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AND COUNTY OF KINGS
6

**COUNTY IS EXEMPT FROM
FILING FEES PER GOV. CODE
SECTION 6103**

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10
11 JOHN TOS, AARON FUKUDA; AND
COUNTY OF KINGS, A POLITICAL
12 SUBDIVISION OF THE STATE OF
CALIFORNIA,

13 Plaintiffs,

14 v.

15 CALIFORNIA HIGH SPEED RAIL
16 AUTHORITY; JEFF MORALES, CEO OF
THE CHSRA; GOVERNOR JERRY
17 BROWN; STATE TREASURER,
BILL LOCKYER; DIRECTOR OF
18 FINANCE, ANA MATASANTOS;
SECRETARY (ACTING) OF BUSINESS,
19 TRANSPORTATION AND HOUSING,
BRIAN KELLY; STATE CONTROLLER,
20 JOHN CHIANG; AND DOES I-V,
INCLUSIVE,

21 Defendants.
22

CASE NO. 34-2011-00113919

**SECOND AMENDED COMPLAINT FOR
DECLARATORY RELIEF; FOR
MANDAMUS/PROHIBITION; FOR
RELIEF PURSUANT TO 526a, CCP; FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF; FOR RELIEF
UNDER THE PRIVATE ATTORNEY
GENERAL DOCTRINE**

23 **JURISDICTION AND VENUE**

24 This court has jurisdiction since the action seeks to prevent a state agency and state
25 officials from committing or authorizing illegal acts or expenditures and to prevent the use of
26 state funds for illegal purposes. Venue is proper since suits against the California High Speed
27 Rail Authority ("CHSRA") are required by law to be filed in the County of Sacramento.
28

IDENTITY OF THE PLAINTIFFS

1
2 1. Plaintiff County of Kings is a political subdivision of the State of California,
3 organized and existing under the laws of this state. Plaintiff John Tos is a farmer and resident of
4 Kings County, California. Plaintiff Aaron Fukuda is also a resident of Kings County, California.
5 Plaintiffs Tos and Fukuda are taxpayers of the state, having paid for many years state income,
6 sales, and property taxes. They are eligible to sue under CCP §526a and sue under that statute.
7 Plaintiff Aaron Fukuda several years ago bought his dream house in Kings County, near Hanford;
8 he married thereafter and planned to start a family in this house. This home was a unique piece of
9 property: in a rural area with slightly over an acre of land, but only one mile from town. Such
10 properties are rare in the area, and plaintiff considered himself fortunate to find this property.
11 The property also has a pasture on it, which plaintiff Fukuda leases for \$200/month; it also has
12 some “workshop” buildings on the property which plaintiff utilizes and which cannot be moved;
13 these contain saws, drills, and other fixed mechanical equipment; the high speed rail (HSR) train
14 system alignment will go through plaintiff’s property. The value of the property will be adversely
15 affected, and plaintiff will not be able to find a suitable replacement property that is so unique and
16 suitable for plaintiff’s needs; plaintiff will also lose the income that he is receiving from the
17 property. These all constitute economic and tangible items of damage/injury to plaintiff and
18 plaintiff’s property. Plaintiff Tos owns a farm and has a walnut orchard; the HSR system will
19 traverse plaintiff’s property, severely impacting its value and income earning potential and
20 present production. Many other adverse effects will occur, including, but not limited to the
21 following: many roads will be closed surrounding plaintiff’s property; parcels on plaintiff’s
22 property will be bisected. All of this will result in a significant increase in farm equipment miles
23 driven per month, because of the severe inconvenience caused by the rail alignment. This will
24 result in increased wear and tear on plaintiff’s farm equipment and a large increase in the fuel
25 costs to run said farm equipment. Plaintiff estimates that the increase in fuel costs will be
26 \$75,000 per year. This increase in miles driven will also result in increased repair, maintenance
27 replacement, and labor costs. When heavy farm equipment has to travel more miles, travelling at
28 low speeds, this will reduce productivity. More miles travelled will also result in more collisions

1 and safety concerns for plaintiff's farm equipment; the defendants' project will seriously increase
2 the safety concerns for operating plaintiff's farm equipment, placing it more often in contact with
3 busy roads and with much faster-moving traffic. Plaintiff's walnut orchards will be adversely
4 affected and any mitigation measures by defendants will be inadequate; therefore the lease value
5 of plaintiff's land will also be rendered less valuable.

6 GIST OF PLAINTIFFS' CLAIMS

7 2. All plaintiffs claim that the Central Valley HSR project Merced to Bakersfield
8 segment (Central Valley HSR project) is NOT ELIGIBLE to receive financial support from
9 Proposition 1A bond funds and that it would be illegal under Proposition 1A and CCP §526a, to
10 authorize, approve, disburse or distribute Proposition 1A bond funds to CHSRA for the purpose
11 of constructing a purported HSR system in the Central Valley. The plaintiffs will seek in this
12 action to have the court declare that such use of Proposition 1A funds would be illegal and that all
13 defendants must be prevented from doing so.

14 Plaintiffs seek a writ of mandamus/prohibition requiring the Authority to include in its
15 UPDATED FUNDING PLAN terms that comply with all the mandatory non-discretionary
16 provisions of paragraph (d) of section 2704.08 and to prohibit the Authority from adopting an
17 UPDATED FUNDING PLAN that does not comply with said paragraph (d). Plaintiffs also seek
18 declaratory relief on this claim as well.

19 IDENTITY OF DEFENDANTS

20 3. The defendants are principally persons and agents of the State who, under the Safe,
21 Reliable High-Speed Passenger Train Bond Act for the 21st Century ("Proposition 1A"), have a
22 voice and decision-making authority on whether bond funds under Proposition 1A should be
23 allowed to be used for the purported Central Valley HSR project and to authorize release of said
24 funds to CHSRA for the purpose of constructing a purported HSR system in the Central Valley of
25 California. The defendants include: Governor Jerry Brown; State Treasurer, Bill Lockyer;
26 Director of Finance, Ana Matasantos; State Controller, John Chiang; Secretary (acting) of
27 Business, Transportation and Housing, Brian Kelly. The CHSRA and its Chief Executive
28 Officer, Jeff Morales, are also sued because they seek to gain control of such Proposition 1A

1 funds for such Central Valley construction and that such use would be illegal under
2 Proposition 1A.

3 4. Does 1-5 are sued herein under the fictitious defendant statute; each of the Doe
4 defendants is in some way charged with responsibility for approving releasing/disbursing bond
5 funds under Proposition 1A and plaintiff seeks to prevent said defendants from doing so.

6 **PROPOSITION 1A – PURPOSE/BACKGROUND**

7 5. In the year 2008, the voters of the state of California passed Proposition 1A (which
8 was proposed by AB 3034 and enacted various sections of the P.U.C. and the Streets and
9 Highways Code). Proposition 1A authorized the construction of a HIGH SPEED RAIL
10 SYSTEM (HSR System”) in California. Proposition 1A defined HSR as AN ELECTRIFIED
11 SYSTEM with a list of required components.

12 6. The voters of the State of California, in passing Proposition 1A, never intended
13 that Proposition 1A's \$9 billion in bond construction funds would be used for anything other than
14 an HSR system, as such; the voters did not authorize Proposition 1A bond funds to be used to
15 build or modify/improve a conventional rail system or segments, even if “justified” by the
16 explanation that an electrified HSR system would be constructed at a later time. No allowance or
17 permission for such a phased system is contained in Proposition 1A.

18 7. Defendant CHSRA intends to use Proposition 1A bond funds for the purpose of
19 building, modifying and/or improving CONVENTIONAL RAIL SYSTEMS/SEGMENTS, prior
20 to, at some later date, construction of an actual HSR system.

21 8. The use of Proposition 1A bond funds for purposes of constructing an electrified
22 or a non-electrified rail segment, which does not contain the specified components of an HSR
23 system, as such, is illegal under, and violates, Proposition 1A.

24 **SPECIFIC VIOLATIONS OF PROPOSITION 1A AND IMPLEMENTING**
25 **STATUTES NO ELECTRIFICATION OF THE 130 MILE SEGMENT**

26 9. Unless the defendants are prevented from obtaining access to Proposition 1A bond
27 funds, these funds will be exhausted and spent on constructing a non electrified rail segment that
28 is conventional in nature, in the guise of serving as a preliminary step to building an HSR system.

1 Proposition 1A absolutely requires that Proposition 1A bond funds be spent to construct, FROM
2 THE OUTSET, a series of usable segments of the corridors that make up the proposed HSR
3 system with all the components required for a HSR system, including electrification. Streets and
4 Highways Code (S&H) § 2704.09 mandates that: “The high speed train system to be constructed
5 pursuant to this chapter shall be designed to achieve the following characteristics: (a) electric
6 trains that are capable sustained maximum revenue operating speeds of no less than 200 miles per
7 hour.”

8 Section 2704.08(c)(2)(H) requires the Authority to CERTIFY that, “The corridor or usable
9 segment thereof would be suitable and ready for high speed train operation”

10 The absence of electrification, HSR-compatible signaling, and any electric trains
11 whatsoever, means that the Authority cannot possibly make this MANDATORY
12 CERTIFICATION.

13 Plaintiffs further allege that the failure to comply with the electrification and all the other
14 requirements (such as HSR signaling, high speed passing tracks at stations, and grade separated
15 crossings) means that another violation of Proposition 1A has occurred: the failure to build a
16 “usable segment” and the inability to complete a usable segment. Proposition 1A requires that
17 the entire system be built, FROM THE OUTSET, in segments called “usable segments,” which
18 are electrified HSR segments, containing all the components of a HSR system, with each usable
19 segment containing at least two HSR stations equipped to handle high speed trains. Not to do so
20 violates S&H Code §§ 2704.08(c)(2)(H) [has to be suitable and ready for HSR operations].

