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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO

13 **JOSH SHAW, Taxpayer and Executive**
14 **Director of California Transit Association;**
15 **and the CALIFORNIA TRANSIT**
ASSOCIATION, a nonprofit corporation,

16 Petitioners,

17 v.

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

21 Respondents.

Case No. 07CS01179

**NOTICE OF INTENTION TO MOVE TO
VACATE JUDGMENT**

Dept: 20
Judge: The Honorable Jack Sapunor

Action Filed: September 6, 2007

23 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT Respondent Michael C. Genest, California Director of
25 Finance, intends to move the court to set aside the judgment entered on December 9, 2009 and to
26 enter a new judgment consistent with law. This motion is currently set to be heard on April 9,
27 2010, subject to further orders of this Court.

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1 This motion¹ will be made pursuant to Code of Civil Procedure 663 on the ground that there
2 is an incorrect or erroneous legal basis for the judgment, as well as Petitioners' proposed writ of
3 mandate. Such legal errors include, but are not limited to:

4 (1) Violation of the doctrine of separation of powers insofar as a court cannot compel the
5 State to make an appropriation as required by its judgment. (*See County of San Diego v. State*
6 (2008) 164 Cal.App.4th 580, 597 ["Under the separation of powers doctrine, the Legislature
7 cannot be judicially compelled to appropriate sufficient funds to satisfy the State's subject
8 reimbursement obligations through future legislation and to pay those funds to the Counties."];
9 *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 595.) Counsel for Petitioners conceded
10 in oral argument before the Court of Appeal that an order requiring Respondent to reimburse the
11 Public Transportation Account for past appropriations as required by this Court's judgment would
12 violate separation of powers, as this Court's judgment would do with respect to funds spent in the
13 2007-2008 Fiscal Year.

14 (2) Lack of jurisdiction over the Governor insofar as Petitioners' proposed writ of
15 mandate would require him to include items of appropriation in the proposed budget to be
16 submitted to the Legislature. Under Article IV, section 12(a), it is the Governor, and not any of
17 the Respondents in this case, who is charged with submitting the budget to the Legislature. As
18 the Governor is not a respondent, the Court has no jurisdiction to compel him to include in his
19 budget an appropriation to reimburse the Public Transportation Account for spillover revenues
20 that were used for other purposes in Fiscal Year 2007-2008.

21 (3) Violation of the doctrine of separation of powers insofar as the proposed writ of
22 mandate compels the Governor to include any specific item in his appropriation. The Court of
23 Appeal recognized that when he is acting pursuant to Article IV, section 12(a), the Governor is
24 exercising a legislative function. (*Shaw v. Chiang* (2008) 175 Cal.App.4th 577, 595 ["The
25 enactment of a budget bill is a legislative function; it is both a right and a duty that is expressly
26 placed upon the Legislature and the Governor by our state Constitution."].) Accordingly,
27

28 ¹ This motion will be brought solely on behalf of Respondent Director of Finance.

1 requiring the Governor to include an appropriation in the budget submitted to the Legislature
2 would be an unconstitutional intrusion by this Court into the legislative process and would violate
3 the separation of powers doctrine.

4 This motion will be based on this Notice; all pleadings, papers, and records in this action;
5 the minutes of the Court; and a memorandum of points and authorities to be filed and served
6 within the time permitted by Code of Civil Procedure, section 1005.

7
8 Dated: December 22, 2009

Respectfully Submitted,

9 EDMUND G. BROWN JR.
10 Attorney General of California
11 CONSTANCE L. LELouis
12 Supervising Deputy Attorney General

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14 DANIEL J. POWELL
15 Deputy Attorney General
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Josh Shaw, et al. v. John Chiang, et al.*

No.: **07CS01179**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 22, 2009, I served the attached **NOTICE OF INTENTION TO MOVE TO VACATE JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 22, 2009, at Sacramento, California.

Rowena Aquino

Declarant



Signature