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SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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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, MORRIS BROWN,**
15 **PATRICIA LOUISE HOGAN-GIORNI,**
16 **ANTHONY WYNNE, COMMUNITY**
17 **COALITION ON HIGH-SPEED RAIL, a**
18 **California nonprofit corporation,**
19 **TRANSPORTATION SOLUTIONS**
20 **DEFENSE AND EDUCATION FUND, a**
21 **California nonprofit corporation, and**
22 **CALIFORNIA RAIL FOUNDATION, a**
23 **California nonprofit corporation,**

Petitioners and Plaintiffs,

v.

20 **THE STATE OF CALIFORNIA,**
21 **CALIFORNIA HIGH SPEED RAIL**
22 **AUTHORITY, a public entity, BOARD OF**
23 **DIRECTORS OF THE CALIFORNIA**
24 **HIGH-SPEED RAIL AUTHORITY in their**
25 **individual and official capacities, JEFF**
26 **MORALES, in his official capacity as Chief**
27 **Executive Officer of the California High-**
28 **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

RESPONDENTS CALIFORNIA HIGH-
SPEED RAIL AUTHORITY'S AND THE
STATE OF CALIFORNIA'S ANSWER
TO VERIFIED SECOND AMENDED
PETITION FOR PEREMPTORY WRIT
OF MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Dept: 28
Judge: Hon. Richard Sueyoshi
Trial Date: None set
Action Filed: December 13, 2016

1 6. Respondents admit that Petitioners have asked the Court to issue a declaratory
2 judgment that AB 1889 is unconstitutional on its face. Respondents deny the allegations of
3 paragraph 6 that the Authority is currently in the process of preparing and/or approving two
4 funding plans. The rest of the allegations in paragraph 6 are legal arguments and legal
5 conclusions which Respondents need not admit or deny.

6 7. Respondents admit that Petitioners have asked the court for injunctive relief, and
7 that Authority has been, is, and intends to continue expending public funds. The rest of the
8 allegations in paragraph 7 are legal arguments and legal conclusions which Respondents need not
9 admit or deny.

10 8. In answer to paragraph 8, Respondents admit that, pursuant to Streets and
11 Highways Code section 2704.08, subdivision (d), Respondents Michael Cohen, in his official
12 capacity as Director of the Department of Finance of the State of California (the "Director of
13 Finance") issued a letter dated March 3, 2017 to Jeff Morales, Chief Executive Officer of the
14 Authority, regarding the Central Valley Funding Plan, and that he issued a letter dated March 3,
15 2017 to Jeff Morales, Chief Executive Officer of the Authority, regarding the Peninsula Funding
16 Plan, which documents speak for themselves.

17 9. Respondents admit that petitioners are asking the Court for a writ of mandate.
18 Respondents deny the rest of the allegations in paragraph 9.

19 10. Respondents admit that petitioners are asking the court for their costs of suit and
20 attorneys' fees. The rest of the allegations in paragraph 10 are legal conclusions which
21 Respondents need not admit or deny.

22 11. Respondents have insufficient information to either admit or deny the allegations
23 of paragraph 11.

24 12. Respondents admit that Tos is a landowner in Kings County who owns and/or has
25 an interest in land in the area of the Authority's Central Valley project, and that his lands are
26 currently the subject of eminent domain action(s). Respondents admit that the eminent domain
27 action may result in the acquisition of portions of his land.

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1 13. Respondents admit the allegations of the first sentence of paragraph 13.
2 Respondents have insufficient information to either admit or deny the rest of the allegations of
3 paragraph 13.

4 14. Respondents admit the allegations of the first sentence of paragraph 14.

5 15. Respondents admit the allegations of the first sentence of paragraph 15.

6 16. Respondents have insufficient information to either admit or deny the allegations
7 of the first and second sentences of paragraph 16. The rest of the allegations in paragraph 16 are
8 legal arguments and conclusions which Respondents need not admit or deny.