21 Proposition 1A does not permit the building of a “partial” usable segment; nor does it permit a
22 “phased approach”, that is, building first a 130 mile conventional rail system, with a HSR system
23 to follow at a later time; such a “phased” system is not permitted under Proposition 1A; yet
24 plaintiffs allege that this is exactly what defendants intend to approve, authorize, and illegally
25 expend bond funds upon.

26 Therefore plaintiffs allege that within the initial 130 miles of construction in the Central
27 Valley the lack of electrification means that a usable segment will not be constructed with bond
28 funds, and that is a fundamental violation of the Proposition.

INADEQUATE FUNDING AS VIOLATION OF PROPOSITION 1A

10. Plaintiffs allege that the intent of the drafters of Proposition 1A and the intent of the voters who approved it was to protect the state from financial risk in the building of a multi-billion dollar public works project that did not meet the definition of a HSR system. Accordingly, numerous restrictions were put in place to ensure that protection. The drafter and the voters were specifically concerned that adequate funding BE COMMITTED AND IN PLACE to ensure that any usable segment (and the project must be built in usable segments, as set forth in para. 9) must have enough money committed to it and available to ensure that it can be completed as a usable segment and suitable for HSR operation. The drafters and the voters had no intention of allowing construction to commence when the funding for the particular usable segment in question was speculative.

In its April, 2012 Revised Business Plan, the Authority describes its version of its “usable segment” as running from Merced to the San Fernando Valley, a distance of about 300 miles. The “first part” of that so-called usable segment is the 130 mile conventional rail portion from south of Merced to north of Bakersfield, and the intent of defendants is that \$6.1 billion will be spent on that conventional rail section (which is not itself a usable segment).

For the usable segment identified by the Authority, running from Merced to the San Fernando Valley, the defendants have no funding committed or available to ensure completion of that segment. The defendants indicate that the entire 300 mile section from Merced to the Los Angeles Basin (San Fernando Valley) will cost an ADDITIONAL \$20 BILLION, on top of the \$6.1 Billion for the 130 miles of conventional rail that will initially be built within the 300 mile segment.

Plaintiffs allege that there is no funding committed, available, or in place, for that entire 300 mile segment. There is no private funding, no further federal funding, and no state funding that is, or can be, committed to this entire 300 mile segment. The Plaintiffs do agree that there is \$6.1 Billion available to build this first 130 miles portion of the 300 mile segment. The Authority views the entire Merced to San Fernando Valley segment as its “usable segment”, and since it is in violation of the funding requirements of Proposition 1A, no Proposition 1A bond funding can

1 be provided for the usable segment identified by the Authority.

2 The “adequate funding” requirements of Proposition 1A, perhaps the most important of all
3 the restrictions, will therefore be violated if funding is permitted for the 130 mile project from the
4 proceeds of Proposition 1A, and the entire 300 mile Central Valley project is therefore ineligible
5 for Prop.1A funding, due to the lack of the additional \$20 Billion in funding needed to complete
6 the last 170 miles. S&H Code §§ 2704.08(c)(1) 2); 2704.08(d); 2704.08(c)(2)(D);
7 2704.08(d)(1)(B).

8 Furthermore, plaintiffs allege that since defendants have described the Merced to San
9 Fernando Valley section as its first usable segment and since there is no funding in place for that
10 segment, defendants are precluded from depleting Proposition 1A funds for any other area of the
11 state until matching funds and Proposition 1A funds are committed and in place in an adequate
12 amount to ensure COMPLETION of the route from Merced to the San Fernando Valley.

13 Defendants cannot be permitted to deplete Proposition 1A bond funds by commencing
14 alleged HSR projects in other parts of the state before they are able to complete the one single
15 project which is the subject of their business plan, namely, the 300 mile Central Valley project;
16 further, to allow the defendants to build simultaneously in other parts of the state, depleting the
17 remainder of Proposition 1A bond funds, would leave the Central Valley isolated, cut off from
18 northern and Southern California (completely contrary to the purposes of Proposition 1A), and
19 would result in great risk of abandonment and inability to complete the Central Valley project
20 itself.

21 Plaintiffs further allege that the allegations of this paragraph concerning inadequate
22 funding and violations of Proposition 1A are supported by numerous studied analyses by
23 respected state agencies, including the LAO and the State Auditor’s Office, and by the Peer
24 Review Committee.

25 **FAILURE TO OBTAIN ENVIRONMENTAL CLEARANCES AS**
26 **VIOLATION OF PROPOSITION 1A**

27 11. Plaintiffs allege that when the Authority approved its Funding Plan, it violated
28 Proposition 1A because it had failed to obtain the necessary environmental clearances required by

1 Proposition 1A; plaintiffs further allege that it would be an illegal act to fund the project from
2 Proposition 1A without such environmental clearances having been obtained.

3 Proposition 1A prohibits the approval by the defendants of a Funding Plan or submission
4 of such a plan to the legislature until all project-level environmental approvals under state law
5 (CEQA) and federal law (NEPA) have been completed and certified. [see S&H Code §
6 2704.08(c)(2)(K)]

7 Plaintiffs specifically allege that the environmental review process required by
8 Proposition 1A is far from complete, it is in its infancy with respect to the section between Fresno
9 and Bakersfield. In addition, major environmental litigation has just been filed in the Central
10 Valley challenging the adequacy of certain of the environmental studies. Additionally, plaintiffs
11 allege that the environmental clearances necessary for defendants to commence construction of
12 the Central Valley project have not been obtained from the U.S. Corps of Engineers, the U.S. Fish
13 and Wildlife Service, and the San Joaquin Valley Air Pollution Control District.

14 Plaintiffs therefore allege that it was ILLEGAL for the Authority to approve a Funding
15 Plan in advance of these required environmental approvals and certifications and that it was
16 ILLEGAL for the authority to submit said Funding Plan to the Legislature, and that it would be
17 illegal for defendants to authorize or approve any funding for the Central Valley project from
18 Proposition 1A bond funds. The Central Valley project is accordingly INELIGIBLE for
19 Proposition 1A bond funding/financing.

20 **VIOLATION OF PROPOSITION 1A:**
21 **2 HOUR 40 MINUTE TRAVEL TIME REQUIREMENT NOT MET**

22 12. Plaintiffs allege that S&H Code §2409.09(b)(1) is a mandatory requirement that
23 the trip from Los Angeles to San Francisco (and vice versa) will be made in no longer than
24 2 hours, 40 minutes, and this promise was made to the voters in Proposition 1A by the
25 defendants. Such a promise/requirement was necessary in order that this system would be
26 competitive with the airlines; plaintiffs allege that, for the passengers on a HSR system, few
27 promises are more important than the amount of time the trip will take. Such
28 promises/requirements are also necessary in order that the HSR system be economically viable.

1 Plaintiffs allege, however, that documents from defendant Authority (recently produced
2 pursuant to a public records request) indicate that the trip will take a minimum of three hours
3 (express) and longer with local stops. Defendant Authority has further indicated that it has no
4 written documentation whatsoever to support this claim that the trip will be made in 2 hours, 40
5 minutes.

6 This is an express violation of Proposition 1A and precludes funding of the Central Valley
7 project from Proposition 1A bond funds. The Central Valley project is accordingly INELIGIBLE
8 to receive Proposition 1A bond funding by reason of this violation.

9 **PROPOSITION 1A VIOLATION:**
10 **PROJECT WILL NOT BE COMPLETED ON PROMISED DATE**

11 13. Plaintiffs allege that the legislature intended, in submitting Prop.1A to the voters,
12 and the voters' intent in approving it, that the project would be completed "... no later than
13 2020." [AB 3034, section 8 (f)].

14 The defendants are in violation of that mandatory provision since they now say that the
15 project will not be completed until 2028, or quite possibly, as late as 2032.

16 This makes the project ineligible for Proposition 1A bond financing. It also greatly
17 increases the financial risk to the state through such delay – a paramount concern of the
18 legislature and the voters.

19 **PROPOSITION 1A VIOLATION:**
20 **PASSENGERS ON THE SYSTEM WILL BE REQUIRED TO CHANGE TRAINS;**
PHASED CONSTRUCTION NOT PERMITTED

21 14. Plaintiffs allege that Proposition 1A requires that a passenger, embarking on a
22 HSR train at any location will NOT be required to change trains before reaching his/her final
23 destination. Therefore the Los Angeles to San Francisco passenger, relying on this legal
24 requirement, should be able to board in Los Angeles with the assurance of no train change.
25 Plaintiffs allege that in going from Los Angeles to Palmdale (or to a San Fernando Valley
26 station), the passenger will be required to change trains there. Likewise, that passenger, in
27 arriving at San Jose, will have to physically change trains to ride to San Francisco on Caltrain. If
28 other conventional rail changes are necessary, these result in violation of mandatory requirements

1 in Prop.1A and unauthorized delays and violation of the travel time promises, set forth, *supra*,
2 para. 12.

3 Plaintiffs allege that these change of trains that will be required violates Proposition 1A
4 [see S&H Code § 2704.09(f)].

5 **PROPOSITION 1A VIOLATION:**
6 **VIOLATION OF THE PROMISE ON FARES**

7 15. Plaintiffs allege that the defendants, in the Proposition 1A ballot measure,
8 promised to the voters that the fare from Los Angeles to San Francisco would be \$50.00. Now,
9 the defendants represent that the fare will be at least \$83.00 almost 2/3 higher, and only three and
10 a half years after the Proposition was approved. This violates Proposition 1A, making the Central
11 Valley project ineligible to receive Proposition 1A fund.

12 **PROPOSITION 1A VIOLATION:**
13 **THE PROJECT WILL REQUIRE A PROHIBITED OPERATING SUBSIDY**

14 16. Plaintiffs allege that the Central Valley project will require an operating subsidy
15 prohibited by law, making the project INELIGIBLE for Proposition 1A funding/financing.

16 Proposition 1A forbids subsidies from the state, local, OR federal governments. [See
17 S&H Code § 2704.08(c)(2)(J)]

18 Defendants' predictions of no operating subsidies are contradicted by data on high speed
19 train operations all over the world, which are heavily subsidized by governments.

20 Furthermore, defendants' operating cost per passenger mile are ¼ of the international
21 average, when, as a new service, plaintiffs allege that the costs will be higher than the
22 international average.

23 Furthermore, plaintiffs allege that the defendants, in order to keep fares competitive with
24 airline travel costs, have set revenues less than ½ the international average.

25 Three state agencies, the LAO, the State Auditor, and the Peer Review Group, have found
26 that there is a serious risk of such a subsidy.

27 Plaintiffs allege that these serious discrepancies will result in HUNDREDS OF MILLION
28 of dollars in annual operating subsidies having to be provided by the State, contrary to the intent

1 of the voters, the legislature, and in violation of Proposition 1A. For this reason the Central
2 Valley Project is ineligible to receive Proposition 1A bond funding/financing.

3 **PROPOSITION 1A VIOLATION:**
4 **MISREPRESENTATION TO THE VOTERS ON COST AND SCOPE OF PROJECT**

5 16a. When Proposition 1A was presented to the voters in November, 2008, the official
6 ballot materials made various representations and promises to the voters. Among these were the
7 following: that the HSR project was a state-wide project, which would create an 800 mile HSR
8 system; that, besides the San Francisco to Los Angeles/Anaheim corridor, all major population
9 centers would be linked, including the Bay Area (including Oakland), Los Angeles, the Central
10 Valley, Orange County, the Inland Empire, Sacramento, and San Diego. It was further
11 represented to the voters that the cost of the ENTIRE STATESIDE SYSTEM would be
12 approximately \$45 billion.

13 But these representations were actually grossly erroneous. Proposition 1A divides the
14 proposed HSR system down into Phase I and Phase II, with Phase I being the SF to Anaheim
15 route (including the Central Valley and San Jose), and Phase II including Sacramento, Oakland,
16 the Inland Empire, and San Diego. In its 2009 Business Plan, the Authority represented that the
17 cost of Phase I ONLY would cost \$43 billion, almost the same amount as it had represented the
18 ENTIRE STATEWIDE SYSTEM would cost in 2008.

19 When the Authority issued its revised Business Plan in April, 2012, it represented that the
20 cost of Phase I only had risen to a range of between \$68 Billion and \$80 Billion (BLENDED),
21 EXCLUDING Anaheim; Anaheim was subsequently added back in (at a cost increase unknown,
22 but undoubtedly substantial). All of this is for Phase I only.

23 These representations regarding the scope of the project and the cost thereof were false
24 and constitute a violation of Proposition 1A itself and what the voters were led to believe.

25 ACTUAL AND THREATENED ILLEGAL EXPENDITURES; ILLEGAL
26 EXPENDITURES UNDER PROPOSITION 1A HAVE OCCURRED, ARE OCCURRING AND
27 ARE ONGOING, AND ARE THREATENED; SUCH ILLEGAL EXPENDITURES ARE
28 OCCURRING OR WILL OCCUR.

1 **ACTUAL ILLEGAL EXPENDITURES OF PROPOSITION 1A FUNDS THAT**
2 **HAVE ALREADY OCCURRED AND WHICH ARE ONGOING**

3 17. Plaintiffs allege that in the year 2011, 2012, and continuing to the present time,
4 there have been ACTUAL ILLEGAL EXPENDITURES of Proposition 1A bond funds
5 authorized, approved, and implemented by the defendants. These include, but are not limited to,
6 the following:

7 (a) In November, 2011 defendant Authority approved, released, promulgated, and
8 submitted to the Legislature its Funding Plan for the Central Valley Project; defendants illegally
9 expended Proposition 1A bond funds in connection with the approval, promulgation, distribution,
10 preparation, and submission of said Funding Plan; this was an illegal and completed expenditure
11 of Proposition 1A bond funds because inter alia, no Funding Plan can be approved until all
12 environmental clearances have been completed and certified [see para. 11, *supra*]; defendants
13 have not obtained all such environmental clearances therefore, the Proposition 1A bond funds
14 which were used in connection with the preparation, promulgation, distribution, and submission
15 of such Funding Plan constitute illegal expenditures of public funds, in violation of Proposition
16 1A.

17 (b) Defendant Authority is now, and has been, for several months, in the process of
18 preparing RFPs (Requests for Proposals). These have been sent to contractors/subcontractors in
19 order to obtain bids from such entities for the CONSTRUCTION of the first portion of the
20 Central Valley ICS Project; more than \$900,000 of public funds has already been spent by the
21 Authority in connection with preparation of those RFPs. These RFPs are directly related to
22 CONSTRUCTION work on the Central Valley project to be bid on and performed, and are
23 thereby capital expenses for construction-related work within the meaning of S & H Code, section
24 2704.04 (c). Such construction-related expenditures (preparation of the RFPs) are an illegal
25 expenditure of Proposition 1A funds that has ALREADY OCCURRED. Such Proposition 1A
26 funds cannot be committed or expended until all the approvals required by Proposition 1A have
27 been obtained, as required by S&H Code § 2704.08(d), and such approvals have not yet been
28 obtained. These illegal expenditures are ongoing. This first RFP was issued in March 2012, and

1 the bid responses from the contractors are due in September, 2012.

2 **IRREVOCABLE AUTHORIZED COMMITMENT**
3 **FOR AN ILLEGAL EXPENDITURE**

4 17a. In connection with its construction program, the Authority has
5 committed/obligated itself to reimburse, in an amount up to \$2 million each, the bidding costs of
6 any qualified contractor which is unsuccessful in its bid for the contract to be awarded for the
7 Authority's Request For Proposal (RFP) Construction Package #1. Alternatively, in the event the
8 Authority cancels that RFP, each qualified bidder will be reimbursed its costs in preparing its bid
9 up to \$2 million each. Defendant Authority has made an IRREVOCABLE FINANCIAL
10 COMMITMENT of Proposition 1A bond funds for a construction-related capital expense in
11 violation of S&H Code section 2704.08(d). There were three such qualified bidders when this
12 commitment was made, so this ILLEGAL financial commitment by the Authority will be in the
13 millions of dollars, and could be as high as \$6 million.

14 **ONGOING WASTEFUL EXPENDITURES TO BE AVOIDED**

15 18. Plaintiffs allege that since Proposition 1A was passed, Defendant Authority has
16 spent hundreds of millions of dollars getting ready to construct the Central Valley Project (more
17 than \$500 Million, with more than \$400 Million from Proposition 1A itself).

18 Plaintiffs allege that these expenditures have already taken place, are currently taking
19 place and are ongoing.

20 In the event that the Central Valley Project is found legally to be INELIGIBLE for
21 Proposition 1A funding, these hundreds of millions of expenditures will have been wasted.

22 On a human level, Defendant Authority has already started sending notices to
23 homeowners and landowners in the Central Valley, putting them on notice that their land will
24 soon be appraised and may be taken or condemned (eminent domain) by the Authority.

25 If this project is found to be violative of Proposition 1A, such acts are causing needless
26 heartache and distress to potentially thousands of residents of the Central Valley.

27 **THREATENED ILLEGAL EXPENDITURES**

28 19. Plaintiffs allege that the bulk of the \$9billion in Proposition 1A bond funds is

1 threatened to be depleted by expenditures which are illegal for the reasons set forth in
2 paragraphs 9 through 16, *supra*. In those paragraphs, plaintiffs set forth the reasons why such
3 illegal expenditures WILL OCCUR, and plaintiffs specifically allege that such illegal
4 expenditures are indeed THREATENED.

5 **FIRST CAUSE OF ACTION**

6 **MANDAMUS:**
7 **VIOLATION OF STREETS AND HIGHWAYS CODE SECTION 2704.08,**
8 **SUBDIVISION(c)**

9 20. Plaintiffs hereby reallege Paragraphs 1-19 inclusive and incorporate them herein
10 by this reference.

11 21. The central concept of Proposition 1A Bond Act's statutory scheme is the "usable
12 segment" of a high-speed rail corridor. The "usable segment" is the primary statutory means by
13 which the Legislature in AB 3034 and the voters sought to regulate the phased, step-by-step
14 funding, construction, and initial operation of California's proposed high-speed rail system.
15 Anything smaller than a "usable segment" would defeat the purposes of the statutory scheme.
16 Thus, once a "usable segment" has been selected and identified by the Authority, that "usable
17 segment" must satisfy all the conditions required for a "usable segment" set forth in paragraphs
18 (c) and (d) of S&H Code § 2704.08.

19 22. Section 2704.08(c)(1) of the S&H Code requires the Authority, at least 90 days
20 prior to any request to the Governor and the Legislature for appropriation of Proposition 1A funds
21 for any "eligible capital costs" for an identified corridor or usable segment thereof, to have
22 approved and submitted to the Director of Finance, the Peer Review Committee, and the
23 designated committees of the Legislature, a detailed Funding Plan for that corridor or usable
24 segment thereof.

