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(NO FILING FEE PURSUANT TO GOV'T CODE § 6103)

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12 California Department of Transportation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

15 MARK BAKER,

16 Petitioner,

17 v.

18 BAY AREA TOLL AUTHORITY, et al.,

19 Respondents,

20 ILLUMINATE, et al.,

21 Real Parties in Interest.

Case No.: CPF-24-518814

**NOTICE OF HEARING AND
RESPONDENT STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION'S
DEMURRER TO PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF**

[CEQA CASE]

Hearing date: April 21, 2025
Hearing time: 2:00 p.m.
Courtroom: Department 606
Judge: Hon. Jeffrey S. Ross

Action filed: December 16, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2025 at 2:00 p.m. or as soon as the matter may be heard in Department 606 of the above-entitled court, located at 400 McAllister Street, San Francisco, CA 94102-4512, Respondent State of California Department of Transportation ("State") will be seeking and hereby seeks a demurrer to Petitioner Mark Baker's Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition").

The State has complied with the meet and confer requirements of California Code of Civil Procedure section 430.41, as set forth in the Declaration of Jennifer A. Flint filed concurrently herewith.

1 The State’s demurrer is made pursuant to California Code of Civil Procedure sections 430.10,
2 *et seq.*, and California Rules of Court, Rule 3.1320, and is based upon this Notice and Demurrer to
3 Petition and supporting Memorandum of Points and Authorities; the Declaration of Jennifer A. Flint;
4 the February 21, 2025 Demurrer of Respondents Bay Area Toll Authority and the Metropolitan
5 Transportation Commission and its accompanying Request for Judicial Notice (“BATA Demurrer”),
6 which the State has joined (see concurrently filed State’s Notice of Joinder to BATA Demurrer); all
7 records presently on file with the Court; any Reply the State may make and/or join; and any argument
8 and evidence that may be advanced at the hearing on this demurrer.

9 DATE: March 3, 2025

HOLBROOK, HARRINGTON, BACA,
GUENZI, STARK, FLINT, & DYESS

10
11 By: 

12 _____
13 JENNIFER A. FLINT
14 Attorneys for Respondent
15 STATE OF CALIFORNIA DEPARTMENT OF
16 TRANSPORTATION
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DEMURRER TO PETITION

All Causes of Action

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3 1. All causes of action are deficient on the grounds they fail to allege facts sufficient to
4 establish standing. (*California Assn. for Health Services at Home v. State Dept. of Health Services*
5 (2007) 148 Cal.App.4th 696, 706-707; *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126
6 Cal.App.4th 993, 1004-1005; see also BATA and MTC Demurrer and State’s Joinder thereto.)

7 2. All causes of action fail on the grounds the Petition is vague and uncertain (*Zumbrun v.*
8 *Univ. of Southern California* (1972) 25 Cal.App.3d 1, 8; Code Civ. Prov. § 430.10, subd. (f); see also
9 BATA and MTC Demurrer and State’s Joinder thereto.)

10 3. All cause of action are barred by laches. (See BATA and MTC Demurrer and State’s
11 Joinder thereto.)

12 **Demurrer Without Leave to Amend the First Cause of Action for Alleged Violations of the California**
13 **Environmental Quality Act (CEQA)**

14 1. The first cause of action fails as a matter of law as against the State because the State is
15 not the lead agency and thus did not make the CEQA determinations challenged by Petitioner. (Pub.
16 Res. Code § 21080.1, subd. (a); Cal. Code Regs., tit. 14 [CEQA Guidelines], § 15061, subd. (a).)

17 2. In addition, the first cause of action is barred by CEQA’s 35-day statute of limitations
18 because the Petition was filed over one year after BATA’s Notice of Exemption was posted with the
19 San Francisco County Clerk. (*Comm. for Green Foothills v. Santa Clara County Bd. of Supervisors*
20 (2010) 48 Cal.4th 32, 42; *Stockton Citizens for Responsible Planning v. City of Stockton* (2010) 48
21 Cal.4th 481, 512; *Guerrero v. City of Los Angeles* (2024) 98 Cal.App.5th 1087, 1099; see also BATA
22 and MTC Demurrer and State’s Joinder thereto.)

