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8 Attorney for Plaintiffs  
9 JOHN TOS; AARON FUKUDA;  
AND COUNTY OF KINGS

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO

13  
14 JOHN TOS, et al.,

15 Plaintiffs,

16 v.

17 CALIFORNIA HIGH SPEED RAIL  
18 AUTHORITY, et al.,

19 Defendants.

CASE NO. 34-2011-00113919

**DECLARATION OF KATHY A.  
HAMILTON**

Trial Date: May 31, 2013

20 I, Kathy A. Hamilton, declare as follows:

21 1. I declare under penalty of perjury, that the following is true and correct, and that if  
22 called as a witness to testify to the following, I would be competent to so testify.

23 2. I am a resident of the City of Menlo Park, San Mateo County. I write on  
24 transportation issues for the SF Examiner, and since January 2010, have written over 150 articles  
25 on the California high-speed rail project.<sup>1</sup> I am also a board member of Community Coalition on  
26 High-Speed Rail, a group of concerned citizens who monitor the process of the high-speed rail  
27 project to inform the citizens of California. I have personal knowledge of the facts set forth in this  
28 declaration and am competent to testify as to them if called as a witness.

1           3.       I have a Bachelors degree in business from Dallas Baptist University (1986). From  
2 1977 to 1980, I was a real estate broker in Desoto, Texas. Between 1980 and 1998, I worked in  
3 the corporate relocation industry in various positions; such as Relocation Manager for a  
4 petroleum company, Vice President of Corporate Development and Training, and Director of  
5 Destination Services. In 1999 I was employed by Ernst & Young in Palo Alto, California as a  
6 Senior Manager in Global Services and managed an international program for a major technology  
7 firm with a worldwide implementation team. Currently I am writing about transportation issues as  
8 well as being self-employed as an independent furniture manufacturer’s representative.

9           4.       I have studied the California high-speed rail project since early 2009. In those four  
10 years I have attended more than 100 legislative hearings, California High-Speed Rail Authority  
11 (CHSRA), Caltrain meetings, and various private and public meetings throughout the state that  
12 related to the California high-speed rail project.

13           5.       I understand that an issue in this case is the ability of the high-speed train to meet  
14 both the promise to voters in the Voter Information Guide of 2008 that says: “*Travel from Los*  
15 *Angeles to San Francisco in about 2 1/2 hours . . .*” and Section 2704.09 (b)(1) of AB3034 that  
16 says the train will go from “*San Francisco-Los Angeles Union Station: two hours, 40 minutes.*”<sup>ii</sup>  
17 This declaration focuses on my attempts to obtain clear and accurate information from the  
18 CHSRA concerning the mileage, speeds and time it will take for the high-speed trains, as  
19 described in the Proposition 1A Voter Information Guide and AB3034, to make the journey  
20 between the downtowns of San Francisco and Los Angeles, as well as by city-to-city pairs  
21 indicated in AB3034. Specifically, I attempt to answer the question, “Does the April 2012  
22 Revised Business Plan, which incorporates the concept of a Phase 1 Blended system using  
23 existing rail infrastructure, meet the travel times required in Prop 1A and the enabling legislation,  
24 AB 3034?”

25           6.       While AB 3034 says that the train will be designed to achieve certain speed, or  
26 operate at certain speeds, AB3034 has no such ambiguity on required travel times. Section  
27 2704.09 says: “*The high-speed train system to be constructed pursuant to this chapter shall be*  
28 *designed to achieve the following characteristics: (a) Electric trains that are capable of sustained*

1 *maximum revenue operating speeds of no less than 200 miles per hour. (b) Maximum nonstop*  
2 *service travel times for each corridor that shall not exceed the following:*

3 *San Francisco to Los Angeles Union Station: two hours, 40*  
4 *minutes*

5 *Oakland to Los Angeles Union Station: two hours, 40 minutes*

6 *San Francisco to San Jose: 30 minutes*

7 *San Jose to Los Angeles Union Station: two hours, 10 minutes*

8 *San Diego to Los Angeles: one hour, 20 minutes*

9 *Inland Empire- Los Angeles: 30 minutes*

10 *Sacramento to Los Angeles: two hours, 20 minutes”*

11 7. The time of the train within a corridor or the sum of those corridors has two  
12 primary components: how fast the train will go, or can go in each corridor, and how many miles  
13 will it travel per corridor or between the downtown Union Station of Los Angeles and San  
14 Francisco’s Transbay Terminal. There is some ambiguity over speed since the Proposition says it  
15 will have electric trains that are capable of sustained maximum revenue operating speeds of no  
16 less than 200 miles per hour. But there is no interpretation needed for the city-set time  
17 requirements in AB3034.