25 23. On November 3, 2011, the Authority adopted Resolution #HSRA-22 that selected
26 for construction each of two "usable segments" of the Phase I corridor – one such "usable
27 segment" being the portion of the Phase I corridor between and including a San Jose station and a
28 Bakersfield station (known as Initial Operating Segment-North or "IOS-North"), and the other
such "usable segment" being the portion of the Phase I corridor between and including a Merced

1 station and a San Fernando Valley station (known as Initial Operating Segment-South or “IOS-
2 South”).

3 24. On November 3, 2011, the Authority adopted Resolution #HSRA11-23 that
4 selected for construction each of two “usable segments” called, respectively, IOS-North and IOS-
5 South, adopted a Funding Plan for each “usable segment,” and directed its Executive Director to
6 submit the Funding Plan to the recipients identified in the previous paragraph herein. The
7 Executive Director did so on the same date. The Funding Plan stated that a decision would be
8 made in the future as to which of the two segments will be constructed first.

9 25. The Funding Plan identifies a limited portion of each such “usable segment,”
10 namely the 130-mile portion from just north of Bakersfield to north of Fresno, which is called the
11 Initial Construction Section (ICS). The Authority has NOT, in its Funding Plan or otherwise,
12 identified or designated the ICS as a “usable segment” within the meaning of S&H Code section
13 2704.08 subdivision (c), and the Authority has not asserted that the ICS itself is such a “usable
14 segment.”

15 26. The Authority's Funding Plan seeks an appropriation of \$2.684 billion of
16 Proposition 1A bond funds to be used solely for construction of the ICS, with no funds being
17 sought for construction of any or all of the remaining portions of either of the two identified
18 “usable segments,” IOS-North and IOS-South.

19 27. On April 12, 2012, the Authority adopted Resolution #HSRA 12-13 which
20 adopted the Revised 2012 Business Plan (the “Business Plan”). The Business Plan asserts that the
21 “usable segment” for which Proposition 1A bond funding is sought is the alleged “usable
22 segment” formerly called IOS-South in the Funding Plan, now just called the IOS. The Business
23 Plan further states that this IOS is “defined as extending from Merced to the San Fernando
24 Valley, and [that] high-speed revenue service would only start once the full IOS is built and
25 operable,” an event that, according to the Funding Plan, is dependent on mere hopes for funding
26 that are not based on any actual or expected commitments, authorizations, agreements, allocations
27 or other reliable assurances.

28 28. The Authority's Funding Plan, to the extent that it seeks funding for only a limited

1 portion of the identified “usable segment,” fails to comply with the mandate of said statutory
2 scheme, including but not limited to said subdivisions (c)(1) and (c)(2) of S&H Code section
3 2704.08, That statutory scheme contemplates and requires that the funding of construction with
4 Proposition 1A bond funds be for geographical sections no smaller than a “usable segment” of an
5 authorized corridor in order to minimize the financial risks to the State that would otherwise
6 obtain. Thus, the Authority's continuing failure to adopt, promulgate and maintain a Funding Plan
7 that satisfies the detailed conditions set forth in subdivisions (c)(1) and (c)(2) of S&H Code
8 2704.08 applicable to an entire “usable segment,” not just a limited portion thereof, constitutes a
9 failure to perform an act that the law specifically enjoins and a prejudicial abuse of discretion.

10 29. The Authority therefore violated, and continues to violate, its legal trust and
11 mandatory non-discretionary duty, and it has failed, and continues to fail, to proceed in the
12 manner required by law. Accordingly, its Funding Plan must be set aside.

13 30. Plaintiffs have performed any and all conditions precedent to the filing of this
14 Second Amended Complaint, and have no plain, speedy, or adequate remedy in the ordinary
15 course of the law.

16 **SECOND CAUSE OF ACTION**

17 **DECLARATORY RELIEF: VIOLATION OF S&H CODE SEC. 2704.08 SUBD. (c)**

18 31. Plaintiffs hereby reallege Paragraphs 1-30 inclusive and incorporate s them herein
19 by this reference.

20 32. Plaintiffs seek a judicial determination and declaration that the Authority's
21 Funding Plan is in violation of the mandate of Streets and Highways Code section 2704.08,
22 subdivisions (c)(1) and (c)(2) by attempting to authorize the use of Proposition 1A bond funds for
23 the construction of a limited 130-mile portion of an identified 300-mile “usable segment” of an
24 authorized corridor.

25 33. There is a present and actual controversy between plaintiffs and the Authority
26 regarding the proper interpretation of said statutory provisions in that plaintiffs maintain that the
27 statute forbids a Funding Plan to authorize use of Proposition 1A bond funds to construct a
28 portion of the proposed high-speed rail system smaller than an entire, properly identified “usable

1 segment” of an authorized corridor, while the Authority maintains that the statute permits its
2 Funding Plan to authorize use of Proposition 1A bond funds to construct a section of track that is
3 only a limited portion of the “usable segment” it has identified. Therefore declaratory relief is
4 appropriate to determine the non-discretionary duties of a State agency under this complex
5 statutory scheme where there is great public interest in the prompt resolution of such issue.

6 **THIRD CAUSE OF ACTION**

7 **MANDAMUS:**
8 **VIOLATION OF S&H CODE SECTION 2704.08 SUBD. (c)(2)(D), (G), (H), (J), (K)**

9 34. Plaintiffs hereby reallege Paragraphs 1-33 inclusive and incorporate them herein
10 by this reference.

11 35. Section 2704.08(c)(2) of the S&H Code imposes on the Authority a mandatory
12 duty as to the specific elements that must be included in the detailed Funding Plan required by
13 subparagraph (c)(1) of § 2704.08. These include the non-discretionary provisions of
14 subparagraphs (D), (G), (H), (J), and (K) of said § 2704.08(c)(2).

15 36. On November 3, 2011, the Authority approved, promulgated, and submitted to the
16 Director of Finance, the Peer Review Committee, and the designated committees of the
17 Legislature a Funding Plan that violates each and every one of the non-discretionary provisions of
18 subparagraphs (D), (G), (H), (J), and (K) of Section 2704.08(c)(2), as follows:

19 36.1 In violation of subdivision (D) of Section 2704.08(c)(2), the Authority's Funding
20 Plan fails to identify all the funds needed to be invested in the identified “usable segment” or their
21 anticipated time of receipt based on expected commitments, authorizations, agreements,
22 allocations, or other comparable means. The Authority's Revised 2012 Business Plan admits that
23 the estimated cost of constructing the identified “usable segment,” over and above the \$6 billion
24 cost for the limited 130-mile portion of the “usable segment, is an additional \$20 billion, for
25 which the Funding Plan fails to identify the required commitments, authorizations, agreements,
26 allocations, or other comparable means of funding such construction. Accordingly, the
27 Authority's certification that it has satisfied this condition is plainly in error and constitutes a
28 prejudicial abuse of discretion.

1 36.2 In violation of subdivision (G) of Section 2704.08(c)(2), the Authority's Funding
2 Plan certification that construction of the identified "usable segment" can be completed as
3 proposed in the Funding Plan is plainly in error.. The Funding Plan merely certifies that
4 construction of the limited 130-mile portion of the identified 300 mile "usable segment" can be
5 completed, which is plainly insufficient and not in compliance with the mandatory requirements
6 of subparagraph (G). Accordingly, the Authority's certification that it has satisfied this condition
7 constitutes a prejudicial abuse of discretion.

8 36.3 In violation of subdivision (H) of Section 2704.08(c)(2), the Authority's Funding
9 Plan certification that the identified "usable segment" would be suitable and ready for high-speed
10 train operation is plainly in error. Section 2704.09(a) of the S&H Code requires that the high-
11 speed rail system to be constructed with Proposition 1A bond funds shall be designed to run
12 electric trains capable of sustained maximum revenue operating speeds of no less than 200 miles
13 per hour. The Authority's Funding Plan and its Revised 2012 Business Plan admits that the
14 construction of the limited 130-mile portion of the identified "usable segment" for which
15 Proposition 1A bond funding is sought, will not be electrified and will not have positive train
16 control, both of which are essential requirements for operation of high-speed rail trains. Thus, the
17 Funding Plan is plainly insufficient and not in compliance with the mandatory requirements of
18 subdivision (H), and thus constitutes a prejudicial abuse of discretion.

19 36.4 In violation of subdivision (J) of section 2704.08(c)(2), the Authority's Funding
20 Plan certification that the planned passenger service by the authority in the identified "usable
21 segment" will not require a local, state, or federal operating subsidy is plainly in error. This
22 certification is contradicted by international data on high-speed train operations all over the world
23 which have its operating and maintenance expenses subsidized by governments. Furthermore, the
24 Authority's claimed operating cost per passenger mile are $\frac{1}{4}$ of the international average and are
25 not credible. Likewise, the Authority's revenue estimates are less than $\frac{1}{2}$ of the international
26 average and are not credible. Accordingly, the Authority's assertion that its high-speed train
27 operations on the identified "usable segment" will not require an operating subsidy constitute a
28 prejudicial abuse of discretion.

1 36.5 In violation of subdivision (K) of Section 2704.08(c)(2), the Authority's Funding
2 Plan fails to certify that it has completed all necessary project-level environmental clearances
3 necessary to proceed to construction for the project for which Proposition 1A bond funding is
4 sought; it merely states that it will do so at some future date before it expends Bond Act funds .
5 Said construction project has two parts, a Northern Part (Merced to Fresno) and a Southern Part
6 (Fresno to Bakersfield), each of which has a separate project-level Environmental Impact Report
7 requirement under the California Environmental Quality Act (CEQA). At the time the Authority
8 approved and promulgated its Funding Plan and at all times since then, no environmental
9 clearance has been completed for said Southern Part of the planned construction project. In
10 addition, plaintiffs are informed and believe, and thereon allege, that project-level environmental
11 clearances necessary to proceed to construction have not been obtained from the United States
12 Corps of Engineers, the United States Fish and Wildlife Service, and the San Joaquin Valley Air
13 Pollution Control District. Accordingly, the Authority is in violation of its mandatory,
14 non-discretionary duty required by said subdivision (K).

15 37. At all times since the Authority adopted and promulgated its Funding Plan , the
16 Authority has maintained it on a continuing basis and relied upon it as the basis for all its
17 planning for construction of the Central Valley project for which Proposition 1A bond funding is
18 sought, all of which constitutes a continuing violation of the Authority's legal non-discretionary
19 duty to adopt and maintain a Funding Plan that complies with the mandatory requirements of
20 Section 2040.08(c)(1) and (2), subdivisions (D), (G), (H), (J), and (K) as herein alleged.

21 38. The Authority therefore violated, and continues to violate, its legal trust and
22 mandatory statutory duty, and it has failed, and continues to fail, to proceed in the manner
23 required by law. Accordingly, its Funding Plan must be set aside.

24 39. Plaintiffs have performed any and all conditions precedent to the filing of this
25 Second Amended Complaint.

26 40. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of the
27 law, in that if the Authority's Funding Plan is not vacated and set aside and the Authority is not
28 required to comply with the non-discretionary mandatory requirements of said subdivisions (D),

1 (G), (H), (J), and (K) of section 2704.08 (c)(2), plaintiffs' beneficial interest in the laws of the
2 State of California, specifically including Proposition 1A and AB 3034 pertaining to the funding
3 and construction of a high-speed rail system consistent with what the voters approved, will be
4 frustrated and defeated.

5 **FOURTH CAUSE OF ACTION**

6 **MANDAMUS:**
7 **VIOLATION OF S&H CODE SEC. 2704.09 (a), (b), (f)**

8 41. Plaintiffs hereby reallege Paragraphs 1-40 inclusive and incorporate them herein
9 by this reference.

10 42. Section 2704.09 of the S&H Code imposes on the Authority a mandatory duty to
11 incorporate certain specified design elements for the high-speed rail system that is to be
12 constructed pursuant to the Funding Plan required by subparagraph (c)(1) of Section 2704.08.
13 Such non-discretionary mandatory design elements include those set forth in subdivisions (a), (b)
14 and (f) of said section 2704.09. Thus, section 2704.09 requires that the high-speed train system
15 to be constructed pursuant to the Proposition 1A Bond Act and its Funding Plan shall be designed
16 to achieve the following characteristics:

17 42.1. Electric trains that are capable of sustained maximum revenue operating speeds of
18 no less than 200 miles per hour. Section 2704.09(a).

19 42.2. Maximum nonstop service travel times for each corridor that shall not exceed the
20 following: San Francisco-Los Angeles Union Station: two hours, 40 minutes. Section
21 2704.09(b)(1).

22 42.3. For each corridor described in subdivision (b), passengers shall have the capability
23 of traveling from any station on that corridor to any other station on that corridor without being
24 required to change trains. Section 2704.09(f).

25 43. The Authority's Funding Plan concedes that "the Authority does not plan to
26 operate high-speed service along the ICS"--the only portion of the identified "usable segment" for
27 which construction funds are sought. "Such [high-speed train] service will only occur upon
28 completion of the Initial Operating Segment that will serve as the initial Usable Segment."

1 Funding Plan, p. 14. Plaintiffs allege that such plans are so speculative that they lack the
2 definiteness contemplated and required by the statutory scheme of the Proposition 1A Bond Act.

3 44. Electrification and a positive train control system are essential design elements for
4 a high-speed rail system to be funded and constructed under Proposition 1A. The Authority's
5 failure to incorporate such elements in its construction and Funding Plan violates subdivision (a)
6 of S&H Code section 2704.09.

7 45. The Authority's construction plan for the limited portion of the identified "usable
8 segment," as set forth in its Funding Plan and Business Plan, fails to satisfy the mandatory design
9 requirement that the travel time between San Francisco and Los Angeles Union Station will not
10 exceed 2 hours and 40 minutes, in violation of subdivision (b)(1) of S&H Code section 2704.09.

11 46. The Authority's Funding Plan incorporates by reference extensive portions of its
12 Business Plan which provide that for at least a number of years, if not indefinitely, passengers
13 traveling between San Francisco and Los Angeles Union Station will have to change trains in San
14 Jose and Palmdale (or an as yet unidentified station in the San Fernando Valley), in violation of
15 subdivision (f) of S&H Code section 2704.09.

16 47. The Authority's failure to perform its non-discretionary mandatory and continuing
17 duty under said section 2704.09 constitute a prejudicial abuse of discretion and require that a writ
18 of mandate issue requiring that it set aside its plans that conflict with or are fatally inconsistent
19 with the terms of said section 2704.09.

20 **FIFTH CAUSE OF ACTION**

21 **MANDAMUS: VIOLATION OF SECTION 8(f) of AB 3034**

22 48. Plaintiffs hereby reallege Paragraphs 1-47 inclusive and incorporate them herein
23 by this reference.

24 49. Subsection (f) of Section 8 of AB 3034 provides that "It is the intent of the
25 Legislature that the entire high-speed train system shall be constructed as quickly as possible in
26 order to maximize ridership and the mobility of Californians, and that it be completed no later
27 than 2020, and that all phases shall be built in a manner that yields maximum benefit consistent
28 with available revenues." The "entire high-speed train system" contemplated by this section

1 would connect with the state's major population centers, including Sacramento, the San Francisco
2 Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego, as
3 specified in S&H Code section 2704.04.

4 50. The Authority's Funding Plan and the Business Plan it references conflicts and is
5 fatally inconsistent with the foregoing clear statement of legislative intent in that (1) the only time
6 line the Authority provides for completion of any high-speed train system is for the limited
7 portion of the Phase 1 corridor between Merced and an as yet unidentified station in the San
8 Fernando Valley, and later from Merced to San Jose, (2) that time line extends to at least the year
9 2030, and (3) no time line whatever is provided for completion of the entire system, but based on
10 the existing schedule the final completion date would extend into at least the middle of the
11 following decade. That would mean that the entire system, as planned by the Authority, would
12 not be completed for at least 20-25 years beyond 2020, the year the Legislature and the voters
13 intended the entire system be completed.

14 51. The Authority's foregoing plans, as set forth in its Funding Plan and the Business
15 Plan it references, deviates so far from what Proposition 1A contemplates and requires that it
16 constitutes a prejudicial abuse of discretion in violation of the statutory scheme of the Proposition
17 1A Bond Act that warrants the issuance of a writ of mandate requiring the Authority to set aside
18 its plans that are so grossly in conflict with the completion dates intended by the Legislature and
19 the voters.

20 SIXTH CAUSE OF ACTION

21 **DECLARATORY RELIEF:** 22 **VIOLATIONS OF S&H CODE SECS. 2704.08, 2704.09, AB 3034 SEC. 8(f)**

23 52. Plaintiffs hereby reallege Paragraphs 1-51 inclusive and incorporate them herein
24 by this reference.

25 53. Plaintiffs seek a judicial determination and declaration that the Authority's
26 Funding Plan and the Business Plan it references are in violation of the mandates of Streets and
27 Highways Code section 2704.08 subdivisions (c) (2) (D), (G), (H), (J) and (K).

28 54. There is a present and actual controversy between plaintiffs and the Authority

1 regarding the proper interpretation of said statutory provisions in that plaintiffs maintain that the
2 statute forbids a Funding Plan to authorize use of Proposition 1A bond funds to construct a
3 limited portion of an identified “usable segment” where 1) the source of the funds needed to
4 construct the entire “usable segment” are not properly identified within the meaning of said
5 subsection (D); 2) the construction of the entire “usable segment” cannot be completed as
6 proposed in the plan within the meaning of said subsection (G); 3) neither the limited portion of
7 the identified “usable segment” nor the entire “usable segment” would be suitable and ready for
8 high-speed train operation within the meaning of said subdivision (H); 4) the planned passenger
9 service by the Authority in the identified “usable segment” will require a local, state, or federal
10 operating subsidy within the meaning of said subdivision (J); and 5) the Authority has not
11 completed all necessary project-level environmental clearances necessary to proceed to
12 construction. The Authority maintains that its Funding Plan satisfies each and all of the foregoing
13 conditions within the meaning of said subdivisions (D), (G), (H), (J) and (K). Therefore
14 declaratory relief is appropriate to determine the non-discretionary duties of a State agency under
15 this complex statutory scheme where there is great public interest, and the same or substantially
16 similar issues are likely to recur in connection with the Authority's Updated Funding Plan under
17 subdivision (d) of S&H Code section 2704.08.

18 55. Plaintiffs seek a judicial determination and declaration that the Authority's
19 Funding Plan and the Business Plan it references are in violation of the non-discretionary
20 mandates of Streets and Highways Code section 2704.09 subdivisions (a), (b), and (f).

21 56. There is a present and actual controversy between plaintiffs and the Authority
22 regarding the proper interpretation of said statutory provisions in that plaintiffs maintain that the
23 statute forbids a Funding Plan and the Business Plan that it references to authorize use of
24 Proposition 1A bond funds to construct a limited portion of an identified “usable segment” where
25 what it proposes to construct fails to comply with the following design elements 1) Electric trains
26 that are capable of sustained maximum revenue operating speeds of no less than 200 miles per
27 hour within the meaning of said subdivision (a); 2) Maximum nonstop service travel times for
28 each corridor that shall not exceed the following: San Francisco-Los Angeles Union Station: two

1 hours, 40 minutes within the meaning of said subdivision (b); 3) passengers shall have the
2 capability of traveling from any station on the identified corridor to any other station on that
3 corridor without being required to change trains within the meaning of said subdivision (f). The
4 Authority maintains that its Funding Plan and the Business Plan that it references satisfies each
5 and all of the foregoing conditions within the meaning of said subdivisions (a), (b) and (f).
6 Therefore declaratory relief is appropriate to determine the duties of a State agency under this
7 complex statutory scheme where there is great public interest, and the same or substantially
8 similar issues are likely to recur in connection with the Authority's Updated Funding Plan under
9 subdivision (d) of S&H Code section 2704.08.

10 57. Plaintiffs seek a judicial determination and declaration that the Authority's
11 Funding Plan and the Business Plan it references is in gross violation of the directions and intent
12 of the Legislature expressed in section 8(f) of AB 3034.

13 58. There is a present and actual controversy between plaintiffs and the Authority
14 regarding the proper interpretation of said statutory provision in that plaintiffs maintain that the
15 Authority's Funding Plan and the Business Plan deviate so far from the Legislature's direction and
16 intent that the entire high-speed rail be completed by 2020 that it constitutes a prejudicial abuse of
17 discretion. The Authority maintains that there is no statutory requirement that it complete the
18 entire system or any portion thereof by 2020, and that it has discretion to extend the time line for
19 such time as it determines to be appropriate for completion of the entire system or any portion
20 thereof. Therefore declaratory relief is appropriate to determine the non-discretionary duties of a
21 State agency under this complex statutory scheme where there is great public interest, and the
22 same or substantially similar issues are likely to recur in connection with the Authority's Updated
23 Funding Plan under subdivision (d) of S&H Code section 2704.08.

24 **SEVENTH CAUSE OF ACTION**

25 **MANDAMUS:**
26 **VIOLATION OF S&H CODE SEC. 2704.04 PARA. (b)-(c), SEC. 2704.08 PARA. (d), AND**
27 **CODE OF CIV. PROC. SEC. 526a**

28 59. Plaintiffs hereby reallege Paragraphs 1-58 inclusive and incorporate them herein
by this reference.

1 60. Proposition 1A's statutory scheme for bond fund expenditures for "eligible capital
2 expenses," primarily construction-related expenses, is set forth in paragraphs (b) and (c) of S&H
3 Code section 2704.04 and in paragraph (d) of S&H Code section 2704.08. Paragraph (b)(1) of
4 section 2704 provides that bond funds, upon appropriation by the Legislature, shall be used for
5 (A) planning and engineering for the high-speed train system and (B) capital costs, as described
6 in paragraph (c). The latter provision defines capital costs as including construction of tracks,
7 structures, power systems and stations, and such other purposes related to the foregoing.
8 Paragraph (d) of Section 2704.08 bars the commitment of any bond funds for construction on any
9 corridor or usable segment thereof unless and until the Director of Finance has approved the
10 Authority's Updated Funding Plan, an event that has not yet occurred. In addition, there is a "safe
11 harbor" provision in paragraph (g) of section 2704.08 that exempts up to 7-1/2 % of the \$9 billion
12 bond fund (or \$650 million) for certain expenses, including right-of-way acquisition and other
13 expenses not applicable here.

14 61. At its March 2012 Board meeting, the Authority adopted Resolution #HSR 12-04
15 which authorized the expenditure of up to \$2 million for each of the three contractors qualified to
16 submit bids for the first Design/Build contract for a portion of the Authority's Central Valley
17 project to reimburse them for their costs in preparing their bids in the event that either 1) the
18 bidding contractors are not awarded the contract, or 2) the Authority cancels its Request for
19 Proposal that solicited the contractor's bids. Plaintiffs are informed and believe, and thereon
20 allege, that in reliance on said resolution each of the qualified contractors are expending large
21 sums of money in preparing their bids.

22 62. The Authority's Resolution authorizes an expenditure of bond funds for a
23 construction-related expenditure within the meaning of paragraph (c) of Section 2704.04.

24 63. The Authority's Resolution constitutes an irrevocable commitment for the
25 expenditure of capital construction bond funds without having complied with the mandatory
26 requirements of paragraph (d) of section 2704.08. Such expenditure does not qualify as planning
27 and engineering work within the meaning of subdivision (b)(1)(A), nor does it qualify for any of
28 the expenditures that are exempt under the "safe harbor" provisions of paragraph (g).

1 violations, declaratory relief that the expenditures violate Proposition 1A, and injunctive relief
2 barring the future payment of such expenditures.

3 **NINTH CAUSE OF ACTION**

4 **MANDAMUS:**
5 **VIOLATION OF S&H CODE SEC. 2704.04 AND CODE CIV. PROC. SEC 526a**

6 70. Plaintiffs hereby reallege Paragraphs 1-69 inclusive and incorporate them herein
7 by this reference.

8 71. The Authority's has expended, and continues to expend staff resources, the
9 payment of salaries and the reimbursement of contractor's expenses for work connected with the
10 preparation, approval, promulgation, and maintenance of its Funding Plan which, as previously
11 alleged herein is illegal and not in compliance with the mandatory non-discretionary requirements
12 of the Proposition 1A bond act in numerous respects.

13 72. Under the doctrine of *Blair v. Pitchess*, 5 Cal.3d 258 and *Wirin v. Horrall* (1948)
14 85 Cal.App.2d 497, in an action brought pursuant to Code of Civ. Proc. 526-a alleging past and
15 ongoing expenditures of public funds in connection with activities alleged to be illegal, the court
16 determines the legality of the challenged activities and, where found to be in violation of law,
17 determines that the expenditures to the public employees performing the work determined to be
18 illegal constitutes an unlawful use of public funds which are enjoined under section 526a.

19 73. Accordingly, plaintiffs seek such a determination that the Authority's Funding Plan
20 violates Proposition 1A bond act, and that the Authority's expenditure of public funds for work
21 performed in connection therewith violates and is enjoined under section 526a.

22 **TENTH CAUSE OF ACTION**

23 **THREATENED ILLEGAL EXPENDITURES, CODE CIV. PROC. SEC. 526A**

24 74. Plaintiffs hereby reallege Paragraphs 1-73 inclusive and incorporate them herein
25 by this reference.

26 75. The Authority requested the Legislature to appropriate \$2.67 billion based on its
27 Funding Plan of November 3, 2011, and the Business Plan it references. The Legislature is
28 poised to make such an appropriation in whole or in part, and such action is widely expected to

1 occur in the near future. Upon such occurrence, plaintiffs plan to seek leave to file an amendment
2 to this Second Amended Complaint alleging that such funds have been appropriated.

3 76. As alleged herein, the Authority has authorized, committed, or spent Proposition
4 1A bond funds for capital expenses, i.e., construction-related activities, without complying with
5 the prohibition of subdivision (d) of S&H Code section 2704.08, and continues to do so.

6 77. Before Proposition 1A bond funds can be committed for construction-related
7 expenditures within the meaning of subparagraph (c) of section 2704.04, said paragraph (d)
8 requires the Authority to submit an Updated Funding Plan to the Director of Finance and the
9 Legislature that includes essentially the same mandatory non-discretionary requirements that are
10 contained in subdivisions (A) through (J) of section 2704.08(c)(2). In promulgating such
11 Updated Funding Plan the Authority is constrained by the provisions of its formal and binding
12 funding agreements with the Federal Railroad Administration called Cooperative Funding
13 Agreements. Such Cooperative Funding Agreements spell out in considerable detail what is to be
14 constructed by the Authority and where, including but not limited to whether the tracks will be
15 electrified (they will not), whether the tracks will have a signaling system (called Positive Train
16 Control) needed for high-speed train operation (it will not), whether the construction project will
17 be for a stretch of track that is far shorter than the 300-mile "usable segment" identified by the
18 Authority in its Funding Plan (it will), and whether completion of the funded project will
19 complete the "usable segment" so identified by the Authority (it will not). The Authority is not
20 free to change these terms of its Cooperative Funding Agreements, and without the federal
21 funding that these Cooperative Funding Agreements provide, the Authority's Central Valley
22 project cannot proceed since the Proposition 1A Bond Act, requires that at least 50 per cent of
23 construction costs be provided by federal, private or local funds (called "matching funds").
24 Section 2704.08 paragraph (a). Thus, as a practical and legal matter, *in these key respects*, the
25 project set forth in the Authority's Funding Plan and other core documents is final and not subject
26 to change in the Authority's Updated Funding Plan, without which construction cannot proceed.

27 78. Similarly, the Director of Finance is limited to determining whether or not the
28 Updated Funding Plan, *as proposed*, can be successfully implemented, and is not authorized to

1 make changes in it.

2 79. Plaintiffs allege that under all the circumstances the controversy over the
3 Authority's plan to expend Proposition Bond Funds has reached or passed the point that the facts
4 have sufficiently congealed to permit an intelligent and useful judicial decision to be made, and
5 that the public interest requires it.

6 **ELEVENTH CAUSE OF ACTION**
7 **MANDAMUS/PROHIBITION AND DECLARATORY RELIEF:**
8 **THREATENED VIOLATION OF S&H CODE § 2704.08 (d)**

8 80. Plaintiffs hereby reallege Paragraphs 1-79 inclusive and incorporate them herein
9 by this reference.

10 81. The Authority has adopted and implemented in virtually all of its core documents
11 (e.g., its Funding Plan, its Business Plan, its Cooperative Funding Agreements with the FRA, its
12 Request For Proposal (RFP) for Construction Package #1, and various Board resolutions) a
13 fundamental policy regarding the “usable segment” requirements of the Bond Act whereby the
14 Authority erroneously asserts the right to use Proposition 1A bond funds to construct piecemeal a
15 limited 130-mile portion of the 300-mile “usable segment” (the former IOS-South) that it has
16 selected and identified without having to satisfy all the conditions applicable to that “usable
17 segment” which are set forth in paragraphs (c) and (d) of S&H Code § 2704.08, as herein alleged.

18 82. The Authority's continued adherence to said policy will result in an Updated
19 Funding Plan being promulgated and adopted with essentially the same terms as those contained
20 in its Funding Plan which plaintiffs allege are violative of subdivisions (D), (G), (H) and (J) of
21 section 2704.08 (c) (2) and will, on the same basis, violate the comparable terms of subdivision
22 (B) of subparagraph (1) of paragraph (d) of Section 2704.08, and the terms of subdivisions (A),
23 (B), and (D) of subparagraph (2) of paragraph (d) of said section 27804.08 applicable to the
24 Updated Funding Plan.

25 83. The Authority has a present and continuing non-discretionary duty to promulgate
26 and adopt an Updated Funding Plan that complies in all respects with said subdivisions of
27 paragraph (d) of section 2704.08.

28 84. There is a present and existing actual controversy between plaintiffs and the

1 Authority regarding the proper interpretation of said statutory provisions in that plaintiffs
2 maintain that the statute forbids an Updated Funding Plan to authorize the use of Proposition 1A
3 bond funds to construct a limited portion of the identified “usable segment” where 1) it fails to
4 identify within the meaning of said subdivision (1)(B) the sources of all funds to be used to
5 construct such “usable segment,” and the anticipated time of receipt thereof, based on offered
6 commitments by private parties, and the authorizations, allocations, or other assurances received
7 from governmental agencies; 2) it fails to establish that construction of the entire identified
8 “usable segment” can be completed as proposed within the meaning of said subdivision (2) (A);
9 3) it fails to establish that if so completed, the “usable segment” would be suitable and ready for
10 high-speed train operation within the meaning of said subdivision (2) (B); and 4) it fails to
11 establish that the planned passenger rail service to be provided by the authority, or pursuant to its
12 authority, on the limited 130-mile portion of the identified “usable segment” will not require an
13 operating subsidy within the meaning of said subdivision (2) (D).

14 85. A writ of mandamus or prohibition should issue to require the Authority to set
15 aside its said policy, to require it to include in its Updated Funding Plan terms that comply
16 fully with the foregoing mandatory non-discretionary provisions of paragraph (d) of said section
17 2704.08, and to prohibit it from adopting or promulgating an Updated Funding Plan that does not
18 comply fully with said provisions.

19 86. Due to the fundamental policy adopted, maintained and implemented by the
20 Authority and the constraints on the Authority to continue to adhere to said policy, as herein
21 alleged, the Authority is obligated to maintain, as it has with respect to the comparable provisions
22 of the Funding Plan, that the foregoing subdivisions of paragraph (d) of Section 2704.08 will be
23 satisfied on the same grounds. Therefore, declaratory relief is appropriate to determine the non-
24 discretionary duties of a State agency under this complex statutory scheme where there is great
25 public interest in the prompt resolution of such issues.

26 **TWELFTH CAUSE OF ACTION**

27 **MANDAMUS, DECLARATORY RELIEF/CCP 526a, AND FOR INJUNCTIVE
RELIEF (AGAINST THE INDIVIDUAL DEFENDANTS AND THE AUTHORITY)**

28 87. Plaintiffs hereby reallege Paragraphs 1-86 inclusive and incorporate them herein

1 by this reference.

2 88. The defendants should be prevented from authorizing or approving the Funding
3 Plan or any Updated Funding Plan provided by defendant Authority; to authorize or approve such
4 Plans would violate Proposition 1A and its implementing statutes.

5 89. Defendants should further be prevented from selling or approving the sale of
6 Proposition 1A state bonds, since to do so would constitute the authorization and approval of an
7 ultimate illegal expenditure of bond funds by the defendant Authority, since the expenditure of
8 bond funds would be an illegal expenditure under Proposition 1A.

9 90. Defendants should be prevented from distributing any Proposition 1A bond funds
10 to defendant Authority, since approval or authorization of such distribution would trigger an
11 illegal expenditure of Proposition 1A bond funds, in light of the fact that the Funding Plan which
12 the Authority approved and certified is in clear violation of numerous provisions of
13 Proposition 1A and its implementing statutes, as set forth above in the First through Eleventh
14 Causes of Action.

15 91. Therefore, with respect to this cause of action, Plaintiffs request that the Court
16 issue a writ of mandamus to prevent the above from occurring; that the Court issue a declaratory
17 relief judgment, declaring that the above would violate Proposition 1A and would sanction and
18 authorize illegal expenditures of public funds under CCP section 526a; and that an injunction
19 should issue to prevent the aforementioned authorizations and approvals.

20 Wherefore plaintiffs pray:

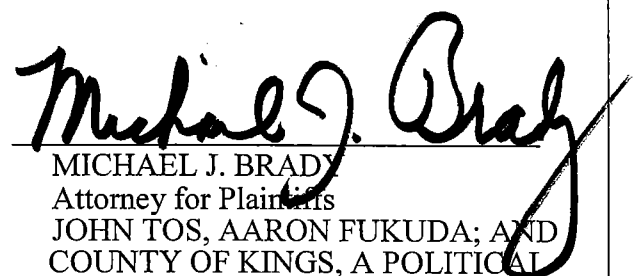
- 21 1. For writs of mandate/prohibition as herein alleged;
- 22 2. For declaratory relief as herein alleged;
- 23 3. For permanent and preliminary injunctive relief pursuant to Code Civ. Proc.
24 section 526a or as otherwise may be warranted;
- 25 4. For attorney fees pursuant to Code of Civ. Proc. section 1021.5;
- 26 5. For such other and appropriate relief to which plaintiffs may be entitled.

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Dated: July 6, 2012


MICHAEL J. BRADY
Attorney for Plaintiffs
JOHN TOS, AARON FUKUDA; AND
COUNTY OF KINGS, A POLITICAL
SUBDIVISION OF THE STATE OF
CALIFORNIA

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 06/22/2012

TIME: 02:00:00 PM

DEPT: 44

JUDICIAL OFFICER PRESIDING: Robert Hight

CLERK: K. Wells

REPORTER/ERM: B. Henrikson CSR# 11373

BAILIFF/COURT ATTENDANT: G. Toda

CASE NO: **34-2011-00113919-CU-MC-GDS** CASE INIT.DATE: 11/14/2011

CASE TITLE: **John Tos vs. California High Speed Rail Authority**

CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,8076205

EVENT TYPE: Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

MOVING PARTY: California High Speed Rail Authority Chief Executive Officer Roelof Van Ark, Secretary Acting of Business Transportation and Housing Traci Stevens, State Controller John Chiang, Governor Jerry Brown, Director of Finance Ana Matasantos, State Treasurer Bill Lockyer

CAUSAL DOCUMENT/DATE FILED: Demurrer to 1st amended complaint, 01/19/2012

APPEARANCES

Michael J Brady, counsel, present for Plaintiff(s).

S Michele Inan, counsel, present for Defendant(s).

Defendants California High-Speed Rail Authority (the "Authority"), Chief Executive Officer Roelof van Ark ("van Ark"), Governor Edmund G. Brown, Jr. ("Brown"), State Treasurer Bill Lockyer ("Lockyer"), Director of Finance Ana Matasantos ("Matasantos"), Acting Secretary of Business, Transportation and Housing Traci Stevens ("Stevens"), and State Controller John Chiang's ("Chiang") (collectively "Defendants") Demurrer to Plaintiffs' First Amended Complaint has been assigned to the Honorable Robert C. Hight, Department 44. Department 44 is dark on June 15, 2012. In the event any party requests oral argument, the matter will be heard in Department 44 on June 22, at 2:00 p.m. Per Local Rule 3.04(B), any request for oral argument must be made by 4:00 p.m. on June 14, 2012, to the courtroom clerk of Department 44 at (916) 874-8243.

Defendants' demurrer is ruled upon as follows.

Defendants' Request for Judicial Notice is Granted. Plaintiffs' Request for Judicial Notice is Granted, with the exception of Exhibits 10, 11, 12, 13, 14, 15, 17, 18, 28, 30, 33, 34 and 35. In taking judicial notice of these documents, the court accepts the fact of their existence, not the truth of their contents. (See *Professional Engineers v. Dep't of Transp.* (1997) 15 Cal.4th 543, 590 [judicial notice of findings of fact does not mean that those findings of fact are true]; *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

Plaintiffs, John Tos ("Tos") and Aaron Fukuda ("Fukuda"), are taxpayers that live in Kings County. Plaintiff, the County of Kings (the "County"), is a political subdivision in the State of California. Plaintiffs Tos, Fukuda and the County are collectively referred to herein as "Plaintiffs." Plaintiffs contend that they are eligible to sue under CCP §526a and sue under that statute.

Plaintiffs allege that the Central Valley high speed rail project, Merced to Bakersfield segment, is not eligible to receive financial support from Prop 1A bond funds and that it would be illegal under Prop 1A and CCP §526a, to disburse or distribute Prop 1A bond funds to the Authority for the purpose of constructing a high-speed rail ("HSR") system in the Central Valley. Plaintiffs allege the following

DATE: 06/22/2012

MINUTE ORDER

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causes of action: (1) Declaratory Relief, (2) Declaratory Relief— Illegal to provide a subsidy under Prop 1A and no Prop 1A funds can be provided since a subsidy will be required, (3) The funding plan of the Authority violates Prop 1A and therefore no Prop 1A bond funds can be released for the Central Valley Project, (4) Request for permanent injunction, (5) Request for writ of mandate/prohibition with appropriate relief, and (6) Private attorney general theory.

Defendants demur to each cause of action on the grounds that each fails to state facts sufficient to constitute a cause of action. Specifically, (1) each cause of action fails to allege facts indicating that the Authority has or will imminently spend public funds to construct the Central Valley HSR project in violation of the High Speed Rail Bond Act ("HSR Bond Act"), and (2) Plaintiffs lack standing to bring each cause of action, and (3) each cause of action fails to allege an actual case or controversy that is proper for court adjudication.

Defendants further demur to each cause of action against Defendants van Ark, Brown, Lockyer, Matosantos, Stevens and Chiang (collectively "Individual Defendants") on the grounds that: (1) these defendants cannot be sued for their exercise of legislative and executive discretion, and (2) these defendants have no authority under the HSR Bond Act to spend bond money to construct the high-speed rail.

Imminent Action

Code of Civil Procedure section 526a provides in pertinent part: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." (CCP §526a) "The purpose of this statute, which applies to citizen and corporate taxpayers alike, is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1240.)

"The taxpayer action must involve an actual or threatened expenditure of public funds. General allegations, innuendo, and legal conclusions are not sufficient; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur." (*Id.* at 1240.)

Defendants contend that the FAC is deficient as Plaintiffs have not alleged specific facts showing that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project without satisfying all of the statutory preconditions necessary to its authority to commit bond proceeds for real property or equipment acquisition or construction. Defendants further contend that before the Authority can spend bond money to construct the high-speed rail, five preconditions must be satisfied, such as approval and submittal of an initial detailed funding plan, request to the Legislature and Governor to appropriate bond proceeds, and approval and submission of a second detailed funding plan. (See Motion, 4:14-27.) Plaintiffs do not dispute these prerequisites. In their FAC, Plaintiffs allege that in November 2011, the Authority announced that it had approved a formal "funding plan" for the project. (See FAC, ¶ 10.) It is unclear from the FAC whether this funding plan was the "Initial Funding Plan" or the "Second Funding Plan" outlined in Defendants' Motion. (See Motion, 4:14-27.) Defendants contend that the November 2011 funding plan was the Initial Funding Plan, and that five additional preconditions must take place before the Authority has legal authority to spend bond funds. (See Motion, 10:15-19.) In Opposition, Plaintiffs state that the matter is "imminent" because "the Federal Transportation Secretary only a few days ago appeared before the legislature and in effect told them that they had to fund the project by July 1, or the federal government could withdraw

its funds; all indications are that the state will act within weeks." (See Opposition, 11:13-16.)

The Court finds that Plaintiffs' allegations are deficient to show that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project. Accordingly, Defendants' Demurrer to each cause of action is SUSTAINED with leave to amend. Leave to amend is granted as the Court is not yet convinced that Plaintiffs will be unable to amend the FAC to show imminent action.

Standing

Defendants next contend that Plaintiffs do not have standing to assert the claims for violation of CCP §526a because they are not injured. Defendants claim that to have standing, Plaintiffs must have "an actual and substantial interest and stand to be benefited or injured by a judgment in order to state a claim for relief." (Motion, 11:8-13)(citing *Friendly Village Community Assn. Inc. v. Silva & Hill Co.* (1973) 31 Cal.App.3d 220, 22d.) In opposition, Plaintiffs contend that CCP §526a automatically grants standing to a resident taxpayer that has paid taxes in the past year. The Court is not persuaded by Defendants' argument. "In this state we have been very liberal in the application of the rule permitting taxpayers to bring a suit to prevent the illegal conduct of city officials, and no showing of special damage to the particular taxpayer has been held necessary." (*Blair v. Pitchess* (1971) 5 Cal. 3d 258, 268 (quoting *Crowe v. Boyle* (1920) 184 Cal. 117, 152.)

Plaintiffs further contend that although the County is not a taxpayer, it has an "interest" in the proceeding being brought by the other plaintiffs. The County alleges that its policies, rules and regulations will be interfered with when the project traverses the County; that it stands to lose property taxes through property devaluations when the project enters the County; and that its emergency fire, police and rescue operations will be seriously affected when the project enters the County and prevents access to the residents of the County. (FAC, ¶ 12.) Counties that have an "interest in the outcome" of the litigation have standing and need not establish a basis for standing as taxpayers under CCP §526a. (*City of Industry v. City of Fillmore* (2011) 198 Cal. App. 4th 191, 209.) Plaintiffs have sufficiently pled facts to show that they have standing.

Accordingly, Defendants' demurrer on this ground is OVERRULED.

Actual Case or Controversy

Defendants next contend that there is no actual case or controversy that is ripe for the Court to review because Plaintiffs have not alleged that spending has occurred or will imminently occur. Plaintiffs contend that when taxpayers sue pursuant to CCP §526a and request declaratory relief, an "actual controversy" is presumed to exist, eliminating the requirement of proving "case or controversy." (Opposition, 8:16-18)(citing *Van Atta v. Scott* (1980) 27 Cal.3d 424, 450.) The Court agrees with Defendants. "[T]he taxpayer action must involve an actual or threatened expenditure of public funds." (*Waste Management of Alameda County, Inc, supra*, 79 Cal. App. 4th at 1240.) As noted above, the Court finds that Plaintiffs' allegations are deficient to show that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project. Accordingly, Defendants' Demurrer to each cause of action is SUSTAINED with leave to amend. Leave to amend is granted as the Court is not yet convinced that Plaintiffs will be unable to amend the FAC to show imminent action.

Individual Defendants

Defendants demur to each cause of action on the grounds that CCP §526a cannot be used to challenge the Individual Defendants exercise of legislative and executive discretion. CCP §526a "should not be

applied to principally "political" issues or issues involving the exercise of the discretion of either the legislative or executive branches of government." (*Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal. App. 4th 349, 356.) Plaintiffs allege that the Individual Defendants "have a voice and decision-making authority on whether bond funds under Prop 1A should be allowed to be used for the purpose of constructing the Central Valley HRS project and to authorize release of said funds." (FAC ¶ 3.) As currently pled, Plaintiffs' allegations address the Individual Defendants' exercise of discretion, and fail to state claims for relief against these defendants. Accordingly, Defendants' demurrer on this ground is SUSTAINED with leave to amend. As this demurrer is Defendants' first objections to the FAC, the Court grants Plaintiffs leave to amend.

Defendants further demur to each cause of action against the Individual Defendants on the grounds that they lack any statutory authority to spend bond money to construct the Central Valley HRS Project. Plaintiffs have not addressed this argument in their opposition. The Court construes Plaintiffs' failure to oppose this argument as a concession on the merits. Accordingly, Defendants' demurrer on this ground is SUSTAINED with leave to amend. As this demurrer is Defendants' first objections to the FAC, the Court grants Plaintiffs leave to amend.

Where leave to amend is granted, Plaintiffs may file and serve an amended complaint by no later than June 29, 2012. Response to be filed within 15 days of service or the amended complaint, 20 days if served by mail. Although not required, Plaintiff should attach a copy of this minute order to the amended complaint to facilitate the filing of the document.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING:

The matter was argued and submitted. The Court affirmed the tentative ruling. Mr. Brady's request to file and serve an amended complaint two weeks from today was granted.

1 **CASE NAME: Tos v. California High Speed Rail Authority, et al.**

2 **ACTION NO.: 34-2011-00113919**

3 **PROOF OF SERVICE**

4 **METHOD OF SERVICE**

- 5 First Class Mail Facsimile Messenger Service
6 Overnight Delivery E-Mail/Electronic Delivery

- 7 1. At the time of service I was over 18 years of age and not a party to this action.
8 2. My business address is 1001 Marshall Street, Suite 500, Redwood City, CA 94063-2052,
9 County of San Mateo.
10 3. On July 6, 2012, I served the following documents:

11 **SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF; FOR**
12 **MANDAMUS/PROHIBITION; FOR RELIEF PURSUANT TO 526a, CCP; FOR**
13 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF; FOR RELIEF**
14 **UNDER THE PRIVATE ATTORNEY GENERAL DOCTRINE**

- 15 4. I served the documents on the persons at the address below (along with their fax numbers
16 and/or email addresses if service was by fax or email):

17 Michele Inan Attorneys for Defendants
18 Office of Attorney General
19 455 Golden Gate Avenue, Suite 11000 Telephone: 415-703-5474
20 San Francisco, CA 94102 Facsimile: 415-703-5480
21 Email: Michele.inan@doj.ca.gov

- 22 5. I served the documents by the following means:

23 a. By United States mail: I enclosed the documents in a sealed envelope or package
24 addressed to the persons at the addresses specified in item 4 and placed the envelope for
25 collection and mailing, following our ordinary business practices. I am readily familiar with this
26 business's practice for collecting and processing correspondence for mailing. On the same day
27 that correspondence is placed for collection and mailing, it is deposited in the ordinary course of
28 business with the United States Postal Service, in a sealed envelope with postage fully prepaid at
the address listed in Paragraph 2 above.

b. By overnight delivery: I enclosed the documents in an envelope or package
provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4.
I placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

c. By messenger: I served the documents by placing them in an envelope or package
addressed to the persons at the addresses listed in item 4 and providing them to a messenger for
service. (Separate declaration of personal service to be provided by the messenger.)

d. By fax transmission: Based on an agreement between the parties and in
conformance with Rule 2.306, and/or as a courtesy, I faxed the documents to the persons at the

RC1/6257905.4/CM3

PROOF OF SERVICE

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fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

e. By email or electronic transmission: Based on an agreement between the parties and/or as a courtesy, I sent the documents to the persons at the email addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 6, 2012

Carmen Callahan
Type Name


Signature