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8 *Attorneys for Petitioners and Plaintiffs John Tos et al.*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS *et al.*,
Petitioners and Plaintiffs
13 vs.
14 STATE OF CALIFORNIA *et al.*,
Respondents and Defendants

No. 34-2016-00204740
Assigned for all purposes to Hon. Richard K.
Sueyoshi, Department 28
PETITIONERS' AND PLAINTIFFS'
REPLY BRIEF IN SUPPORT OF MOTION
TO BIFURCATE FOR EARLY
DETERMINATION OF FIRST CAUSE OF
ACTION

Date: February 16, 2018
Time: 10:00 AM
Department: 28
Judge: Hon. Richard K. Sueyoshi
Action filed: December 13, 2016
Trial Date: Not Yet Set

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20 **INTRODUCTION**

21 As Petitioners explained in their opening brief, a motion to bifurcate is extremely simple. The
22 only issues are: first, would bifurcation further the Court's convenience in handing this case or be
23 conducive to expediting and economizing the case's handing; and second, conversely, would bifurcation
24 prejudice Respondents, and specifically Respondents' right to a trial by jury on any claim. (See, *Orange*
25 *County Water Dist. v. Alcoa Global Fasteners, Inc.* ("Alcoa") (2017) 12 Cal.App.5th 252, 353.)
26

1 Petitioners' opening brief lays out the ways that bifurcation would expedite and simplify the
2 Court's handling of this case. As was also explained, since the entire case lies in equity, there is no right
3 of jury trial at issue. Consequently, Petitioners could see no obvious way that bifurcation could prejudice
4 Respondents.

5 Respondents' Opposition to Motion to Bifurcate ("RO") does not identify any way bifurcation
6 would prejudice their interests in the Court's handling of this complex case. Instead, Respondents assert
7 that "bifurcating the First Cause of Action would serve no real purpose." (*Id.* at 9: 1-2.)

8 Respondents' arguments, however, address not bifurcation, but possible determinations on the
9 various causes of action in the petition and complaint – and their potential consequences, after bifurcation
10 has been granted. Thus, for example, Respondents argue that mere determination of the constitutionality
11 of AB 1889 would not, *per se*, determine whether declaratory relief should be granted. (*Id.* at 9: 7-17.)

12 How the Court and the parties address the various causes of action after bifurcation is not,
13 however, what is before the Court. Rather, what is at issue is whether bifurcation would further the
14 Court's convenience or help expedite the case's resolution. Even Respondents are forced to admit that a
15 determination that AB 1889 was constitutional would greatly simplify the case. (RO at p. 9: 4-7.) The
16 converse – that a ruling finding AB 1889 unconstitutional would also simplify the case – is, contrary to
17 Respondents' objections, also true. For these reasons, as explained further below, the motion to bifurcate
18 should be granted in spite of Respondents' objections.

19 ARGUMENT

20 I. CONTRARY TO RESPONDENTS' ARGUMENTS, BIFURCATION WOULD 21 SIMPLIFY AND EXPEDITE THE COURT'S HANDLING OF THIS COMPLEX 22 CASE.

23 As is often the case when a motion to bifurcate is proposed, this case presents a complex set of
24 issues, some of which will require extensive expenditure of time and resources by the parties and the
25 Court. The two mandamus claims (Third and Fourth Causes of Action) will each require preparation of
26 its own administrative record, and will present the Court with numerous issues that will likely involve
27 extensive briefing. The Second Cause of Action, for injunctive relief under Code of Civil Procedure

1 Section 526a, may involve not only legal issues but also contested factual issues that could even require a
2 court trial.¹

3 By contrast, the First Cause of Action, for declaratory relief on whether AB 1889 is facially
4 unconstitutional by violating Article XVI Section 1 of the California Constitution, presents a purely legal
5 issue that can be decided entirely on the pleadings and documents and facts subject to the Court's judicial
6 notice.² (See, e.g., *Shaw v. People Ex Rel. Chiang* (2009) 175 Cal.App.4th 577, 616 [action for
7 declaratory relief finding that certain legislative enactments violated Article II Section 10 subdivision(c)
8 of the California Constitution by attempting to modify a voter-approved initiative bond measure without
9 voter ratification]; see also, e.g., *American Federation of Labor v. Unemployment Ins. Appeals Bd.*
10 (1996) 13 Cal.4th 1017, 1028; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 211
11 *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 679 fn. 31 [cases where declaratory relief actions were
12 decided by motions for judgment on the pleadings].)

