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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
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12 **JOHN TOS, QUENTIN KOPP, TOWN OF**
ATHERTON, a municipal corporation,
13 **COUNTY OF KINGS, a subdivision of the**
State of California, **MORRIS BROWN,**
14 **PATRICIA LOUISE HOGAN-GIORNI,**
ANTHONY WYNNE, COMMUNITY
15 **COALITION ON HIGH-SPEED RAIL, a**
California nonprofit corporation,
16 **TRANSPORTATION SOLUTIONS**
DEFENSE AND EDUCATION FUND, a
17 **CALIFORNIA nonprofit corporation, and**
CALIFORNIA RAIL FOUNDATION, a
18 **CALIFORNIA nonprofit corporation,**

19 Petitioners,

20 v.

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

24 Respondents.
25

Case No. 34-2016-00204740

**DEFENDANTS' NOTICE OF HEARING
AND MOTION TO STRIKE
ALLEGATIONS FILED
CONCURRENTLY WITH A
DEMURRER TO VERIFIED AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 18, 2017
Time: 9:00 a.m.
Dept: 54
Judge: Raymond M. Cadei
Trial Date: Not set
Action Filed: December 13, 2017

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1 In addition, the Authority will and hereby does move to strike the underlying allegations
2 that purport to support plaintiffs' Prayer for injunctive relief:

3 4. The second sentence of Paragraph 3: Page 3, lines 3-6, which states:

4 PLAINTIFFS also seek injunctive relief under Code of Civil Procedure § 526a to halt
5 CHSRA's illegal, improper, wasteful, and unconstitutional use of public funds and to
6 require CHSRA to restore to the State Treasury all funds involved in these illegal,
7 improper, and/or wasteful expenditures.

8 5. The entire Paragraph 14: Page 6, lines 1-7, which states:

9 If CHSRA is not enjoined from moving forward on its illegal, improper,
10 wasteful, and unconstitutional expenditures and from undertaking acts in furtherance
11 thereof, PLAINTIFFS will suffer irreparable harm for which there is no adequate
12 remedy at law in that CHSRA will have violated the express intent of California's
13 voters in approving Prop. 1A and will have expended those public funds
14 inappropriately and illegally on projects that are not qualified for those expenditures
15 under Prop. 1A's requirements, thereby misusing and wasting those funds in
16 violation of the will of California's voters.

17 6. The entire Paragraph 69: Page 14, lines 18-23, which states:

18 Accordingly, plaintiffs seek this court's temporary restraining order,
19 preliminary injunction and permanent injunction to bar CHSRA from expending any
20 public funds towards the completion and approval of funding plans that rely on
21 § 2704.78 for their validity, or from expending any Prop. 1A bond funds towards
22 their implementation. PLAINTIFFS further seek this Court's order that any Prop. 1A
23 bond funds that have already been illegally spent by CHSRA in reliance on the
24 validity of § 2704.78 be repaid and restored to the California State Treasury so that
25 they may be used properly in accordance with the voters' intent.

26 This motion is set concurrently with the Authority's demurrer to the same complaint and
27 will be based on this notice of hearing and motion to strike, the attached memorandum of points
28 and authorities, the request for judicial notice filed concurrently herewith, the pleadings, records,
and files in this case, and on such further argument as the Court may entertain at the hearing of
this motion and the demurrer.

This alternative motion to strike is on the grounds that the pleading is substantively
defective and therefore does not conform to the laws of this State.

Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this
matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings
for the department may be downloaded off the court's website. If the party does not have online
access, they may call the dedicated phone number for the department as referenced in the local

1 telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the
2 hearing and receive the tentative ruling. If you do not call the court and the opposing party by
3 4:00 p.m. the court day before the hearing, no hearing will be held.

