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EXEMPT FROM FEES PER
GOVERNMENT CODE §6103

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 (to be handled as writ) PLAINTIFFS' REPLY BRIEF ON REMEDIES Date: November 8, 2013 Time: 9:00 AM Dept. 31 Judge: Hon. Michael P. Kenny

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INTRODUCTION

Defendants California High-Speed Rail Authority *et al.* ("Defendants") have mischaracterized the question raised by the Court. As a result, they have also provided an overly narrow answer. The question posed by the court was, given that Plaintiffs John Tos *et al.* ("Plaintiffs") are theoretically entitled to a writ of mandate ordering Defendant California High-Speed Rail Authority ("Authority") to rescind its approval of its initial funding plan, as a practical matter what would be the real and practical effect of issuing that writ? If there would be none, the Court noted that issuing the writ would be an empty act which it was not inclined to pursue. (See, Ruling on Submitted Matter of August 16, 2013 at p. 12.)

The Court pointed out that ordering rescission of subsequent contracts entered into by the Authority might be an overly broad remedy due to the fact that expenditures allowed under Streets & Highways Code §2704.08(g), if included in those contracts, are not dependent on compliance with subsection (c) of that section. (*Id*. at p. 14.) The Court also noted that prior to committing or expending bond funds for construction of the project, a second funding plan would have to be prepared[1].

While posed in terms of invalidating approvals subsequent to the funding plan, the Court's ultimate question was whether a writ ordering rescission of the funding plan approval would have any real and practical effect. As explained in their Opening Brief on Remedies, Plaintiffs believe the answer is, "Yes." Respondents' Opposition Brief does not change that answer.

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[1] In fact, Plaintiffs would note that, based on the evidence before the Court, the Authority has already committed bond funds towards construction without approval of an updated Funding Plan under §2704.08(d).

ARGUMENT

I. BECAUSE THE AUTHORITY'S APPROVED CONSTRUCTION CONTRACTS COMMIT BOND FUNDS, RESCINDING THE FUNDING PLAN WILL HAVE A REAL AND PRACTICAL EFFECT.

Defendants argue that the Authority has neither spent nor committed Proposition 1A bond funds on either of the two construction contracts it has already awarded.[2] (Defendants/ Respondents' Memorandum of Points and Authorities in Opposition to Plaintiffs/Petitioners' Request for Remedies ("DOB") at pp.6-11; *see also* Declaration of Dennis Trujillo in Opposition to Plaintiffs/Petitioners' Request for Remedies ["Trujillo Dec"], ¶6: "Since the legislative appropriation of July 18, 2012, the Authority has not committed nor expended any bond funds appropriated for capital construction costs, including for the Caltrans or Tutor-Perini contracts discussed above.".) Plaintiffs acknowledge that it may be that at this point the Authority has not explicitly spent any Proposition 1A bond funds on these contracts[3]. However, as Defendants acknowledge, the provisions of both Federal grants[4] currently being used to pay expenses under those contracts require that the Authority provide state matching funds for those federal funds, and the only state matching funds that have been appropriated by the legislature are the $2.8 Billion in Proposition 1A bond funds. Based on the facts before the Court, the two contracts have committed the Authority to the expenditure of Proposition 1A bond funds (without first satisfying the requirements of §2704.08(d)). As a consequence, rescission of the Funding Plan, and a consequent prohibition against expending bond funds under §2704.08(d) until a valid Funding Plan has been prepared, will have real and practical effect.

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[2] Since the filing of Plaintiffs' Opening Brief on Remedies, the Authority has continued forward on construction activities, and has now authorized execution of additional construction contracts for utility relocation. (Declaration of Rita Wespi in Support of Plaintiffs Reply Brief on Remedies ["Wespi Decl.'], ¶ 6and Exhibit C thereto, filed herewith.)

[3] However, review of documents recently obtained through California Public Records Act requests indicates that the Authority has already spent $4 Million on unspecified construction expenses. (Wespi Decl., ¶ 5 and Exhibit B thereto at p.7.)

