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14 *Town of Atherton, County of Kings, Patricia Louise*
15 *Hogan-Giorni, Anthony Wynne, Community Coalition*
16 *on High-Speed Rail, Transportation Solutions Defense and*
17 *Education Fund, and California Rail Foundation*

18 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE COUNTY OF SACRAMENTO**

20 JOHN TOS, QUENTIN KOPP, TOWN OF
21 ATHERTON, a municipal corporation,
22 COUNTY OF KINGS, a subdivision of the State
23 of California, PATRICIA LOUISE HOGAN-
24 GIORNI, ANTHONY WYNNE, COMMUNITY
25 COALITION ON HIGH-SPEED RAIL, a
26 California nonprofit corporation,
27 TRANSPORTATION SOLUTIONS DEFENSE
28 AND EDUCATION FUND, a California
29 nonprofit corporation, and CALIFORNIA RAIL
30 FOUNDATION, a California nonprofit
31 corporation,

Petitioners and Plaintiffs

vs.

32 THE STATE OF CALIFORNIA, CALIFORNIA
33 HIGH SPEED RAIL AUTHORITY, a public
34 entity, BOARD OF DIRECTORS OF THE
35 CALIFORNIA HIGH-SPEED RAIL
36 AUTHORITY in their individual and official
37 capacities, JEFF MORALES, in his official
38 capacity as Chief Executive Officer of the
39 California High-Speed Rail Authority,
40 MICHAEL COHEN, in his official capacity as
41 Director of the Department of Finance of the
42 State of California, and DOES 2-20 inclusive,
43 Respondents and Defendants

No. 34-2016-00204740 Filed 12/13/16

VERIFIED SECOND AMENDED
PETITION FOR PEREMPTORY WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

[Code of Civil Procedure §§ 526a, 1060,
1085, 1094.5]

1 As causes of action against Respondents and Defendants THE STATE OF CALIFORNIA
2 (“CALIFORNIA”), CALIFORNIA HIGH-SPEED RAIL AUTHORITY (“CHSRA”), the BOARD
3 OF DIRECTORS OF CHSRA, in their individual and official capacities (“BOARD”), JEFF
4 MORALES (“MORALES” or “CEO”), in his official capacity as Chief Executive Officer of
5 CHSRA, and MICHAEL COHEN (“COHEN” or “DOF”) in his official capacity as Director of the
6 Department of Finance of the State of California, Petitioners and Plaintiffs JOHN TOS (“TOS”),
7 QUENTIN KOPP (“KOPP”), TOWN OF ATHERTON (“ATHERTON”), COUNTY OF KINGS
8 (“COUNTY”), PATRICIA LOUISE HOGAN-GIORNI (“GIORNI”), ANTHONY WYNNE
9 (“WYNNE”), COMMUNITY COALITION ON HIGH-SPEED RAIL (“CC-HSR”),
10 TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND (“TRANSDEF”) and
11 CALIFORNIA RAIL FOUNDATION (“CRF” and the foregoing, collectively, “PETITIONERS”)
12 hereby allege as follows:

13 INTRODUCTION

14 1. This action challenges the constitutionality of AB 1889, a statute enacted by
15 CALIFORNIA through its Legislature and signed by its Governor in the 2015-2016 Legislative
16 session, that added § 2704.78¹ to the California Streets & Highways Code. § 2704.78 purports to
17 “clarify” a provision of § 2704.08(d). However, § 2704.08 was enacted by the voters of California
18 in November 2008 as part of the Safe, Reliable High-Speed Passenger Train Bond Act for the
19 Twenty-First Century, designated on the ballot as Proposition 1A (hereinafter, “Prop. 1A”).

20 2. Prop. 1A was a 9.95 billion dollar California general obligation bond measure intended to
21 assist in funding the construction of a high-speed rail system in California, under the auspices of
22 CHSRA.

23 3. PETITIONERS allege that CALIFORNIA’s enactment of § 2704.78 violated the California
24 Constitution in that, rather than clarify, it attempted to materially change the terms of Prop. 1A, a

25 _____
26 ¹ Unless otherwise specified, all statutory references are to the California Streets & Highways Code.

1 voter-approved bond measure, without gaining voter ratification of the change – in essence
2 attempting a partial repeal of the provisions of that measure – in violation of Article XVI Section 1
3 of the California Constitution. PETITIONERS ask the Court to declare AB 1889, and specifically
4 §2704.78, facially unconstitutional and therefore void.

5 4. In addition, PETITIONERS allege that CHSRA, its BOARD, and MORALES have
6 approved two Funding Plans and associated documents; one for the Central Valley Segment (“CV
7 Segment”) and one for the “San Francisco to San Jose Peninsula Corridor” (“SF-SJ Corridor
8 Segment”), purportedly pursuant to Streets & Highways Code § 2704.08(d). The Funding Plans
9 purport to describe how CHSRA will fund and construct “Usable Segments” as that term is defined
10 in Streets & Highways Code § 2704.01(g). However, these Funding Plans and their associated
11 documents fail to meet the mandatory requirements of Prop. 1A and their approvals are therefore
12 invalid. In approving these Funding Plans and documents, CHSRA, its BOARD, and MORALES
13 therefore abused their discretion. PETITIONERS therefore seek this Court’s Peremptory Writ of
14 Mandate under Code of Civil Procedure §1094.5 ordering the rescission of those approvals.

15 5. In addition, in approving the Funding Plans and associated documents, CHSRA, its
16 BOARD, and MORALES, by failing to require inclusion or certification in those two Funding
17 Plans and associated documents of all of the information required under Streets & Highways Code
18 § 2704.08(d) as approved by the voters, failed to perform acts which the law specifically enjoins.
19 PETITIONERS therefore also seek this Court’s Peremptory Writ of Mandate under Code of Civil
20 Procedure § 1085 ordering CHSRA, its BOARD, and MORALES to fulfill their legal obligations
21 properly before considering whether to approve or reapprove those Funding Plans and documents.

22 6. In addition, PETITIONERS are informed and believe, and on that basis allege, that
23 CHSRA is currently in the process of preparing and/or approving two additional Funding Plans for
24 projects within the “bookend” segments² of its proposed high-speed rail system, but that neither of

25 ² The two “bookend” segments are defined as the segments extending between San Francisco and
26 San Jose at the northern end of the Phase I San Francisco to Los Angeles/Anaheim Project and the
segment between Burbank and Anaheim at the southern end.

1 these Funding Plans can meet the requirements set by Streets & Highways § 2704.08(d) unless AB
2 1889, upon which both Funding Plans must rely, is found constitutional. Consequently,
3 PETITIONERS seek this Court's declaratory judgment under Code of Civil Procedure § 1060 that
4 AB 1889, and specifically Streets & Highways Code Section 2704.78, is unconstitutional as
5 applied to those two proposed projects and their Funding Plans.

6 7. In addition, PETITIONERS allege that CHSRA has been, is, and intends to continue
7 expending public funds in reliance on the validity of AB 1889, and specifically of § 2704.78, and
8 that, if § 2704.78 is unconstitutional and invalid, such expenditures are illegal and/or wasteful in
9 that they violate provisions of Prop. 1A, as enacted by the voters and spend public funds to prepare
10 and approve Funding Plans that cannot properly be approved. PETITIONERS therefore also seek
11 injunctive relief under Code of Civil Procedure § 526a against CHSRA's past, present, and
12 impending illegal, improper, wasteful, and/or unconstitutional use of public funds and seek to
13 recover from the BOARD and its members and restore to their proper governmental sources all
14 funds involved in the illegal, improper, and/or wasteful expenditures that the BOARD authorized.