4
5 Dated: March 15, 2017

Respectfully Submitted,

6 XAVIER BECERRA
7 Attorney General of California
8 TAMAR PACHTER
9 Supervising Deputy Attorney General

10 

11 SHARON L. O'GRADY
12 Deputy Attorney General
13 *Attorneys for Respondents*
14 *California High-Speed Rail Authority*

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This action challenges administrative decisions of the California High-Speed Rail Authority (the "Authority") to spend the proceeds of state general obligation bonds on construction of segments of a high-speed rail system. More specifically, the Second Cause of Action seeks to enjoin the High-Speed Rail Authority from spending money to implement certain administrative decisions made or to be made in the future by the Authority that plaintiffs allege violate the Bond Act. Plaintiffs allege that the expenditures will be made in reliance on Assembly Bill No. 1889, which clarifies a provision of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, and which plaintiffs allege is unconstitutional. Plaintiffs also seek a mandatory injunction requiring the Authority to "recover[] and restor[e]" to the State Treasury monies that have been spent in reliance on AB 1889.

If the Court does not sustain the Authority's demurrer to the Second Cause of action, the Court should grant this motion to strike the requests for injunctive relief. The sole remedy available to redress plaintiffs' challenge to the Authority's administrative decisions is a writ of mandamus, not an injunction. Further, the request for an injunction against future spending would either be an idle act or would require the Court to choose between violating the vagueness doctrine or violating the prohibition on advisory opinions. The requested order to recover and turn over to the State Treasury monies that have already been spent lacks any support in law. Accordingly, plaintiffs' requests for injunctive relief should be stricken.

BACKGROUND

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I. THE SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY.

California voters passed Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. (Stats. 2008, ch. 267, § 9 [Proposition 1A (Assem. Bill. No. 3034

1 (2007-2008 Reg. Sess.)), codified at Sts. & Hy. Code, § 2704 et seq.,² hereafter, “Bond Act”).
2 The Bond Act authorized construction of a high-speed rail system in California, and the issuance
3 of \$9 billion in general obligation bonds to partially fund the initial segments of the system. (§
4 2704.04, subs. (a), (b) It permits the Authority to use the proceeds of bond sales (“bond funds”).
5 (§ 2704.04, subd. (b)(1)(B).) Generally, before the Authority can spend bond funds on
6 construction costs or to acquire real property, it must approve and submit to the Director of
7 Finance and the Chairperson of the Joint Legislative Budget Committee a detailed funding plan.
8 (§ 2704.08, subd. (d)(1).) If, after receiving any communication from the Joint Legislative
9 Budget Committee, the Director of Finance finds that the project is likely to be successfully
10 implemented as proposed in the funding plan, the Authority may commit bond proceeds for
11 capital costs. (§ 2704.08, subd. (d).) Assembly Bill No. 1889, (2015-2016 Reg. Sess) (hereafter,
12 “AB 1889”), clarifies a Bond Act requirement that, on completion, certain projects approved
13 under section 2704.08, subdivision (d), will be “suitable and ready for high-speed train
14 operation.”

15 II. ALLEGATIONS OF THE COMPLAINT.

16 The Second Cause of Action alleges that the Authority released two draft pre-expenditure
17 funding plans, one for a project in California’s Central Valley (the “Central Valley Funding
18 Plan”) and one for a project on the San Francisco peninsula (the “Peninsula Funding Plan”).
19 (FAC, ¶¶ 48, 62.) Plaintiffs allege that the Central Valley Funding Plan and the Peninsula
20 Funding Plan can only comply with the Bond Act if AB 1889 is determined to be legally valid.
21 (*Id.*, ¶¶ 51, 52, 62.) Plaintiffs further allege that once the Central Valley Funding Plan and the
22 Peninsula Funding Plan have been approved by the Director of Finance, the Authority will spend
23 money illegally on the projects to be constructed pursuant to those plans, and that spending in
24 connection with those plans and on future funding plans “that must rely on the provisions of
25

26
27 ² Hereafter, all statutory cites are to the Streets and Highways Code unless otherwise
28 indicated.

1 AB 1889” will be an illegal expenditure of public funds. (*Id.*, ¶¶ 64, 66). Plaintiffs ask the Court
2 to enjoin future expenditures, specifically:

3 2. For this Court’s temporary restraining order, preliminary injunction, and
4 permanent injunction preventing CHSRA from expending any public funds toward
5 the approval of a Funding Plan that relies on AB 1889 to find compliance with the
6 requirements of Prop. 1A.

