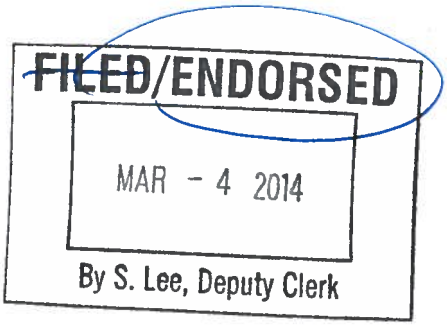

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS, AARON FUKUDA, COUNTY OF KINGS **Plaintiffs and Petitioners,** **v.** **CALIFORNIA HIGH SPEED RAIL AUTHORITY, et al.,** **Defendants and Respondents.**	**Case No. 34-2011-00113919-CU-MC-GDS** **RULING ON SUBMITTED MATTER: MOTION FOR JUDGMENT ON THE PLEADINGS (CODE OF CIVIL PROCEDURE SECTION 438)**

The Court heard oral argument on this matter on Friday, February 14, 2014. Deputy Attorney General Sharon O'Grady argued on behalf of respondents. Stuart M. Flashman argued on behalf of petitioners. Raymond L. Carlson argued on behalf of amicus curiae. At the close of the hearing, the Court took the matter under submission for issuance of a written ruling.

The following shall constitute the ruling of the Court.

Petitioners' request for judicial notice in opposition to the motion is granted. The documents attached to the request are records of the courts of this State and therefore are proper subjects for judicial notice pursuant to Evidence Code section 452(d).

Petitioners' objection to portions of the reply brief is overruled. Petitioners assert that the reply brief raised a new argument (that petitioners' claims arose from the Authority's adoption of the funding

plan, the draft business plan and the revised business Plan) that they were unable to rebut by arguing that the adoption of the business plan did not commit the Authority to any course of action. Petitioners explicitly raised this argument at page 11, footnote 7 of their opposition brief.

This is a motion for judgment on the pleadings, in which defendants/respondents seek an order dismissing petitioners' remaining claims for failure to state a cause of action.

In ruling on a motion for judgment on the pleadings, the court applies the same standards that are applicable to a general demurrer. (See, *Civic Partners Stockton, LLC v. Youssefi* (2012) 218, Cal. App. 4th 1005, 1012.) The court must accept the allegations of the complaint as true and liberally construe them with a view toward attaining substantial justice. (See, *Inter-Modal Rail Employees Association v. Burlington Northern and Santa Fe Railway Company* (1999) 73 Cal. App. 4th 918, 924.) At the pleading stage, the court does not decide whether the petitioners will be able to prove their allegations, and does not consider the possible difficulty in making such proof. (See, *Collier v. Superior Court* (1991) 228 Cal. App. 3rd 117, 1120.)

A motion for judgment on the pleadings must be denied if the facts alleged in the complaint state a viable cause of action under any legal theory. Thus, the court is not limited to the petitioners' stated theory of recovery. (See, *Zhang v. Superior Court* (2013) 57 Cal. 4th 364, 370.)

Having applied these standards to petitioners' Second Amended Complaint, the Court concludes that petitioners have alleged facts sufficient to state a cause of action for review of an administrative determination by respondent California High Speed Rail Authority to commit to the building of a high-speed train system that does not comply with the substantive design requirements of Proposition 1A (most specifically, Streets and Highways Code section 2704.09), including financial viability and required "maximum nonstop service travel times" that "shall not exceed" specified limits. At a minimum, the facts alleged state a cause of action for issuance of a writ of mandate under Code of Civil Procedure section 1085. For purposes of the present motion, the Court must accept those facts as true, without considering any difficulty petitioners may have in proving those facts at trial.

The Court finds that this case is similar to *Hayward Area Planning Association v. Alameda*

County Transportation Authority (1999) 72 Cal. App. 4th 95 ("HAPA"). In HAPA, the First District Court of Appeal reversed an order granting summary judgment for respondents, thus permitting the petitioners to go to trial on their claim that the respondents had violated applicable law by using revenue generated from a voter-approved sales and use tax to implement a highway extension project that contained a route or alignment significantly different from the one presented to the voters. Here, petitioners similarly allege that respondents have violated applicable law by committing to build a high-speed rail system that differs significantly from the one approved by the voters in Proposition 1A.

Petitioners have standing to assert this claim under Code of Civil Procedure section 526a. The California Supreme Court has stated that Section 526a provides a general citizen remedy for controlling illegal governmental activity which should be construed liberally in order to achieve its remedial purpose. (See, *Van Atta v. Scott* (1980) 27 Cal. 3rd 424, 447.) Although Code of Civil Procedure section 526a by its terms applies only to funds and officials of "a county, town, city or city and county of the state", judicial decisions have held that it provides a basis for suing state officials as well. (See, *Serrano v. Priest* (1971) 5 Cal. 3rd 584, 618, footnote 38.) "If a taxpayer can demonstrate that a state official did authorize the improper expenditure of public funds, the taxpayer 'will be entitled, at least, to a declaratory judgment to that effect; if he establishes that similar expenses are threatened in the future, he will also be entitled to injunctive relief.'" (*Hooper v. Deukmejian* (1981) 122 Cal. App. 3rd 987, 1019, citing *Stanson v. Mott* (1976) 17 Cal. 3rd 206, 222-223.)[1]

The Court is not persuaded that petitioners' remaining claims have been resolved by the ruling on the writ of mandate claims previously adjudicated. Those first-stage writ claims focused on the validity of the initial detailed funding plan required by Streets and Highways Code section 2704.08(c). That funding plan applies to the use of bond proceeds for a "corridor, or usable segment thereof", i.e., a discrete portion of the high-speed rail system. The issues that remain to be tried involve the design of the entire system

[1] In a writ of mandate case involving improper governmental action, declaratory relief is available as an additional remedy. (See, *Shaw v. People ex rel. Chiang* (2009) 175 Cal. App. 4th 577, 616: Third District Court of Appeal affirmed a judgment for declaratory relief and writ of mandate in a case involving the Legislature's transfer of spillover gas tax revenue to the Mass Transportation Fund in violation of Proposition 116.) Furthermore, injunctive relief is identical in purpose and function to a writ of mandate and therefore is an appropriate remedy when a writ is granted. (See, *Venice Town Council v. City of Los Angeles* (1996) 47 Cal. App. 4th 1547, 1563, footnote 9.)

and whether that design complies with Proposition 1A.

Of course, at this stage, the Court reaches no conclusions regarding whether petitioners will be able to prove their claims. That is a matter to be resolved at trial. The present ruling only finds that judgment should not be entered for respondents based solely on the face of the Second Amended Complaint, and that the case should proceed to trial.

The motion for judgment on the pleadings is therefore denied.

Counsel for all parties are directed to meet and confer and contact the Clerk of this Department regarding setting a date for trial. The Court notes that much of respondents' argument in the present motion focused on whether the evidence at trial should be limited to the content of the administrative record supporting respondents' determination(s) regarding the design of the high-speed rail system. The present motion was not brought as an evidentiary motion, and was not directed towards any specifically-identified evidence that petitioners intend to offer at trial. The Court therefore declines to make any specific evidentiary rulings at this time. Counsel for the parties are directed to meet and confer and report to the Court regarding their positions as to the scope of admissible evidence at trial, and regarding any further proceedings that will be needed to resolve disputes over the admissibility of evidence.

This ruling shall take effect immediately. No further written order shall be required.

DATED: March 4, 2014

MICHAEL KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record or by email as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: March 4, 2014

By: S. LEE
Deputy Clerk