23 3. The first cause of action is barred by other CEQA statute(s) of limitations. (See BATA
24 and MTC Demurrer and RJN; and State’s Joinder thereto.)

25 **Demurrer Without Leave to Amend the Second Cause of Action for Alleged Violations of the**
26 **National Environmental Policy Act (NEPA)**

27 1. The second cause of action for alleged violations of NEPA is barred for lack of subject
28 matter jurisdiction because state courts cannot adjudicate NEPA claims, as such challenges are within
the exclusive jurisdiction of federal courts. (*Califano v. Sanders* (1977) 430 U.S. 99, 105-107;

1 *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 832-833, 835; Code Civ.
2 Proc., §430.10, subd. (a).)

3 Demurrer Without Leave to Amend the Third Cause of Action for Alleged Violations of the
4 Americans with Disabilities Act (ADA)

5 1. The third cause of action for alleged violations of the ADA fails as a matter of law
6 because the Petition fails to identify any violation of law that would support the requested relief to
7 “develop an ADA analysis” and nothing in the ADA requires an “ADA analysis.” (*Common Cause v.*
8 *Board of Supervisors* (1989) 49 Cal.3d 432, 445-446; 42 U.S.C. §§ 12131 – 12165; 28 C.F.R. §
9 35.101, et seq.; see also BATA and MTC Demurrer and State’s Joinder thereto incl. RJN Exh. G.)

10 2. The third cause of action for alleged violations of the ADA fails to allege facts sufficient
11 to establish a claim under the ADA. (*Weinreich v. Los Angeles County. Metro. Transp. Auth.* (9th Cir.
12 1997) 114 F.3d 976, 978; *McInnis-Misenor v. Maine Medical Center* (1st Cir. 2003) 319 F.3d 63, 69;
13 *Chapman v. Pier 1 Imports (U.S.) Inc.* (9th Cir. 2011) 631 F.3d 939, 954; *Elbert v. New York State*
14 *Dept. of Correctional Services* (S.D.N.Y. 2010) 751 F.Supp.2d 590, 596; *Bouslog v. Care Options*
15 *Management Plans and Supportive Services, LLC* (N.D. Cal. 2020) 459 F.Supp.3d 1281, 1286-1287.)

16 Demurrer Without Leave to Amend the Fourth Cause of Action for Alleged Violations of the Section
17 504 of the Rehabilitation Act (Section 504)

18 1. The fourth cause of action for alleged violations of Section 504 fails as a matter of law
19 because the Petition fails to identify any violation of law that would support the requested relief.
20 (*Payan v. Los Angeles Cmty. Coll. Dist.* (9th Cir. 2021) 11 F.4th 729, 737; 29 U.S.C. § 794(a);
21 *Bouslog v. Care Options Management Plans and Supportive Services, LLC* (N.D. Cal. 2020) 459
22 F.Supp.3d 1281, 1286-1287.)

23 2. The fourth cause of action for alleged violations of Section 504 fails to allege facts
24 sufficient to establish a claim under Section 504. (*Payan v. Los Angeles Cmty. Coll. Dist.* (9th Cir.
25 2021) 11 F.4th 729, 737; 29 U.S.C. § 794(a); *Bouslog v. Care Options Management Plans and*
26 *Supportive Services, LLC* (N.D. Cal. 2020) 459 F.Supp.3d 1281, 1286-1287.)

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1 Demurrer Without Leave to Amend the “Sixth” Cause of Action for Alleged Violation of the Equal
2 Protection Clause of the Fourteenth Amendment (Equal Protection Clause)¹

3 1. The “sixth” cause of action for alleged violations of the Equal Protection Clause fails as a
4 matter of law because Petitioner has a statutory remedy. (See BATA and MTC Demurrer and State’s
5 Joinder thereto.)

