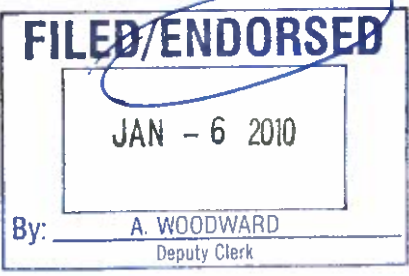


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9 Attorneys for Petitioners JOSH SHAW, Taxpayer and
10 Executive Director of California Transit Association;
and the CALIFORNIA TRANSIT ASSOCIATION,
11 a nonprofit corporation,

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 JOSH SHAW, Taxpayer and Executive)
15 Director of California Transit Association; and)
the CALIFORNIA TRANSIT)
16 ASSOCIATION, a nonprofit corporation,)
17)
Petitioners,)
18 v.)
19)
20 JOHN CHIANG, California State Controller)
and MICHAEL C. GENEST, California)
21 Director of Finance, in their official capacity,)
22)
Respondents.)
23)

CASE NO. 07CS01179

AMENDED WRIT OF MANDATE
PURSUANT TO JUDGMENT AFTER
REMITTITUR

24 TO: RESPONDENTS, JOHN CHIANG, California State Controller and MICHAEL C. GENEST,
25 California Director of Finance, and THEIR COUNSEL OF RECORD:

26 1. Pursuant to paragraph 10 of the attached Judgment After Remittitur issued and filed
27 by this court on December 9, 2009, (copy attached hereto as Exhibit 1), Respondents shall forthwith
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take all steps necessary to restore/reimburse to the Public Transportation Account the illegal appropriations of spillover gas tax revenue described therein for the 2007-08 fiscal year.

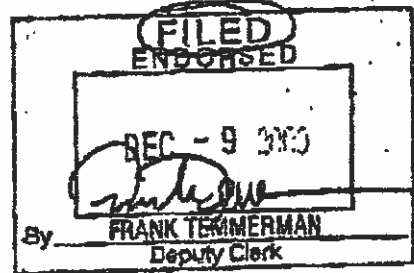
2. Respondents shall make and file a return in this action on or before April 1, 2010, setting forth what they have done to comply with this writ.

Dated: _____

Clerk of the Superior Court

EXHIBIT 1

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

JOSH SHAW, taxpayer and Executive Director of California Transit Association; and the **CALIFORNIA TRANSIT ASSOCIATION**, a nonprofit corporation, Pctitioners,

Case Number: 07CS01179

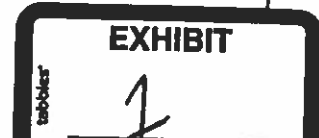
vs.

JUDGMENT AFTER REMITTITUR

JOHN CHIANG, California State Controller, and **MICHAEL C. GENEST**, California Director of Finance, in their official capacity, Respondents,

Hon. Jack Sapunor

This matter having been heard and decided on appeal by the Court of Appeal of the State of California, Third Appellate District (Case No. CC58479), and the Court of Appeal having affirmed the portion of the judgment granting a declaratory judgment and writ of mandate regarding the budget year 2007-08 transfer of four hundred nine million dollars (\$409,000,000) from the Public Transportation Account to the General Fund to offset the cost of past debt service payments on public transportation-related general obligation bonds (Proposition 108 bonds), having reversed the portion of the judgment denying all other relief, and having directed the trial court to enter a new judgment granting declaratory relief and a writ of mandate consistent with the Court of Appeal's opinion,



1 **IT IS HEREBY ORDERED and ADJUDGED that:**

2 1. **The amendment of California Revenue and Taxation Code section 7102,**
3 **subdivision (a)(1) to add subparts (G) and (H) is not consistent with and does not further**
4 **the purpose of section 7102, subdivision (a)(1) and therefore is invalid. Any funds**
5 **transferred pursuant to those subparts are Public Transportation Account spillover gas tax**
6 **revenue and are restricted in use to "transportation planning and mass transportation**
7 **purposes" pursuant to Public Utilities Code section 99310.5 (as amended by Proposition**
8 **116);**

9 2. **The term "mass transportation" in Public Utilities Code section 99310.5**
10 **means "public transportation" or "public transit;"**

11 3. **The budget year 2007-08 appropriation of \$144,332,489 from the Mass**
12 **Transportation Fund to the General Fund (via the Transportation Debt Service Fund) for**
13 **the payment of current debt service on Proposition 192 bonds does not serve a**
14 **transportation planning or mass transportation purpose and is invalid;**

15 4. **The budget year 2007-08 appropriation of \$99,120,000 from the Public**
16 **Transportation Account to the Department of Education to fund the Home-to-School**
17 **Transportation and Small School District transportation programs does not serve a**
18 **transportation planning or mass transportation purpose and is invalid;**

19 5. **The budget year 2007-08 appropriation of \$128,806,000 from the Public**
20 **Transportation Account to the State Department of Developmental Services to pay for**
21 **transportation of the developmentally disabled to regional centers does not serve a**
22 **transportation planning or mass transportation purpose and is invalid;**

23 6. **The budget year 2007-08 appropriation of \$200 million from the Mass**
24 **Transportation Fund to the General Fund (via the Transportation Debt Service Fund) to**
25 **offset the cost of past debt service on public transportation-related general obligation**
26 **bonds (Proposition 108 bonds) does not serve a transportation planning or mass**
27 **transportation purpose and is invalid;**

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7. The budget year 2007-08 appropriation of \$409 million from the Public Transportation Account to the General Fund to offset the cost of past debt service on public transportation-related general obligation bonds (Proposition 108 bonds) does not serve a transportation planning or mass transportation purpose and is invalid;

8. The budget year 2007-08 appropriation of \$82,678,000 from the Mass Transportation Fund to the General Fund for the purpose of making suspended transfer reimbursements required by California Constitution article XIX B, section 1, subdivision (f), does not serve a transportation planning or mass transportation purpose and is invalid;

9. The budget year 2007-08 appropriation of \$123,973,493 from the Mass Transportation Fund to the General Fund (via the Transportation Debt Service Fund) for the payment of current debt service on Proposition 116 bonds violates Public Utilities Code section 99611 and is invalid;

10. The peremptory writ of mandate applied for herein is granted. A writ of mandate shall issue under the seal of this Court commanding Respondents to take all steps necessary to restore/reimburse the above-described appropriations of spillover gas tax revenue to the Public Transportation Account. The writ shall further command Respondents to make and file a return on or before April 1, 2010, setting forth what they have done to comply.

11. Petitioners Josh Shaw and the California Transit Association shall recover their costs in the amount of \$_____.

12. The Court retains jurisdiction to consider any motions for an award of attorneys' fees.

13. Petitioners are directed to prepare and submit a proposed writ of mandate consistent with this Judgment After Remittitur.

Date: December 9, 2009


Jack Sapunor
Judge of the Superior Court, 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 Court's Ruling in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

**RICHARD D. MARTLAND, ESQ. or
KURT ONETO
NIELSEN MERKSAMER LAW FIRM
1415 L STREET, STE. 1200
SACRAMENTO, CA 95814**

**JAMES R. PARRINELLO, ESQ. or
CHRIS SKINNELL, ESQ.
NIELSEN MERKSAMER LAW FIRM
591 REDWOOD HIGHWAY, #4000
MILL VALLEY, CA 94941**

**MARGARET C. TOLEDO
DEPUTY ATTORNEY GENERAL
1300 I STREET, STE. 125
SACRAMENTO, CA 94244-2550**

Dated: December 11, 2009

**Superior Court of California,
County of Sacramento**

By: _____



**Frank Temmerman,
Deputy Clerk**

**DEPT : 29
DATE : December 11, 2009
CASE NO. : 07CS001179
CASE TITLE : Shaw v. Chiang**

**Superior Court of California,
County of Sacramento**

**By: F. Temmerman,
Deputy Clerk**

AFFIDAVIT OF SERVICE

Case Name: *Shaw et al v. Chiang et al*
Sacramento Court Case No. 07CS01179

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 1415 L Street, Suite 1200, Sacramento, CA 95814.

On January 6, 2010, I Caused the Foregoing Document(s) Described as: **AMENDED WRIT OF MANDATE PURSUANT TO JUDGMENT AFTER REMITTITUR**; to be served on the individual(s) listed below as follows:

Daniel J. Powell, Esq. (SB # 230304)
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Phone: 415/703-5830
Fax: 415/703-1234
e-mail: daniel.powell@doj.ca.gov


Attorney for Respondents
John Chiang and Michael C. Genest

(BY U.S. MAIL) I placed each such envelope(s), with postage thereon fully prepaid for First Class Mail, for collection and mailing at Sacramento, California, following ordinary business practices. I am "readily familiar" with Nielsen, Merksamer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(VIA E-MAIL SERVICE) By electronically transmitting these documents in Adobe PDF format to the e-mail address(es) listed above.

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

Executed January 6, 2010, at Sacramento, California.



MARIE COOK