[4] Defendants identify two federal funding sources: the $2.466 Billion ARRA grant and the $928 Million FY 2010 Grant. (DOB at pp.4-5.)

A. THE AUTHORITY'S COMMITMENT OF FUNDS TO THE TWO CONTRACTS NECESSARILY COMMITS BOND FUNDS.

In discussing its available federal resources, Defendants have failed to mention that the provisions of the most recent fifth amendment to the Federal ARRA grant limit how those funds may be spent. That amendment, included as Exhibit 1 to Defendants/Respondents' Request for Judicial Notice in Opposition to Plaintiffs/Petitioners' Request for Remedies ("Defendants' RJN"), restricts the use of the ARRA grant proceeds to the Fresno to Bakersfield segment of the Authority's Central Valley rail construction project. (Exhibit 1 at pp. 78, 80, 82, 88; *see also* Declaration of William H. Warren in Support of Plaintiffs' Reply Brief on Remedies ["Warren Decl."], ¶ 10.) The other source of federal funds, the so-called FY 2010 Grant, is less geographically restrictive on the use of its funds. (Warren Decl., ¶ 10.)

Virtually the entirety of both the Caltrans contract[5] (Exhibit 2 to Defendants' RJN) and the Tutor-Perini-Parsons contract for design and construction of the CP-1 segment of the Authority's Central Valley rail project cover an area between Madera and Fresno[6]. None of the work currently planned to proceed involves the area between Fresno and Bakersfield. That is because the Authority has neither certified the project-level EIR/EIS for that segment nor given final approval to the segment plans. Consequently, none of the Federal ARRA funds may be used for either the Caltrans or the Tutor-Perini-Parsons contract. Thus, the total federal funding available for these two contracts is the $928,620,000 from the FY 2010 Grant (DOB at 5:1.) However, the total design and construction costs for the two contracts is $1,195,888,000.00. (DOB at p.5.) As explained in Plaintiffs' Opening Brief and recapitulated without objection by Defendants (DOB at p.5 fn.8), $1.066 Billion of this total is for construction itself.

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[5] This contract provides not only for the relocation of SR 99 in this two-mile segment of CP-1 (Exhibit F to Warren Decl. [segment indicated by "See Attachment 2a"]) but also for "preparation of sub-ballast" [i.e., substrate upon which high-speed rail tracks will be laid]. (Exhibit 2 to Defendants' RJN at p.1.)

[6] The Tutor-Perini-Parsons contract includes in its scope of work an area south of the proposed Fresno High-Speed Rail station (CP1C, Exhibit 3 to Defendants' RJN at p.6; see also Exhibit F to Warren Decl. [map of CP1 areas]), but that portion is contingent upon future completion and approval of the project EIR/EIS for that segment. The entire Caltrans contract is for work north of the Fresno High-Speed Rail station. (Exhibit 3 to Defendants' RJN at p. 5.)

Even this large sum, however, greatly underestimates the total construction cost for CP1. That is because these contracts do not include ancillary work required for the construction to go forward. Not only does this include land acquisition for the entire CP1 right of way[7], estimated by the Authority at $441 Million (Warren Decl., ¶12 and Exhibit C thereto), but it also includes the cost of other construction activities such as utility relocations, amounting to an additional $446 Million, for a total CP1 cost of $2.118 Billion. (*Id.*) Thus there is approximately $1.189 Billion ($2.118B – $929M=$1.189 Billion) of construction costs for these two contracts that cannot be paid with currently available federal funds. Clearly, Defendants' assertion that no state funds are needed to cover the cost of the two contracts (DOB at 10:6) is contrary to the evidence.