15 8. In addition, PETITIONERS allege that COHEN has given his approval, purportedly
16 pursuant to Streets & Highways Code § 2704.08(d) and based on the Funding Plan for the CV
17 Segment, for CHSRA to enter into commitments and expend Prop. 1A funds towards the purchase
18 of equipment and real property and towards the construction of the CV segment. He has also
19 deferred action on approving allowing CHSRA to enter into commitments and expend Prop. 1A
20 bond funds similarly on the SF-SJ Corridor Segment based on its Funding Plan.

21 9. However, PETITIONERS allege that, because these Funding Plans were not properly
22 prepared and approved by CHSRA, and do not meet the requirements of Streets & Highways Code
23 § 2704.08(d), they cannot properly serve as the basis for COHEN's, or any other, approval. Thus,
24 COHEN's actions in approving the CV Segment Funding Plan and not rejecting outright the SF-SJ
25 Corridor Segment Funding Plan were abuses of his discretion and failures to perform acts required
26 of him under § 2704.08(d). Consequently, Petitioners seek this Court's Peremptory Writ of

1 Mandate under Code of Civil Procedure §§ 1085 and 1094.5 ordering COHEN to rescind his
2 actions and instead reject both segments and their Funding Plans.

3 10. PETITIONERS also seek their costs of suit and their reasonable attorneys' fees under Code
4 of Civil Procedure § 1021.5 or other applicable authority in pursuing this legal action in the public
5 interest.

6 **PARTIES**

7 11. Petitioners and Plaintiffs JOHN TOS, QUENTIN KOPP, PATRICIA LOUISE HOGAN-
8 GIORNI, and ANTHONY WYNNE are California citizens, voters and taxpayers who, during the
9 preceding year, have paid taxes to the State of California that would be used to repay and/or pay
10 interest on the funds that PETITIONERS allege are being and/or will be illegally and
11 unconstitutionally used by CHSRA. Under Code of Civil Procedure § 526a, they have standing to
12 seek relief against CHSRA.

13 12. TOS is also a farmer and landowner in Kings County who owns farm lands that lie directly
14 in the path of CHSRA's proposed CV Segment. CHSRA is in the process of taking portions of
15 TOS' lands by eminent domain for construction of the CV Segment. The taking of that land will
16 cause TOS irreparable harm for which a legal remedy would not be adequate in that, with the
17 taking of that land, TOS will lose trees upon which he has lavished not only money but his
18 personal efforts, for which monetary damages will not be an adequate remedy. In addition, the
19 taking of this land will sever portions of TOS's land, which will permanently interfere with his, or
20 anyone else's use of that land, for which monetary damages will also not be an adequate remedy.

21 13. Petitioner and Plaintiff QUENTIN KOPP is a former State Senator, retired judge, and
22 former Chair of the BOARD. As such, KOPP, as State Senator, was the author of the legislation
23 establishing defendant CHSRA. Later, as Chair of the BOARD, he had a major role in preparing
24 Prop. 1A for legislative approval. He desires to defend the intent of California's voters in enacting
25 Prop. 1A as it was written and placed on the ballot and to protect it from later unconstitutional
26 modifications.

1 14. Petitioner and Plaintiff TOWN OF ATHERTON is a municipal corporation, organized and
2 existing under the general laws of the State of California. ATHERTON has a direct and beneficial
3 interest in seeing that funds of the State of California are not used illegally and unconstitutionally.
4 ATHERTON would also be directly and adversely affected by the illegal expenditures at issue
5 herein in that funds would be expended by CHSRA on projects, including the Caltrain
6 Electrification Project, that would harm ATHERTON and its citizens, including causing the
7 unnecessary destruction of mature trees bordering on the Caltrain right-of-way in Atherton. In
8 addition ATHERTON has standing under Code of Civil Procedure § 526a in a representative
9 capacity on behalf of its citizens, residents, and taxpayers who have paid taxes to the State of
10 California during the past year and whose taxes would be involved in the illegal/wasteful
11 expenditures alleged herein.

12 15. Petitioner and Plaintiff COUNTY OF KINGS is a political subdivision of the State of
13 California, organized and existing under the laws of the State of California. COUNTY has a direct
14 and beneficial interest in seeing that funds of the State of California are not used illegally and
15 unconstitutionally. COUNTY would also be directly and adversely affected by the illegal
16 expenditures at issue herein in that funds will be expended by CHSRA on projects that will harm
17 COUNTY and its citizens by, among other things, disrupting roadways and impeding emergency
18 access, severing and otherwise making unusable valuable farmlands, and causing unnecessary
19 construction impacts for a project that does not have sufficient funding to ever become operational,
20 as well as depleting funds that might otherwise be used to build an operational and beneficial high-
21 speed rail system that would meet the requirements of Proposition 1A. In addition COUNTY has
22 standing under Code of Civil Procedure § 526a in a representative capacity on behalf of its
23 citizens, residents, and taxpayers who have paid taxes to the State of California during the past
24 year and whose taxes would be involved in the illegal/wasteful expenditures alleged herein.

25 16. Petitioners and Plaintiffs COMMUNITY COALITION ON HIGH-SPEED RAIL,
26 CALIFORNIA RAIL FOUNDATION, and TRANSPORTATION SOLUTIONS DEFENSE AND
27

1 EDUCATION FUND are California nonprofit corporations organized and existing under the laws
2 of the State of California. They, and/or their members and/or board members, have paid taxes to
3 the State of California during the preceding year. CC-HSR, CRF, and TRANSDEF therefore have
4 standing under Code of Civil Procedure § 526a on their own behalf and/or in a representative
5 capacity on behalf of their members and/or directors. In addition, each of these petitioners and
6 plaintiffs has a direct and beneficial interest in seeing that the Constitution and laws of the State of
7 California are obeyed. In addition, each of these petitioners and plaintiffs, and their members
8 and/or directors, would be directly and adversely affected by the illegal expenditures at issue
9 herein in that the funds would be expended by CHSRA on projects that would directly harm their
10 interests by, among other things wastefully and illegally expending Proposition 1A bond funds on
11 projects that do not and cannot meet the requirements of Proposition 1A, thereby depleting those
12 funds so they cannot be used to build a high-speed rail system that would meet Proposition 1A's
13 requirements and would directly and beneficially affect the interests of these three entities, which
14 seek to promote rail projects that, unlike CHSRA's current proposed high-speed rail project, are
15 cost-effective and environmentally beneficial.

16 17. Respondent and Defendant THE STATE OF CALIFORNIA ("CALIFORNIA") is the duly
17 constituted government of the State of California. As such, its powers include the power, through
18 the Legislature and the Governor, to enact legislation for the governance of the State of California
19 and all state agencies. It also has the power, through the Legislature, to place general obligation
20 bond measures on the California statewide ballot for consideration and potential enactment by the
21 voters of California. However, CALIFORNIA's powers are limited by the provisions of the
22 Federal and California constitutions.

23 18. During the 2016 legislative session, CALIFORNIA, acting through its Legislature and its
24 Governor, enacted AB 1889, a statute purporting to "clarify the meaning" of a provision of
25 § 2704.08. PETITIONERS contend that CALIFORNIA's action in enacting that statute was
26 unconstitutional as violative of Article XVI Section 1 of the California Constitution.

