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 8 *California High-Speed Rail Authority*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF CALIFORNIA; and**
 15 **CALIFORNIA HIGH-SPEED RAIL**
AUTHORITY,

16 Plaintiffs,

17 v.

18 **UNITED STATES DEPARTMENT OF**
TRANSPORTATION; ELAINE L. CHAO,
 19 in her official capacity as Secretary of the
 Department of Transportation; **THE**
 20 **FEDERAL RAILROAD**
ADMINISTRATION; RONALD L.
 21 **BATORY,** in his official capacity as
 Administrator of the Federal Railroad
 22 Administration,

23 Defendants.
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 27
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Case No.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. The State of California and the California High-Speed Rail Authority
3 (“Authority”) bring this action for declaratory and injunctive relief challenging the Federal
4 Railroad Administration’s decision to terminate and de-obligate nearly \$1 billion in federal grant
5 funding for the California high-speed rail project. The high-speed rail project, the first of its kind
6 in United States history, is a critical part of California’s long-term strategic planning, not only to
7 address critical transportation needs, but also greenhouse gas emissions and climate change.

8 2. The Authority and the Federal Railroad Administration (“FRA”) have been
9 collaborating for over a decade on this historic program, and the State has committed billions of
10 dollars to it.

11 3. California has performed its obligations on the project, and construction is well-
12 advanced, furthering the goal of the Congressional appropriation that funds the grant—to fund
13 cooperative agreements for the development of segments or phases of intercity or high-speed rail
14 corridors.

15 4. In the last year, however, the FRA has stopped cooperating on the project,
16 including refusing to process important environmental clearances, and to count hundreds of
17 millions of dollars in state-funded expenditures toward California’s obligation to provide
18 matching funds under the grant.

19 5. On February 19, 2019—one day after California and fifteen other states filed suit
20 to invalidate President Trump’s declaration of emergency at the southern border—President
21 Trump tweeted that the suit was led by California, “the state that has wasted billions of dollars on
22 their out of control Fast Train, with no hope of completion.” One minute later, he tweeted that
23 the “failed Fast Train project in California . . . is hundreds of times more expensive than the
24 desperately needed Wall.” Later that same day, in a curt, three-page letter, the FRA abruptly
25 notified the Authority of its intent to terminate the grant agreement.

26 6. On May 16, 2019, the FRA carried out its threat and announced its “final decision”
27 to terminate the grant and de-obligate the remaining funding. The FRA also signaled its intent to
28 reallocate the money to other inter-city rail projects.

1 7. The FRA did not make any of the efforts at conciliation or compliance required by
2 its own procedures and policies, and its 25-page termination letter set out a raft of detailed
3 allegations about the Authority’s supposed non-compliance with the grant agreement that it did
4 not include in its notice or elsewhere, and that the Authority had no opportunity to rebut before
5 the FRA took action.

6 8. FRA’s sudden decision to terminate the grant in violation of its own procedures
7 and policies was arbitrary and capricious, an abuse of discretion, and contrary to law, and
8 threatens to wreak significant economic damage on the Central Valley and the State.

9 9. For these reasons, and those discussed below, the Court should vacate and set
10 aside the FRA’s action terminating the grant and de-obligating nearly \$1 billion in federal
11 funding for the project. The Court also should enjoin Defendants from re-obligating and
12 distributing these funds to any other recipient, or from otherwise transferring the funds.

13 **JURISDICTION, VENUE, AND INTRA-DISTRICT ASSIGNMENT**

14 10. This Court has subject matter jurisdiction under 28 U.S.C. sections 1331 and 2201.

15 11. An actual, present, and justiciable controversy exists between the parties within the
16 meaning of 28 U.S.C. section 2201(a), and this Court has authority to grant declaratory and
17 injunctive relief under 28 U.S.C. sections 2201 and 2202.

18 12. Venue is proper in this judicial district under 28 U.S.C. section 1391(e), because
19 this is a civil action in which Defendants are agencies of the United States or officers of such an
20 agency, no real property is involved in this action, and Plaintiff the State of California resides in
21 this judicial district.

22 13. Assignment to the San Francisco Division of this District is proper pursuant to
23 Civil Local Rule 3-2(c)-(d) and 3-5(b) because Plaintiff State of California, by and through its
24 Attorney General, maintains an office in San Francisco.