9 17. Respondents admit the first allegations of the first sentence of paragraph 17. The
10 rest of the allegations in paragraph 17 are legal conclusions which Respondents need not admit or
11 deny

12 18. Respondents admit that the Legislature enacted and the Governor signed AB 1889
13 in 2016. The rest of the allegations in paragraph 18 are legal arguments and conclusions which
14 Respondents need not admit or deny.

15 19. Respondents admit the allegations of the first sentence of paragraph 19.
16 Respondents admit that the Authority is composed of nine members. The rest of the allegations
17 in paragraph 19 are legal conclusions which Respondents need not admit or deny.

18 20. The allegations in paragraph 20 are legal conclusions which Respondents need not
19 admit or deny.

20 21. Respondents admit that the Authority has prepared and the Authority has approved
21 a Funding Plan for constructing a grade separation at Rosecrans Avenue and Marquardt Avenue
22 in the City of Santa Fe Springs in Los Angeles County, pursuant to Streets & Highways Code
23 section 2704.08.

24 22. Respondents admit that Jeff Morales was the Executive Director (CEO) of the
25 Authority during the time that the two Final Funding Plans primarily at issue in this case were
26 being prepared and approved by the Authority. Respondents admit that Jeff Morales forwarded
27 those two Plans and related documentation to the Director of Finance. The rest of the allegations
28 in paragraph 22 are legal conclusions which Respondents need not admit or deny.

1 23. Respondents admit the allegations of the first sentence of paragraph 23. The rest
2 of the allegations in paragraph 23 are legal arguments and conclusions which Respondents need
3 not admit or deny

4 24. Respondents have insufficient information to either admit or deny the allegations
5 of paragraph 24.

6 25. Respondents admit that a letter from Stuart Flashman on behalf of the
7 Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the
8 Community Coalition on High-Speed Rail to the Director of Finance dated September 23, 2016 is
9 attached as Exhibit A to the Petition, which letter speaks for itself, and admit that Stuart
10 Flashman, counsel for petitioners, and David Schonbrunn, representing petitioner Transportation
11 Solutions Defense and Education Fund provided oral comments to the Authority at its meeting on
12 December 13, 2016, the video and transcript of which speaks for themselves. The rest of the
13 allegations in paragraph 25 are legal arguments and conclusions which Respondents need not
14 admit or deny.

15 26. The allegations in paragraph 26 are legal conclusions which Respondents need not
16 admit or deny.

17 27. The allegations in paragraph 27 are legal arguments and conclusions which
18 Respondents need not admit or deny.

19 28. In answer to paragraph 28, Respondents admit that in 1996 the Legislature enacted
20 the High Speed Rail Act, which speaks for itself.

21 29. Respondents admit that in 2008 the Legislature placed on the ballot and the voters
22 passed Proposition 1A, which speaks for itself. Respondents have insufficient information to
23 either admit or deny the allegations of the second sentence of paragraph 29.

24 30. The allegations in paragraph 30 are legal arguments and conclusions which
25 Respondents need not admit or deny.

26 31. Respondents admit that the document referenced in paragraph 31 speaks for itself.
27 The rest of the allegations in paragraph 31 are legal arguments and legal conclusions which
28 Respondents need not admit or deny.

1 32. Respondents admit the document referenced in paragraph 32 speaks for itself. The
2 rest of the allegations in paragraph 32 are legal arguments and conclusions which Respondents
3 need not admit or deny.

4 33. Respondents admit that Proposition 1A speaks for itself. The rest of the
5 allegations in paragraph 33 are legal arguments and legal conclusions which Respondents need
6 not admit or deny.

7 34. In answer to paragraph 34, Respondents admit that Proposition 1A speaks for
8 itself.

9 35. In answer to paragraph 35, Respondents admit that Proposition 1A speaks for
10 itself.