7 3. For this Court’s temporary restraining order, preliminary injunction, and
8 permanent injunction preventing CHSRA from expending any Prop. 1A high-speed
9 rail construction bond funds towards the construction of any and all projects based on
10 a second Funding Plan that relies on AB 1889 to find compliance with the
11 requirements of Streets & Highways Code §2704.08(d).

12 (FAC Prayer.) In addition, the FAC asks:

13 4. For the recovery and restoration to the California State Treasury of any
14 funds that CHSRA has illegally, improperly or wastefully spent toward the
15 preparation or approval of improper/non-compliant Funding Plans, and of any Prop.
16 1A funds illegally spent to implement or in reliance upon such improper and/or illegal
17 Funding Plans.

18 (*Ibid.*)³ The FAC concedes that the Central Valley Funding Plan and Peninsula Funding Plan are
19 not final decisions, and that plaintiffs intend to supplement the Complaint if the plans are
20 approved by the Director of Finance. (FAC, ¶ 86.)

21 ARGUMENT

22 I. APPLICABLE LEGAL STANDARD

23 A defendant may, within the time for filing a responsive pleading, file a motion to strike the
24 complaint in whole or in part. (Code Civ. Proc., § 435, subs. (a), (b).) While a demurer to a
25 portion of a cause of action is procedurally improper, where “a substantive defective is clear from
26 the face of the complaint . . . a defendant may attack that portion of the cause of action by filing a
27 motion to strike.” (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

28 The court may strike out “any irrelevant, false or improper matter,” or “[s]trike out all or
any part of any pleading not drawn or filed in conformity with the laws of this state.” (Code Civ.
Proc., § 436.) Irrelevant matter includes a demand for judgment requesting relief not supported
by the allegations of the complaint. (*Id.*, § 431.10, subd. (b)(3); *Caliber Bodyworks, Inc. v.*

³ Underlying allegations are contained in Paragraphs 3, 14 and 69 of the FAC.

1 *Superior Court of Los Angeles* (2005) 134 Cal.App.4th 365, 384-385 [“The appropriate
2 procedural device for challenging a portion of a cause of action seeking an improper remedy is a
3 motion to strike”]; accord *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164, 167-168
4 [holding that adequacy of punitive damages allegations could be tested by motion to strike].)

5 **II. PLAINTIFFS’ REQUESTS FOR INJUNCTIVE RELIEF SHOULD BE STRICKEN BECAUSE**
6 **THEY ARE BASED ON A CHALLENGE TO THE AUTHORITY’S FUNDING PLANS,**
7 **WHICH MUST BE BROUGHT IN A WRIT PROCEEDING.**

8 The Second Cause of Action challenges the Central Valley Funding Plan, the Peninsula
9 Funding Plan, and future funding plans that the Authority may approve, and seeks an injunction.
10 (FAC, ¶¶ 56-59, 63-67, 69.) However, an administrative decision by a public agency may only
11 be challenged by petitioning the court for a writ of mandate compelling the Authority to set aside
12 its determination. (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1466; *Excelsior*
13 *College v. Cal. Bd. of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1228, fn. 2; *State v.*
14 *Superior Court* (1974) 12 Cal.3d 237, 249, 251.) Thus, these challenges to the Authority’s
15 funding plans are only properly alleged in a writ proceeding, as in an earlier action brought by
16 some of the same plaintiffs, *California High-Speed Rail Authority v. Superior Court* (2014) 228
17 Cal.App.4th 676.⁴ In *California High-Speed Rail Authority v. Superior Court*, the Court
18 reviewed the Authority’s pre-appropriation funding plan under the standard for writ relief, stating:

19 Four simple words resolve the issues before us: clear, present, ministerial, and
20 duty. The refrain is a familiar one. To obtain writ relief under Code of Civil
21 Procedure section 1085, a petitioner must demonstrate that the respondent has a clear,
22 present, and ministerial duty that inures to the petitioner’s benefit.

23 (*Id.* at p. 707.) Plaintiffs cannot challenge these administrative decisions in a civil action.
24 (*Center for Biological Diversity v. California Department of Forestry and Fire Protection* (2014)
25 232 Cal.App.4th 931, 952, fn. 27 [“It is settled that an action for declaratory relief is not
26 appropriate to review an administrative decision,” quoting *State v. Superior Court, supra*, 12

27 ⁴ Plaintiffs John Tos and County of Kings were plaintiffs in the trial court writ proceeding
28 at issue in *California High-Speed Rail Authority v. Superior Court* and were represented by the
attorneys who are counsel of record for plaintiffs in this case.

