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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

**RESPONDENT STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION'S
NOTICE OF MOTION TO STRIKE AND
MOTION TO STRIKE PETITION OR
PORTION(S) OF PETITION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[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

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that on April 21, 2025 at 2:00 p.m. or as soon as the matter may be
24 heard in Department 606 of the above-entitled court, located at 400 McAllister Street, San Francisco,
25 CA 94102-4512, Respondent State of California Department of Transportation (“State”) will, and
26 hereby does, move the Court under Code of Civil Procedure section 436 to strike the Petition in its
27 entirety, for lack of a verification thereto; or, in the alternative, to strike portions of the Petition, on the
28 grounds that certain relief sought is improper in its face.

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1 **MOTION TO STRIKE**

2 The State hereby moves, pursuant to California Code of Civil Procedure section 436, to
3 strike the Petition in its entirety, because it has not been verified. In the alternative, the State moves
4 to strike a portion of the Petition because the relief sought in that portion is improper on its face.
5 Specifically, the State seeks to strike the entirety of paragraph 75 of the Petition, located on page 19,
6 line 12: “D) Writ of mandate directing Respondents to develop an ADA analysis.” This portion of
7 the Petition, requesting a writ directing the development of an ADA analysis, has no basis in law.

8 The State’s Motion to Strike is based on this Notice and Motion and Memorandum of Points
9 and Authorities; the concurrently filed Declaration of Jennifer Flint and its exhibits; the files and
10 records of this action; any oral argument at the hearing of this Motion; and any further evidence or
11 argument that the Court may properly receive at or before the hearing.

12
13 DATE: March 3, 2025

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

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15
16 By: 

17 _____
18 JENNIFER A. FLINT
19 Attorneys for Respondent
20 STATE OF CALIFORNIA DEPARTMENT OF
21 TRANSPORTATION
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Respondent State of California Department of Transportation (“State”) moves to strike the
4 Petition for Writ of Mandate and Complaint for Injunctive Relief (“Petition”) brought by Mark Baker
5 (“Petitioner”). The entire Petition should be stricken for failure to verify the allegations in the Petition,
6 as required by Code of Civil Procedure sections 1086 and 446. In the alternative, the portion of the
7 Petition seeking a writ of mandate directing the State to develop an ADA analysis is improper on its
8 face and must be stricken, as there is no basis in law for such a request—as expressly acknowledged in
9 the Petition itself.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 The Petition was filed on December 16, 2024, naming as Respondents the Bay Area Toll
12 Authority, the Metropolitan Transportation Commission, the State, and the Federal Highway
13 Administration (“FHWA”).¹ No verification was included with the Petition. (See Petition filed on
14 December 16, 2024; see also Declaration of Jennifer Flint, ¶ 2.) The Petition alleges five causes of action
15 arising out of an art installation on the San Francisco - Oakland Bay Bridge (“Bay Lights 360”). (Pet.
16 ¶¶ 1-2.) One of the claims alleges that Respondents violated the Americans with Disabilities Act
17 (“ADA”) in relation to the Bay Lights 360 project. (Pet. ¶¶ 64-67, 75.) For the ADA claim, Petitioner
18 seeks relief in the form of a “[w]rit of mandate directing Respondents to develop an ADA analysis[.]”
19 (Pet. ¶ 75, p. 19, line 12.)

20 Prior to bringing this motion to strike, and pursuant to California Code of Civil Procedure section
21 435.5, counsel for the State met and conferred with the Petitioner regarding the State’s intended grounds
22 for the motion to strike, via exchanged letters and emails, and via videoconference. (Flint Decl. ¶¶ 4-8.)
23 No resolution regarding the deficiencies in the Petition was reached. (Flint Dec. ¶ 9.)

24 **III. LEGAL ARGUMENT**

25 **A. Standard of Review**

26 Upon a motion to strike, a court may strike out any irrelevant, false, or improper matter inserted
27 in any pleading, or strike out all or any part of any pleading not drawn or filed in conformity with the
28

¹ FHWA was dismissed with prejudice on December 24, 2024.

1 laws of this state, a court rule, or an order of the court. (Code Civ. Proc. § 436.) The grounds for a
2 motion to strike appear on the face of the challenged pleading. (See CCP § 436, subd. (a).)

3 Further, a motion to strike is proper when the complaint contains substantive defects that are
4 clear from the face of the complaint. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680,
5 1682-1683.) While the State is also challenging the sufficiency of the pleadings in its simultaneously-
6 filed Demurrer, a motion to strike is an appropriate procedural vehicle for challenging an unverified
7 pleading (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575) and/or a complaint which seeks
8 an improper remedy (see *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 843–844).

9 **B. The Petition is not verified and, therefore, must be stricken in its entirety.**

10 A petition for a writ of mandate must be verified, as must a complaint. (Code Civ. Proc. §§
11 1086, 446; see also *Krueger v. Superior Court* (1979) 89 Cal.App.3d 934, 939 [petition for writ of
12 mandate must be verified].) The lack of an appropriate verification is fatal to the writ petition, and no
13 relief may be granted thereon. (*Ibid.*).

14 The Petition here contains no verification whatsoever—let alone a proper verification signed by
15 a party beneficially interested in the relief sought. Accordingly, the entire Petition must be stricken.
16 (See *Perlman v. Municipal Court, supra*, 99 Cal.App.3d at p. 575.)

17 **C. In the alternative, the requested relief ordering an “ADA Analysis” must be stricken**
18 **because it has no basis in law.**

19 As pled, Petitioner’s requested relief ordering an “ADA analysis” has no basis under law. (Pet.
20 ¶ 67, 75.) Petitioner himself states that an “ADA analysis” is not a legally cognizable remedy under the
21 ADA. (Pet. ¶ 67 (“no specific law ... requires an ‘ADA analysis’ for a project”) Indeed, nothing in
22 the ADA or its implementing regulations requires an “ADA analysis” as part of an environmental impact
23 report or other process prior to the implementation of the public entity’s program or construction of the
24 improvement or facility. (See 42 U.S.C. §§ 12131 – 12165; 28 C.F.R. § 35.101, et seq.)

25 Because there is no statutory basis for seeking an “ADA analysis,” whether in an environmental
26 impact report or otherwise, Petitioner’s remedy seeking a writ of mandate ordering an “ADA analysis”
27 is improper on its face and must be stricken.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the State respectfully requests that the Court grant this Motion to
3 Strike and strike the Petition in its entirety, for failure to be verified; or, in the alternative, strike
4 Paragraph 75 (page 19, line 12) of the Petition.

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6 DATE: March 3, 2025

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

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8 By: 

9 _____
10 JENNIFER A. FLINT
11 Attorneys for Respondent
12 STATE OF CALIFORNIA DEPARTMENT OF
13 TRANSPORTATION
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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):

**RESPONDENT STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION’S
NOTICE OF MOTION TO STRIKE AND MOTION TO STRIKE PETITION OR
PORTION(S) OF PETITION; MEMORANDUM OF POINTS AND AUTHORITIES**

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
<p>Mark Baker Soft Lights Foundation 9450 SW Gemini Drive PMB 44671 Beaverton, OR 97008</p> <p>Petitioner, Pro Se</p>	<p>mbaker@softlights.org</p>
<p>Amy R. Higuera, Esq. Daria A. Gossett, Esq. Samuel D. Bacal-Graves, Esq. DOWNEY BRAND LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814</p> <p>Counsel for Respondents, Bay Area Toll Authority and Metropolitan Transportation Commission</p>	<p>ahiguera@DowneyBrand.com dgossett@downeybrand.com sbacalgraves@downeybrand.com</p>
<p>Kathleen Kane, Esq. 375 Beale Street, Suite 800 San Francisco, CA 94105-2066</p> <p>Counsel for Respondents, Bay Area Toll Authority and Metropolitan Transportation Commission</p>	<p>kkane@bayareametro.gov</p>

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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