25 **PARTIES**

26 **I. PLAINTIFFS**

27 14. The State of California, represented by and through its Attorney General, is a
28 sovereign State of the United States of America.

1 concluded that a high-speed rail system in California was technically, environmentally and
2 economically feasible. Three years later, in 1996, the Legislature passed, and Governor Pete
3 Wilson signed into law, the High-Speed Rail Act, which established the Authority to continue the
4 Commission's work in planning and developing a high-speed rail system. Cal. Pub. Util. Code
5 § 185000 et seq.

6 23. In 2008, the Legislature passed, Governor Schwarzenegger signed, and the voters
7 approved Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st
8 Century. Proposition 1A envisions a system of high-speed rail trains stretching from San
9 Francisco through Los Angeles to Anaheim and eventually to Sacramento and San Diego.
10 Proposition 1A divides this system into two phases, the first of which is to connect San Francisco
11 with Los Angeles and Anaheim on a route through the Central Valley. Proposition 1A also
12 contemplates that the first phase will be built in corridors and smaller "usable segments."
13 *Id.* §§ 2704.04(b)(2), 2704.08(a), (c)(1), (d).

14 24. Proposition 1A authorizes the issuance of \$9.95 billion in general obligation bonds
15 to jump-start construction of the high-speed rail system. Cal. Sts. & Hy. Code § 2704.04(b). It
16 provides, however, that, except for certain specified costs such as preliminary engineering
17 activities, bond proceeds may not be used for more than 50 percent of the total cost of
18 construction for each corridor or usable segment of the high-speed rail system. *Id.*
19 § 2704.08(a), (g).

20 25. In 2014, the California Legislature provided the Authority with a continuing
21 source of revenue for the high-speed rail system by allocating to the system 25 percent of the
22 revenues from the State's auction of greenhouse gas emissions allowances.

23 26. The high-speed rail system contemplated by these enactments is a critical element
24 in meeting the State's growing transportation demand, especially for intercity transportation. The
25 interstate highway system, commercial airports, and the conventional passenger rail system
26 serving the intercity travel market are operating at or near capacity. In many California regions,
27 freeway and airport expansion is not viable because of existing land use constraints. And where
28 freeway and airport expansion may be viable in other parts of the state, it would nevertheless

1 require enormous public investments for maintenance and expansion to meet existing demand and
2 future growth that far exceed the cost of high-speed rail.

3 27. California's high-speed rail system is also critical to the State's environmental and
4 climate change goals. The system's trains will be powered by electricity, in contrast to airplanes
5 and most automobiles. The system will improve air quality by reducing vehicle miles travelled
6 by automobile and airplane, thereby reducing criteria pollutant emission from the transportation
7 sector. In addition, as the California Legislature has found, the high-speed rail system "will
8 contribute significantly toward the goal of reducing emissions of greenhouse gas and other air
9 pollutants" and will provide "the foundation for a large-scale transformation of California's
10 transportation infrastructure" by reducing millions of vehicles miles travelled by automobile and
11 reducing the demand for air travel. Senate Bill 862 (2014).

12 28. California's high-speed rail system is also an essential strategy for efficient
13 transportation energy use. A trip on the high-speed rail system would use one-third the energy of
14 a similar trip by air and one-fifth the energy of a trip made by car.

15 29. The economic benefits from high-speed rail system construction are significant.
16 An analysis prepared for the Treasury Department estimates net economic benefits from the
17 California high-speed rail project of between \$130.3 and \$260.6 billion. The project has
18 employed more than 36,000 people to date and is projected to employ, either directly or
19 indirectly, 100,000 people in the Central Valley. It will also help the Central Valley become
20 more accessible to the State's major metropolitan areas, thus increasing the economic stimulus.

21 **II. THE GRANTS FROM THE FEDERAL RAILROAD ADMINISTRATION**

22 30. In February 2009, Congress enacted the American Recovery and Reinvestment
23 Act, Public Law 111-5 ("ARRA"). ARRA provided \$8 billion for high-speed rail and intercity
24 passenger rail projects, but required that FRA obligate the funds no later than September 30,
25 2012, Pub. L. No 111-5, 123 Stat. at 208, and that grant monies be expended by September 30,
26 2017.