13 Bifurcating the First Cause of Action would allow the determination of that claim without having
14 to wait for the other more complex causes of action to unfold. Indeed, in all likelihood it would be
15 decided in three months or less by cross-motions for judgment on the pleadings.³

16 ¹ The degree to which factual issues are in dispute cannot yet be determined, because neither the
17 State of California nor the California High-Speed Rail Authority has yet filed an answer.

18 ² Respondents argue (RO at p. 9:11-12) that the declaratory relief claim is not “a purely legal
19 issue” because it falls under the Court’s equitable jurisdiction. Respondents confuse legal (versus
20 equitable) jurisdiction with legal (versus factual) issues. Declaratory relief certainly falls within
the Court’s equitable jurisdiction, but declaratory relief claims are often decided as matters of law,
especially when they center on statutory and constitutional interpretation. (See, *Shaw, supra*, 175
Cal.App.4th at p. 595 [standard of review for matters of statutory interpretation].)

21 ³ Respondent asserts that an action for declaratory relief must take into account the public interest,
and that the public interest here so clearly favors Respondents that the Court should summarily
22 find AB 1889 constitutional. (RO at p. 10: 9-10.) Respondent can only point to one case, *Cota v.*
County of Los Angeles (1980) 105 Cal.App.3d 282, as supporting consideration of the public
23 interest in deciding a claim for declaratory relief. However, the public interest there was actually
invoked on the issue of injunctive relief under C.C.P. § 526a. (*Id.* at p. 292.) In fact, that case did
24 not even involve declaratory relief, but reverse validation under C.C.P. § 863. (*Id.* at p. 285.) It is
therefore irrelevant. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 943
25 [“Cases are not authority ... for issues not raised and resolved.”].) Nor have Petitioners been able
26 to find a single published case where a declaratory relief action was decided upon, or even
addressed, the public interest – other than that, when a case involved a matter of great public
interest, as this case does, declaratory relief should not be withheld. (*Farm Sanctuary, Inc. v.*

1 As explained in Petitioners’ opening brief, a court determination that AB 1889 either is or is not
2 unconstitutional would greatly simplify determination of the remaining causes of action. On the two
3 mandamus claims, if the record shows that Respondents relied on AB 1889 in granting their approvals,
4 and that without AB 1889, the Final Funding Plans could not have been found to be “suitable and ready
5 for high-speed train operation,” then if AB 1889 is found unconstitutional, approving those funding plans
6 would have been an abuse of discretion and a violation of the mandatory requirements of Prop. 1A,
7 *requiring* issuance of a writ of mandate. Similarly, on the C.C.P. § 526a cause of action, if AB 1889 is
8 (or is not) unconstitutional, then expenditures of public funds (e.g., bond funds) that must rely on AB
9 1889 are (or are not) illegal and subject to injunctive relief.

10 All that, however, is in the future. The important thing in considering the motion to bifurcate is
11 that allowing early determination of the First Cause of Action, whatever that determination is, will
12 simplify and shorten the Court’s consideration of the remainder of the case.

13 **II. RESPONDENTS’ ARGUMENTS ON THE CONSEQUENCES OF BIFURCATION**
14 **ARE BOTH SPECULATIVE AND WRONG.**

15 Respondents spend most of their argument addressing what they claim are the pitfalls of granting
16 bifurcation. Much of what they say is speculation. With the exception of the Director of Finance,
17 Respondents have not even answered the petition and complaint, nor is there any indication that they
18 have begun preparing the administrative records for the two mandamus causes of action. While the
19 Second Amended Petition lays out numerous factual and legal issues, much will depend on what facts
20 Respondents admit to, and what defenses they tender in their answers. Even so, some of their assertions
21 are, even at this point, simply incorrect.

22 Respondents claim that a court must evaluate the effects on the public interest before determining
23 whether a claim for declaratory relief should be considered or summarily denied. Indeed, Respondents
24 go so far as to assert that, based on the public interest, the Court should summarily find AB 1889

25 *Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 503-504.) Respondents’ argument
26 should therefore be rejected out of hand.

1 constitutional. As explained in footnote number 3, neither the statute nor the case law supports these
2 assertions.⁴

3 While it is true that Code of Civil Procedure Section 1061 gives a trial court discretion to reject a
4 claim where a declaration would not be necessary or proper, the courts have made it clear that a court's
5 discretion to refuse to entertain an action for declaratory relief is quite limited.

6 The discretion to refuse to entertain an action in declaratory relief vested in the trial
7 court by section 1061 is not unlimited. It may be exercised only when there is a
8 basis in fact for the conclusion that the declaration is not necessary or proper.
[citations] Here there is an inadequate factual basis for the conclusion drawn by the
trial court.

9 Any doubt should be resolved in favor of granting declaratory relief. [citation]
10 While the court may refuse to entertain the action where "the rights of the
11 complaining party have crystallized into a cause of action for past wrongs, [and] all
12 relationship between the parties has ceased to exist ..." [citation], it may not exclude
13 the action where the alternative remedy of suing upon the matured breach is not as
"speedy and adequate or as well suited to the plaintiff's needs as declaratory relief."

14 (*Warren v. Kaiser Foundation Health Plan, Inc.* (1975) 47 Cal.App.3d 678, 683
15 [citations omitted].)

16 In this case, while two claims have matured into mandamus claims, the Second Amended
17 Petition also alleges that additional Final Funding Plans are being prepared that will also rely on AB 1889
18 (SAP at ¶¶ 77-80. 89). The action for declaratory relief goes beyond the mandamus claims, and even
19 beyond the claims for illegal and wasteful expenditure of public funds, to address the important long-term
20 policy question of whether the State's action in enacting AB 1889 without voter approval was proper and
21 valid, and therefore whether Respondents and Defendants are entitled to continue to rely upon that statute
22 in adopting, approving, and implementing Final Funding Plans for California's high-speed rail system.⁵

23 ⁴ Respondents have submitted a 355-page request for judicial notice in support of their opposition
24 brief. Much of this consists of documents submitted in this case under the earlier First Amended
25 Complaint, which has now been superseded by the current Second Amended Petition and
26 Complaint. Respondents assert all these documents are relevant to showing that the public interest
27 favors finding AB 1889 constitutional. As explained, the public interest is not a factor to be
28 considered in a claim for declaratory relief. Consequently, Respondents' request for judicial notice
29 is irrelevant and should be denied on that basis.

⁵ Respondents also parenthetically assert that the Court has similar discretion in a mandamus
claim, presumably also based on harm to the public interest. (OB at p. 10 fn.6.) Such is not the
case. While a court has discretion in considering a mandamus claim, it is a legal discretion, "not a

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CONCLUSION

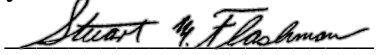
For all the above reasons, and those stated in Petitioners’ initial memorandum of points and authorities, Petitioners respectfully request that the motion to bifurcate be granted.

Dated: February 8, 2018

Respectfully submitted,

Michael J. Brady
Stuart M. Flashman

Attorneys for Petitioners and Plaintiffs

by: 
Stuart M. Flashman

capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised ex gratia, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666.) The cases do not allow a court to flatly deny relief just based on the grounds that it would cause harm to a public agency or public project.

PROOF OF SERVICE BY 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 9, 2018, I served the within PETITIONERS' AND PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO BIFURCATE FOR EARLY DETERMINATION OF FIRST CAUSE OF ACTION; PETITIONERS' AND PLAINTIFFS' OPPOSITION TO RESPONDENTS' REQUEST FOR JUDICIAL NOTICE on counsel for the Respondents and Defendants by placing a true copy thereof enclosed in a sealed envelope with first class mail postage thereon fully prepaid and depositing it in a U.S. Post Office mailbox at Oakland, California addressed as follows:

Sharon O'Grady, Deputy Attorney General
Tamar Pachtar, Deputy Attorney General
Office of California Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-7004
Sharon.OGrady@doj.ca.gov
Tamar.Pachtar@doj.ca.gov

In addition, on the above-same day, I also served the above-same document, converted into a pdf file, on the above-same parties via electronic service as an e-mail attachment sent to the e-mail addresses shown above from my e-mail account at stu@stuflash.com.

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 9, 2018.



Stuart M. Flashman