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BAY AREA TOLL AUTHORITY  
13 and METROPOLITAN TRANSPORTATION  
COMMISSION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO  
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17 MARK BAKER,  
18  
Petitioner,  
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v.  
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21 BAY AREA TOLL AUTHORITY,  
METROPOLITAN TRANSPORTATION  
COMMISSION, CALIFORNIA  
22 DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION,  
23 AND DOES 1-20,  
24 Respondents.

25 ILLUMINATE, AND DOES 21-40,  
26 Real Parties in Interest.

Case No. CPF-24-518814

**DECLARATION OF AMY R. HIGUERA  
IN SUPPORT OF RESPONDENTS BAY  
AREA TOLL AUTHORITY'S AND  
METROPOLITAN TRANSPORTATION  
COMMISSIONS' NOTICE OF  
DEMURRER AND DEMURRER TO  
COMPLAINT OF PETITIONER MARK  
BAKER; MEMORANDUM OF POINTS  
AND AUTHORITIES**

*[Action Under the California Environmental  
Quality Act]*

Date: TBD  
Time: 1:30 p.m.  
Dept.: 606  
Judge: Hon. Jeffrey S. Ross  
Action Filed: December 16, 2024  
Trial Date: None set

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I, Amy R. Higuera, declare as follows:

1. I am an attorney licensed to practice law in the State of California and I am a partner at the law firm of Downey Brand LLP, attorneys of record for Defendants BAY AREA TOLL AUTHORITY (BATA) and METROPOLITAN TRANSPORTATION COMMISSION (MTC) in this matter. I have personal knowledge of the facts stated in this declaration, except as to those facts stated on information and belief. As to facts stated on information and belief, I believe them to be true. I could and would testify to these facts if called upon to do so.

2. On January 29, 2025, during an initial meeting, I informed Petitioner Mark Baker (“Petitioner”) that BATA and MTC intended to file a demurrer to all causes of action alleged in the Petition.

3. On February 12, 2025, I sent to Petitioner a courtesy letter describing the grounds for the demurrer to inform our meet and confer. The letter is attached hereto as **Exhibit A**.

4. On February 14, 2025, I met with Petitioner via videoconference to meet and confer on the demurrer, Petitioner’s proposed motion for preliminary injunction, and the required joint case management conference statement. Also in attendance were my co-counsel Daria Gossett, Sam Bacal-Graves, and Scott Spansail, and counsel for Respondent California Department of Transportation Jennifer Flint. During this meeting, Ms. Gossett and I explained the grounds for demurrer based on the defects we have identified in the Petition. While Ms. Gossett explained the identified defects in the cause of action Petitioner alleges under the Americans with Disability Act, Petitioner stuck his fingers in his ears. He then stated, “I don’t think that we need to talk anymore.” He referred to Ms. Gossett as “obnoxious,” “annoying,” and a “mean lady.”

5. At Petitioner’s request, the meet and confer ended. He declined to voluntarily dismiss any cause of action or amend his pleading in any respect.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this 21st day of February 2025, in San Francisco, California.



AMY R. HIGUERA

**EXHIBIT A**

**EXHIBIT A**

February 12, 2025

**VIA E-MAIL**

Mark Baker  
9450 SW Gemini Drive PMB 44671  
Beaverton, OR 97008  
[mbaker@softlights.org](mailto:mbaker@softlights.org)

Re: Demurrer to be filed in *Baker v. Bay Area Toll Authority, et al.* (Case No. CPF-24-518814)

Dear Mr. Baker:

Bay Area Toll Authority (BATA) and Metropolitan Transportation Commission (MTC) intend to file a demurrer to all causes of action alleged in the above referenced matter. This letter is a courtesy being provided in advance of the required meet and confer to inform you of the grounds for the demurrer. (See Code Civ. Proc. § 430.41.) The meet and confer is scheduled for February 14 at 10:30 a.m. We will provide a link to the electronic meeting in advance of the meeting time.

**All Causes of Action**

The grounds for demurrer to all causes of action include failure to allege facts sufficient to establish standing and uncertainty for failure to identify which causes of action are alleged against which parties.

**First Cause of Action – Violations of CEQA**

The grounds for demurrer to the first cause of action also include statute of limitations, failure to allege facts sufficient to establish that an EIR is required, and failure to verify the petition, as required when filing a petition for writ of mandate against a public agency.

**Second Cause of Action – Violations of NEPA**

The grounds for the demurrer to the second cause of action also include that the court lacks jurisdiction over the NEPA claim and that NEPA imposes no obligations on BATA and MTC.

**Demurrer Basis Common to Third, Fourth, & Fifth<sup>1</sup> Causes of Action**

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<sup>1</sup> The Complaint erroneously labels this cause of action as the “Sixth.”

The Complaint admits that there are no requirements promulgated by any legal authority that require an “ADA analysis” or governmental policies with respect to LED lights. “Any injunctive relief must, of course, comply with our state and federal constitutions,” meaning that injunctive relief cannot be obtained where there is no violation of existing law. (See *People v. Padilla-Martel* (2022) 78 Cal.App.5th 139, 156.) The third, fourth, and fifth causes of action therefore all fail to state facts sufficient to constitute a cause of action.

### **Third Cause of Action – Violations of ADA**

The grounds for demurrer to the third cause of action also include failure to state facts sufficient to constitute a cause of action because it does not satisfy the requisite elements for a cause of action under the ADA and the Complaint concedes that no “ADA analysis” is required.

### **Fourth Cause of Action – Violations of Rehabilitation Act**

The grounds for demurrer to the fourth cause of action also include failure to state facts sufficient to constitute a cause of action because it does not satisfy the requisite elements for a cause of action under the Rehabilitation Act and the Bay Area Lights 360 project is privately funded.

### **Fifth Cause of Action – Violations of 14<sup>th</sup> Amendment Equal Protection Clause**

The grounds for demurrer to the fifth cause of action also include failure to state facts sufficient to constitute a cause of action because there is no private right of action, no existing law is challenged which causes an unequal impact, and because BATA and MTC are immune.

Sincerely,

DOWNEY BRAND LLP

Amy R. Higuera

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**PROOF OF SERVICE**

**Mark Baker v. Bay Area Toll Authority, et al  
Case No. CPF-24-518814**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 621 Capitol Mall, 18th Floor, Sacramento, CA 95814.

On February 21 2025, I served true copies of the following document(s) described as **DECLARATION OF AMY R. HIGUERA IN SUPPORT OF RESPONDENTS BAY AREA TOLL AUTHORITY’S AND METROPOLITAN TRANSPORTATION COMMISSIONS’ NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT OF PETITIONER MARK BAKER; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Downey Brand LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address dreeder@downeybrand.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on February 21, 2025, at Sacramento, California.



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Dana Reeder

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**SERVICE LIST**  
*Mark Baker v. Bay Area Toll Authority, et al*  
**Case No. CPF-24-518814**

**Via Email and US Mail**

Mark Baker  
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*Pro Se*

**Via Email and US Mail**

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*Counsel for California Department of  
Transportation*

**Courtesy Copy sent Via Email**

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*General Counsel Bay Area Toll Authority  
Metropolitan Transportation Commission*

**Via Email and US Mail**

Ben Davis  
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*Real Party-in-Interest*