1 Cal.3d at p. 249; *City of Pasadena v. Cohen*, *supra*, 228 Cal.App.4th at p. 1466 [same].) And
2 claims for injunctive relief cannot be joined with writ claims. (*Id.* at p. 1467.)

3 The fact that plaintiffs label the Second Cause of Action as brought under Code of Civil
4 Procedure section 526a does not save plaintiffs' request for injunctive relief. Section 526a
5 provides standing where it otherwise would not exist. (*Taxpayers for Accountable School Bond*
6 *Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1032; *Daily Journal*
7 *Corp. v. City of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557.) It cannot be used to convert
8 what otherwise would be a mandamus proceeding into a civil action. (*Nathan H. Schur, Inc. v.*
9 *City of Santa Monica* (1956) 47 Cal.2d 11, 17-18 [holding that cause of action brought under
10 section 526a did not convert a mandamus action into a civil proceeding]; *Animal Defense Fund v.*
11 *California Exposition and State Fairs* (2015) 239 Cal.App.4th 1286, 1301 [concluding that a
12 taxpayer action not an available where the Legislature has provided an administrative remedy];
13 see *Daily Journal Corp. v. City of Los Angeles*, *supra*, 172 Cal.App.4th at pp. 1557-1558
14 [applying mandamus analysis to a section 526a cause of action].) To hold otherwise would mean
15 that plaintiffs who are taxpayers could be afforded a remedy not available to plaintiffs who are
16 not taxpayers but have a direct and beneficial interest.⁵

17 Therefore, plaintiff's requests for injunctive relief should be stricken.

18 **III. THE FAC'S ALLEGATIONS ARE INSUFFICIENT TO SUPPORT PERMANENT**
19 **PROSPECTIVE INJUNCTIVE RELIEF.**

20 Even if plaintiffs could as an abstract matter be entitled to injunctive relief, which they
21 cannot for the reasons discussed above, the injunction plaintiffs seek would not be an appropriate
22 remedy in this case. Paragraphs 2 and 3 of the Prayer seek a permanent injunction preventing the
23 Authority from spending money on the Central Valley Funding Plan, the Peninsula Funding Plan,
24 and any future plans that "rel[y] on AB 1889."⁶ To the extent the plaintiffs seek no more than an

25 ⁵ Here, neither the City of Atherton nor the County of Kings allege taxpayer status. (FAC,
26 ¶¶ 6, 7.)

27 ⁶ The FAC is devoid of any allegations of fact that would suggest plaintiffs could meet the
28 standard for a preliminary injunction. Taxpayer status alone is not sufficient to support a
preliminary injunction. (*White v. Davis* (2003) 30 Cal.4th 528, 555-556; *Loder v. City of*
(continued...)

1 order requiring the Authority to comply with the law as expressed in a declaratory judgment
2 entered by the Court on plaintiffs' First Cause of Action (which is unripe for the reasons
3 discussed in the Authority's demurrer), the request is improper. To the extent the FAC seeks
4 anything else, it is hopelessly vague, or would require the Court to issue an advisory decision. In
5 either event, the request for injunctive relief should be stricken.

6 Under the Bond Act, the Authority must approve detailed funding plans in light of statutory
7 criteria that involve the exercise of discretion. (§ 2704.08, subd. (d).) The FAC asks the court to
8 enjoin various activities related to any future plan "that relies on AB 1889 to find compliance
9 with the requirements" of the Bond Act. (Prayer, ¶¶ 2-3.) To the extent plaintiffs simply seek to
10 recast any declaratory judgment that may be entered as an injunction, it is improper. Once a court
11 has issued a declaratory judgment determining that a statute is unconstitutional, absent allegations
12 that the state defendants intend to enforce the statute despite the declaratory judgment, there is no
13 basis on which a court may issue an injunction. (*Connerly v. Schwarzenegger* (2007) 146
14 Cal.App.4th 739, 742-743, 750 [holding that a court may not enter an injunction based on
15 speculation that defendants might try to enforce a statute that has been declared unconstitutional].)
16 "There is a presumption that state officers will obey and follow the law." (*Id.* at p. 751.)
17 Plaintiffs have pleaded no facts suggesting that the Authority would not conduct itself in
18 conformance with any final declaratory judgment entered in this case.