11 36. In answer to paragraph 36, Respondents admit that Proposition 1A includes a
12 definition of Phase 1 high-speed rail system corridor, and that definition speaks for itself.

13 37. In answer to paragraph 37, Respondents admit the Authority issued a 2016
14 Business Plan, which document speaks for itself.

15 38. In answer to paragraph 38, Respondents admit that the Authority's 2016 and
16 revised 2014 business plans speak for themselves. Respondents admit that bond funds were
17 appropriated in 2012. Respondents deny the rest of the allegations of paragraph 38.

18 39. In answer to paragraph 39, on information and belief, Respondents admit that the
19 Authority has commenced construction in the Central Valley, consisting of three construction
20 packages, CP 1, CP 2-3 and CP 4, and has used federal grant funds and state matching funds on
21 that construction. Respondents admit that CP 2-3 were initially separate packages, but were
22 subsequently merged. Respondents admit that construction of CP 1 began in 2015, and that
23 construction of CP 2-3 and CP 4 began in 2017, and that none of the segments has been
24 completed.

25 40. In answer to paragraph 40, Respondents admit that the Central Valley Funding
26 Plan speaks for itself.

27 41. In answer to paragraph 41, Respondents admit that the Central Valley Funding
28 Plan speaks for itself.

1 42. In answer to paragraph 42, Respondents admit that the Central Valley Segment is
2 described in the Central Valley Funding Plan and the Central Valley Funding Plan speaks for
3 itself.

4 43. The allegations in paragraph 43 are legal arguments and conclusions which
5 Respondents need not admit or deny.

6 44. Respondents admit that SB 1029 speaks for itself. The rest of the allegations in
7 paragraph 44 are legal arguments and conclusions which Respondents need not admit or deny.

8 45. In answer to paragraph 45, Respondents admit that SB 1029 speaks for itself.

9 46. In answer to paragraph 46, Respondents admit that the Peninsula Corridor Joint
10 Powers Board has certified an Environmental Impact Report for electrification of the Caltrain
11 corridor.

12 47. Respondents admit that the Peninsula Funding Plan speaks for itself. The rest of
13 the allegations in paragraph 47 are legal arguments and conclusions which Respondents need not
14 admit or deny.

15 48. In answer to paragraph 48, Respondents admit that the Authority approved the
16 Peninsula Funding Plan, which document speaks for itself.

17 49. In answer to paragraph 49, Respondents admit the existence of the lawsuit *Tos v.*
18 *High-Speed Rail Authority*, Sacramento Superior Court case no. 35-2011-00113919, filed on
19 November 14, 2011 hereafter, "*Tos P*", the pleadings in which speak for themselves.

20 50. Respondents admit the allegations of paragraph 50.

21 51. In answer to paragraph 51, Respondents admit that the Authority approved a 2012
22 revised business plan, which document speaks for itself.

23 52. In answer to paragraph 52, Respondents admit that the Authority approved a 2011
24 funding plan and the 2012 revised business plan, which documents speak for themselves, and
25 requested an appropriation of bond proceeds. Respondents admit that in 2012 the Legislature
26 enacted Senate Bill 1029, which speaks for itself.

1 53. In answer to paragraph 53, Respondents admit the existence of *Tos I*, the orders
2 and records of which speak for themselves. Respondents admit that a hearing in *Tos I* took place
3 on May 31, 2013.

4 54. In answer to paragraph 54, Respondents admit the existence of the writ proceeding
5 *California High-Speed Rail Authority v. Superior Court*, the pleadings, orders and records of
6 which speak for themselves. Respondents admit that the Court of Appeal issued an opinion in
7 that proceeding, *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th
8 676, which opinion speaks for itself.

9 55. Respondents admit that State Assembly Member Mullin authored AB 1889 and
10 that AB 1889 underwent amendments in the Assembly and the Senate, which measure and
11 amendments speak for themselves. Respondents have insufficient information to either admit or
12 deny the rest of the allegations of paragraph 55.

13 56. Respondents admit that State Assembly Member Mullin authored AB 1889 and
14 that AB 1889 underwent amendments in the Assembly and the Senate, which measure and
15 amendments speak for themselves. The rest of the allegations in paragraph 56 are legal
16 arguments and conclusions which Respondents need not admit or deny.

17 57. Respondents have insufficient information to either admit or deny the allegations
18 of paragraph 57.

19 58. Respondents admit the allegations of paragraph 58.

20 59. Respondents admit that State Assembly Member Mullin authored AB 1889 and
21 that AB 1889 underwent amendments in the Assembly and the Senate, which measure and
22 amendments speak for themselves. Respondents have insufficient information to either admit or
23 deny the allegations of the first sentence of paragraph 59. The rest of the allegations in paragraph
24 59 are legal arguments and conclusions which Respondents need not admit or deny.

25 60. Respondents admit the allegations of paragraph 60.

26 61. Respondents have insufficient information to either admit or deny the allegations
27 of paragraph 61.

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1 62. Respondents admit that AB 1889 was passed by the Legislature and signed by the
2 Governor. Respondents have insufficient information to either admit or deny the rest of the
3 allegations of paragraph 62.

4 63. In answer to paragraph 63, Respondents admit that the Authority prepared two
5 Funding Plans pursuant to section 2704.08(d).

6 64. Respondents admit that in December 2013 the Authority released the Central
7 Valley Funding Plan and the Peninsula Funding Plan, which documents speak for themselves.

8 65. Respondents admit the documents referenced in paragraph 65 speak for
9 themselves.

10 66. Respondents deny the allegations of paragraph 66.

11 67. Respondents admit the referenced document speaks for itself. The rest of the
12 allegations in paragraph 67 are legal arguments and conclusions which Respondents need not
13 admit or deny.

14 68. Respondents admit the referenced document speaks for itself. The rest of the
15 allegations in paragraph 68 are legal arguments and conclusions which Respondents need not
16 admit or deny.

17 69. Respondents admit the referenced document speaks for itself. The rest of the
18 allegations in paragraph 69 are legal arguments and conclusions which Respondents need not
19 admit or deny.

20 70. Respondents admit the referenced document speaks for itself. The rest of the
21 allegations in paragraph 70 are legal arguments and conclusions which Respondents need not
22 admit or deny.

23 71. The allegations in paragraph 71 are legal arguments and conclusions which
24 Respondents need not admit or deny.

25 72. In answer to paragraph 72, Respondents admit that at the meeting of the Authority
26 on December 13, 2016, the Authority approved Central Valley Funding Plan and the Peninsula
27 Funding Plan effective as of January 1, 2017; and authorized the Authority's CEO to finalize and
28 submit the funding plans to the Director of Finance and to the Joint Legislative Budget

1 Committee. The Authority admits that the Authority's CEO did so, and that the funding plans
2 and documentation were forwarded to the Director of Finance on or about January 3, 2017.

3 73. In answer to paragraph 73, Respondents admit the existence of the letters from the
4 Director of Finance to the Authority dated March 3, 2017 regarding the Central Valley Funding
5 Plan and the Peninsula Funding Plan, which speak for themselves.

6 74. Respondents admit the allegations of paragraph 74.

7 75. In answer to paragraph 75, Respondents admit that on or about April 28, 2017,
8 \$1,248,070,000 in bonds were sold, and that the Authority has begun encumbering and spending
9 those funds on construction on the project described in the Central Valley Funding Plan.

10 76. The allegations in paragraph 76 are legal arguments and conclusions which
11 Respondents need not admit or deny.

12 77. Respondents deny the allegations of paragraph 77.

13 78. In answer to paragraph 78, Respondents admit that the Authority has approved a
14 Funding Plan for constructing of a project at Rosecrans Avenue and Marquardt Avenue in the
15 City of Santa Fe Springs in Los Angeles County (the "Rosecrans-Marquardt Funding Plan"),
16 which speaks for itself. Respondents admit that the Authority received from its CEO a report
17 regarding the status of a draft funding plan for that project, which draft document speaks for
18 itself.

19 79. Respondents deny the allegations of paragraph 79.

20 80. Respondents deny the allegations of paragraph 80.

21 81. In answer to paragraph 81, Respondents re-allege and incorporate by reference as
22 if fully set forth herein his admissions, denials, and allegations set forth in Respondent's
23 paragraphs 1 through 80, above.

24 82. The allegations in paragraph 82 are legal conclusions which Respondents need not
25 admit or deny.

26 83. The allegations in paragraph 83 are legal arguments and conclusions which
27 Respondents need not admit or deny.

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1 84. The allegations in paragraph 84 are legal arguments and conclusions which
2 Respondents need not admit or deny.

3 85. The allegations in paragraph 85 are legal arguments and conclusions which
4 Respondents need not admit or deny.

5 86. Respondents have insufficient information to either admit or deny the allegations
6 of paragraph 86..

7 87. In answer to paragraph 87, Respondents deny that the State as such has taken a
8 position on the validity of AB 1889, codified at Streets and Highways Code section 2704.78.

9 88. Respondents admit the allegations of paragraph 88.

10 89. Respondents admit that the Authority has approved three funding plans, the
11 Central Valley Funding Plan, the Peninsula Funding Plan and the Rosecrans-Marquardt Funding
12 Plan, which documents speak for themselves. Respondents admit that the Authority will presume
13 the validity of AB 1889 and defend the validity of the statute until such time, if ever, that a final
14 determination to the contrary is made by a court of appeal or the Supreme Court. Respondents
15 deny the rest of the allegations of paragraph 89, and specifically deny that the Authority is in the
16 process of preparing any funding plans.

17 90. In answer to paragraph 90, Respondents admit that Petitioners are asking the Court
18 for declaratory relief.

19 91. In answer to paragraph 91, Respondents re-allege and incorporate by reference as
20 if fully set forth herein his admissions, denials and allegations set forth in Respondent's
21 paragraphs 1 through 90, above.

22 92. In answer to paragraph 92, Respondents admit that public funds were expended
23 toward the preparation and approval of the Central Valley Funding Plan, the Peninsula Funding
24 Plan, and the Rosecrans-Marquardt Funding Plan.

25 93. In answer to paragraph 93, Respondents admit the Director of Finance issued a
26 letter to the Authority dated March 3, 2017 regarding the Central Valley Funding Plan, which
27 document speaks for itself.

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1 94. In answer to paragraph 94, Respondents admit the State of California sold
2 approximate \$1.25 billion in Prop 1A bond funds intended for use in construction of the project
3 described in the Central Valley Funding Plan.

4 95. In answer to paragraph 95, Respondents admit the Authority has begun to
5 encumber and expend Prop 1A bond funds.

6 96. The allegations in paragraph 96 are legal arguments and conclusions which
7 Respondents need not admit or deny.

8 97. The allegations in paragraph 97 are legal arguments and conclusions which
9 Respondents need not admit or deny.

10 98. The allegations in paragraph 98 are legal arguments and conclusions which
11 Respondents need not admit or deny.

12 99. On information and belief, Respondents admit that the Authority has spent public
13 funds in connection with the preparation and approval of the Central Valley Funding Plan and the
14 Peninsula Funding Plan. The rest of the allegations in paragraph 99 are legal conclusions which
15 Respondents need not admit or deny.

16 100. The allegations in paragraph 100 are legal conclusions which Respondents need
17 not admit or deny.

18 101. Respondents have insufficient information to either admit or deny the allegations
19 of paragraph 101.

20 102. Respondents have insufficient information to either admit or deny the allegations
21 of paragraph 102.

22 103. The allegations in paragraph 103 are legal arguments and conclusions which
23 Respondents need not admit or deny.

24 104. The allegations in paragraph 104 are legal conclusions which Respondents need
25 not admit or deny.

26 105. In answer to paragraph 105, Respondents admit that petitioners sought this Court's
27 temporary restraining order, preliminary injunction and permanent injunction, and that
28 Respondents' demurrer to this cause of action was sustained without leave to amend.

1 106. In answer to paragraph 106, Respondents admit that petitioners filed a request for
2 dismissal dismissing the allegations in paragraph 106.

3 107. In answer to paragraph 107, Respondents re-allege and incorporate by reference as
4 if fully set forth herein his admissions, denials and allegations set forth in Respondent's
5 paragraphs 1 through 106, above.

6 108. The allegations in paragraph 108 are legal arguments and conclusions which
7 Respondents need not admit or deny.

8 109. The allegations in paragraph 109 are legal arguments and conclusions which
9 Respondents need not admit or deny.

10 110. Respondents admit the referenced document speaks for itself. The rest of the
11 allegations in paragraph 110 are legal conclusions which Respondents need not admit or deny.

12 111. Respondents admit the referenced document speaks for itself. The rest of the
13 allegations in paragraph 111 are legal arguments and conclusions which Respondents need not
14 admit or deny.

15 112. The allegations in paragraph 112 are legal arguments and conclusions which
16 Respondents need not admit or deny.

17 113. Respondents admit the referenced document speaks for itself. The rest of the
18 allegations in paragraph 113 are legal arguments and conclusions which Respondents need not
19 admit or deny.

20 114. Respondents admit the referenced document speaks for itself. The rest of the
21 allegations in paragraph 114 are legal arguments and conclusions which Respondents need not
22 admit or deny.

23 115. Respondents admit the referenced document speaks for itself. The rest of the
24 allegations in paragraph 115 are legal arguments and conclusions which Respondents need not
25 admit or deny.

26 116. The allegations in paragraph 116 are legal arguments and conclusions which
27 Respondents need not admit or deny.

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SIXTH DEFENSE

Respondents are immune from suit pursuant to Government Code section 815 to the extent the Petition attempts to state a cause of action not provided by statute against a public entity.

SEVENTH DEFENSE

There is no liability against Respondents for any injury or damages resulting from an exercise of discretion and judgment vested in Respondent, whether or not such discretion be abused.

EIGHTH DEFENSE

Petitioners Town of Atherton and County of Kings lack standing to bring the Petition and each cause of action therein.

NINTH DEFENSE

Because the Petition is couched in conclusory terms, all affirmative defenses that may be applicable to the within action cannot be fully anticipated. Accordingly, Respondents reserve the right to assert additional affirmative defenses, if and to the extent such affirmative defenses are applicable.

WHEREFORE, Respondents the State of California and the California High-Speed Rail Authority pray as follows:

1. That judgment be entered in favor of Respondents and against Petitioners;
2. That Petitioners take nothing by their Petition;
3. That Respondents be awarded attorneys' fees and costs of suit incurred herein; and
4. That Respondents be awarded such other and further relief as the Court may deem just and proper.

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Dated: March 19 2018

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
TAMAR PACTER
Supervising Deputy Attorney General



SHARON L. O'GRADY
Deputy Attorney General
Attorneys for Respondents and Defendants

SA2016104863

DECLARATION OF SERVICE

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 March 19, 2018, I served the attached **RESPONDENTS CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S AND THE STATE OF CALIFORNIA'S ANSWER TO VERIFIED SECOND AMENDED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

Stuart M. Flashman
Attorney at Law
Law Offices of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
Email Address: stu@stufash.com

Michael J. Brady
Ropers, Majeski, Kohn & Bentley -
Redwood City
1001 Marshall St, Suite 500
Redwood City, CA 94063
Email Address: mbrady@rmkb.com

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 March 19, 2018, at San Francisco, California.

Susan Chiang
Declarant



Signature

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GUSSE COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY