KAMALA D. HARRIS
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General
SHARON L. O'GRADY
Deputy Attorney General
State Bar No. 102356
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5899
Fax: (415) 703-1234
E-mail: Sharon.OGrady@doj.ca.gov
Attorneys for Defendants/Respondents California High-Speed Rail Authority, Chief Executive Officer Jeff Morales, Governor Edmund G. Brown Jr., State Treasurer Bill Lockyer, Director of Finance Ana Matosantos, Secretary of California State Transportation Agency Brian P. Kelly and State Controller John Chiang

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiffs,

v.

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

Defendants.

Case No. 34-2011-00113919

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

Date: February 14, 2014
Time: 9:00 a.m.
Dept: 31
Judge: Hon. Michael P. Kenny

Trial Date: May 13, 2013
Action Filed: November 14, 2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION

This Court granted Plaintiffs partial relief on their writ claims and denied other relief by writ. Judgment on the pleadings should now be entered in Defendants' favor on any non-writ claims purportedly pled pursuant to Code of Civil Procedure section 526a ("Section 526a"), and a final judgment entered reflecting resolution of both the writ claims earlier resolved by this Court, and any purported Section 526a claims. Plaintiffs have received all the relief to which they are entitled. This Court should grant this motion to avert further proceedings that would needlessly consume judicial resources.

Plaintiffs' Section 526a claims suffer from several defects. First and foremost, where, as here, a litigant is challenging agency action – no matter what claim is alleged, no matter what facts are alleged in support of the claim, and no matter what remedy is sought – relief may only be obtained by petition for writ of mandamus. Second, some of the claims Plaintiffs seek to assert are not even alleged in the Second Amended Complaint. Plaintiffs cannot ask this Court to adjudicate new claims as they may occur to counsel; relevant allegations must actually be made in the operative complaint. But even the purported Section 526a claims that ***are*** alleged in the complaint fail to state facts sufficient to constitute a cause of action, first, because they are demonstrably without legal foundation, and second, because they were fully resolved in the context of the writ proceedings.

SUMMARY OF PLAINTIFFS' ALLEGATIONS

The Second Amended Complaint ("Complaint" or "SAC") is the operative pleading in this matter. This Court resolved all the writ claims alleged in two orders dated August 16 and November 25, 2013. What remains are civil claims against the Defendants, purportedly pled pursuant to Section 526a. By letter, Plaintiffs have narrowed these remaining claims which they wish to bring to trial. (Stuart Flashman, letter to Sharon O'Grady, Jan. 8, 2014 ("Flashman Letter").)[1] Their claims are now limited to the following:

[1] For the convenience of the Court, a copy of the Flashman Letter is attached hereto as Exhibit A.

I. CLAIM ONE – TWO HOUR AND 40 MINUTE TRAVEL TIME REQUIREMENT

> The currently proposed high-speed rail system does not comply with the requirements of Streets and Highways Code §2704.09 in that it cannot meet the statutory requirement that the high-speed train system to be constructed so that maximum nonstop service travel time for San Francisco – Los Angeles Union Station shall not exceed 2 hours and 40 minutes.

II. CLAIM TWO – THE NO-GOVERNMENT-SUBSIDY REQUIREMENT

> The currently proposed high-speed rail system does not comply with the requirements of streets [sic] and Highways Code §2704.09 in that it will not be financially viable as determined by the Authority and the requirement under §2704.08(c)(2)(J) that the planned passenger service by the Authority in the corridors or usable segments thereof will not require a local, state, or federal operating subsidy.

III. CLAIM THREE – BLENDED RAIL SYSTEM'S CONSTITUTIONALITY

> The currently proposed "blended rail" system is substantially different from the system whose required characteristics were described in Proposition 1A, and the legislative appropriation towards constructing this system is therefore an attempt to modify the terms of that ballot measure in violation of article XVI, section 1 of the California Constitution and therefore must be declared invalid.

IV. CLAIM FOUR – INABILITY TO CONSTRUCT A USEFUL PROJECT

> If Plaintiffs are successful in any of the above three claims, Proposition 1A bond funds will be unavailable to construct any portion of the Authority's currently-proposed high-speed rail system. Under those circumstances, the $3.3 billion of federal grant funds will not allow construction of a useful project. Therefore, under those circumstances the Authority's expenditure of any portion of the $3.3 billion of federal grant funds towards the construction of the currently-proposed system would be a wasteful use of public funds and would therefore be subject to being enjoined under Code of Civil Procedure §526a. [2]

This motion argues that judgment should be entered against Plaintiffs on each of the four remaining claims they have identified as outstanding for trial.

LEGAL STANDARD

Under Code of Civil Procedure section 438, subdivision (c)(1)(B), a defendant may move for judgment on the pleadings on the grounds that:

> (i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.
>
> (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

[2] While we have supplied the headings, Claims One through Four are quoted from the Flashman Letter.

(*Ibid.*)

A motion for judgment on the pleadings is equivalent to a demurrer and is subject to the same legal standard. All material facts which are properly pled are deemed true, but not contentions, deductions, or conclusions of fact or law. (*Mack v. State Bar of California* (2001) 92 Cal.App.4th 957, 961.) Additionally, the court may consider matters which may be judicially noticed, including court records, and a party's admissions or concessions which cannot reasonably be controverted. (*Ibid.; Barker v. Hull* (1987) 191 Cal.App.3d 221, 224.)

If the court grants the motion without leave to amend on the entire pleading, judgment "shall be entered forthwith" for the moving party. (Code of Civil Procedure, §438, subd.(h)(3).)

In addition, a common law motion for judgment on the pleadings survives enactment of Code of Civil Procedure section 438. (*Smiley v. Citibank (South Dakota) N.A.* (1995) 11 Cal.4th 138, 145 [common law motion for judgment on the pleadings upheld despite fact that Code of Civil Procedure section 438 was enacted during the course of proceedings]; *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5 [treating defective motion for summary judgment as 'nonstatutory motion for judgment on the pleadings'].) In *Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 649 [decided after enactment of section 438], the court held that a motion for judgment on the pleadings may be made at any time either prior to the trial or at the trial itself.

ARGUMENT

I. ALL CLAIMS ARE BARRED BECAUSE PLAINTIFFS' SOLE AVENUE FOR REVIEW OF AGENCY ACTION IS BY WRIT.

Defendants will show in Arguments II-IV that judgment on the pleadings should be entered because Plaintiffs' four specific claims were not pled, were already resolved by this Court's writ rulings, or are simply not cognizable. Even assuming, *arguendo*, there were unresolved civil claims within the scope of the Complaint, however, they would fail to state a claim and would be non-justiciable because judicial review of the agency action challenged here in a civil trial would be legally prohibited.

Plaintiffs propose a trial in which they can present lay and expert evidence to a jury or advisory jury to challenge the basis for the Authority's decisions. (Plaintiffs' Informal Case

Management Conference Statement, pp. 6-7.) But claims challenging quasi-legislative planning decisions of a public agency, including decisions that purportedly result in illegal expenditures of public funds, can only be reviewed for abuse of discretion based on the record of the underlying proceedings. (*Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 575, 579 [prohibiting admission of extra-record evidence to contradict evidence upon which an agency based its quasi-legislative decision].)

> It is established in reviewing quasi-legislative actions of administrative agencies that the scope of judicial ***review is limited to an examination of the proceedings before the agency*** to determine whether its actions have been arbitrary, capricious or entirely lacking evidentiary support, or whether it has followed the procedure or give the notices required by law.

(*McKinny v. Oxnard Union High School Dist. Bd. of Trustees* (1982) 31 Cal.3d 79, 88 [emphasis added]; *Hess Collection Winery v. Cal. Agricultural Labor Relations Bd.* (2006) 140 Cal.App.4th 1584, 1596-1597 [quoting *McKinny*].) In an analogous case brought under the California Environmental Quality Act ("CEQA"), the California Supreme Court held that evidence outside the agency record should not be considered:

> [J]ust as the appellate courts generally may not consider evidence not contained in the trial record when reviewing such findings, courts generally may not consider evidence not contained in the administrative record when reviewing the substantiality of the evidence supporting a quasi-legislative decision under [CEQA]. We also conclude that extra-record evidence is generally not admissible to show that an agency "has not proceeded in a manner required by law" in making a quasi-legislative decision. Such evidence is generally not admissible to challenge quasi-legislative decisions on non-CEQA grounds, and we see no reason to apply a different rule in CEQA cases.

(*Western States Petroleum Ass'n v. Superior Court*, *supra*, 9 Cal.4th at p. 565.) As the Supreme Court in *Western States Petroleum* observed, "[t]he propriety or impropriety of a particular legislative decision is a matter for the Legislature and the administrative agencies to which it has lawfully delegated quasi-legislative authority; such matters are not appropriate for the judiciary." (*Id.* at p. 572.)

Alleging claims under Section 526a does not alter the fact that Plaintiffs are challenging quasi-legislative decisions by the Authority. Section 526a provides standing where standing would not otherwise exist to challenge governmental actions, but it is not available to avoid

proper procedures for litigating claims challenging public agency planning decisions generally. (*Schur v. City of Santa Monica* (1956) 47 Cal.2d 11, 14, 16.) In *Schur*, a suit challenging, *inter alia*, expenditure of city funds in allegedly issuing licenses in violation of state law under Section 526a, the Supreme Court held that the trial court committed reversible error in considering independent evidence instead of confining its review to the city council record. The Court found that the allegation of a Section 526a action did not change the result.

> There appears to be no reason, however, why a municipal corporation with valid authority to do so, holding a public hearing and making a quasi-judicial determination with reference to the issuance of a license to engage in a certain business, should be required to justify its action in a trial de novo in the court ***whether the one attacking its determination is a taxpayer or one of the applicants for a license***. The local officials are vested with the power of determination and such determination is reviewable by mandamus or certiorari in which the issues are limited as set forth in *Fascination, Inc., v. Hoover* [(1952)] 39 Cal.2d 260, 246 P.2d 656.

(*Id.* at p. 17 [emphasis added]. See also *Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 656, 659 [a writ action holding that the trial court erred in admitting evidence that was not a part of the underlying administrative agency record].)[3] A writ issued in a mandamus action can address associated illegal expenditures and enjoin them. (*Long v. Hultberg* (1972) 27 Cal.App.3d 606, 609 [finding no difference between a writ and an injunction].) In fact, this was exactly the purpose of the recent supplemental briefing on the remedies issues and the Court's November 25 Ruling in which the Court determined there had been no illegal expenditures of public funds. (November 25, 2013 Ruling on Submitted Matter ("November 25 Ruling"), p. 5.)

Plaintiffs likewise have no surviving claim for declaratory relief. Declaratory relief actions cannot be used to challenge a specific quasi-legislative act of a public agency. (See *State v. Superior Court* (1974) 12 Cal.3d 237, 249 [declaratory relief is appropriate to test validity or constitutionality of a state law but not to challenge a specific quasi-legislative act of a public agency].) Moreover, a declaratory judgment action may not be used to challenge an agency action with evidence not a part of the administrative record. (*Guilbert v. Regents of University of*

[3] Although *Schur* happened to involve a quasi-judicial agency action, as the *Western States* decision shows, the same principle applies to quasi-legislative agency actions. *Western States Petroleum Ass'n v. Superior Court*, *supra*, 9 Cal.4th at p. 565.

California (1979) 93 Cal.App.3d 233, 244 [it is not possible to join a declaratory relief action with a mandamus claim to avoid limitations of judicial review of quasi-legislative agency decisions].) Thus Plaintiffs' purported Section 526a claims for declaratory relief provide no basis for a civil trial to review any quasi-legislative decisions of the Authority. These decisions can only be reviewed in mandamus, that proceeding has been concluded, and (as will be shown below) has already addressed most of the issues Plaintiffs now seek to re-litigate.

Finally, Plaintiffs' planned civil trial by expert testimony is not only prohibited under the controlling Supreme Court authority discussed above, it is particularly inapposite here because of the existing statutory provisions of Assembly Bill 3034 (2007-2008 Reg. Sess.), companion legislation to Proposition 1A. As Plaintiffs' trial brief and voluminous attached exhibits demonstrate, Plaintiffs intend to challenge the Authority's decision based on their purported expert witnesses. (See Plaintiffs' Informal Case Management Statement, pp. 6-7.) But AB 3034's amendments to the Public Utilities Code provides a specific structure to provide for review of the Authority's plans and to guide the Legislature in its decision to appropriate bond funds, which structure does not include litigation expert witnesses hired by unhappy property owners. It required the Authority to establish "an independent peer group for the purposes of reviewing the planning, engineering, financing, and other elements of the Authority's plans and issuing an analysis of the appropriateness and accuracy of the authority's assumptions and an analysis of the viability of the authority's financing plan, including the funding plan for each corridor . . . ." (Pub. Util. Code, § 185035, subd. (a).) The make-up of the Peer Review Group includes persons with specific high speed rail expertise. (*Id.*, § 185035, subd. (b).) The Peer Review Group is required to review the Authority's funding plans and prepare an independent evaluation. (*Id.*, § 185035, subd. (c).) The Peer Review Group then is required to report its findings to the Legislature, (*id.*, § 185035, subd. (e)), which ultimately has the sole power to appropriate monies for the project.[4] There is no allegation in the Complaint that the Authority

[4] As this Court found in its August 16, 2013, Ruling on Submitted Matter ("August 16 Ruling"), page 13, Proposition 1A does not give this Court authority to interfere with the Legislature's judgment to make an appropriation.

failed to appoint the Peer Review Group, or that the Peer Review Group did not do its job. (SAC, *passim*.) Nothing in Proposition 1A or AB 3034 purports to provide a private cause of action allowing citizens to second-guess the work of the Authority, the Peer Review Group, or the Legislature by submitting contradictory evidence provided by their own hired experts. In short, the statute provides a specific mechanism for review and evaluation of the Authority's funding plan and its business plan; that mechanism does not authorize a civil trial featuring a battle of experts.

II. PLAINTIFFS' CLAIMS WERE DETERMINED THROUGH THEIR WRIT CAUSES OF ACTION AND ARE NOW MOOT.

A. Plaintiffs Cannot Litigate Issues That Were Determined Through a Writ Cause of Action and Are Now Moot.

The above-described rules for judicial review of an agency's quasi-legislative decision have particular force when a court has already adjudicated mandamus claims. Where writ claims are granted or dismissed in a mandamus proceeding and a writ has issued granting or denying the same relief a plaintiff seeks in associated civil causes of action, the writ rulings necessarily dispose of the civil causes of action. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, 697-700.) That is true even when the trial court has not issued an order dismissing the civil causes of action or entered a formal order of judgment. (*Id.* at p. 698.)

> It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.

(*Ibid.* [quoting *Lyon v. Goss* (1942) 19 Cal.2d 659, 670].)

In *Griset*, for example, the Supreme Court held that the trial court's resolution of plaintiff's writ claims on the constitutionality of a law prohibiting anonymous campaign mailings by a candidate or candidate-controlled committees necessarily disposed of plaintiff's causes of action to enjoin future enforcement of the statute and to enjoin the Fair Political Practices Commission from enforcing fines for violation of the statute. (*Id.* at pp. 699-700.) Likewise, the Court's

disposition of plaintiffs' writ petition necessarily disposed of all of plaintiffs' claims, leaving nothing for trial. (Accord, *R & A Vending Services, Inc. v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1193-1194 [entry of writ of mandate barred remainder of lawsuit asserting claims for declaratory relief and injunction, since all three remedies sought were for the alleged invasion of a single primary right – plaintiff's alleged right to receive a city contract].)

B. Claims One Through Four Were Fully Resolved in the Writ Proceeding, Rendering Them Moot.

Claims One and Two rest on the same allegations and underlying facts as Plaintiffs' writ claims. The Court resolved all of Plaintiffs' writ claims either by granting them (ordering issuance of a writ instructing the Authority to rescind its funding plan), denying them (declining to invalidate the legislative appropriation based on the funding plan),[5] or dismissing them as unripe. (November 25 Ruling, p. 5.) Accordingly, Claims One and Two were fully resolved in the context of the writ claims and are moot.

Claim One alleges that the proposed high-speed rail system does not comply with Streets and Highways Code section 2704.09 because "it cannot meet the statutory requirement that the high-speed train system to be constructed shall be designed to achieve maximum nonstop service travel time for San Francisco – Los Angeles Union Station that shall not exceed 2 hours and 40 minutes." (Flashman Letter.) This essentially duplicates the allegations contained in the Complaint's fourth cause of action for mandamus, paragraph 42.2, which alleges that section 2704.09, subdivision (a) requires the system to be designed to run electric trains "capable of sustained maximum revenue operating speeds of no less than 200 miles per hour," and that the funding plan is not complaint with Streets and Highway Code section 2704.08(c). (SAC, ¶¶ 36.3, 45.) Plaintiffs asked for a writ to set aside the funding plan. (*Id.*, ¶¶ 40, 47.) This claim was resolved when the Court held that the funding plan was not compliant and ordered that a writ

[5] The Court has ruled there was no demonstrated impropriety in the expenditure of bond funds subject to funding plan requirements in subdivision (c) or (d). (November 25 Ruling, p. 5.) The Court also denied Plaintiffs' requested remedies associated with spending of, or commitments to spend, bond funds and federal funds following approval of the subdivision (c) funding plan, including a remedy that would have prevented the Authority from approving a subdivision (d) funding plan, and Plaintiffs' request for an accounting. (*Id.* at pp. 3-4.)

issue instructing the Authority to rescind it. (August 16 Ruling at pp. 7, 11; November 25 Ruling, p. 3.). Claim One was therefore mooted by resolution of the writ claims.

Claim Two, that the project "will not be financially viable" and meet the requirement that passenger service "will not require a local, state, or federal operating subsidy," (Flashman Letter.) duplicates the writ claims in the third cause of action, in which Plaintiffs alleged that the funding plan erroneously certified that passenger service "will not require a local, state or federal operating subsidy" (SAC, ¶ 36.4), as well as the eleventh cause of action, seeking writ and declaratory relief by incorporating these allegations (SAC, ¶ 84). These causes of action asked the Court to set aside the funding plan and subsequent approvals, including the funding plan under section 2704.08, subdivision (d). (SAC, ¶¶ 45, 85.) In its writ rulings, the Court granted Plaintiffs the relief they requested, rescinding the funding plan and finding that a compliant subdivision (c) plan is a necessary predicate to a subdivision (d) plan. (November 25 Ruling, pp. 2-3.)

To the extent the Court concludes Claims Three and Four have been pled (and Defendants believe they have not been for the reasons stated in Section IV below), these claims also have been resolved in the Court's writ rulings. Plaintiffs' twelfth cause of action (which incorporates by reference all of the allegations in the complaint, and by definition must encompasses all allegations pleaded), alleges a writ claim, which was fully resolved in this Court's rulings on the writ petitions. (November 25 Ruling, pp. 2-3.) The "Section 526a" allegations of this hybrid claim are based on the same facts – that expenditure of bond funds would be illegal because the funding plan is illegal. (SAC, ¶ 90.)

Thus, the substance of Plaintiffs' claims were resolved in the Court's mandamus rulings, rendering Plaintiffs' Section 526a claims moot, and therefore non-justiciable. (*Wilson & Wilson v. City Council of Redwood City, supra*, 191 Cal.App.4th at pp. 1572-1573.) The courts lack subject matter jurisdiction over cases in which there is no justiciable controversy, including disputes that have become moot. (*Housing Group v. United Nat. Ins. Co.* (2001) 90 Cal.App.4th 1106, 1111-1112; (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter

Group 2013) ¶ 3.123.35.) A trial court's adjudication of claims that have become nonjusticiable, either because they are not ripe or because they have been rendered moot, constitutes an abuse of discretion subject to reversal on appeal. (*Housing Group v. United Nat. Ins. Co.*, *supra*, 90 Cal.App.4th at pp. 1111-1112.)

C. The Fact that Plaintiffs Have Pled Section 526a Claims Does Not Save Them.

All of Plaintiffs' remaining claims have now been mooted either by this Court's grant of writ relief setting aside the Authority's funding plan or its rejection of other requested relief in connection with those writ claims. Plaintiffs cannot now pursue these claims simply by recasting them as taxpayer causes of action. To state a claim for relief under Section 526a, an action must allege "an actual or threatened expenditure of public funds," as well as the standing of the person bringing the action as a citizen or taxpayer. (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240, emphasis added, disapproved on other grounds in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155; *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 91; see (59 Cal.Jur.3d (2012) Taxpayers' Actions § 1 ["The taxpayer's suit is a means of satisfying the jurisdictional requirement that the plaintiffs have standing to sue."]). Section 526a provides a taxpayer standing to assert claims which otherwise would go unchallenged because of the standing requirement (*Waste Management of Alameda County, Inc. v. County of Alameda*, *supra*, 79 Cal.App.4th at p. 1239), it does not provide a stand-alone cause of action. (See *Schur v. City of Santa Monica* (1956) 47 Cal.2d 11, 17 [fact that plaintiff has challenged agency action through Section 526a does not entitle him to a civil trial].)

Here, the Court ordered a writ requiring the Authority to rescind the funding plan and has found that a new Streets and Highway Code section 2704.08, subdivision (c) plan is a prerequisite to the Authority's preparation of a section 2704.08, subdivision (d) plan, which in turn is a prerequisite for spending bond monies (other than the monies authorized for environmental, planning and preliminary engineering activities authorized under Streets and Highway Code section 2704.08, subdivision (g)). Plaintiffs have received all the relief to which they would be

entitled if they were to prevail on their four Section 526a claims.[6] No justiciable controversy remains, and a final judgment should be entered.

III. CLAIMS THREE AND FOUR FAIL TO STATE A CAUSE OF ACTION.

There are independent grounds for the Court to dismiss Claims Three and Four – if any were needed. They are not alleged in the Complaint.

A. Claim Three, Alleging that the Blended Rail System is Unconstitutional, Fails to State a Cause of Action.

In Claim Three, Plaintiffs contend that the current "blended rail system" is sufficiently different from the system described in Proposition 1A that it violates article XVI, section 1 of the California Constitution. But none of the allegations in the Complaint refer to the "blended rail system." (SAC, *passim.*) Nor does the complaint allege ***any*** constitutional violations. (*Ibid.*) Plaintiffs do not allege that the funding plan they challenge provides any bond funds for a "blended rail system." (*Ibid.*) Defendants cannot determine from the Complaint what Plaintiffs claim the "blended system" is and why it is unconstitutional. To the extent Plaintiffs are claiming non-compliance with the provisions of Streets and Highway Code sections 2407.08 or 2407.09, those claims were alleged as part of their writ claims, which have now been resolved. (SAC ¶¶ 27-30, 36.2-39, 42-47.) If Plaintiffs are referring to a proposed rail system not addressed in the funding plan and not described in the Complaint, its claims are plainly outside the scope of this litigation. Patently, Claim Three fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 438, subd. (c).)

B. Claim Four, Challenging the Authority's Use of Federal Funds, Fails to State a Cause of Action.

Claim Four, too, is not alleged in the complaint. In it, Plaintiffs posit that, if any of Plaintiffs' Claims One, Two or Three are determined to be valid, the Court should bar the Authority from spending any of the *federal* grant money it has received in connection with the

[6] It should be noted that injunction is a remedy, not a cause of action, and one that is available in a writ proceeding. (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.) Indeed, Plaintiffs requested an injunction in connection with their writ claims, a request the Court denied. (November 25 Ruling, p. 4.)

high-speed rail project. The Complaint, however, nowhere alleges that the Authority should be precluded from spending federal funds. (SAC, *passim.*)

Plaintiffs Case Management Statement urges that the twelfth cause of action provides a vehicle by which plaintiffs' may obtain section 526a relief. (Plaintiffs' Informal Case Management Statement, p. 7) That cause of action, however, does not ask the court to enjoin the Authority from spending federal funds, nor does it incorporate any other such allegation. (See SAC, ¶¶ 88-90.) In any event, it is far from clear that Plaintiffs have standing to challenge the Authority's spending of *federal* funds under section 526a – even if such allegations appeared in the complaint – because the use of federal funds does not injure Plaintiffs as state taxpayers. (See *Cornelius v. Los Angeles County Metropolitan Transportation Authority* (1996) 49 Cal.App.4th 1761, 1777-1778 [plaintiff challenging federal program implemented by transit authority does not have section 526a standing based on his payment of state income taxes, where state income taxes provide only a partial or indirect source of funding for the agency].) "To establish taxpayer standing the plaintiff must show a logical link between the plaintiff's taxpayer status and the type of legislative enactment attacked . . . ." (59 Cal.Jur.3d, *supra*, Taxpayers' Actions § 1.) There is no logical link between the individual Plaintiffs' status as *state* taxpayers and the Authority's use of federal grant funds. (See SAC, ¶ 1.) Accordingly, for this reason as well, Claim Four fails to state a cognizable cause of action.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiffs' remaining claims and enter a final judgment in this matter.

Dated: January 10, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

SHARON L. O'GRADY
Deputy Attorney General
Attorneys for Defendants/Respondents California High-Speed Rail Authority, Chief Executive Officer Jeff Morales, Governor Edmund G. Brown Jr., State Treasurer Bill Lockyer, Director of Finance Ana Matosantos, Secretary of California State Transportation Agency Brian P. Kelly and State Controller John Chiang

SA2011103068
40859911.doc