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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

11 **JOHN TOS; QUENTIN KOPP; TOWN OF**
12 **ATHERTON, a municipal corporation;**
13 **COUNTY OF KINGS, a subdivision of the**
14 **State of California; PATRICIA LOUISE**
15 **HOGAN-GIORNI; ANTHONY WYNNE,**
16 **COMMUNITY COALITION OF HIGH-**
17 **SPEED RAIL, a California nonprofit**
18 **corporation; TRANSPORTATION**
19 **SOLUTIONS DEFENSE AND**
20 **EDUCATION FUND, a California**
21 **nonprofit corporation; and CALIFORNIA**
22 **RAIL FOUNDATION, a California**
23 **nonprofit corporation,**

Petitioners and Plaintiffs,

v.

24 **THE STATE OF CALIFORNIA,**
25 **CALIFORNIA HIGH SPEED RAIL**
26 **AUTHORITY, a public entity, BOARD OF**
27 **DIRECTORS OF THE CALIFORNIA**
28 **HIGH-SPEED RAIL AUTHORITY in their**
individual and official capacities, JEFF
MORALES, in his official capacity as Chief
Executive Officer of the California High-
Speed Rail Authority, MICHAEL COHEN,
in his official capacity as Director of the
Department of Finance of the State of
California, and DOES 2-20 inclusive,

Respondents and Defendants.

Case No. 34-2016-00204740

REPLY IN FURTHER SUPPORT OF
STATE OF CALIFORNIA'S
DEMURRER TO SECOND AMENDED
COMPLAINT

Date: December 8, 2017
Time: 9:00 a.m.
Dept: 31
Judge: Hon. Michael P. Kenny
Trial Date: None set
Action Filed: December 13, 2016

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1 INTRODUCTION

2 Plaintiffs’ Opposition fails to explain why the State of California is a proper defendant in
3 this case, or why the authority cited in the Demurrer is not controlling. Accordingly, the
4 demurrer should be sustained without leave to amend.

5 ARGUMENT

6 I. THE FIRST CAUSE OF ACTION DOES NOT ALLEGE A CONTROVERSY WITH THE
7 STATE OF CALIFORNIA.

8 Plaintiffs’ argument, that they can obtain declaratory relief against the State of California
9 when the complaint seeks no relief against the State, is unsupported by any authority.
10 (Opposition, p. 8.) Plaintiffs contend that a declaratory judgment would define the State’s
11 “duties” including “ensuring that its agencies and officers follow the Court’s binding
12 declaration.” (*Ibid.*) But the only “agencies and officers” involved in the approval process for
13 the funding plans at issue in this case are the Authority and the Director of Finance (see Sts. &
14 Hy. Code § 2704.08, subd. (d)), and both are named defendants. Plaintiffs nowhere explain how
15 the State as an entity could be expected to have “duties” to “ensure” that the Authority and the
16 Director of Finance comply with a judgment entered against them in this action, or what those
17 duties would be.

18 There is a genuine controversy between the Authority¹ and plaintiffs as to the validity of
19 AB 1889, codified at Streets and highways Code section 2704.78. That cause of action can afford
20 plaintiffs any declaratory relief to which they may be entitled. (See *Serrano v. Priest* (1976) 18
21 Cal.3d 728, 752 [holding that state officials charged with administering statute are proper
22 defendants in an action challenging its constitutionality, not the Governor or the Legislature];
23 *State v. Superior Court* (1974) 12 Cal.3d 237, 251, 255 [holding that cause of action seeking a
24 declaration that statute was unconstitutional stated a cause of action against the California Coastal
25 Zone Conservation Commission but not against the State]; *Yorty v. Anderson* (1963) 60 Cal.2d

26
27 ¹ The role of the Director of Finance is limited; he determines whether a given project
28 described in a funding plan approved by the Authority “is likely to be successfully implemented
as proposed.” (Sts. & Hy. Code, § 2704.08, subd. (d).)

1 312, 317 [holding that petitioners could obtain a determination of the validity of a senatorial
2 district reapportionment statute in an action against the Secretary of State, as the chief officer
3 responsible for the election of state senators].) The allegations in the SAC do not state a claim
4 against the State itself, and it is not a proper defendant.²

5 **II. THE SUPREME COURT’S DECISIONS IN *STATE V. SUPERIOR COURT* AND *SERRANO V.***
6 ***PRIEST* ARE CONTROLLING.**

7 Plaintiffs argue that *State v. Superior Court, supra*, 12 Cal.3d 237, is inapposite because in
8 *State* “the petition contains no allegations establishing any right to declaratory relief against the
9 state (as distinguished from the [Coastal] Commission acting as its agent),” while plaintiffs claim
10 that the allegations of SAC paragraphs 87 and 88 “lay out an actual controversy.” Not so.
11 Paragraph 87 contains a bare-bones allegation on information and belief that “CALIFORNIA also
12 asserts that AB 1889 and § 27045.78 [sic] are valid legislative enactments.” Since the State can
13 act only through officials and agents, that is at best a legal conclusion. The *facts* alleged are that
14 the State, “acting through its Legislature and its Governor, enacted AB 1889.” (SAC ¶ 18.) At
15 best that is an argument for joining the Governor and Legislature as defendants, a result
16 foreclosed by the Supreme Court’s decision in *Serrano v. Priest, supra*, 18 Cal.3d at p. 752, in
17 which the Court held that the “state officers with statewide administrative functions under the
18 challenged statute are the proper parties defendants” and that the interest of the Legislature and
19 the Governor – “that of lawmakers concerned with the validity of statutes enacted by them – is
20 not of the immediacy and directness requisite to party status.” (*Ibid.*)

21 Plaintiffs’ argument that “there are a host of cases where the State of California has been
22 duly named as a defendant in a declaratory relief action concerning the constitutionality of a
23 statute” (Opposition at p. 10), neither casts doubt on the above-discussed authorities nor
24 otherwise advances plaintiffs’ position. The cited authorities are inapposite, for none addresses

25 _____
26 ² Plaintiffs’ quotation from *Perry v. Brown* (2011) 52 Cal.4th 1116, 1155, that state
27 defendants assert the state’s interest in the validity of its laws, does not support plaintiffs’ position
28 that the State itself is an appropriate party defendant. The State was not a party to that action (the
Attorney General filed an amicus brief), and there was no argument advanced that the State
should or could have been made a party.

1 whether the State of California was a proper defendant in the action (and in some the State was
2 *not* named as a defendant). “It is axiomatic that cases are not authority for propositions not
3 considered.” (*In re Marriage of Cornejo* (1996) 14 Cal.4th 381, 388; *Martin v. City & County of*
4 *San Francisco* (2005) 135 Cal.App.4th 392, 400, fn. 4.)³

5 **CONCLUSION**

6 The Court should sustain the State’s demurrer without leave to amend.

7
8 Dated: December 1, 2017

Respectfully Submitted,

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10 Attorney General of California
11 TAMAR PACHTER
12 Supervising Deputy Attorney General

13 
14 SHARON L. O'GRADY
15 Deputy Attorney General
16 *Attorneys for Respondents and Defendants*

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24 ³ Plaintiffs’ parenthetical description of *Chiltern v. Contra Costa Community College*
25 *District* (1976) 55 Cal.App.3d 544 – “attempt to litigate constitutionality of loyalty oath statute
26 fails for failure to name State of California as a defendant” – suggests that case is relevant, but it
27 is not. The State was not a party to that action, yet the court had no trouble holding that the
28 loyalty oath of office that appellant refused to sign – and that was required under Article XX,
Section 3 of the California Constitution – did not violate plaintiff’s First Amendment rights, and
that the oath did not “become[] constitutionally defective when read in concert with” a statute that
made it a crime to violate a statutory oath containing some of the same language, but which
appellant had not been asked to take (*id.* at pp. 548-549, 551-552).

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority**

No.: **34-2016-00204740**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On December 1, 2017, I served the attached **REPLY IN FURTHER SUPPORT OF STATE OF CALIFORNIA'S DEMURRER TO SECOND AMENDED COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT**, addressed as follows:

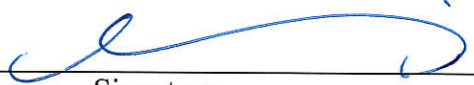
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 1, 2017, at San Francisco, California.

Susan Chiang

Declarant



Signature