While Defendants argue that other state funds may be used to match federal funds for the project, the Proposition 1A bond funds are the only funds that have been appropriated for high-speed rail project construction costs. All FRA agreements with the Authority, beginning in 2010, in addition to both of the Authority's 2012 Business Plans, have specifically called out the use of Proposition 1A bond funds. (Warren Decl., ¶6; .1 AR 104, 112, 156, 201, 202; 2 AR 1941, 1982, 2066, 2077, 2079, 2084.) Further, committing to pay these expenditures without an identified state funding source would violate Article 16 §1 of the California Constitution.

In addition, the legislature explicitly expected Proposition 1A bond funds to be used to match the federal grant funds, not some other hypothetical future funds. During the debate on the SB 1029 appropriation bill, Senator Mark Leno, one of the leading proponents of the appropriation, stated the following:

> Sen. Leno: This really is a rare opportunity for California. We don't see, in a certain sense, stars align as they are right now -- to have the authority and the reputation of the offices of the President of the United States, the leader of the House of Representatives, the governor of the largest in the country -- all in support of moving forward with *voter approved bond monies matched by federal dollars* to create hundreds of thousands of jobs over the course of the project. This doesn't happen all that often. (California State Senate debate of July 8, 2012 on approving SB 1029 [emphasis added].) (Declaration of Stuart Flashman, ¶4.)

[7] Some of this cost may be payable with Proposition 1A bond funds under §2704.08(g), at least until its $675 Million cap is reached.

Thus, the two already-executed contracts will require expenditure of bond funds. Rescission of the Funding Plan is thus justified by the real and practical effect it would have in requiring rescission of these subsequent approvals, since the commitment of bond funds to these contracts beyond that allowable under subsection (g) is improper without first having prepared an adequate subsection (c) Funding Plan, as well as an updated Funding Plan under subsection (d).

B. DEFENDANTS' COMMITMENT OF FEDERAL FUNDS TO THE CONTRACT HAS ALSO COMMITTED THE AUTHORITY TO EXPENDING BOND FUNDS BEYOND THE LIMITATIONS OF SUBSECTIONS (g) AND (h) WITHOUT A PROPER SUBSECTION (c) FUNDING PLAN.

In their opposition brief, Defendants note that the fifth amendment to the ARRA grant agreement allowed for a "tapered match" of federal grant spending. (DOB at p.6:3-5.) Essentially, this allows the Authority to "front-load" expenditure of federal ARRA funds, and only later match that spending with state funds.

Defendants note that between prior state expenditures extending back to 1996 and current bond fund expenditures under §2704.08(g) and (h), the Authority has spent $450 Million in state funds (DOB at p.10; Trujillo Decl., ¶7). Defendants' argument that because of that earlier spending no state funds need be expended until April 2014 is irrelevant, because under Amendment 5 to the ARRA grant agreement state contributions must begin by April 2014. (Warren Decl. ¶7 and sources cited therein.)

Even taking into account past state fund expenditures on the Project, by approving the Tutor-Perini-Parsons and Caltrans contracts, the Authority has committed over two billion dollars towards construction of CP1. (Warren Decl., ¶ 12.[8]) Defendants admit that as of June 30, 2013, the Authority has already spent over $331 Million of bond funds on subsection (g) expenses. (DOB at p. 7 fn.9 [continued].) That leaves only $344 Million as allowed within the

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[8] While not all of this amount is explicitly part of the two contracts, all of it is necessary in order for the two contracts to be completed. Thus, by executing the two contracts the Authority has committed itself to the full 2.118 Billion in CP1 expenditures.

$675 Million cap on subsection (g) expenditures. Yet the total of over $2 Billion in committed expenditures for CP1 will require a more that a $1 Billion contribution of state matching funds.

Because the federal FY 2010 Grant, unlike the ARRA Grant, does not provide for tapered contributions, matching state contributions must be contemporaneous. Since the Proposition 1A bond funds are the only legislative appropriations available to match the federal grant expenditures, and since committing state funds without an appropriation to serve as the source for those funds would amount to creating a state liability in violation of Article 16 §1 of the California Constitution, the match must be made using Proposition 1A funds. Additionally, in FY2014-2015 there is a deficiency of available FRA funds, leading to a requirement for about $364 Million of Prop 1A funds to service these two contracts in that fiscal year. (Warren Decl., ¶ 11.)

Therefore, by this criterion as well, in approving the two CP1 contracts, the Authority has committed bond funds towards these contracts in the absence of a valid subsection (c) Funding Plan beyond what can be provided under subsection (g). That commitment can be addressed by ordering rescission of the contracts or by prohibiting bond fund expenditures on those contracts (other than as allowed under subsections (g) and (h)) until both a proper subsection (c) Funding Plan and an updated subsection (d) Funding Plan have been prepared.

C. A CONTRACT ENTERED INTO IN VIOLATION OF THE STATE CONSTITUTION IS INVALID REGARDLESS OF THE VALIDITY OF THE APPROPRIATION UNDER WHICH IT IS MADE.

Defendants argue (DOB at p.7) that the Court cannot invalidate the two contracts the Authority has executed, even if they were made in violation of Proposition 1A, because they were made pursuant to a valid appropriation. Defendants' argument would reduce the financially protective provisions of the Proposition to a nullity.

The provisions requiring identification of full funding for the usable segment and completion of environmental clearances for that segment are voter-approved bond measure provisions with the force of law. Any attempt to contravene those provisions would amount to an attempt to rewrite the bond measure in a manner contrary to the intent of the voters who

approved it. (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348.) As in *O'Farrell, supra*, an attempt to execute a contract that is contrary to the requirements set by the voter-approved bond measure would violate the bond measure, and hence the California Constitution.

Regardless of the validity of the appropriation, it is presumed that official acts will be properly performed. (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 900 [citing *Bracy v. Gramley* (1997) 520 U.S. 899, 909].) The legislature, in making its appropriation, could properly presume that the Authority would fully comply with Proposition 1A in committing and expending that appropriation. The legislature's approval of the appropriation is therefore no defense to a claim that the two contracts are unauthorized in the absence of a valid subsection (c) Funding Plan.

II. THE ALTERNATIVE RELIEF REQUESTED FOR THE AUTHORITY'S VIOLATION OF §2704.08(c) IS PROPER.

As an alternative to ordering rescission of both the Caltrans and the Tutor-Perini-Parsons contracts, Plaintiffs have suggested that the Court could take less drastic action. It could permanently enjoin the Authority from expending any Proposition 1A bond funds towards any construction/acquisition activities (other than those allowable under §2704.08(g) or (h)) under either contract[9] until such time as it had properly completed a Funding Plan under subsection (c).

Coupled to that, Plaintiffs suggest, should be the Court's declaration that in the future the Authority is not allowed to expend Proposition 1A bond funds towards any construction/ acquisition activities (other than those allowable under §2704.08(g) or (h)) under any future contracts until such time as it had properly fulfilled all the prerequisites for such spending, as well as an accounting of funds spent, committed, or expected to be spent or committed on the Project[10].

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[9] This would also include ancillary construction activities (e.g., utility relocation, property or equipment acquisition) required to perform the contracts.

[10] This latter requirement could be satisfied, at least in part, by providing the Court with copies of the quarterly reports required under the ARRA grant.

Defendants argue that it is improper for Plaintiffs to seek injunctive or declaratory relief on its writ claims. (DOB at pp. 11-13.) Defendants offer multiple grounds for rejecting these alternative and less drastic remedies. Defendants begin by arguing that because these remedies were not proposed in Plaintiffs' initial briefing for the case, "considerations of fairness" preclude their being raised now. Yet Defendants have had their full opposition brief to attempt to rebut these claims. Why is that unfair? Defendants do not explain further. Defendants also claim that there is no evidence that the Authority has either expended or committed bond funds in violation of the bond measure. As already explained, there is plentiful evidence showing that the Authority has both expended and necessarily committed bond funds on the two contracts, in violation of the intent of the bond measure. (See Section I, *supra*.)

Defendants then proceed to make several other arguments against the alternative remedies. They argue that 1) Plaintiffs' Second Amended Complaint ("SAC") fails to assert waste of federal funds[11]; 2) that preliminary injunctive relief is unavailable in a cause of action under Code of Civil Procedure §526a; 3) that a temporary restraining order may only be granted upon noticed motion based on evidence supporting injunctive relief; and 4) that a temporary restraining order may not issue unless Plaintiffs post a bond of over $300 Million to cover possible damages during the term of the restraining order. Each of these contentions will be rebutted in turn.

A. THE SECOND AMENDED COMPLAINT ADEQUATELY ALLEGES WASTEFUL USE OF PUBLIC FUNDS, INCLUDING FEDERAL GRANT FUNDS.

In Paragraph 18 of the SAC, Plaintiffs allege the following:

[11] Defendants erroneously characterize the claim of waste of federal funds as being based on their unlawfully committing bond funds. The waste of federal funds is, instead, based on the fact that if the use of bond funds on the current project is improper, because it is not the project the voters approved, there are insufficient other funds available to build anything useful, and the expenditure of public funds to build a useless structure would be wasteful. (*See, City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545 [lawsuit properly stated a claim under §526a alleging that a city's use of its public funds to build sewer lines to an area that was outside of and might never be annexed to the city would be a wasteful use of public funds].)

> 18. Plaintiffs allege that since Proposition lA was passed, Defendant Authority has spent hundreds of millions of dollars getting ready to construct the Central Valley Project (more than $500 Million, with more than $400 Million from Proposition lA itself). Plaintiffs allege that these expenditures have already taken place, are currently taking place and are ongoing. In the event that the Central Valley Project is found legally to be INELIGIBLE for Proposition lA funding, these hundreds of millions of expenditures will have been wasted.

These allegations suffice to support a claim for wasteful use of public funds, which includes the federal grant funds at issue. Further, the paragraph alleges not only the wasteful use of Proposition 1A funds, but also the wasteful use of at least $100 Million of non-bond funds. The only non-bond funds available to the Authority are precisely the federal grant funds. Those funds are therefore included in the allegation of wasteful use of public funds.

B. A CAUSE OF ACTION UNDER C.C.P. §526a MAY SEEK PRELIMINARY INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING ORDER, ON THE SAME BASIS AS ANY OTHER CAUSE OF ACTION.

Defendants claim that, "preliminary injunctive relief is generally unavailable in a taxpayer standing case." (DOB at 11:16-17.) They cite to *White v. Davis* (2003) 30 Cal.4th 528, 556-557 as supporting authority. Their reliance of *White* is misplaced. In *White*, the California Supreme Court merely affirmed the long-standing appellate rule that a claim under §526a does not <u>necessarily</u> entitle the plaintiff to preliminary injunctive relief. (*Id.* at 554.) Rather, a preliminary injunction in a 526a case must be based on the same factors, including the likelihood of success on the merits and the balance of harms between the plaintiff and defendant depending on whether or not the injunction is granted. (*Id.*) However, Plaintiffs are not, at the moment, seeking a preliminary injunction. Plaintiffs seek two other forms of injunctive relief, neither of which has the same standards as a preliminary injunction.

On the one hand, Plaintiffs seek permanent injunctive relief as part of their remedy, based on the Court's decision on the merits on mandamus claims. A permanent injunction may properly be part of the remedy, regardless of whether it has been pled:

> A permanent injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action. [] The remedy is available in a mandamus proceeding and is appropriate to restrain action which, if carried out, would be unlawful. [] (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965 [citing *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356, 356-357]; *see also, Cal.Trout v. Superior Court* (1990) 218 Cal.App.3d

187, 204 [injunctive relief appropriate remedy to enforce a right in mandamus action].)

Indeed, in *Consulting Engineers & Land Surveyors of California, Inc. v. Professional Engineers in California Government* (2007) 42 Cal.4th 578, the California Supreme Court confirmed a trial court judgment granting not only a writ of mandate but also both permanent injunctive and declaratory relief based on alleged constitutional violations.

As for the temporary restraining order sought to prevent expenditure of federal grant funds on the two construction contracts until the §526a claims on the use of Proposition 1A grant funds can be heard, a temporary restraining order is again quite different from a preliminary injunction. It is *not* generally sought by a noticed motion, nor does it require showing a likelihood of success on the merits or that the balance of harms favors its issuance. That is because it serves a very different purpose from a preliminary injunction. Its purpose is merely to preserve the status quo and prevent damage to the plaintiff's interests until the issues involved can be brought before the Court. (*See, e.g., Signal Oil etc. Co. v. Ashland Oil etc. Co*. (1958) 49 Cal.2d 764, 775 [temporary restraining order properly issued pending determination of applicable law under Delaware laws involved in case].) Further, unlike a preliminary injunction, a temporary restraining order, because of its shorter duration, does not generally require posting of a bond.[12]

III. DEFENDANTS MUST SUBSTANTIALLY COMPLY WITH THE PROVISIONS OF §2704.08(c) BEFORE THEY CAN PROCEED TO PREPARING THE UPDATED FUNDING PLAN UNDER §2704.08(d).

Defendants posit that Plaintiffs demand preparation of a "flawless" funding plan under §2704.08(c) before the Authority can move on to preparation of the updated funding plan under §2704.08(d). All Plaintiffs seek is what the law requires: substantial compliance. When the voters approved Proposition 1A, they set up a series of financial protections for the funds they

[12] In any case, because Kings County is a public entity, under the California Bonds and Undertakings Law (Code of Civil Procedure §995 *et seq*.), it is exempt from posting a bond. (§995.220.)

were granting to the Authority. Substantial compliance requires that the voters' (and legislature's) intent be respected.

As noted in Plaintiffs' Opening Brief on Remedies, only the first funding plan addresses environmental clearances, and this was one of the areas where the Authority's funding plan was deficient. This requirement would not have been included in the funding plan if the voters had not intended it to be complied with. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute." (*Stasher v. Harger-Haldeman* (1962) 58 Cal.2d 23, 29; *Burks v. Kaiser Foundation Health Plan, Inc.* (2008) 160 Cal.App.4th 1021, 1029.) There can be little question that complying with each of the certification requirements of the funding plan constituted a "reasonable objective of the statute" as approved by the voters. Defendants' interpretation, which would bypass these requirements, cannot be countenanced.

Defendants also argue that the updated funding plan may differ substantially from the initial funding plan, and that it may even include, "a change in the corridor or usable segment selected for funding …." (DOB at 12:24-25.) They point out that any material changes from the prior funding plan must be included in a report submitted with the updated funding plan.

However, if the updated funding plan did change the corridor or usable segment selected for funding, that report is not all that would be required. The initial funding plan is to be submitted to the legislature in conjunction with an appropriation request for the corridor or usable segment thereof described in the funding plan. Presumably, the appropriation provided in response to the request would be (and in the current case was) for the corridor or usable segment described in the funding plan.

If the Authority later decided to change the corridor or usable segment it intended to build, it would need an appropriation that addressed <u>that</u> corridor or usable segment. Consequently, it would also need to submit an appropriation request for <u>that</u> corridor or usable segment <u>and</u>, in accordance with §2704.08(c)(2) a new or revised funding plan addressed to that different corridor or usable segment. Thus the very type of change that Defendants assert could

be made without returning to the subsection (c) funding plan would in fact require returning to and revising or replacing that plan. Similarly, completion of a noncompliant funding plan also requires returning to and properly completing that plan before going on to preparing the updated funding plan required in §2704.08(d). That was the intent of the voters, and that is what substantial compliance requires.

IV. THE PRESUMPTION THAT THE AUTHORITY WILL PROPERLY COMPLY WITH PROPOSITION 1A'S REQUIREMENTS HAS ALREADY BEEN OVERCOME.

As their last argument, Defendants claim that because a public agency is presumed to follow legal requirements, no mandate or injunction should or can be required. It is certainly true that one starts with a presumption that public agencies will properly perform their official functions. However, that presumption is not irrebuttable. In this case, the very fact that the Authority abused its discretion by not properly complying with Proposition 1A's requirements for its funding plan indicates that one cannot presume that the Authority will properly comply with all of Proposition 1A's requirements. Further, the evidence presented here and in Plaintiffs' Opening Brief on Remedies also indicates that the Authority has not been complying and does not intend to comply with the requirements of Proposition 1A. Under these circumstances, the presumption of proper action has been overcome and the remedy of injunctive relief, "…is available in a mandamus proceeding and is appropriate to restrain action which, if carried out, would be unlawful." (*County of Del Norte, supra.*)

V. ALL OF THE INDIVIDUAL DEFENDANTS SHOULD CONTINUE TO BE INCLUDED IN THE COMPLAINT.

Finally, as the last sentence of their conclusion, and with no supporting argument (DOB at 14:7-8), Defendants appear to ask that the Court dismiss all of the individual respondents (presumably with the exception of the Authority). Such a request is improper without identification as a point to be argued, or inclusion of any supporting authority. (*People v. Robinson* (2002) 104 Cal.App.4th 902, 905.) Given that Defendants' request is not part of the argument, and includes no supporting authority, the Court is entitled to disregard it. However,

even on its merits it should be obvious that in order for the declaratory and injunctive relief requested to apply to the named defendants, those defendants must continue to be parties to the case. Plaintiffs would also note that the §526a causes of action remain to be adjudicated, and that these involve some if not all of the individual defendants[13]. Defendants' implied request to dismiss the individual defendants should therefore be denied.

CONCLUSION

For all of the above reasons, Plaintiffs are entitled to the remedies specified in their proposed order, and Plaintiffs respectfully request that the order be granted as requested.

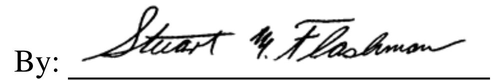
Dated: October 24, 2013

Respectfully submitted,

Michael P. Brady

Stuart M. Flashman

Attorneys for Plaintiffs John Tos,
Aaron Fukuda, and County of Kings

By: 

Stuart M. Flashman

[13] For example, an action seeking to invalidate a legislative appropriation must name the state controller as a defendant (*e.g.*, *Shaw v. People Ex Rel. Chiang* (2009) 175 Cal.App.4th 577 [suit to invalidate legislative appropriation named controller as individual defendant].)

PROOF OF SERVICE BY OVERNIGHT 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 October 24, 2013, I served the within PLAINTIFFS' REPLY BRIEF ON REMEDIES; PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY BRIEF ON REMEDIES; DECLARATION OF STUART FLASHMAN IN SUPPORT OF REPLY BRIEF ON REMEDIES; DECLARATION OF RITA WESPI IN SUPPORT OF REPLY BRIEF ON REMEDIES; and DECLARATION OF WILLIAM H. WARREN IN SUPPORT OF REPLY BRIEF ON REMEDIES on the parties listed below by placing a true copies thereof enclosed in sealed envelopes with overnight priority mail postage thereon fully prepaid, in a U.S. mailbox at Oakland, California addressed as follows:

Michele Inan, Deputy Attorney General
Office of California Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-7004
Michele.Inan@doj.ca.gov

Raymond L. Carlson, Esq.
Griswold, LaSalle, Cobb, Dowd & Gin LLP
111 East Seventh Street
Hanford, CA 93230
carlson@griswoldlasalle.com

In addition, on the above-same day, I also sent electronic copies of the above-same documents, converted to "pdf" format, as e-mail attachments, to the above-same parties at the e-mail addresses shown above.

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 October 24, 2013.

Stuart M. Flashman