27 31. In 2009, Congress passed the Consolidated Appropriations Act, 2010, Pub. Law
28 111-117, 123 Stat. 3057 ("2010 Appropriations Act"), which provided additional funding for the

1 development of segments or phases of intercity or high-speed rail corridors.

2 **A. The ARRA Grant**

3 32. In 2010, the Authority applied for grants under ARRA for infrastructure and track
4 for three portions—the northern, southern, and Central Valley segments—of the first phase of
5 California’s high-speed rail system.

6 33. FRA approved one portion of the application—the Central Valley segment—and
7 awarded the Authority a grant ultimately totaling about \$2.5 billion. Although ARRA did not
8 require grantees to contribute their own funding, California offered to spend one dollar of its own
9 for every dollar in federal funding it received, using Proposition 1A bond proceeds as the source
10 of state funds. The agreement that FRA and the Authority executed on September 20, 2010
11 (“ARRA Grant Agreement”) required this state-federal match as a condition of the grant.

12 34. Although the ARRA Grant Agreement covered preliminary engineering and
13 environmental work in support of the entire 520-mile segment between San Francisco and Los
14 Angeles and Anaheim, it provided construction funding for only an initial 115-mile portion of
15 infrastructure and track on the segment in the Central Valley, spanning from North of Bakersfield
16 to Fresno (the “Project”).

17 35. The ARRA Grant Agreement does not contain a time-is-of-the-essence clause.
18 Nor does it create a construction time line or otherwise set a deadline for completing the San
19 Francisco to Anaheim phase of the high-speed rail system.

20 36. The scope of work in the ARRA Grant Agreement includes ten tasks, which, in
21 addition to planning and environmental work, encompass construction of infrastructure and track
22 (but not procurement of rolling stock or electrification) on the span from north of Bakersfield to
23 Madera.

24 37. The ARRA Grant Agreement also provides for extensive oversight by FRA,
25 including approval of all written agreements with (i) railroads owning property on which the
26 Project would be built, (ii) owners of infrastructure on which the Project would be built, and
27 (iii) the operator of any passenger service benefiting from the Project. The Agreement also
28 requires FRA approval for, among other things, the Authority’s project management plan, project

1 environmental reviews, preliminary engineering documents, final design documents, and Design
2 Build Program Plan.

3 38. Finally, the ARRA Grant Agreement provides that grant funds are to be disbursed
4 as reimbursements for payments previously made by the Authority. In addition, the Agreement
5 permits FRA to authorize a disbursement only if the Authority is (a) “complying with its
6 obligations under [the] Agreement” and (b) “making adequate and timely progress toward Project
7 completion.”

8 **B. The FY 10 Grant**

9 39. In 2010 and 2011, FRA awarded the Authority two additional grants, both under
10 the 2010 Appropriations Act, totaling \$928,620,000: an award of \$715 million requiring a
11 30 percent match, and an award of a little more than \$213 million requiring a 20 percent match.
12 Proposition 1A bond proceeds were again to provide the source of California’s matching funds.

13 40. On November 18, 2011, FRA and the Authority executed an agreement concerning
14 these grants (“FY 10 Grant Agreement”).

15 41. The FY 10 Grant Agreement was intended to provide funds to complete the
16 Project funded by the ARRA Grant Agreement, and the statement of work in the FY 10 Grant
17 Agreement therefore includes six tasks identical to six of the ten tasks in the statement of work in
18 the ARRA Grant Agreement.

19 42. The FY 10 Grant Agreement also contains many other provisions of the ARRA
20 Grant Agreement, including those requiring FRA oversight and approval. Like the ARRA Grant
21 Agreement, the FY 10 Grant Agreement does not contain a time-is-of-the-essence clause, a
22 construction timeline or a completion deadline for the San Francisco to Anaheim phase of the
23 high-speed rail system.

24 **III. CALIFORNIA’S COMPLIANCE WITH THE GRANT AGREEMENTS AND SUBSTANTIAL 25 PROGRESS ON THE PROJECT**

26 43. Since executing the ARRA Grant Agreement and the FY 10 Grant Agreement, the
27 Authority has made substantial progress on the Project.
28

1 44. Over 90 percent of the design work on the Project has been completed, and
2 82 percent of the rights of way needed for the Project have been obtained and delivered to the
3 Authority's contractors.

4 45. State Route 99, the main highway through the Central Valley, has been realigned,
5 and the realignment of other roads and utilities is in progress.