19 To the extent plaintiffs are seeking anything more – anything other than an injunction
20 requiring the Authority to comply with any declaratory judgment that may be entered – the
21 request is vague. "The vagueness doctrine bars enforcement of [an order] which either forbids or
22 requires the doing of an act in terms so vague that men of common intelligence must necessarily
23 guess at its meaning and differ as to its application." (*In re Sheena* (2007) 40 Cal.4th 875, 890,
24 892 [applying the doctrine to probation conditions, analogizing to an injunction].)

25
26
27 (...continued)
28 *Glendale* (1989) 216 Cal.App.3d 777, 784-785.)

1 The determination whether an Authority funding plan complies with the highly technical
2 statutory criteria is made in the first instance by the Authority in the exercise of its discretion,
3 after which it is subject to review (along with a report prepared by an independent financial
4 consultant) by the Director of Finance, the Joint Budget Committee, and a statutorily-mandated
5 peer review group. (§ 2704.08, subdivision (d)(b); Pub. Util. Code § 185035.) If approved by the
6 Director of Finance, the funding plan may be reviewed by a court in a traditional mandamus
7 proceeding for abuse of discretion. Issued in a vacuum, without context, the requested injunction
8 provides insufficient guidance to the Authority to enable it to know what conduct is or is not
9 permissible. It is unclear what is meant by “relies on AB 1889 to find compliance” with section
10 2704, subdivision (d), or at what point in the approval or construction process the Authority could
11 fairly be charged with knowledge that a given plan is non-compliant. In order to provide
12 sufficient guidance in its order, the Court would have to decide, in a setting devoid of factual
13 content, what potential funding plan characteristics would or would not be deemed to “rely on
14 AB 1889,” for their compliance with Proposition 1A. Such an advisory opinion “falls within
15 neither the functions nor the jurisdiction of this court.” (*People ex rel. Lynch v. Superior Court*
16 (1970) 1 Cal.3d 910, 912.)

17 **IV. AS A MATTER OF LAW, PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION TO**
18 **“RECOVER AND RESTORE FUNDS” TO THE CALIFORNIA TREASURY.**

19 Paragraph 5 of plaintiffs’ Prayer seeks recovery of monies that have been spent, i.e., “[f]or
20 recovery and restoration to the California State Treasury of any funds [the Authority] has illegally,
21 improperly or wastefully spent” in preparing, approving or implementing
22 “improper/noncompliant Funding Plans.” The request suffers from multiple fatal defects.

23 Although Section 526a may, in appropriate circumstances, be used to allow a taxpayer to
24 obtain an injunction before an illegal expenditure is made, it may not be used to sue for recovery
25 of expenditures already made. (Code Civ. Proc., § 526a; *O’Connell v. City & County of San*
26 *Francisco* (1928) 204 Cal. 1, at ** 1-2; *Fox v. City of Pasadena* (9th Cir. 1935) 78 F.2d 948, 950
27 [applying California law].)

1 To the extent the FAC could be construed as seeking an order requiring the Authority to
2 recover money from the third parties who have received payments from the Authority, it also
3 fails.⁷ Plaintiffs have failed to allege facts that would support a legal claim by the Authority to
4 recover monies from the third parties that received payments for goods or services provided, in
5 preparing, obtaining approval of, or implementing the allegedly illegal funding plans (see FAC,
6 ¶¶ 26, 69.) Since the FAC does not allege facts suggesting that the Authority has a claim against
7 such third parties, plaintiffs, who suing as taxpayers purport to act on behalf of the Authority,
8 have none. (*Silver v. City of Los Angeles* (1966) 245 Cal.App.2d 673, 677; see *Duskin v. San*
9 *Francisco Redevelopment Agency* (1973) 31 Cal.App.3d 769, 773.) Moreover, even if the FAC
10 had alleged that the Authority had legal claims it could pursue against third parties, which the
11 FAC does not, under either section 526a or common law, such a taxpayer lawsuit may be
12 maintained only if the government agency has a duty to act but refuses to do so. (*San Bernardino*
13 *County v. Superior Court, supra*, 239 Cal.App.4th at p. 686.)

14 “It has long been held that a government entity’s decision whether to pursue a legal
15 claim involves the sort of discretion that falls outside the parameters of waste under
16 section 526a and cannot be enjoined by mandate.” (*Daily Journal, supra*, at p. 1558[
17 And because deciding whether to pursue a legal claim is generally an exercise of
18 discretion, rather than “a duty specifically enjoined,” the common law too does not
19 normally provide the taxpayer a cause of action to pursue a legal claim on behalf of
20 the government entity. (*Silver [v. City of Los Angeles* (1962) 57 Cal.2d 39, 41].)
21 (*Ibid.*) And any effort to require the Authority to recover monies from third parties may only be
22 enforced by mandamus, not in a civil action. (*Fox v. City of Pasadena, supra*, 78 F.2d at p. 950;
23 see *San Bernardino v. Superior Court, supra*, 239 Cal.App.4th at p. 882.)

24 Further, the FAC asks the Court to order “recovery and restoration” of expended monies,
25 not to *the Authority*, but to *the State Treasury*. (FAC, ¶¶ 3, 69 & Prayer, Paragraph 5.) The FAC
26 alleges no facts that suggest that the Treasury has any entitlement to Authority funds. Indeed, the
27

28

⁷ In unusual circumstances, a taxpayer may sue *on behalf of* the government entity to
recover from a person receiving money illegally paid. (See *San Bernardino County v. Superior*
Court (2015) 239 Cal.App.4th 679, 681, 686-687.) But the FAC does not purport to do that. (See
FAC, ¶¶ 63-68.) And plaintiffs have not joined in this action any such third parties, which would
be required for such a suit. (See *San Bernardino County, supra*, 239 Cal.App.4th 679
[considering action against county and party with whom county contracted].)

1 FAC alleges that the Authority is spending *federal grant funds*. (FAC at ¶ 26.) And even if the
2 FAC had alleged that the Authority had spent Proposition 1A bond proceeds, which it does not,
3 those funds must be used in accordance with the Bond Act, which does not allow them to simply
4 become funds of the State Treasury. (§ 2704.06.)

5 For all of these reasons, Paragraph 5 of the Prayer is substantively defective and should be
6 stricken.

7 **V. THE REQUESTS FOR INJUNCTIVE RELIEF SHOULD BE STRICKEN, WITHOUT LEAVE**
8 **TO AMEND.**

9 Where a complaint is defective, in furtherance of justice courts liberally grant leave to
10 amend. (*Sandler v. Sanchez* (2012) 206 Cal.App.4th 1431, 1436-1437.) Leave should not be
11 granted, however, when amendment would be futile. (*Id.* at p. 1437.) Plaintiffs cannot cure their
12 requests for injunctive relief by further amendment to the complaint, because injunctive relief
13 simply is not available, for the reasons described above.

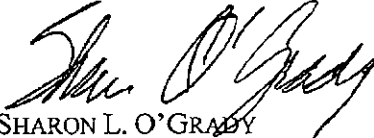
14 **CONCLUSION**

15 The Court should strike Paragraphs 3 through 5 of the prayer for relief contained in the
16 FAC, as well as the supporting allegations in the FAC, Paragraphs 3, 14 and 69, without leave to
17 amend.

18 Dated: March 15, 2017

19 Respectfully Submitted,

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21 Attorney General of California
22 TAMAR PACHTER
23 Supervising Deputy Attorney General

24 
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28 *California High-Speed Rail Authority*

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DECLARATION OF SERVICE

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority**

No.: **34-2016-00204740**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 15, 2017, I served the attached **DEFENDANTS' NOTICE OF HEARING AND MOTION TO STRIKE ALLEGATIONS FILED CONCURRENTLY WITH A DEMURRER TO VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:


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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 15, 2017, at San Francisco, California.

Susan Chiang

Declarant



Signature