1 19. Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY is an
2 agency organized and existing within the executive branch of the State of California. As such,
3 CHSRA has a mandatory duty to follow the California Constitution and specifically to adhere to
4 the requirements of Prop. 1A as it was approved by California voters. CHSRA is governed by a
5 nine-member Board of Directors (“BOARD”).

6 20. The BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL
7 AUTHORITY is the governing body of CHSRA. The BOARD and its members are sued as
8 respondents and defendants herein in both their official and individual capacities. BOARD is
9 responsible for approving or authorizing all expenditures by CHSRA and for ensuring that CHSRA
10 obeys the California Constitution and its statutes, including specifically voter-approved bond
11 measures. BOARD was responsible for giving its approval to and directing its chief executive
12 officer to give final approval to two Funding Plans, purportedly prepared pursuant to § 2704.08(d),
13 for two purported Usable Segments of the high-speed rail system, but which cannot comply with §
14 2704.08(d) if § 2704.78 is constitutionally infirm.

15 21. PETITIONERS are informed and believe, and on that basis allege, that the BOARD has
16 also given approval to having CHSRA staff expend public funds to prepare additional Funding
17 Plans, including a Funding Plan for constructing a grade separation at Rosecrans Avenue and
18 Marquardt Avenue in the City of Santa Fe Springs in Los Angeles County and a San Mateo Grade
19 Separation Project Funding Plan at 25th Avenue in the City of San Mateo in San Mateo County;
20 which funding plans would also necessarily depend on Streets & Highways Code §2704.78 for
21 compliance with provisions of Prop. 1A.

22 22. Respondent and Defendant JEFF MORALES is hereby substituted for DOE number 1 in
23 the First Amended Complaint herein. MORALES currently is, and at all times during which the
24 Final Funding Plans at issue herein were being prepared and approved by CHSRA was, the Chief
25 Executive Officer of CHSRA, and is sued as such in his official capacity. MORALES was
26 responsible for giving final ministerial approval, under orders from the BOARD, to the two

1 Funding Plans that are primarily at issue in this case, and for forwarding those Plans and related
2 documentation to COHEN for his consideration and approval.

3 23. Respondent and Defendant MICHAEL COHEN is the Director of the California
4 Department of Finance within the executive branch of the California state government, and is sued
5 as such in his official capacity. Under Proposition 1A, and specifically Streets & Highways Code
6 § 2704.08(d), COHEN had the duty of reviewing Funding Plans and other related materials that
7 had been submitted to him by CHSRA and making a final determination that they, and the Usable
8 Segment involved therein, satisfied the requirements of Proposition 1A, and specifically of Streets
9 & Highways Code § 2704.08(d). A favorable determination by DOF was necessary before
10 CHSRA could obligate or expend Prop. 1A funds towards the purchase of equipment or real
11 property or towards the construction of the Usable Segment described in a Funding Plan that had
12 been submitted to him.

13 24. PETITIONERS are unaware of the true names and capacities of Defendants DOES 2
14 through 20, inclusive, and therefore sue those Defendants under fictitious names. PETITIONERS
15 will amend their Petition and Complaint to show their true names and capacities when the
16 Defendants have been identified and their capacities ascertained. Each of the Doe Defendants is
17 the agent, employee, or both of every other Defendant, and each performed acts on which this
18 action is based within the course and scope of such Doe Defendant's agency, employment, or both.
19 PETITIONERS are informed and believe, and on that basis allege, that each Doe Defendant is
20 legally responsible in some manner for the events and actions referred to herein.

21 **GENERAL ALLEGATIONS**

22 25. PETITIONERS have exhausted their administrative remedies. Some of the
23 PETITIONERS or their authorized representatives submitted oral and/or written comments to the
24 Legislature prior to the enactment of AB 1889 warning of its unconstitutionality. Those same
25 PETITIONERS or their authorized representatives also submitted a written letter to CHSRA,
26 through the Chair of its BOARD, as well as to other public officials involved with the handling of
27 Prop 1A bond funds, including specifically DOF, shortly after the final legislative passage of
28 AB 1889. The letter warned its recipients of the unconstitutionality of AB 1889 as enacted. A true

1 and correct copy of that letter is attached hereto as Exhibit A and is incorporated herein by this
2 reference. Those same PETITIONERS or their authorized representatives also provided oral
3 comments to the BOARD and MORALES at the Board's regular public meeting prior to the
4 BOARD giving its final approval to the two above-mentioned funding plans on December 13,
5 2016. Those comments warned the BOARD and MORALES of the unconstitutionality of AB
6 1889 and the impropriety of relying upon it to approve the two funding plans and the expenditures
7 that they intended to undertake pursuant to those funding plans.

8 26. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law.
9 Unless this Court grants the requested relief, AB 1889 will continue to be considered a valid
10 statute and CHSRA's approvals of the two Final Funding Plans at issues here will stand, and their
11 illegal and/or wasteful expenditures of public funds in reliance on that invalid statute will continue.

12 27. If CHSRA is not enjoined from moving forward on its illegal, improper, wasteful, and
13 unconstitutional expenditures and from undertaking acts in furtherance thereof, PETITIONERS
14 will suffer irreparable harm for which there is no adequate remedy at law in that CHSRA will have
15 violated the express intent of California's voters in approving Prop. 1A and will have expended
16 those public funds inappropriately, wastefully, and/or illegally on projects that are not qualified for
17 those expenditures under Prop. 1A's requirements, thereby misusing and wasting those funds in
18 violation of the will of California's voters. In addition, the Prop. 1A funds illegally and/or
19 wastefully used by CHSRA will no longer be available for use to construct a properly Prop. 1A-
20 compliant high-speed rail system, thereby damaging and depleting a limited fund made available
21 by California's voters specifically and exclusively for construction of a compliant high-speed rail
22 system. In addition, use of the funds for the Central Valley Segment will cause irreparable harm
23 specifically to COUNTY and TOS in that the construction of that segment will take property
24 belonging to TOS and the trees and other products of his hands on that property, thereby
25 destroying the time and effort TOS and his family have spent over many years creating those
26 properties. The taking and destruction of those properties cannot be adequately addressed by a
27 legal remedy. In addition, the construction of the Central Valley Segment will force the closure of
28 many of COUNTY's roadways, will impede emergency access for COUNTY's emergency

1 vehicles, will impede the mobility of the COUNTY and its residents and businesses, and will in
2 many other ways interfere with the functioning of the COUNTY, its residents, and its businesses,
3 all of which cannot be adequately addressed by a legal remedy.

4 **BACKGROUND**

5 28. In 1996, the Legislature, in a bill authored by Plaintiff KOPP, created CHSRA and charged
6 it with directing and implementing an intercity high-speed rail service within California, including
7 specifically preparing a plan for the construction and operation of a high-speed rail network.
8 CHSRA was granted the exclusive right to plan, construct, and operate all rail facilities in
9 California operating at speeds in excess of 125 miles per hour.

10 29. In 2008, the Legislature placed on the ballot and the voters enacted Prop. 1A, a \$9.95
11 billion general obligation bond act, to help CHSRA fund construction of a high-speed rail system.
12 The bond measure was written in part by KOPP, who, at that time, was Chair of the BOARD. The
13 bond measure included \$9 billion specifically allocated for the planning and construction of the
14 high-speed rail system.

15 30. Prop. 1A included numerous conditions and requirements that had to be met in order for
16 the bond funds to be used, especially for construction activities.

17 31. At the time it wrote and approved Prop. 1A for placement on the November 2008 ballot,
18 the Legislature was presumptively aware of, and sought to implement in that pending legislation,
19 Governor's Schwarzenegger's May 2008 Budget Message. In that message, the Governor stated in
20 regard to the proposed California high-speed rail system that, "Before any construction or
21 equipment purchase contracts can be signed for a portion of the system, there must be a complete
22 funding plan that provides assurance that all funding needed to provide service on that portion of
23 the system is secured."

24 32. The Legislature was also aware, as shown by the Legislative Analyst's analysis of Prop. 1A in
25 the Supplemental Voter Quick-Reference Guide for the November 2008 election, that voters needed
26 assurance that there would be accountability and oversight of CHSRA's use of the bond proceeds.

1 33. Specifically, the Legislature inserted into Prop. 1A provisions, included in §2704.08,
2 requiring that before Prop. 1A bond funds could be used towards the construction of the high-
3 speed rail system, or any corridor or usable segment thereof, CHSRA was required to prepare and
4 approve two successive funding plans for the corridor or usable segment thereof that was to be
5 constructed using Prop. 1A bond funds – a first “preliminary” funding plan prior to an legislative
6 appropriation of bond funds toward construction-related activities or purchases, and a second
7 “final” funding plan prior to encumbering or expending bond funds toward construction-related
8 activities or purchases for a corridor or usable segment thereof. These conditions and requirements
9 were characterized by the Third District Court of Appeal, in *California High-Speed Rail Authority*
10 *v. Superior Court* (2014) 228 Cal.App.4th 676, 706 as a “financial straitjacket.”

11 34. Even more specifically, Prop. 1A required that all second “final” funding plans, provided
12 for in Streets & Highways Code § 2704.08(d), include or demonstrate that:

- 13 a. The funds would be used to construct a usable segment containing at least
14 two stations,
- 15 b. The full projected cost of constructing that segment;
- 16 c. Funds had been identified, including their expected time of availability, to
17 allow completion of the usable segment;

18 35. In addition, along with that funding plan, CHSRA was required to provide one or more
19 reports prepared by one or more independent consultants that would demonstrate:

- 20 a. That construction of the usable segment could be completed as proposed in
21 the second “final” funding plan;
- 22 b. That, if completed, the usable segment would be suitable and ready for high-
23 speed train operation;
- 24 c. That the train service on the usable segment provided by CHSRA or
25 pursuant to its authority would not require an operating subsidy.

1 36. CHSRA has defined its “Phase I” high-speed rail system corridor as running from Anaheim
2 to Los Angeles (Union Station) to Burbank, to Palmdale, to Bakersfield, to Fresno, to Merced
3 and/or San Jose, and to San Francisco, with a northern terminus at the Transbay Transit Center.

4 37. In its Final 2016 Business Plan, CHSRA redefined its “Initial Operating Segment” (“IOS”)
5 as running from north of Bakersfield, starting at or in the vicinity of Wasco, to San Jose and
6 including a station in Merced.

7 **THE CENTRAL VALLEY SEGMENT**

8 38. While CHSRA currently defines its IOS as running from Wasco to San Jose, in its Revised
9 2012 Business Plan CHSRA identified a segment of its high-speed rail system running from
10 Madera to Bakersfield as its “Initial Construction Section” (“ICS”). It proposed to fund
11 construction of the ICS through a combination of approximately \$3.24 billion in Federal Railroad
12 Administration grant funds and approximately \$2.6 billion of Prop. 1A bond funds. However,
13 those bond funds, while appropriated by the Legislature in 2012, have not been utilized because,
14 up until now, no second funding plan encompassing the ICS has been prepared and approved.

15 39. At the moment, CHSRA has begun construction of two portions of the ICS using federal
16 grant funds. The two portions are identified as CP 1 and CP 2-3. CP 2 and CP 3 were initially
17 proposed as separate portions, but they have now been merged. Construction of CP 1 began in
18 2015, and that of CP 2-3 in 2016, but neither segment has been completed, nor have the last two
19 phases, CP 4 and CP 5, begun construction.

20 40. The proposed Central Valley Segment corresponds roughly to the ICS in its extent and is
21 proposed for construction in the CV Segment Funding Plan. It is proposed to run from Madera to
22 Shafter, with two stations, one in the City of Fresno and the other, a Kings/Tulare station, located
23 West of Hanford and East of Visalia along Highway 43 in an area that is currently agricultural.

24 41. The Funding Plan for the CV Segment, at page 5, asserts that the Segment, when
25 constructed, will be suitable and ready for high-speed train operation. However, that Funding
26 Plan, at p.4, admits that it does not include funds for purchasing any high-speed rail trains.
27 Instead, those trains will only be purchased, at a cost of \$865 million, as part of implementing the
28 “Valley to Valley line” – the IOS running between Wasco and San Jose. The Funding Plan
29 provides no information about the status of funding needed to complete the IOS.

1 42. The Funding Plan does not propose to provide any high-speed rail service between the two
2 stations on its “Usable Segment.” Instead, the Funding Plan proposes that the segment might
3 serve as a “test track” to test the feasibility of operating high-speed trains and the suitability of the
4 other system components to be built as part of the segment – but only at such time as high-speed
5 rail cars might become available for that use on the segment. The Funding Plan also proposes that
6 the segment might be usable by Amtrak for its San Joaquin line, although it admits that this is a
back-up option and not a primary goal of the segment.

7 43. At its completion the CV Segment would not be “suitable and ready for high-speed train
8 operation” unless § 2704.78 was found to be a valid statute; nor would it otherwise satisfy
9 requirements of Prop. 1A.

10 **THE CALTRAIN ELECTRIFICATION SEGMENT**

11 44. As part of the Legislature’s 2012 appropriation of Prop. 1A funds towards high-speed rail,
12 it appropriated \$1.1 billion towards construction in the two “bookend” segments – between San
13 Jose and San Francisco on the north and between the San Fernando Valley and Los Angeles on the
14 south – for improvements that would culminate in a complete high-speed rail system. This was in
15 spite of the fact that CHSRA had not, at that point, prepared a Funding Plan for any portion of
16 either bookend segment. However, the legislative appropriation included a provision that before
17 Prop. 1A bond funds could be spent on construction activities within either bookend segment,
18 CHSRA must prepare and have approved a Funding Plan pursuant to Streets & Highways Code §
19 2704.08(d) for the corridor or usable segment involved.

20 45. In the northern bookend segment, the 2012 appropriation included approximately \$706
21 million³ to assist Caltrain in funding its electrification project, which was intended to also provide
22 electric power for an eventual San Jose – San Francisco high-speed rail segment. This was
23 confirmed by a series of memoranda of understandings between the Peninsula Corridor Joint
24 Powers Board (“PCJPB”), Caltrain’s governing body, and CHSRA.

25 ³ \$600 million was allocated from Prop 1A high-speed rail construction funds, while \$106 million
26 was appropriated from Prop. 1A “connectivity” funds – to improve transit facilities connecting to
the high-speed rail system.

1 46. In 2015, the PCJPB certified an Environmental Impact Report for its electrification project
2 and approved the project, which was projected to cost roughly \$2.1 billion. Even with the \$706
3 million contribution from CHSRA, the electrification project was not fully funded.

4 47. The electrification would provide a power source for a future high-speed rail line between
5 San Jose and the 4th and King Street San Francisco Caltrain station. However, even at the
6 electrification project's completion, it would not result in a segment that would be "suitable and
7 ready for high-speed train operation," unless Streets & Highways Code §2704.78 is found valid;
8 nor would it otherwise satisfy the requirements set by Prop. 1A.

8 **THE *TOS V. CHSRA* LITIGATION**

9 48. In November of 2011, CHSRA approved a "Preliminary Funding Plan" for a usable
10 segment, which it defined as running either from San Jose to Bakersfield ("IOS – North"), or from
11 Merced to the San Fernando Valley ("IOS – South").

12 49. Shortly after that initial approval, TOS, COUNTY, and other plaintiffs filed suit against
13 CHSRA as well as numerous California state officials, challenging that approval as being in
14 violation of Prop. 1A and the California Constitution and involving the illegal expenditure of
15 public funds.

16 50. The case was assigned to Judge Michael Kenny in Sacramento County Superior Court.

17 51. In April, 2012, CHSRA approved a Revised 2012 Business Plan. That Business Plan
18 identified the IOS to be completed as IOS – South.

19 52. In July 2012, at the request of CHSRA and based on its "Preliminary" (§ 2704.08(c)) Funding
20 Plan and the Revised 2012 Business Plan, the Legislature appropriated funds towards the construction of
21 a portion of CHSRA's IOS, the so-called ICS, as well as funds to be used for improvements to the
22 "bookend" segments of the Phase I high-speed rail system. The latter appropriation was not supported by
23 a Preliminary Funding Plan, but was conditioned on the preparation and approval of a Funding Plan
24 pursuant to Streets & Highways Code § 2704.08(d) for each usable segment involved, as well as
25 completion of all project-level environmental clearances necessary to proceed with construction.

26 53. In May of 2013, the allegations of noncompliance with the requirements of § 2704.08(c) of
27 CHSRA's Preliminary Funding Plan for its IOS were heard in the trial court. In November of that
28 same year, the trial court issued its ruling that CHSRA's Preliminary Funding Plan was inadequate
29 and invalid and ordered the rescission of CHSRA's approval of that plan.

1 54. CHSRA filed a petition for writ of mandate with the California Supreme Court challenging
2 the trial court's ruling on this and other related matters. That petition was transferred to the Third
3 District Court of Appeal. The Third District Court of Appeal ordered full briefing, and after
4 briefing and oral argument, granted the petition, holding that the approval of a Preliminary
5 Funding Plan was not a final action subject to legal challenge, and that only approval of a Funding
6 Plan pursuant to Streets & Highways Code § 2704.08(d) could be subjected to legal challenge.
(*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 713.)

7 **AB 1889**

8 55. During the summer of 2016, the PCJPB convinced State Assembly Member Mullin to
9 amend AB 1889, a bill he had authored that had already passed the Assembly, to replace its body
10 with new language that attempted to modify provisions of Prop. 1A by adding a new section to the
11 Streets & Highways Code, § 2704.78.

12 56. As first proposed by PCJPB and Assembly Member Mullin, the bill would have made
13 conclusive CHSRA's determination that a corridor or usable segment thereof would be suitable
14 and ready for high-speed train operation. As a result, not only would the required review of
15 Funding Plans prepared pursuant to Streets & Highways Code § 2704.08(d) by an independent
16 expert become a nullity, but the Funding Plans, once approved by CHSRA, would not be subject to
17 judicial review.

18 57. An attorney representing several of the Petitioners herein submitted a letter to the Senate
19 Transportation Committee, which was considering the amended bill, pointing out that because the
20 bill attempted to modify materially the terms of Prop. 1A, it must be ratified by California voters
21 before it could be validly enacted.

22 58. The Senate Transportation Committee nonetheless approved the bill, which then went to
23 the Senate Appropriations Committee. That Committee, however, voted to place the bill in the
24 suspense file, preventing it from moving forward to the Senate floor.

25 59. Assembly Member Mullin then further amended AB 1889 so that, rather than make
26 conclusive CHSRA's approval of a usable segment as "suitable and ready for high-speed train
27 operation", it purported to "clarify" the meaning of that phrase. Prop. 1A's voter-approved
28 language required that a corridor/usable segment be suitable and ready for high-speed train
29 operation when its construction pursuant to the Funding Plan was complete. AB 1889's newly-

1 proposed § 2704.78 would modify that requirement. Under § 2704.78, a corridor/usable segment
2 would be deemed “suitable and ready for high-speed train operation” not only if it were actually
3 suitable and ready for high-speed rail operation when its construction pursuant to the funding plan
4 was complete; but also if, at some later date, it would become suitable and ready for high-speed
5 train operation after further investments to the corridor/usable segment had been made, so long as
it would, during the “interim” period, benefit passenger train service providers.

6 60. The revised bill was removed from the suspense file and brought to the Senate floor for
7 consideration.

8 61. The attorney representing several of the Petitioners herein then submitted a second letter,
9 directed to the author of the Senate floor analysis of the bill, pointing out that the revised bill also
10 materially altered the requirements approved by the voters in Prop. 1A, and therefore also needed
to be placed before the California voters for ratification before it could be enacted.

11 62. Nevertheless, and despite strong objections from some senators, at the very end of the
12 session, the bill was approved by the Senate, then reapproved by the Assembly, and signed by the
13 Governor.

14 **THE DECEMBER 2016 FUNDING PLANS**

15 63. In the Fall of 2016, after the passage of AB 1889, CHSRA began preparation of two
16 Funding Plans, purportedly pursuant to § 2704.08(d).

17 64. On or about December 8, 2016, CHSRA released to the public the two draft Funding Plans
18 purportedly prepared pursuant to Streets & Highways Code § 2704.08(d): one for what it called the
19 “Central Valley Segment” (“CV Segment”) and one for what it called the “San Francisco to San
Jose Peninsula Corridor” (“SF-SJ Corridor Segment”).

20 65. The CV Segment is defined in its Funding Plan as extending from approximately adjacent
21 to the Madera Amtrak station to Poplar Avenue in Shafter. It would include two stations, Fresno
22 and Kings/Tulare⁴, and would include electrification, a positive train control system,
23 communication systems, and a maintenance facility. Roughly this same segment had previously
24 been identified in the Revised 2012 Business Plan as the ICS. It had not, however, been called a
usable segment at that time.

25 _____
26 ⁴ The Kings/Tulare station had only been “proposed” in the certified EIR for this section.

1 66. In fact, at an open Board meeting session in or about 2011, a Deputy Attorney General
2 opined that, because high-speed train operation on that section would require a public subsidy, it
3 could not qualify for Prop. 1A bond funding under § 2704.08.

4 67. The Funding Plan for the CV Segment asserts that, when completed, the CV Segment
5 would be suitable and ready for high-speed train operation. However, the Funding Plan does not
6 propose actual operation of this segment for high-speed rail service; nor would it actually be
7 suitable and ready for high-speed train operation.

8 68. Rather, the Funding Plan proposes that the CV Segment might, instead, serve as a “test
9 track” to test the function, utility, and reliability of high-speed trains, as well as of the various
10 systems proposed for construction as part of the segment. Only if those tests proved successful
11 and the train and segment had been certified might the system be deemed actually suitable and
12 ready for high-speed train operation. The Funding Plan does not even provide for the purchase of
13 any of the high-speed trains that would be needed for the testing.

14 69. Consequently, even when construction as proposed in the Funding Plan is completed, the
15 segment would not and could not be called suitable and ready for high-speed train operation. The
16 Funding Plan also indicated that, if completion of the IOS was delayed, the CV Segment could,
17 with additional capital outlay, be utilized by Amtrak for its San Joaquin service. In this and other
18 respects, the CV Segment could not possibly qualify for the use of Prop. 1A funds for its
19 construction unless § 2704.78 was legally valid.

20 70. The Funding Plan for the SF-SJ Corridor Segment proposes to use \$600 million of Prop.
21 1A high-speed rail construction bond funds towards completion of the Caltrain electrification
22 project. That project, when fully completed, would, for a variety of reasons, still not be “suitable
23 and ready for high-speed train operation.” In fact, it would not be a segment of the high-speed rail
24 system at all, but an improvement to PCJPB’s Caltrain conventional rail commuter line that would
25 only become a segment of the high-speed rail system at some future time after funding and
26 construction of major additional improvements whose environmental review has barely
27 commenced.

28 71. CHSRA’s rationale for approving the SF-SJ Corridor Funding Plan as being compliant
29 with the requirements of § 2704.08(d) is entirely dependent on the validity of AB 1889 and
30 § 2704.78.

1 72. The two Funding Plans were given final BOARD approval at the BOARD's December
2 13th meeting. At that same meeting, the BOARD directed CHSRA's CEO to finalize both
3 Funding Plans after January 1, 2017, when AB 1889 became effective, and submit them to the
4 Director of Finance for his consideration and approval. The CEO gave final approval to both
5 Funding Plans on or about January 3, 2017 and forwarded both plans, along with associated
6 documentation, to the DOF for his consideration and possible approval, as called for in §
2704.08(d).

7 73. On or about March 3, 2017, the DOF gave his final approval to the CV Segment Funding
8 Plan. He neither approved nor disapproved the SF-SJ Corridor Funding Plan, but instead deferred
9 action on it, pending a determination by the Federal Transit administration on whether to approve a
10 federal grant for that same segment. Without that grant, there would not be full funding to allow
completion of that segment as described in the Funding Plan.

11 74. On or about April 28, 2017, approximately \$1.25 billion of Prop. 1A bonds were placed on
12 the market for sale. The proceeds of the sale of those bonds are intended to be used towards the
13 construction of the CV Segment.

14 75. PETITIONERS are informed and believe that CHSRA has either already begun to
15 encumber and expend those funds on construction pursuant to its CV Segment Funding Plan, and
16 in reliance on the validity of § 2704.78, or will do so very shortly.

17 76. If § 2704.78 is not, in fact, legal, but violates Article XVI Section 1 of the California
18 Constitution, those expenditures, and all of CHSRA's expenditures for the preparation and
approval of the two funding plans, have been and will be improper, illegal, and/or wasteful.

19 **THE ADDITIONAL FUNDING PLANS**

20 77. In addition to the two Funding Plans given final approval by CHSRA in January 2017,
21 CHSRA is contemplating or engaged in the preparation and approval of two other Funding Plans
22 to help fund grade separations in portions of the proposed eventual high-speed rail system. Both of
23 those Funding Plans would also have to rely on AB 1889 in order to comply with the requirements
of Streets & Highways Code § 2704.08(d).

24 78. One of those Funding Plans would help fund construction of a grade separation at
25 Rosecrans Avenue and Marquardt Avenue in the City of Santa Fe Springs in Los Angeles County.
26 There currently exists an at-grade crossing used by freight lines and conventional intercity and
27 commuter passenger rail lines at that location, which is located South of Union Station in Los

1 Angeles on the way to Anaheim. At present, no Funding Plan has been approved by CHSRA that
2 includes that grade crossing. At its December 13, 2016 meeting, the BOARD received a report
3 from the CEO on the status of preparation of a Funding Plan for that grade separation. That report
4 stated that completion of the Funding Plan for BOARD approval was anticipated in early 2017.
5 CHSRA would contribute approximately half of the cost of constructing the grade separation, but,
6 because there would be no construction beyond the grade separation, neither the grade separation
7 nor the track area surrounding the grade separation would be suitable and ready for high-speed
8 train operation when construction of the grade separation in accordance with its Funding Plan was
9 complete. Rather, they would only be suitable and ready for conventional rail operation.

10 79. Petitioners are informed and believe and on that basis allege that another Funding Plan is
11 planned to allow CHSRA to expend \$84 million of Prop. 1A bond funds to help fund building a
12 grade separation at the current E. 25th Avenue grade crossing of the Caltrain tracks in the City of
13 San Mateo. Petitioners are further informed and believe and on that basis allege that the Funding
14 Plan for that project, which would also necessarily rely on AB 1889 for compliance with Prop. 1A
15 requirements, is also proposed to be completed and approved in 2017.

16 80. Like the Rosecrans Avenue/Marquardt Avenue grade separation, the 25th Avenue grade
17 separation would, when its construction is completed in accordance with its Funding Plan, not be
18 suitable and ready for high-speed train operation, but only for conventional Caltrain commuter rail
19 and Union Pacific Railroad freight rail operation.

17 **CHARGING ALLEGATIONS**

18 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF** 19 (Violation of Article XVI Section 1 of the California Constitution)

20 81. PETITIONERS reallege and incorporate by this reference the allegations contained in
21 Paragraphs 1 through 80 of this petition and complaint.

22 82. Once the voters approved Prop. 1A on the November 2008 ballot, its provisions became
23 law and binding on CALIFORNIA and all California agencies, including CHSRA.

24 83. Under Article XVI Section I of the California Constitution, any state general obligation
25 bond measure, once approved by the voters, may not be repealed except by the California voters.
26 The case law on that constitutional provision makes clear that any attempt by the legislative body
27 to materially alter the provisions, and specifically the requirements, of a voter-approved bond

1 measure is, in effect, a partial repeal of the measure, and is only valid if it has been ratified by the
2 voters.

3 84. PETITIONERS assert that AB 1889, and specifically Streets & Highways Code § 2704.78,
4 although it purports to “clarify” the provisions of § 2704.08, in reality materially changes the
5 requirements for Funding Plans prepared pursuant to § 2704.08 by allowing Prop. 1A bond funds
6 to be expended on a segment of the proposed high-speed rail system even though, at the
7 completion of construction pursuant to the Funding Plan, the segment would not be suitable and
8 ready for high-speed train operation.

9 85. PETITIONERS further assert that, by materially changing the terms of a voter-approved
10 California general obligation bond measure without having that change ratified by California
11 voters, AB 1889, and specifically Streets & Highways Code § 2704.78 violates Article XVI
12 Section 1 of the California Constitution, and that the statute is therefore unconstitutional and void.

13 86. CHSRA has publicly asserted, through the Chair of its BOARD, that AB 1889 and
14 § 2704.78 are valid legislative enactments that it may rely upon in approving Funding Plans for its
15 high-speed rail system.

16 87. PETITIONERS are informed and believe and on that basis allege that CALIFORNIA also
17 asserts that AB 1889 and § 27045.78 are valid legislative enactments.

18 88. PETITIONERS, on the other hand, assert that AB 1889 and Streets & Highways Code §
19 2704.78 violate Article XVI Section 1 of the California Constitution.

20 89. CHSRA has already approved two Funding Plans in reliance on the constitutionality of AB
21 1889. Petitioners are informed and believe and on that basis allege that CHSRA is in the process
22 of preparing, using public funds, at least two additional Funding Plans that will rely on AB 1889
23 for compliance with the requirements of Prop. 1A. Petitioners are further informed and believe
24 that CHSRA, as a matter of policy, intends to continue to rely on the validity of AB 1889 in
25 preparing and approving future Funding Plans for its proposed high-speed rail system.

26 90. PETITIONERS seek this Court’s judicial declaration as to the validity of AB 1889 and
27 § 2704.78 and of the parties’ rights, responsibilities, and duties in relation to pending Funding
28 Plans and expenditures of public funds on those Funding Plans pursuant to that declaration.

29 **SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF**
30 Code of Civil Procedure §526a – illegal expenditure of public funds

1 91. PETITIONERS reallege and incorporate by this reference the allegations of paragraphs 1-
2 90 inclusive.

3 92. CHSRA has been and is continuing to expend public funds towards the preparation and
4 approval of Funding Plans in reliance on the validity of AB 1889.

5 93. One of those Funding Plans, the CV Segment Funding Plan, has been approved by the
6 Director of Finance.

7 94. Subsequent to that approval, the State of California has sold 1.25 billion of Prop. 1A bond
8 funds intended for use in construction of the CV Segment.

9 95. PETITIONERS are informed and believe and on that basis allege that CHSRA either has
10 already begun or will shortly begin to encumber and expend Prop. 1A bond funds towards the
11 construction of the CV Segment.

12 96. Because AB 1889 attempts to alter materially the provisions and requirements of Prop. 1A,
13 a voter-approved general obligation bond measure of the State of California, without ratification
14 by California voters, it violates Article XVI Section 1 of the California Constitution.

15 97. Because the CV Segment Funding Plan must rely on the provisions of AB 1889 to meet the
16 requirements of §2704.08(d), it is, in fact, invalid and in violation of the provisions of Prop. 1A.

17 98. Any expenditure of Prop. 1A funds in reliance on the CV Segment Funding Plan is an
18 illegal expenditure of public funds that may be enjoined under Code of Civil Procedure §526a.

19 99. CHSRA has already expended public funds towards the preparation and approval of both
20 the CV Segment Funding Plan and the SF-SJ Corridor Funding Plan, both of which must rely on
21 AB 1889 to meet the requirements of Prop. 1A.

22 100.If AB 1889 is, in fact, unconstitutional, any Funding Plan that must rely on it for
23 compliance with the requirements of Prop. 1A must be invalid, and therefore any expenditure of
24 public funds towards the preparation of such a Funding Plan is a wasteful use of public funds.

25 101.The BOARD had already been informed, shortly after the final passage of AB 1889, and
26 before it took any actions in reliance on that measure, that it was an unconstitutional attempt by the
27 Legislature to modify a voter-approved bond measure and therefore violated Article XVI Section 1
28 of the California Constitution.

29 102.Despite this warning, neither CHSRA nor the BOARD took any action to seek a definitive
30 legal determination, through an action for declaratory relief or otherwise, of whether AB 1889 was
constitutional.

1 103. By failing to seek a definitive determination of the constitutionality of AB 1889 prior to
2 relying upon it to expend public funds towards preparation of Funding Plans that relied on
3 AB 1889 for compliance with the requirements of Prop. 1A, the Board failed to exercise due care.

4 104. Under Code of Civil Procedure § 526a, any California taxpayer may sue to seek that funds
5 that have been illegally or improperly spent be restored to the public fisc.

6 105. Accordingly, PETITIONERS seek this court's temporary restraining order, preliminary
7 injunction and permanent injunction for the following:

- 8 a. to bar CHSRA, its officers, agents, employees, contractors, and any others working
9 in concert with it on the CV Segment or the SF-SJ Corridor Segment from
10 encumbering or expending any Prop. 1A bond funds towards the implementation of
11 the Funding Plans for those segments;
- 12 b. to bar CHSRA from expending any public funds towards the completion or
13 approval of funding plans currently in progress that rely on § 2704.78 for their
14 validity

15 106. PETITIONERS further seek this Court's order that the BOARD's individual members
16 repay any public funds that have already been illegally or wastefully spent by CHSRA in reckless
17 reliance on the validity of § 2704.78 and restore those funds to their proper source or sources.

18 **THIRD CAUSE OF ACTION – ADMINISTRATIVE AND TRADITIONAL MANDAMUS**
19 Code of Civil Procedure §§ 1085 and 1094.5

20 107. PETITIONERS reallege and incorporate by this reference the allegations of paragraphs 1-
21 106 inclusive.

22 108. After the approval of a preliminary Funding Plan in 2011, CHSRA, the BOARD, and the
23 CEO had a clear, present, and mandatory duty to ensure that any Funding Plan and associated
24 documents prepared pursuant to Street & Highways Code § 2704.08(d) to follow up on that
25 preliminary Funding Plan include or certify to all the information required in subdivision (d) of
26 section 2704.08, to provide the Director of the Department of Finance with the assurances the
27 voters intended that the high-speed rail system can and will be completed as provided in the Bond
28 Act.

29 109. Among those assurances was the requirement that, if the Usable Segment described in the
30 Funding Plan was completed as proposed in the Funding Plan, it would be suitable and ready for
31 high-speed train operation.

Count One – Preparation and Approval of the CV Segment Funding Plan.

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110. Contrary to that requirement, the CV Segment Funding Plan only provides that the CV Segment, when completed according to that plan, would be suitable and ready for testing high-speed rail trains and associated systems.

111. Further, the CV Segment Funding Plan, contrary to the requirements of § 2704.08(d) does not provide a ridership and revenue report *for high-speed train operation on that segment*. Rather, it provides a ridership and revenue report for the San Joaquin Amtrak service that the CV Segment might be used for. The Funding Plan does provide a general external reference to ridership and revenue information for the proposed “Valley to Valley” high-speed train Segment, but that is not the Usable Segment proposed for construction in the Funding Plan.

112. For these reasons, CHSRA, the BOARD, and the CEO failed to perform their clear, present, and mandatory duties in preparing the CV Segment Funding Plan and abused their discretion in approving that Funding Plan and its associated reports.

Count Two – Preparation of the SF-SJ Corridor Segment Funding Plan.

113. Contrary to the requirement of Streets & Highways Code § 2704.08(d), the SF-SJ Corridor Segment Funding Plan does not provide for construction of a usable segment that, when completed according to that Funding Plan, will be suitable and ready for high-speed train operation. Rather, the SF-SJ Corridor Segment Funding Plan only provides that, when completed according to that plan, the SF-SJ Corridor Segment will be suitable and ready for electrified conventional Caltrain commuter rail operation.

114. Completion of a SF-SJ Corridor Usable Segment that would be suitable and ready for high-speed train operation would require numerous further improvements for which funding has been neither identified nor secured as that segment is described in the SF-SJ Corridor Funding Plan, and whose construction is also neither described nor provided for in that Funding Plan.

115. Because the SF-SJ Corridor Segment Funding Plan does not create a segment that, when completed, would be suitable and ready for high-speed train operation, the SF-SJ Corridor Funding Plan also does not provide ridership and revenue information for high-speed rail operation *on that segment*. Rather, information is provided on Caltrain current and projected ridership and revenue. The Funding Plan does provide a general external reference to Ridership and Revenue information for the Valley to Valley Segment and for the eventual planned high-speed rail service along the

1 Peninsula Corridor, but neither of those is the Usable Segment proposed for construction in the
2 Funding Plan.

3 116. For these reasons, CHSRA, the BOARD, and the CEO failed to perform their clear,
4 present, and mandatory duties in preparing the SF-SJ Corridor Segment Funding Plan and abused
5 their discretion in approving that Funding Plan and its associated reports.

6 **FOURTH CAUSE OF ACTION – ADMINISTRATIVE AND TRADITIONAL
MANDAMUS**

7 Code of Civil Procedure §§ 1085 and 1094.5

8 117. PETITIONERS reallege and incorporate by this reference the allegations of paragraphs 1-
9 116 inclusive.

