cost more and take longer than automotive travel. Defendants provide absolutely no evidence to support their claim that IOS-South will support anything close to the ridership claimed in the 2014 Business Plan.

Defendants' references to *Carrancho v. California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1277 and other similar cases are unavailing. There, the court found adequate evidentiary support for the Air Resources Board's conclusion. Likewise, in *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 903, there was substantial evidence before the City that compliance with the building code was adequate mitigation of possible seismic hazards. Here, such support is totally lacking.

The situation is far more similar to that in *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 227-229, where even though the basic methodology used was correct, substantial evidence did not support the conclusion reached. While the threshold for showing that IOS-South would be financially viable might be low, it still

requires some evidentiary support. Defendants have provided none. Their claim of financial viability must therefore fail.

c. Defendants' fail to provide substantial evidence to support CHSRA's claim that its analysis of Operating and Maintenance expenses allows its system to be financially viable.

Responding to Plaintiffs' critique of CHSRA's analysis of expected O&M costs, Defendants provide a laundry list of documents from the administrative records, which they claim support their analysis. (Opposition at p. 22:21-24.) However, they provide absolutely no explanation of how, if at all, any of these documents support CHSRA's analysis of O&M costs. Indeed, it is unclear how, if at all, some of the cited documents have anything to do with O&M costs. For example, Document #227 provides an overview of rebuilding Doyle Drive in San Francisco as a public-private partnership, and document #228 lists a 22 year history of spot prices for an unidentified commodity (perhaps oil?). Defendants provide no explanation what these, or other cited documents, show about the adequacy of CHSRA's analysis of O&M costs. Defendants do nothing to dispel the deficiencies Plaintiffs have identified in that analysis; deficiencies that make the results worthless in determining whether CHSRA's system will be financially viable.

IV. BECAUSE PROP. 1A WAS NOT LIMITED TO THE USE OF BOND FUNDS, AND BECAUSE IT IS INFEASIBLE TO BUILD A USEFUL PROJECT WITH ONLY THE FEDERAL FUNDS, THE USE OF THOSE FUNDS ON CONSTRUCTION OF THE CURRENT PROPOSED SYSTEM SHOULD BE ENJOINED.

As already explained, Prop. 1A was not just about authorizing bond funds and defining their allowable uses. The Legislature and the voters specified what kind of high-speed rail system they intended CHSRA to construct, regardless of funding source. If those dictates have been violated, it would be a violation of the Measure, and of the California Constitution, for CHSRA to use *any* funds to try to build a noncompliant system.

In addition to their argument that Prop. 1A applies only to use of bond funds, Defendants also argue that Plaintiffs may not interfere with the Legislature's plenary authority. (Opposition at pp.30-31.) However, even the Legislature's powers are not unlimited. The Legislature may not take action prohibited by the Constitution. (*Shaw, supra*,175 Cal.App.4th at p. 602.) Similarly here, under Article XVI, Section 1, neither CHSRA nor the Legislature may substantially modify the provisions enacted by Prop. 1A without returning to the voters.

Attempts to do so must be declared invalid and/or ordered rescinded, and any violative expenditures must be enjoined.

Finally, even if, arguendo, the provisions of Prop. 1A only applied to bond funds, the use of those funds for a system that does not comply with Prop. 1A can be enjoined, and without those funds, it is impossible, based on the situation as of April 10, 2014, to complete even the Initial Construction Section ("ICS") using only the available federal funds. Continued construction with those funds would therefore be a wasteful use of public funds, especially because failure to complete the ICS could result in the Federal Railroad Administration, under the terms of its grant contracts, demanding the return of those funds by CHSRA, resulting in the loss of more than $3 billion from the state treasury.

CONCLUSION

Defendants, and specifically CHSRA, the Governor, and the State Controller, Treasurer, and Director of Finance, have proceeded with approving and beginning construction of a high-speed rail system that fails to meet the requirements set by California voters in Prop. 1A.

Proceeding with construction of that noncompliant system without first getting approval of California's voters to change the requirements they set in enacting the Measure was and is a violation of Article XVI, Section 1 of the California Constitution. For that reason, judgments should be entered against Defendants and in favor of Plaintiffs.

Dated: February 5, 2016

Respectfully Submitted,

Stuart M. Flashman

Stuart M. Flashman
Attorney for Plaintiffs John Tos et al.

PROOF OF SERVICE BY OVERNIGHT MAIL AND ELECTRONIC MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above-titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On February 5, 2016, I served the within PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR JUDGMENT; PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTIONS TO REQUESTS FOR JUDICIAL NOTICE by mail on the parties listed below by depositing true copies thereof, enclosed in sealed envelopes with priority mail express postage thereon fully prepaid, in a U.S. mailbox in Oakland, California addressed as listed below. In addition, on the above-same day, I also served the document electronically by sending electronic copies of the document, converted to "pdf" format, as e-mail attachments, to the parties listed below at the e-mail addresses shown below:

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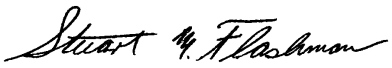
I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on February 5, 2016.



Stuart M. Flashman