18 8. Concerning the key element of route miles traveled there is a major discrepancy  
19 between the 2012 Revised Business Plan Fact Sheet and the Authority’s trip planner on its  
20 website. The Fact Sheet for the Phase 1 Blended System says: “*In 2029, dedicated high-speed*  
21 *infrastructure will extend from the San Fernando Valley to Los Angeles Union Station, linking the*  
22 *upgraded Metrolink corridor to Anaheim and connecting to commuter and urban rail systems*  
23 *throughout the Los Angeles region. The entire length of Phase 1 from San Francisco to*  
24 *LA/Anaheim is 520 miles.*”<sup>iii</sup> However, the CHSRA’s Trip Planner says that from San Francisco  
25 to Los Angeles is 432 miles and the trip will take 2 hours and 38 minutes.<sup>iv</sup> Or the distance from  
26 San Francisco to Los Angeles is 465 miles and that trip will take 2 hours and 57 minutes.<sup>v</sup> The  
27 differences of seventeen and eleven percent less, respectively, than the 520 miles are not  
28 insignificant and not only seem contradictory, but also confused. I believe this confusion, after

1 hundreds of millions of dollars already spent planning this project, is an indication of the lack of  
2 detail the Authority has demonstrated to date and seriously calls into question their ability to  
3 manage such a complex project involving billions of dollars.

4 9. My interest in the ‘elapsed times of the train journey’ issue began when I attended  
5 an Authority Operations Meeting in August 2009 with Board members present. At that time then-  
6 Executive Director, Mehdi Morshed, and then-Parson’s Brinckerhoff’s (PB) operational leader,  
7 Tony Daniels, were managing the project. In their August 2009 presentation, Mr. Daniels  
8 showed a slide that outlined how it was possible to achieve the elapsed times of the train journey  
9 required in Prop 1A.<sup>vi</sup> (Also see Exhibit A) The slide showed how the high-speed train would  
10 achieve the times shown city-to-city pairs and between Los Angeles and San Francisco’s city  
11 centers. This was a Phase 1 Full Build system; that is, a four-track system the full distance  
12 between the state’s two major metropolises.<sup>vii</sup> According to Mr. Daniels, a Parsons Brinckerhoff  
13 team created the model underlying the times between cities. I have sought expert opinion on  
14 ‘elapsed times of the train journey’ issue since a discussion began that the Authority might offer a  
15 different project, which became the Phase 1 Blended System of April 2012. I believe the  
16 Authority has chosen to violate the promise to voters concerning the Full Build Phases 1 since  
17 finances became a major issue and the public was disturbed over a \$98 to \$117 billion dollar  
18 construction price tag.

19 10. I asked Richard Tolmach, a rail-scheduling planner, President of California Rail  
20 Foundation, and advocate of transit if he thought the Phase 1 Blended System could achieve  
21 Prop1A’s promises and AB3034’s requirements. Mr. Tolmach was very doubtful that the  
22 proposed Phase 1 Blended System could meet those requirements due to technical problems such  
23 as FRA having no specifications for such high-speed rail track, resulting in overall slower-than-  
24 200mph speeds, the train having to travel more slowly in urban areas on non-high-speed rail  
25 specified track, rocks in rail beds becoming airborne, and unrealistic acceleration rates, and noise  
26 pollution at high speeds.<sup>viii</sup>

27 11. In an early April 2012 CHSRA press conference, CHSSRA Chairman, Dan  
28 Richard, introduced the 2012 Revised Business Plan, featuring the Phase 1 Blended System.

1 Chairman Richard took questions after the formal announcement, one of which was about the  
2 elapsed times between destinations. The following, from the transcript of that conference, is  
3 telling.

4 *“The reason that we are confident that the blended approach*  
5 *system, which will cost \$30 billion less, could work, is because our*  
6 *engineers have told us that it will achieve the performance*  
7 *standards that the voters insisted on in the ballot measure. So that*  
8 *means trains that can go from Los Angeles Union Station to the*  
9 *San Francisco Transbay Terminal in 2 hours and 40 minutes.”<sup>ix</sup>*

10 12. After having received Mr. Tolmach’s email mentioned earlier, I was struck by the  
11 determination and confidence by which Chairman Richard unreservedly gave his confidence to  
12 Parsons Brinckerhoff’s engineers. While it is unclear from Chairman Richard’s statements if he  
13 or CHSRA’s senior management reviewed or approved the engineers’ claims on this statutorily  
14 driven promise to voters, it is clear he accepted their work. As was later discovered, the engineer  
15 had no underlying research or information to substantiate that claim.

16 13. A few days later, at the April 12<sup>th</sup> CHSRA Board meeting, the Board certified and  
17 approved going forward with the Revised 2012 Business plan. During this meeting, there was  
18 also a slide presentation in which the Authority asserted they had ascertained the Phase 1 Blended  
19 System’s trains would achieve the required 2 hours and 40 minute elapsed time between Los  
20 Angeles Union Station and the San Francisco TransBay Terminal. <sup>x</sup> Californians Advocating  
21 Responsible Rail Design, (CARRD) examined the back up documentation for that business plan  
22 in the Authority’s documents for the April 12<sup>th</sup> board meeting and showed ‘travel runs’ for a non-  
23 stop express train at or above three hours.<sup>xi</sup> Reading these documents, after both Mr. Tolmach  
24 and Chairman Richard’s competing claims, I saw inconsistencies and began to be suspicious of  
25 the Authority’s intentions.

26 14. These inconsistencies caused me to begin a public records request. On April 17,  
27 2012 the High-Speed Rail Authority received my first public records request (PRR) to document  
28 the train could achieve the voter-approved Phase 1 system between the downtowns of LA to SF in  
29 2 hours and forty minutes, as well as the segment between San Jose and the San Francisco  
30 Transbay Terminal. There was an error in my first request, and Mr. Thomas Fellenz, Counsel to  
31 the Authority, and I quickly clarified that error.<sup>xii</sup> Then Mr. Fellenz responded on May 1<sup>st</sup> 2012,

1 saying my request could not be fulfilled in its current form: “According to the Authority’s  
2 *Records Retention Schedule, email communications are retained for a period of 90 days. Please*  
3 *narrow your scope of your request to adjust to this time parameter.*”<sup>xiii</sup> I responded that same  
4 day and challenged the Authority’s seemingly abbreviated email retention policy. The Authority  
5 at that time knew it was under investigation by both the Government Accountability Office  
6 (GAO) and the Congressional Committee on Oversight and Government Reform that demanded  
7 they immediately cease destruction of records. I advised Mr. Fellenz that they must retain  
8 everything from January 2009 forward, and they were required to notify their contractors,  
9 employees and former employees to do the same. I continued asking for information and pointed  
10 to the 10-day requirement for satisfaction of Public Records Act.

11 15. On May 31<sup>st</sup> 2012 CHSRA staff member, Kyle Wunderli responded to my inquiry  
12 on what information Chair Richard used to substantiate his statement: (Exhibit B)

13 “Ms. Hamilton – *“The answer is that no document exists. These*  
14 *were verbal assertions based on skill, experience, and optimism*  
15 *and so Dan Richard went with the expertise of the engineers*  
16 *offering these assertions. I have been informed that a memo is in*  
17 *the process of being drafted on this very issue and I will provide*  
18 *that to you as soon as it’s complete. Their best guess is that by end*  
19 *of next week it may be ready. I apologize for the inconvenience in*  
20 *waiting so long only to find no documents existed.”*

21 16. In response to another part of my request I received the communications between  
22 Mr. Wunderli and Parsons Brinckerhoff (PB). These show Mr. Wunderli attempted to fill my  
23 requests. On January 11<sup>th</sup> 2013 I received those emails. (Exhibit C – emails) There was one  
24 important email dated May 23<sup>rd</sup> 2011 between Mr. Wunderli and Theiry Prate, a Principal  
25 Consultant of Parsons Brinckerhoff. Mr. Prate offered apologizes for the delay and said: (Exhibit  
26 C- emails)

27 “As you know this is a very sensitive matter, Jeff Morales and  
28 Hans van Winkle [Vice President, Parsons Brinckerhoff] have  
required from the team to produce a technical memo on how to  
achieve the 1A journey time under the Phase 1 Blended system.  
The memo is currently is being reviewed by Hans. You will receive  
the information from Hans directly today or tomorrow.”

17. This confirmed the May 31, 2012 promise in Mr. Wunderli’s statement; “. . . a

1 *memo is in the process of being drafted on this very issue”* suggesting that the matter was to be  
2 resolved quickly. However, no memo addressing the source of the elapsed time assertions by the  
3 Authority was received.

4 18. The significance of this exchange is that it appears, unless the Authority and PB  
5 were less than forthcoming, that there was no research after the August 2009 study presented to  
6 the board on the full Phase 1 that is the four-track system. There is also nothing to confirm the  
7 Phase 1 Blended System, using existing infrastructure in the bookends, (LA Union Station and  
8 Transbay Terminal in SF) can meet the legal requirements. Consequently, the April 2012 plan,  
9 certified by the Board, has no foundation in facts. I agree with Californians Advocating  
10 Responsible Rail Design, (CARRD) that Parsons Brinkerhoff’s alleged ‘back-up documents’ for  
11 the business plan (a 3-hour express train, and the slide in the April 2012 Revised Business Plan  
12 (showing 2 hours and 40 minutes) were in conflict, unsubstantiated and speculative. <sup>xiv</sup> (Also see  
13 Exhibit D)

14 19. After our original exchange, Records Coordinator, Kyle Wunderli, said that he had  
15 nothing more in his system on the elapsed time issue; and unless a document had a Ca.gov  
16 address, he couldn’t search it. I continued to ask him to broaden his search for correspondence  
17 among all agencies and contractors to see who else who might have been a consultant working for  
18 the Authority on this subject. June 3<sup>rd</sup> 2012 and again on June 14<sup>th</sup> 2012, I sent Mr. Wunderli an  
19 emails saying if he were unable to find documentation related to the travel time issue for the  
20 Phase 1 Blended System on the Authority’s servers, the search should be broadened and I should  
21 receive a comprehensive answer. <sup>xv</sup> In PDF from May 24 to June 14, 2012, I continued to follow  
22 up, asking the Authority provide the source and documentation of the elapsed time statements by  
23 CHSRA during June and early July of 2012. Nothing was sent to me over those months on this  
24 issue.

25 20. I restarted my public records request on December 12, 2012 after I was told by an  
26 acquaintance in the Central Valley that indeed Parsons Brinckerhoff admitted to him that they  
27 indeed had the backup information on the train time. They told this person they couldn’t release it  
28 because it belonged to the Authority.

1           21.     On January 4, 2013, Chief Counsel Fellenz said; " *The data that shows what train*  
2 *time will be considering the blended system presented in the April 2012 Business Plan is in draft*  
3 *form, and is not being released under Government Code section 6254 (a)*" <sup>xvi</sup> (Also see Exhibit  
4 E)

5           22.     Having followed the protocol that Mr. Fellenz requested, ie, asking for documents  
6 thorough the High-Speed Rail Records Coordinator obviously; unless they were again less than  
7 forthright telling me no document existed, this wasn't the backup information I requested in the  
8 business plan documents, but perhaps something new. Therefore, seven months later Mr. Fellenz  
9 said the Authority was preparing something that related to my public records request for the  
10 backup information about the train times. The question that comes to mind is: how could the  
11 Authority in late 2012 be preparing anything other than an after-the-fact justification of their prior  
12 undocumented claims? I wrote to Fellenz on January 10, 2012: (Exhibit F)

13                     *"If I understand this, you are saying that the Final Business Plan*  
14 *which the High-Speed Rail Authority voted to approve in April*  
15 *2012 and which the Legislature referred to when appropriating*  
16 *\$4.7 billion in bond funds and \$3.29 billion in federal funds in the*  
*Budget Act of 2012 is based on draft travel times which are not*  
*ready to be released for public view. Is that correct?"*

17           23.     Additionally, after consulting experts on California law; on January 16 2012 I  
18 challenged the Authority's basis for not releasing the draft materials Counsel Fellenz said were  
19 privileged.<sup>xvii</sup> (Also see Exhibit G)

20           24.     Finally, on February 13th 2013, CHSRA released a memo on elapsed travel times  
21 between the two major metropolitan centers under the Phase 1 Blended System.<sup>xviii</sup> The memo  
22 came eleven months after Chairman Richard said "*The express trains will go from LA Union*  
23 *station to the TransBay Terminal, also known as the TransBay Transit Center in San Francisco in*  
24 *two hours and forty minutes.*" <sup>xix</sup> It was also nine months after CHSRA Records Coordinator,  
25 Kyle Wunderli, replied to a Public Records request for documentation on the Chairman's  
26 statement, which said: "*The answer is that no document exists. These were verbal assertions*  
27 *based on skill, experience, and optimism and so Dan Richard went with the expertise of the*  
28 *engineers offering these assertions.*" <sup>xx</sup> Despite Mr. Wunderli's assertion; "*that. . I will provide*



1 *that to you as soon as it's complete . . . by end of next week . . . , was not sent.* Chief Counsel to  
2 the Authority refused to release a draft, and “*the end of next week*” became another forty weeks.

3 25. I believe the Authority had no evidence of their Phase 1 Blended System’s ability  
4 to meet both the promise to voters that says “*Travel from Los Angeles to San Francisco in about*  
5 *2 1/2 hours . . .*” and AB3034 that says the train will go from “*San Francisco-Los Angeles Union*  
6 *Station: two hours, 40 minutes.*” I think they deliberately ‘stalled’ the answering those demands  
7 for such evidence until they could make enough assumptions to make their calculations meet the  
8 promises and legal demands.<sup>xxi</sup>

9 26. The memo itself lacks so much information that I find it impossible to ascertain  
10 the factual believability of what they claim is a new public records requests are underway.  
11 (Exhibit H and Exhibit I) Early views by experts indicate they are doubtful that what the  
12 Authority proposes is actually achievable.<sup>xxii</sup>

13 **Other testimony or confirmations on doubts about train time issues:**

14 27. On April 18<sup>th</sup> 2012, Elizabeth Alexis, co-founder of Californians Advocating  
15 Responsible Rail Design (CARRD) commented at the State Assembly Budget Committee that,  
16 according to the Rail Authority’s records, the train will not go between the metropolitan centers  
17 in the promised 2 hours and forty minutes. Rather, its express train will make the fastest journey  
18 in three hours while other trains in the Blended System will take much longer.<sup>xxiii</sup>

19 28. Similarly, a recent study from the UK has said that the increased travel time,  
20 specifically if over three hours, would result in less ridership, which translates into less revenue  
21 and the greater likelihood of either bankruptcy or the need for a subsidy, which is forbidden by  
22 law.<sup>xxiv</sup>

23 29. On June 8, 2012, before the SB1029 vote, the Assembly’s Legislative Counsel  
24 published a report stating that while the Authority says they can make the 30-minute time along  
25 the San Francisco rail corridor, “*we are not able to independently verify the authority's assertion*  
26 *that the required travel times can be met under the blended system.*”<sup>xxv</sup> The quoted the run times  
27 that Caltrain had published were in fact more than 30 minutes and did not consider San  
28 Francisco’s Transbay Terminal start or finish point.

1           30.     And finally, Dan Richard, High-Speed Rail Chairman is in dispute with what Van  
2 Ark says. He says this on April 18, 2012 in Assembly Budget Sub-committee chaired by  
3 Assemblyman Gordon, *“There is nothing about using the existing tracks on the Peninsula in  
4 Northern California that prevents us from making the two hours and forty minutes. That is our  
5 plan. That is the law. That is what we are planning for and that is how we will operate. The  
6 express trains will go from LA Union station to the TransBay Terminal -- also known as the  
7 TransBay Transit Center -- in San Francisco in two hours and forty minutes.”*<sup>xxvi</sup> Yet no  
8 information was available at this time verifying these claims.

9     **Summary:**

10           31.     After my more than four years of observing the behavior of the Authority,  
11 including:

- 12           • Reading the Wunderli-Prate exchange
- 13           • The lack of documentation in Parsons Brinckerhoff’s records, and conflicting records  
14           in the April 2012 business plan.
- 15           • Listening to other legislative testimony in contrast to the travel time memo produced  
16           by the Authority February 2013.
- 17           • The Authority’s Counsel ‘stonewalled’ my request by stating documents were in draft  
18           form
- 19           • The release of the memo dated February 2013 and early expert opinions that are  
20           distrustful of what is in the memo.

21           32.     For all these reasons, I believe the Authority has been less than forthcoming on  
22 this issue; and based on all the information I found, I have strong reasons to believe what they  
23 propose for the travel times in Phase 1 Blended System is unachievable, and will not meet the  
24 promises to voters or the provisions of AB3034 on times between San Francisco and Los Angeles  
25 or the corridors between.

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

Executed on this   1   day of March, 2013, at Menlo Park, California.

  
KATHY A. HAMILTON

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