10 118. Under Streets & Highways Code § 2704.08(d), the DOF is to review and consider the
11 Funding Plan and associated documents, including the report or reports prepared by one or more
12 financial services firms, financial consulting forms, or other consultants evaluating the Funding
13 Plan, as well as any communication he receives from the Joint Legislative Budget Committee and
14 any other relevant evidence.

15 119. After reviewing the information required to be provided to him under Streets & Highways
16 § 2704.08(d), the DOF is to make a finding as to whether the Funding Plan is likely to be
17 successfully implemented as proposed.

18 120. While the DOF was provided the CV Segment Funding Plan, the SF-SJ Corridor Segment
19 Funding Plan, independent consultant reports evaluating those plans, and communications from the
20 Joint Legislative Budget Committee, as well as other communications, both the CV Segment
21 Funding Plan and the SF-SJ Corridor Segment Funding Plan were defective, as described in the
22 Third Cause of Action, *supra*, in that they failed to contain the information required under Streets
23 & Highways Code § 2704.08(d).

24 121. As a consequence, the DOF's considerations of both the CV Segment Funding Plan and
25 the SF-SJ Corridor Segment Funding Plan and their associated documentation were flawed
26 because the Funding Plans and associated documentation did not include information required to
27 be considered under Streets & Highways Code § 2704.08(d).

28 122. Consequently, the DOF's decisions: 1) determining that the CV Segment Funding Plan
29 was likely to be successfully implemented; and 2) to defer further consideration of the SF-SJ
30 Corridor Segment Funding Plan; were fatally flawed, invalid, and abuses of his discretion and his

1 decision accepting the CV Segment Funding Plan was a failure to perform properly an act which
2 the law specially enjoins, as well as an abuse of his discretion.

3 **WHEREFORE**

4 PETITIONERS pray for relief as follows:

5 1. For this Court's declaration that AB 1889 violates Article XVI Section 1 of the California
6 Constitution both on its face and as applied to the Funding Plans that are currently being prepared
7 by CHSRA, that AB 1889 is therefore invalid and void, and that neither CHSRA nor its BOARD
8 may rely upon AB 1889 in preparing or approving any future Funding Plan.

9 2. For this Court's temporary restraining order, preliminary injunction, and permanent
10 injunction preventing CHSRA from expending any public funds toward the approval of the two
11 Funding Plan now in preparation that rely on AB 1889 to find compliance with the requirements of
12 Prop. 1A, as well as any future Funding Plan that must rely on AB 1889 to comply with the
13 requirements of Prop. 1A.

14 3. For this Court's temporary restraining order, preliminary injunction, and permanent injunction
15 preventing CHSRA from expending any Prop. 1A high-speed rail bond funds towards the construction of
16 any and all projects or the acquisition of any equipment or property based on a Funding Plan that relies
17 upon AB 1889 to find compliance with the requirements of Streets & Highways Code §2704.08(d).

18 4. For the recovery from the BOARD and its members and restoration to their proper funding
19 source of any funds that CHSRA has illegally, improperly, or wastefully spent towards the
20 preparation or approval of improper/noncompliant Funding Plans, and of any Prop. 1A funds
21 illegally spent to implement or in reliance upon such improper and/or illegal Funding Plans.

22 5. For a peremptory writ of mandate directed at Respondents and Defendants CHSRA, the
23 BOARD, and CEO directing them to rescind their approvals of the CV Segment Funding Plan and
24 the SF-SJ Corridor Segment Funding Plan and to follow the requirements of Streets & Highways
25 Code § 2704.08(d) as approved by the voters in preparing and approving any and all Funding Plans
26 pursuant to that subsection.

1 6. For a peremptory writ of mandate directed at Respondent and Defendant DOF directing
2 him to rescind his determinations on both the CV Segment Funding Plan and the SF-SJ Corridor
3 Segment Funding Plan and, instead, to reject both of those Funding Plans as invalid.

4 7. For a peremptory writ of mandate directed at Respondent and Defendant DOF directing
5 him to follow the requirements of Streets & Highways Code § 2704.08(d) as approved by the
6 voters in evaluating the completeness and propriety of any and all Funding Plans submitted to him
7 by CHSRA and making his determinations pursuant to that subsection.

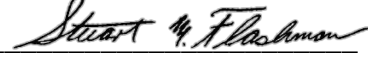
8 8. For an award of attorneys' fees to PETITIONERS in the public benefit under Code of Civil
9 Procedure §1021.5 or any other applicable provision.

10 9. For PETITIONERS' costs of suit herein.

11 10. For such other and further relief as the Court may find just and proper.

12 May 25, 2017

13 Michael J. Brady
14 Stuart M. Flashman
15 Attorneys for PETITIONERS

16 by 

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VERIFICATION

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I, Quentin Kopp, am a petitioner and plaintiff in this action. I have read the foregoing second amended petition and complaint and am familiar with the matters alleged therein. All of the facts stated therein are true of my own knowledge, except as to matters alleged based on information and belief, and as to such matter I am informed and believe that the matters stated therein are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on May 24, 2017 2017 at San Francisco, California.

Quentin Kopp

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com

September 23, 2016

Hon. Michael Cohen, Director of
Finance
California Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

Re: Legality of approving a Final Funding Plan for the California High-Speed Rail Authority pursuant to Streets & Highways Code Section 2704.08(d).

Dear Mr. Cohen,


I am writing to you on behalf of my clients: the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the Community Coalition on High-Speed Rail, in the wake of the Legislature's recent passage of Assembly Bill 1889. That bill purports to "clarify" language contained in California Streets & Highways Code §2704.08, which was approved by California voters in November 2008 as part of Proposition 1A, the Safe, Reliable, High-Speed Passenger Train Bond Act for the Twenty-First Century.

While AB 1889 has not yet been signed by the Governor, I wanted to put you on notice that, as my clients have already indicated to the Legislature during its consideration of the bill, the bill violates Article XVI, Section 1 of the California Constitution. It does so by materially changing the terms of Proposition 1A after its approval by the voters without referring that change to the voters for their ratification.

I expect that, assuming the Governor does not veto the bill because of its unconstitutionality, once it is signed, the California High-Speed Rail Authority plans to prepare, approve, and send to you for your approval, one or more Final Funding Plans, as described in Streets & Highways Code §2704.08(d), for your consideration and approval. I also expect that the funding plan(s) will rely on AB 1889 in determining that the usable segment(s) involved will be, when the construction proposed in the funding plan is complete, "suitable and ready for high-speed train operation." However, that assertion will be fraudulent and contrary to the voters' intent when they approved Proposition 1A.

The meaning of the language in question in §2704.08 was abundantly clear when it was presented to the voters. The Legislature may not, after the fact, attempt to "clarify" that language in a way that fundamentally alters the expressed voters' intent. Consequently, my clients will be filing an action for declaratory and injunctive relief challenging the validity of AB 1889. You will be named as a respondent and defendant in that suit, as your approval of the funding plan(s) would be a necessary step towards the illegal expenditure of the bond funds, and the lawsuit will seek to enjoin that approval, as well as other steps that would involve or lead to the illegal expenditure of public funds. Please feel free to contact me if you need more information.

Most sincerely


Stuart M. Flashman

cc: J. Brown, Governor
J. Chiang, State Treasurer
B. Yee, State Controller
Assembly Member K. Mullin
B. P. Kelly, Secretary of State Transportation Agency
D. Richard, Chair, California High-Speed Rail Authority Board
J. Hartnett, General Manager, Caltrain