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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

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

25 Plaintiffs,

26 v.

27 **CALIFORNIA HIGH SPEED RAIL**  
28 **AUTHORITY, a public entity, BOARD OF**  
**DIRECTORS OF THE CALIFORNIA**  
**HIGH-SPEED RAIL AUTHORITY, and**  
**DOES 1-20 inclusive,**

Defendants.

Case No. 34-2016-00204740

**REPLY IN FURTHER SUPPORT OF  
MOTION TO STRIKE**

Date: April 18, 2017  
Time: 9:00 a.m.  
Dept: 54  
Judge: Raymond M. Cadei  
Trial Date: Note set  
Action Filed: December 13, 2017

Reservation No. 2232493

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**MEMORANDUM OF POINTS AND AUTHORITIES**  
**INTRODUCTION**

Plaintiffs' Opposition to the Authority's Motion to Strike relies, as does their opposition to the Authority's demurrer, on the mistaken premise that they may challenge an administrative decision that can only be reviewed by writ of mandate and convert it into a civil lawsuit merely by alleging a taxpayer action under Code of Civil Procedure section 526(a). Plaintiffs are not entitled to dispense with a writ proceeding simply by seeking an injunction that merely restates a declaratory judgment. They have failed to identify any additional injunctive relief that would not require the Court to rule on whether a specific Authority decision approving a funding plan does or does not comply with the Bond Act, a challenge for which a writ of mandate is the sole remedy. Plaintiffs' defense of their claim for injunctive relief to recover funds already expended is unsupported by either the allegations of the First Amended Complaint, or by any authority (including those on which plaintiffs purport to rely).

**ARGUMENT**

**I. PLAINTIFFS' PROCEDURAL OBJECTION IS BASELESS.**

As a threshold matter, plaintiffs' contention that a motion to strike is procedurally improper (Opposition at p. 3) lacks merit. The motion was brought *in the alternative* in the event that the Court denies the Authority's demurrer to the Second Cause of Action. An injunction is a remedy, not a cause of action. (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159; *Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168.) A cause of action "is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty" and the "essential nature of a cause of action is determined by the primary right alleged to have been violated, not by the remedy sought." (*Ibid.*) Thus, the "nature of the relief sought does not determine the nature of the cause of action." (*Ibid.*) If the Court were to conclude that, broadly construed, the Second Cause of Action states a claim for relief, then the Court should decide that the remedy of an injunction is not available and that the allegations relating to that remedy should be stricken.

1 **II. PLAINTIFFS' ARGUMENT THAT THE SECOND CAUSE OF ACTION IS NOT A**  
2 **CHALLENGE TO THE AUTHORITY'S FUNDING PLANS IS MERITLESS.**

3 In response to the Authority's argument that an injunction directed to present or future  
4 funding plans are improper because any remedy plaintiffs may have must be pursued in a writ  
5 proceeding, plaintiffs primarily incorporate by reference their Opposition to the Demurrer  
6 (Opposition at p. 4), which requires no response here. The balance of plaintiffs' argument is a  
7 discussion as to why, in their view, the Central Valley Funding Plan violates the Bond Act (*id.* at  
8 p. 4 & fn. 3), thus underscoring that the Second Cause of Action *is* a challenge to the Authority's  
9 administrative decisions, specifically its approval of funding plans for construction of segments of  
10 the high-speed rail system, including the Central Valley Funding Plan.<sup>1</sup>

11 **III. PLAINTIFFS' OTHER ARGUMENTS FOR A PROSPECTIVE INJUNCTION ARE**  
12 **MERITLESS.**

13 In its motion, the Authority argued that an injunction that did no more than order  
14 compliance with a declaratory judgment was unnecessary and contrary to the presumption that a  
15 state agency will comply with the law. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th  
16 739, 742-743, 750.) "There is a presumption that state officers will obey and follow the law."  
17 (*Id.* at p. 751.) Plaintiffs cite no authority to rebut this, but simply argue that in *Connerly* a final  
18 declaratory judgment had already issued. (Opposition at p. 5.) Plaintiffs do not explain what  
19 purpose would be served by issuing an injunction that simply orders compliance with a  
20 simultaneously issued declaratory judgment, which plaintiffs seek here. The cases on which  
21 plaintiffs rely are inapposite. Neither *People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10

22  
23 <sup>1</sup> Plaintiffs' argument that taxpayers may be entitled to relief denied to non-taxpayers  
24 (Opposition at p. 4, fn. 2), misunderstands the Authority's position, which is simply that  
25 taxpayers are not entitled to relief not available to other persons *who have standing based on a*  
26 *direct and beneficial interest.* (Motion to Strike at p. 13, citing *Nathan H. Schur, Inc. v. City of*  
27 *Santa Monica* (1956) 47 Cal.2d 11, 17-18; *Animal Defense Fund v. California Exposition and*  
28 *State Fairs* (2015) 239 Cal.App.4th 1286, 1301; *Taxpayers for Accountable School Bond*  
*Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1032; *Daily Journal*  
*Corp. v. City of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557.) The Authority is not arguing  
that non-taxpayers who do not have a direct interest in a controversy have the same standing as  
taxpayers; this would render Code of Civil Procedure section 526a meaningless.

1 nor *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, involved a claim for declaratory relief  
2 coupled with an injunction that ordered a state agency to comply with the declaratory judgment.<sup>2</sup>

3 **IV. PLAINTIFFS' ARGUMENTS THAT THEY MAY BE ENTITLED TO AN INJUNCTION**  
4 **REQUIRING RESTORATION OF FUNDS ALREADY SPENT ARE FRIVOLOUS.**

5 In support of their argument that they may be entitled to an order "restoring" to the State  
6 Treasury monies that the Authority has already spent, plaintiffs rely on three cases that are  
7 inapposite because in each, individual officers were sued for improperly spending public money  
8 on election campaigns, which expenditures were not authorized by statute. (*Mines v. Del Valle*  
9 (1927) 201 Cal. 273,<sup>3</sup> *Stanson v. Mott* (1976) 17 Cal.3d 206, and *Vargas v. City of Salinas* (2009)  
10 46 Cal.4th 1.) The Supreme Court in this line of cases concluded that a public official's use of  
11 public funds to benefit one side in a partisan election campaign "raise[s] potentially serious  
12 constitutional issues." (*Stanson, supra*, 17 Cal.3d at p. 217; *Vargas, supra*, 46 Cal.4th at p. 7.)  
13 Plaintiffs cite no authority for the proposition that money spent by a state official as authorized by  
14 state statute is subject to "restoration" if the statute is later declared unconstitutional.

15 Nor have Plaintiffs identified any authority that would allow it to pursue this remedy  
16 against the Authority. Plaintiffs mischaracterize *Fox v. City of Pasadena* (9th Cir. 1935) 78 F.2d  
17 948, 950). In *Fox*, as here, plaintiffs sued the public entity, not individual officials, and the court  
18 held that the City was not liable for alleged misconduct of its officials. (*Id.* at p. 949-950.)

19 As a matter of law, plaintiffs are not entitled to an order "restoring" expended monies to the  
20 State Treasury.

21  
22  
23 <sup>2</sup> Both *Pacific Land Research* and *Continental Baking Co.* involved a preliminary  
24 injunction issued against private parties, in which the courts decided, based on the records in  
25 those cases, that the language of the preliminary injunction was not void for uncertainty or  
26 overbreadth. (*Pacific Land Research, supra*, 20 Cal.3d at pp. 22-23; *Continental Baking, supra*,  
27 68 Cal.2d at pp. 533-534.)

28 <sup>3</sup> Plaintiffs fail to mention that *Mines* was overruled by *Stanton*, and that *Stanton* held that  
a public officer can be liable for improperly using public money on partisan campaigning only if  
he or she failed to use "due care," i.e., reasonable diligence, in authorizing the expenditure."  
(*Stanton, supra*, 17 Cal.3d at pp. 226-227.) The FAC contains no such allegation.

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**CONCLUSION**

The Court should grant the Authority's motion to strike.

Dated: April 11, 2017

Respectfully Submitted,

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SA2016104863



**DECLARATION OF SERVICE BY E-MAIL and 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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **[GOLDEN STATE OVERNIGHT]**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On April 11, 2017, I served the attached **REPLY IN FURTHER SUPPORT OF MOTION TO STRIKE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, 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 April 11, 2017, at San Francisco, California.

Susan Chiang  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature