

1 GERALD JAMES (SBN: 179258)
455 Capitol Mall, Suite 501
2 Sacramento, CA 95814
Telephone: (916) 446-0400
3 Facsimile: (916) 446-0489
4 SOMACH, SIMMONS & DUNN
A Professional Corporation
5 JENNIFER T. BUCKMAN (SBN: 179143)
KANWARJIT S. DUA (SBN: 214591)
6 500 Capitol Mall, Suite 1000
Sacramento, CA 95814
7 Telephone: (916) 446-7979
Facsimile: (916) 446-8199
8
9 Attorneys for Petitioners/Plaintiffs
Professional Engineers in California Government
and Dennis Alexander

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA

14 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
15 DENNIS ALEXANDER,
16
17 Petitioners/Plaintiffs,

17 v.

18 CALIFORNIA DEPARTMENT OF
TRANSPORTATION;
19 CINDY McKIM as Director of the Department of
Transportation;
20 SAN FRANCISCO COUNTY
TRANSPORTATION AUTHORITY;
21 ROSS MIRKARIMI as Chair of Board of
Commissioners of the San Francisco County
22 Transportation Authority;
CALIFORNIA TRANSPORTATION
23 COMMISSION;
JAMES EARP as Chair of the California
24 Transportation Commission; and
DOES 1-15,
25
26 Respondents/Defendants.

CASE NO. RG10544672

**PETITIONERS/PLAINTIFFS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION**

ASSIGNED FOR ALL PURPOSES
DEPT.: 21
JUDGE: Hon. Wynne Carvill

Trial Date: Not Set
Action Filed: 11-2-2010

FILED BY FAX

I. INTRODUCTION

1
2 By this application, Petitioners/Plaintiffs Professional Engineers in California
3 Government and Dennis Alexander (hereinafter collectively referred to as "PECG") seek a
4 temporary restraining order (TRO) to prevent Defendants California Department of
5 Transportation (Caltrans) and the San Francisco County Transportation Authority (SFCTA) from
6 entering into an illegal no-bid public private partnership (P3) lease agreement with Golden Link
7 Partners in violation of Streets and Highways Code section 143 ("Section 143"). The project at
8 issue, known as the Presidio Parkway Project, is for the design and replacement of an existing
9 1.6 - mile six-lane facility, Doyle Drive, on California's highway Route 101 south of the Golden
10 Gate Bridge. Despite the fact that there was a fully funded plan already in place as a competitive
11 design-bid-build project, SFCTA and Caltrans switched directions mid-stream in mid-2009 and
12 instead pursued and requested that the California Transportation Commission (CTC) approve this
13 project as a \$1.378 billion P3 in May 2010. By the time this decision was made, the Presidio
14 Parkway Project had already been initiated under other statutes and could no longer meet the
15 statutory prerequisites to qualify as a P3.

16 CTC staff recommended that the CTC not grant Defendants' request, relying in part upon
17 two opinions, including one from its own legal counsel that concluded that the project could not
18 satisfy the statutory requirements to be eligible as a P3 under Streets and Highways Code section
19 143. Notwithstanding the recommendation of CTC staff, on May 20, 2010 the CTC approved
20 Defendants' request to allow the Presidio Parkway Project to convert into a P3. Subsequently, on
21 October 26, 2010, Caltrans provided the first volume of the three-volume lease agreement to the
22 Legislature, which they now allege commenced the mandatory 60-day review period required by
23 Section 143(c)(5). However, Caltrans did not provide a full copy of the lease agreement to the
24 Legislature until November 23, 2010 and did not make the full lease agreement available to the
25 public and PECG until November 30, 2010.

26 Even though the mandatory 60-day review period will not end until January 23, 2011 at
27 the earliest, assuming the 60-day review has even started to run, Caltrans has indicated that it
28 intends to execute the lease agreement for the P3 project as early as December 26, 2010. Until

1 the Court can hear and rule on PECG's motion for a preliminary injunction, a TRO is essential to
2 preserve the status quo, ensure that Caltrans follows the mandatory legislative notice and
3 oversight procedures required of it, protect the nearly 9,000 public servants represented by PECG
4 who work for Caltrans and prevent wasteful spending of public funds.

5 II. BACKGROUND FACTS

6 Doyle Drive is part of the existing California state highway system in San Francisco and
7 provides southern access to the Golden Gate Bridge, which connects Marin and San Francisco
8 Counties. The existing structure, originally constructed in 1936, does not meet current highway
9 or seismic standards. Caltrans and the San Francisco Board of Supervisors have long considered
10 different recommendations to reconstruct or replace Doyle Drive. Ultimately, in the early 1990s,
11 the San Francisco Board of Supervisors approved the recommendation that the six-lane Doyle
12 Drive be replaced with a new six-lane facility constructed as a parkway, the Presidio Parkway
13 Project.

14 As approved, the Presidio Parkway Project involves only the replacement of the existing
15 Doyle Drive facilities. As noted in the Record of Decision issued by the Federal Highway
16 Administration (FHWA) in conjunction with its funding of a portion of the project, no new or
17 additional facilities will be constructed. (Declaration of Gerald James in Support of Ex Parte
18 Application for Temporary Restraining Order and Order to Show Cause for a Preliminary
19 Injunction (James Decl.), Exhibit I.) Pursuant to the FHWA's May 12, 2009 finance plan, the
20 Presidio Parkway Project was to be designed and constructed through eight contracts, the first of
21 which was to be awarded in June 2009. (James Decl., Exhibit G 000013-15.) The first phase of
22 the Presidio Parkway Project is currently ongoing and consists of shifting traffic from the existing
23 street on to a temporary alignment.

24 SFCTA contracted with Parsons Brinkerhoff to prepare the project reports and
25 environmental documents for the Presidio Parkway Project. In January 2007, the SFCTA
26 awarded a professional services task order no-bid contract to Arup/Parsons Brinkerhoff
27 (Arup/PB) for initial task orders for General Engineering and Design Services. The SFCTA later
28 approved Amendment No. 1 to the contract in October 2007, authorizing work to complete 35

1 percent of the design for the Presidio Parkway Project and increasing the contract amount.
2 (Petitioners' Verified Complaint filed November 2, 2010 (Pet. Verified Compl.), ¶ 33.)

3 In November 2008, SFCTA, the Golden Gate Bridge District (GGBD) and the
4 Metropolitan Transportation Commission (MTC) entered into the Doyle Drive Replacement
5 Project Memorandum of Understanding (MOU). (James Decl., Exhibit F 000001-7.) The plain
6 terms of the MOU preclude GGBD and MTC from using tolls to contribute financially to the
7 project. (James Decl., Exhibit F 000003.)

8 Three months later, in February 2009, the Legislature passed and Governor
9 Schwarzenegger signed into law Senate Bill 4 (SBX2 4, Cogdill, 2nd Extraordinary Session,
10 effective February 20, 2009), which requires that a P3 project be supplemental to existing
11 facilities and include tolls or user fees, and that Caltrans perform certain delineated functions on
12 P3 projects on the state highway system. (Pet. Verified Compl. ¶ 35.) The legislation included a
13 specific provision that "no lease agreement" may be entered into for a project under Section 143
14 that affects, alters, or supersedes the Doyle Drive Replacement Project MOU. (Section 143 (s).)
15 The bill's language concerning the MOU reveals that, by February 2009, the Legislature was
16 aware that there were proposals to convert the Presidio Parkway Project into a P3 project under
17 Section 143. (James Decl., Exhibit J.)

18 The month after the legislation passed, in March 2009, the SFCTA amended its design
19 and engineering contract with Arup/PB Joint Venture to complete 100% of the design (Plans,
20 Specifications & Estimates) for the new Doyle Drive facilities in late 2012 and to complete all
21 construction in 2014. (Pet. Verified Compl. ¶ 34.) SFCTA executed this contract precluding
22 Caltrans from the design and engineering work even though discussions about converting the
23 project to a P3 project were then underway and SFCTA's decision to let the contract for the
24 design and engineering precludes the project from satisfying the requirements of Section 143.
25 (Pet. Verified Compl. ¶ 32.)

26 Within three months of executing that contract with Arup/PB, in June 2009, the SFCTA
27 decision to "cease development of the detailed Plans, Specifications and Estimates for Contracts 5
28 to 8 through a traditional DBB approach was made at the end of June 2009 while assessment of

1 possible P3 procurement was initiated." (Analysis of Delivery Options for the Presidio Parkway
2 Project, Arup/PB, January 19, 2010.) (James Decl., Exhibit H.) The development of the detailed
3 Plans, Specifications and Estimates was halted even though the Presidio Parkway Project was
4 proceeding on schedule and was already fully funded. Shortly thereafter, SFCTA and Caltrans
5 jointly submitted a project proposal report in support of their request that the CTC approve
6 Presidio Parkway Project as a P3 at a cost of \$1.378 billion from the State Highway Account.
7 (Pet. Verified Compl. ¶ 37.) The cost represented a significant increase over the \$473 million
8 estimate for proceeding with Phase II of the project under the DBB process that had already been
9 initiated. In May 2010, in preparation for a CTC meeting to consider the P3 request, CTC staff
10 prepared a staff report recommending that it be rejected. The staff report noted that the proposal
11 would take up to \$1 billion from State Highway Account capital programs and that there were
12 legal questions concerning whether the project met the statutory P3 project requirements of
13 providing facilities that are supplemental to the existing transportation system and including tolls
14 or user fees as part of the project financing. (James Decl., Exhibit A 000001.) The staff report
15 attached three legal opinions, two of which opined the project did not meet those legal
16 requirements.¹ (James Decl., Exhibit A 000049-98.)

17 Despite the CTC staff recommendation and the legal opinions of the California
18 Legislature's Legislative Counsel and CTC's own counsel admonishing otherwise, on May 20,
19 2010, the CTC approved the Presidio Parkway Project to proceed as a P3 under Section 143.
20 Caltrans thereafter issued a Request for Qualifications and a Request for Proposals from entities
21 interested in designing, building, financing, operating and maintaining the project through a no-
22 bid P3, selected Golden Link Partners as a "preferred proposer," and issued a Notice of Intent to
23 Award a contract to Golden Link Partners for the Presidio Parkway Project. (Pet. Verified
24 Compl. ¶ 40.)

25 On October 20, 2010, Caltrans released Volume I of the final form of the "Public-Private
26 Partnership Agreement for the Presidio Parkway Project Between California Department of

27 _____
28 ¹ The first was an April 6, 2010 Legislative Counsel Opinion titled "Comprehensive Development Lease Agreements
- #1008978." The second was a May 4, 2010 memorandum from legal counsel to the CTC.

1 Transportation and Golden Link Concessionaire LLC Contract Number 04-1637U4." (James
2 Decl. at ¶8, Exhibit B.) The full proposed lease agreement consists of three lengthy volumes, yet
3 nowhere in its more than 540 pages, does the proposed lease agreement include any provision
4 indicating that Caltrans is going to perform construction inspection services for the project as
5 required by Section 143. (James Decl., Exhibits B and C.)

6 The following day, Caltrans conducted a public hearing near the proposed facility for the
7 purposes of receiving public comment on the lease agreement. (James Decl., Exhibit D.) On
8 October 26, 2010 Caltrans submitted Volume I of the lease agreement to the Legislature and
9 Public Infrastructure Advisory Commission for review. However, Caltrans did not submit
10 Volumes II and III of the lease agreement to the Legislature for review until on or about
11 November 23, 2010. (Declaration of Theodore Toppin in Support of Ex Parte Application for
12 Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction (Toppin
13 Decl.) at ¶ 6.)

14 The proposed final lease agreement has not yet been executed, but Caltrans has announced
15 its intent to award the contract sometime between December 20 and 29, 2010.

16 III. ARGUMENT

17 A. **PECG Is Entitled to a Temporary Restraining Order to Protect the Status 18 Quo Pending the Court's Decision on the Legality of the Proposed P3 Agreement.**

19 In determining whether to issue a TRO or preliminary injunction, the trial court must
20 consider two factors: (1) the likelihood that plaintiff will prevail on the merits of its case at trial;
21 and (2) the interim harm that plaintiff is likely to suffer if the injunction is denied as compared to
22 the harm the defendant is likely to suffer if the injunction is granted. (*Smith v Adventist Health
23 System/West* (2010) 182 Cal.App.4th 729, 749; see also Cal. Code of Civ. Proc., § 526(a).) The
24 second "comparative harms" factor involves consideration of the degree of irreparable harm, the
25 inadequacy of other remedies and the necessity of preserving the status quo. (*Abrams v. St.
26 John's Hospital & Heath Center* (1994) 25 Cal.App.4th 628, 636.) Provisional injunctive relief is
27 both appropriate and proper in mandamus proceedings such as this one.
28

1 To obtain provisional relief, the plaintiff need not satisfy both of these two factors. Even
2 when the plaintiff is unable to show that the balance of harms tips in its favor, a TRO may be
3 granted when the plaintiff demonstrates high likelihood of success on the merits of its case. (*King*
4 *v. Meese* (1987) 43 Cal.3d 1217, 1227-28.)

5 As fully described below, there is ample evidence and legal support for this Court to
6 exercise its sound discretion and issue a TRO in this mandamus proceeding. First, PECG has
7 demonstrated a strong likelihood of success on the merits since Defendants have not complied
8 with the plain terms of Section 143. Second, the balance of harms tips in favor of PECG because
9 the statutory requirement of legislative oversight of P3 projects will be utterly defeated if
10 Defendants are permitted to ignore the provision. In their rush to execute the P3 lease agreement
11 before satisfying the statutory prerequisites, Defendants have created the exigency now before the
12 Court. The only reasonable and available remedy to redress Defendants' wrongful conduct is for
13 the Court to issue an immediate TRO.

14 **B. PECG Will Prevail on the Merits Because Caltrans Failed to Provide the**
15 **Entire P3 to the Legislature and the Public Infrastructure Advisory**
16 **Commission for Review or Hold a Public Hearing on the Entire P3 as**
17 **Required by Law.**

18 Section 143 mandates that the Legislature and the Public Infrastructure Advisory
19 Commission be allowed 60 days to review any P3 agreement before it is executed. Section
20 143(c)(5) provides, in pertinent part:

21 At least 60 days prior to executing a final lease agreement authorized pursuant to
22 this section, the department or regional transportation agency shall submit the
23 agreement to the Legislature and the Public Infrastructure Advisory Commission
24 for review. Prior to submitting a lease agreement to the Legislature and the Public
25 Infrastructure Advisory Commission, the department or regional transportation
26 agency shall conduct at least one public hearing at a location at or near the
27 proposed facility for purposes of receiving public comment on the lease
28 agreement. Public comments made during this hearing shall be submitted to the
Legislature and the Public Infrastructure Advisory Commission with the lease
agreement. The Secretary of Business, Transportation and Housing or the
Chairperson of the Senate or Assembly fiscal committees or policy committees
with jurisdiction over transportation matters may, by written notification to the
department or regional transportation agency, provide any comments about the
proposed agreement within the 60-day period prior to the execution of the final
agreement. The department or regional transportation agency shall consider those
comments prior to executing a final agreement and shall retain the discretion for
executing the final lease agreement.

1 The obvious purpose of this statutory requirement is to ensure that the public and the Legislature
2 has an opportunity to review and comment upon P3 projects before Caltrans commits to them.

3 Notwithstanding this plain statutory text, Caltrans proposes to execute the lease agreement
4 without allowing the Legislature its full 60-day review period. The 60-day review period does
5 not commence until the full agreement has been provided to the Legislature and the Public
6 Infrastructure Advisory Commission. (Section 143(c)(5).) The proposed lease agreement
7 consists of three volumes. Although Caltrans transmitted one of these volumes to the Legislature
8 on October 26, 2010, it did not provide the entire lease agreement to the Legislature until
9 November 23, 2010. (James Decl., Exhibit E; Toppin Decl. at ¶6.) Thus, the agreement was not
10 submitted to the Legislature until November 23, 2010.

11 Just as important, Caltrans did not make the full lease agreement available to the public
12 until it posted Volumes II and III of the lease agreement on its website on November 30, 2010.
13 (James Decl. at ¶ 9, Exhibit E.) In order to comply with Section 143 (c)(5), Caltrans would need
14 to hold another public hearing to receive public comment on the lease agreement. Those public
15 comments would be included with the lease agreement sent to the Legislature.

16 Because Caltrans failed to hold a public hearing to receive public comment on Volumes II
17 and III of the lease agreement, the Legislature's 60-day review period has not yet commenced.
18 (Section 143(c)(5).) Caltrans must therefore hold another public hearing to receive public
19 comment on these volumes prior to sending it to the Legislature for it to review the agreement
20 and must consider the comments of the Legislature prior to executing the final lease agreement.
21 (Section 143(c)(5).) Consequently, Caltrans cannot execute the agreement on December 26, 2010
22 as it intends and Petitioners request should be granted.

23 **C. There is a High Likelihood that PECG Will Prevail on the Merits Because the**
24 **Presidio Parkway Project Is Not an Eligible Project Under Section 143 of the**
Streets and Highways Code.

25 To qualify as an eligible project Section 143, a transportation project must be
26 "supplemental to existing facilities currently owned and operated by the department or regional
27 transportation agencies." (§143 (a)(6).) Section 143 (a)(6) provides, in pertinent part:

28 "Transportation project" means one or more of the following: planning, design,

1 development, finance, construction, reconstruction, rehabilitation, improvement,
2 acquisition, lease, operation, or maintenance of highway, public trust, rail, or
3 related facilities *supplemental to existing facilities* currently owned and operated
4 by the department or regional transportation agencies that is consistent with the
5 requirements of subdivision (c).

6 (*Id.*, emphasis added)

7 As discussed above, the Presidio Parkway Project is a project to replace the existing 1.6 -
8 mile six-lane Doyle Drive facility. The project does not add any additional lane(s) or provide an
9 alternative route to the existing southern approach to the Golden Gate Bridge. (James Decl.,
10 Exhibit I.) Rather, the Presidio Parkway Project is merely a one-for-one replacement for the
11 existing Doyle Drive facility. (*Id.*) Therefore, it does not propose supplemental facilities, and it
12 is not eligible to be a P3 project under Section 143. Indeed, in their staff reports, CTC staff
13 admitted as much, noting that both the Legislative Counsel and CTC legal counsel had issued
14 opinions concluding the Presidio Parkway Project does not qualify as an eligible project under
15 Section 143. (James Decl., Exhibit A 000049-62, 76-98.) Thus, PECG is likely to prevail on the
16 merits in this matter and its TRO should be issued.

17 **D. Because the Presidio Parkway Project Is Precluded From Collecting Tolls or**
18 **User Fees as Required by Section 143, It Is Not an Eligible Project Under**
19 **Section 143.**

20 Among the statutory requirements contained in section 143 for a P3 is that a project
21 undertaken under its provisions must rely on tolls or user fees, rather than using existing public
22 sources of state or federal transportation revenues. Section 143 contemplates that tolls or user
23 fees generate the revenue from which the lessee will pay for capital outlay costs for a project,
24 costs of operation, and other costs.

25 The Presidio Parkway Project also fails to meet this additional requirement of Section
26 143. Doyle Drive is subject to a November 8, 2008 Memorandum of Understanding (MOU)
27 entered into between the SFCTA, the Golden Gate Bridge District (GGBD) and the Metropolitan
28 Transportation Commission (MTC). (James Decl., Exhibit F.) The MOU sets forth that the
GGBD and MTC's financial contributions to the project are conditioned upon the prohibition of
the use of tolls for the Doyle Drive replacement project. (James Decl., Exhibit F 000003-4.)
Under amendment added by Senate Bill 4, Second Extraordinary Session (2009), Section 143

1 provides that "no lease agreement" may be entered into for a project under section 143 that
2 affects, alters, or supersedes the Doyle Drive Replacement Project MOU dated November 8,
3 2008. (§ 143(s).)

4 With the addition of Subdivision (s) to Section 143, the Legislature effectively excluded
5 the Presidio Parkway Project from being an eligible transportation project under Section 143.
6 Because the Presidio Parkway Project is precluded from collecting tolls on Doyle Drive, pursuing
7 this project as a P3 is contrary to Section 143.

8 While Section 143 requires tolling or user fees for P3s, it also specifically precludes the
9 Presidio Parkway Project from imposing tolls and/or user fees. Thus the Presidio Parkway
10 Project is effectively precluded from consideration as a P3. Here too, CTC staff, relying upon the
11 Legislative Counsel and CTC counsel legal opinions, recommended against the CTC's approval
12 of Defendants' request to approve the Presidio Parkway Project as a P3. (James Decl., Exhibit A
13 000049-62, 76-98.) Because Section 143 itself precludes the Presidio Parkway Project from
14 imposing tolls and/or user fees as required for a qualified transportation project, it is likely that
15 PECG will prevail in its action.

16 **E. PECG is Likely to Prevail on the Merits Because Caltrans Has Not and Will**
17 **Not Perform the Services Required by Section 143 (f)(1) on the Presidio**
18 **Parkway Project Because Some of the Services Have Already Been Performed**
19 **by Others.**

20 Section 143(f)(1) specifies that Caltrans is the responsible agency for, among other things,
21 the performance of project services including performance specifications, preliminary
22 engineering, pre-bid services, the preparation of project reports and environmental documents,
23 and construction inspection services on all projects on California's highway system. In addition,
24 Caltrans is also responsible for preparing certain documents that set forth the scope and estimated
25 price for P3 projects. Caltrans may perform the above services using its own employees or by
26 outsourcing some or all of the required tasks to consultant engineers retained by Caltrans.

27 Here, though, it is undisputed that of the services performed to date, Caltrans did not
28 perform these tasks as Section 143 mandates. Instead, these services were performed through
SFCTA contracts with the Parsons Brinkerhoff and Arup/PB. (Pet. Verified Compl at ¶ 32.)

1 Further, when the SFCTA instructed Arup/PB to cease development of the design of the project
2 as a traditional design-bid-build and to instead prepare the P3 delivery option analysis, Caltrans
3 was still not responsible for these tasks as required by Section 143. Because the Presidio
4 Parkway Project has not and cannot meet the requirements of Section 143(f)(1), PECG is likely to
5 prevail on the merits of its case at trial and the TRO should issue.

6 **F. This Court Should Issue A Temporary Restraining Order Because the Harm**
7 **to PECG Outweighs the Harm to Defendants.**

8 This case presents a textbook example of when a TRO should be issued. The harm to the
9 Plaintiffs is immediate and irreparable. Defendants have expended and continue to expend
10 money of the State of California for the illegal purpose of pursuing and proceeding with the
11 Presidio Parkway Project as a P3. Any private entity that will be awarded the design-build
12 contract will perform work that Caltrans is legally required to perform under Section 143(f)(1).
13 Consequently, any amount spent to perform such work constitutes an illegal expenditure that
14 cannot be recovered by the State's taxpayers. As a result, the Court should enjoin any further
15 such expenditures.

16 On the other hand, no harm will come to Defendants if a TRO is issued. Simply put, there
17 is no compelling reason for Caltrans to sign the lease agreement on a date prior to when this
18 Court can hear Plaintiff's motion for preliminary injunction, particularly when Caltrans is
19 proposing to execute the agreement before the expiration of the statutory review period and
20 construction on this project is not scheduled to begin until 2012. Since PECG is likely to prevail
21 on the merits and the balancing of the comparative harms favors PECG, this Court should issue a
22 TRO preventing Caltrans from executing the lease agreement prior to an order from this Court on
23 PECG's preliminary injunction.


24 **IV. CONCLUSION**

25 For all the reasons above, the Court should approve PECG's request for a temporary
26 restraining order preventing Defendants from executing the lease agreement before the Court can
27 hear PECG's motion for preliminary injunction.
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SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: December 21, 2010

By: 
Kanwarjit S. Dua,
Attorney for Petitioners/Plaintiffs
Professional Engineers in California Government
and Dennis Alexander

CASE TITLE: *Professional Engineers in California Government, et al. v. California Department of Transportation, et al.*

COURT/CASE NO.: Alameda County Superior Case No. RG10544672

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814. I am over the age of 18 years and not a party to the foregoing action.

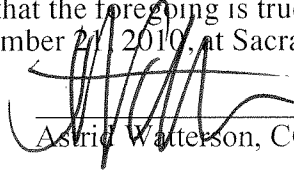
On December 21, 2010, I served the following document:

[PETITIONERS/PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

XX (by overnight delivery) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing, same-day pickup by Federal Express at the offices of Somach Simmons & Dunn for overnight delivery, billed to Somach Simmons & Dunn, and addressed as set forth below.

Gerald James, Esq. 455 Capitol Mall, Suite 501 Sacramento, CA 95814 Telephone: (916) 446-0400 Facsimile: (916) 446-0489 <i>Co-Counsel for Petitioners</i> VIA OVERNIGHT MAIL	Jeffrey Rich, Esq. Attorney General's Office 1300 I Street Sacramento, CA 95814 Telephone: (916) 324-7862 Facsimile: (916) 327-2247 <i>Attorney for Respondents California Transportation Commission and James Earp</i> VIA OVERNIGHT MAIL
Erin Holbrook, Esq. 1120 N Street (MS 57) Sacramento, CA 95812 Telephone: (916) 654-2630 Facsimile: (916) 654-6128 <i>Attorney for Respondents California Department of Transportation and Cindy McKim</i> VIA OVERNIGHT MAIL	Stephen N. Roberts, Esq. Nossaman LLP 50 California Street, 34th Floor San Francisco, CA 94111 Telephone: (415) 398-3600 Facsimile: (415) 398-2438 <i>Attorney for Respondents San Francisco County Transportation Authority and Ross Mirkarimi</i> VIA OVERNIGHT MAIL

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on December 21, 2010, at Sacramento, California.


Astrid Watterson, CCLS

SOMACH SIMMONS & DUNN
A Professional Corporation