6 2. The “sixth” cause of action for alleged violations of the Equal Protection Clause fails to
7 allege facts sufficient to establish a claim under the Equal Protection Clause because the Petition fails
8 to challenge any law that has allegedly been applied in a discriminatory manner or that imposes
9 different burdens on different classes of people. (*HSH, Inc. v. City of El Cajon* (S.D. Cal. 2014) 44
10 F.Supp.3d 996, 1006; *People v. Moore* (2021) 68 Cal.App.5th 856, 862.)

11 3. The “sixth” cause of action for alleged violations of the Equal Protection Clause fails to
12 allege facts sufficient to establish a claim under the Equal Protection Clause because it fails to allege
13 one or more of the required elements of an Equal Protection Clause claim. (*Furnace v. Sullivan* (9th
14 Cir. 2013) 705 F.3d 1021, 1030; *Pimentel v. Dreyfus* (9th Cir. 2012) 670 F.3d 1096, 1106; *Voronin v.*
15 *Garland* (C.D. Cal., Apr. 20, 2021, No. 2:20-CV-07019-ODW (AGRX)) 2021 WL 1546957, at *5;
16 *Gama v. Bd. of Trustees of California State University* (9th Cir. 2020) 808 Fed.Appx. 591, 592-593.)

17 WHEREFORE, the State prays that its demurrer be sustained without leave to amend, as to the
18 State and as to all five causes of action alleged in the Petition.

19 DATE: March 3, 2025

HOLBROOK, HARRINGTON, BACA,
GUENZI, STARK, FLINT, & DYESS

20
21 By: 

22 _____
23 JENNIFER A. FLINT
24 Attorneys for Respondent
25 STATE OF CALIFORNIA DEPARTMENT OF
26 TRANSPORTATION
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¹ Petitioner’s fifth claim is listed as the “Sixth Cause of Action.” For consistency purposes, this cause of action will be
referenced as the “Sixth” Cause of Action.

Case Name: *Mark Baker vs. Bay Area Toll Authority, et al.*
Case No.: San Francisco County Superior Court No. CPF-24-518814

PROOF OF ELECTRONIC SERVICE

I am employed in the City of Oakland, State of California. I am over the age of 18 years and not a party to the within action. My business address is 111 Grand Avenue, Oakland, California 94612; MAIL: P.O. BOX 24325, Oakland, CA 94623-1325. On the date set forth below, I served a true copy of the following document(s):

**NOTICE OF HEARING AND RESPONDENT STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION’S DEMURRER TO PETITION FOR WRIT
OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF**

on the interested party to said action by the following means:

[XX] (BY ELECTRONIC-MAIL ONLY) by attaching a copy of the document(s) in PDF format sent from Rosalie.H.Nguyen@dot.ca.gov to the email addresses of the parties listed below, pursuant to Code of Civil Procedure section 1010.6, permitting electronic service of notices or documents that may be served by mail, express mail, overnight delivery, or facsimile transmission. No hard copies will follow.

COUNSEL OF RECORD/PARTY	EMAIL ADDRESSES
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Amy R. Higuera, Esq. Daria A. Gossett, Esq. Samuel D. Bacal-Graves, Esq. DOWNEY BRAND LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 Counsel for Respondents, Bay Area Toll Authority and Metropolitan Transportation Commission	ahiguera@DowneyBrand.com dgossett@downeybrand.com sbacalgraves@downeybrand.com
Kathleen Kane, Esq. 375 Beale Street, Suite 800 San Francisco, CA 94105-2066 Counsel for Respondents, Bay Area Toll Authority and Metropolitan Transportation Commission	kkane@bayareametro.gov

1 Illuminate the Arts
2 P.O. Box 194210
3 San Francisco, CA 94119-4210

ben@illuminate.org

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct. Executed on March 3, 2025, at Oakland, California.

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7 ROSALIE NGUYEN SOLOMON, Declarant

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