6 46. Over 44 miles of grading and embankment work is either finished or in progress.

7 47. Two overhead crossings, a bridge, and a viaduct have been completed; two other
8 viaducts as well as a trench in Fresno are in progress; and abutments for bridges are being
9 constructed.

10 48. In total, there are more than 24 active or completed construction sites in the
11 Central Valley, and the Project is currently employing more than 2,600 workers in the Central
12 valley, engaging 500 small businesses, and has generated nearly \$7.2 billion in economic output.

13 49. As required by the ARRA statute, the Authority spent all of its ARRA funds by
14 September 30, 2017, and having already spent \$970 million in state funds, the Authority is well
15 on its way to matching the \$2.5 billion in ARRA funds spent on the Project (after which it will
16 draw on the FY 10 Grant Agreement monies). In addition, the State has committed an additional
17 \$3.1 billion in funding toward the Project.

18 50. The FRA has closely monitored the Authority's performance under the ARRA
19 Grant Agreement. Among other things, the Authority has provided regular reports and updates
20 allowing the FRA to verify that the Authority is in compliance with a variety of grant
21 requirements. In addition, FRA and the Authority have annually conducted a Site Monitoring
22 Review designed to provide the Authority and FRA an opportunity to review issues that have
23 arisen over the previous year and address any ongoing or anticipated future needs and concerns.

24 51. In spite of this close monitoring, the FRA has only once issued a finding
25 demanding corrective action from the Authority. This occurred in 2014, and the Authority
26 promptly implemented a corrective action plan, which resolved the matter.

27 52. FRA repeatedly has recognized that the Authority was complying with the ARRA
28 Grant Agreement and making substantial progress on the Project.

1 53. As noted above, under the ARRA Grant Agreement, the FRA is permitted to
2 release funds only if it finds that the Authority is “complying with its obligations under [the
3 ARRA] Agreement,” and “making adequate and timely progress toward Project completion.”

4 54. Far from withholding funds based upon any failure to comply or make substantial
5 progress, from March 2011 through September 2017, the FRA approved 459 separate
6 disbursements totaling \$2.5 billion.

7 **IV. THE FEDERAL RAILROAD ADMINISTRATION’S PRIOR COOPERATIVE APPROACH**

8 55. Major infrastructure projects face challenges at every stage—from planning,
9 funding, environmental review, and acquisition of private property to the physical challenges of
10 construction—that cannot be fully predicted or addressed until they occur. Consequently, such
11 projects require the cooperation and patience of numerous agencies.

12 56. Until the recent change in administration, the Authority and FRA enjoyed such
13 cooperation, and they collaborated effectively toward their common goal of achieving the first
14 true high-speed rail system in the United States.

15 57. Recognizing the need for flexibility, both the ARRA Grant Agreement and the
16 FY 10 Grant Agreement permit amendments, and in fact the ARRA Grant Agreement was
17 amended six separate times and the FY 10 Grant Agreement once.

18 58. For example, in 2012, after litigation challenging California’s ability to use
19 Proposition 1A bond proceeds on the Project was filed, FRA and the Authority amended the
20 ARRA Grant Agreement to allow a tapered match payment arrangement whereby the federal
21 ARRA funds would be used first until fully expended, after which the State would spend its funds
22 until the federal expenditures are fully matched.

23 59. In late 2013, while the same litigation was on appeal, FRA and the Authority also
24 agreed to slow down Project construction, pending the results of the appeal or access to
25 alternative state matching funds. And in 2014, with Proposition 1A bond proceeds still tied up in
26 litigation, the California Legislature allocated to the Authority 25 percent of the revenues from
27 the State’s auction of greenhouse gas emissions allowances, so that the Authority would have
28 another source of State funds available for matching the federal grant funds.

1 60. In 2016, FRA and the Authority amended the ARRA Grant Agreement to extend
2 the Project performance period from September 2017 to December 2022, and in 2017, they
3 similarly amended the FY 10 Grant Agreement to extend the project performance period to
4 December 2022. The amendments also extended the length of the segment by approximately 2.5
5 miles to the north to allow better connectivity to the Madera Amtrak station used for intercity
6 passenger train travel between Sacramento and Bakersfield.

7 61. The Authority is lead agency on obtaining state environmental clearances under
8 the California Environmental Quality Act (“CEQA”), Cal. Pub. Res. Code § 2100 *et seq.*, while
9 FRA is lead agency on obtaining federal environmental clearances under the National
10 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* Assignment of FRA’s NEPA
11 responsibilities to the Authority would be more efficient because the environmental process
12 involves a single NEPA/CEQA document. Between mid-2017 and August 2018, the parties
13 worked together on the steps needed to effectuate the assignment.

14 62. FRA and the Authority also worked closely between 2012 and late 2018 to come
15 up with an acceptable intrusion barrier between the tracks used by freight trains and the high-
16 speed rail tracks in the Central Valley, to prevent derailed freight trains from intruding into the
17 Authority’s trackway and to prevent errant passenger trains from intruding into the trackway used
18 by freight trains.

19 **V. THE RECENT CHANGE IN THE FEDERAL RAILROAD ADMINISTRATION’S APPROACH**

20 63. Beginning in 2018, however, FRA effectively ceased cooperating on the Grant
21 Agreements.

22 64. For example, the Authority is informed and believes, and thereupon alleges, that
23 FRA’s monitoring report for 2017 was completed on or about February 12, 2018, the date shown
24 on the report. FRA, however, did not provide the report to the Authority until June of 2018.
25 Similarly, FRA completed its 2018 site visit in November, 2018, but has still not provided the
26 Authority with its 2018 monitoring report.

27 65. FRA also has ceased to cooperate in the environmental review process. All steps
28 for securing assignment of FRA’s NEPA responsibilities to the Authority had been completed by

1 June 2018, and FRA ostensibly continued to work toward implementation as late as August 2018,
2 but FRA never executed the assignment, despite the fact that FRA management orally assured the
3 Authority that there was no policy disagreement about the NEPA assignment and that approvals
4 of the assignment were imminent.

5 66. To make matters worse, in September 2018, FRA ceased all environmental
6 clearance work on the Project.

7 67. As a result, the Authority's efforts to obtain NEPA environmental clearances have
8 ground to a halt.

9 68. In addition, as of February 18, 2019, FRA had cancelled all previously scheduled
10 meetings with the Authority, declined to attend any meetings scheduled by the Authority, and
11 stopped responding to communications from the Authority.

12 **VI. THE EXPANDED CENTRAL VALLEY CONSTRUCTION PLAN**

13 69. Since 2014, the Authority has been considering a plan to expand construction in
14 Central Valley.

15 70. The ARRA Grant Agreement and the FY 10 Grant Agreement authorize the use of
16 federal grant money to construct a 119-mile segment from Madera to a point approximately
17 15 miles north of downtown Bakersfield.

18 71. The expanded construction plan under consideration would extend the segment by
19 52 miles so that it would reach north from Madera to Merced and south into downtown
20 Bakersfield.

21 72. This expanded construction plan would tie together three of the largest cities in the
22 Central Valley, three major universities, and three of California's fastest growing counties.

23 73. The expanded construction plan also would provide transit connectivity in the
24 north with the Altamont Corridor Express and Amtrak trains traveling to Sacramento and the Bay
25 Area, as well as connectivity in the south to bus services from Bakersfield to Los Angeles. The
26 plan is consistent with the California State Rail Plan released by the California Transportation
27 Agency in 2018.

28 74. California currently is responsible for all Project costs in excess of the federal

1 grant funds and the state’s matching funds combined. If the decision is made to expand to
2 downtown Bakersfield, California would be responsible for those additional costs, as well,
3 bringing its share of the total cost of the expanded Project to 82 percent.

4 75. On February 12, 2019, Governor Newsom delivered the State of the State address
5 to the California Legislature, and in that address, he endorsed the expanded Central Valley
6 construction plan.

7 76. The Governor announced that his administration would adopt a pragmatic
8 approach with an immediate focus on completing a high-speed rail link between Merced and
9 Bakersfield, stating that “we’ll connect the revitalized Central Valley to other parts of the state.”

10 77. At the same time, Governor Newsom confirmed that he shared the ambitious
11 vision for high-speed rail of his predecessors Governors Brown and Schwarzenegger, and would
12 finish environmental work for the entire Phase 1, San Francisco to Los Angeles area segment.

13 78. Also on February 12, Brian Kelly, the Chief Executive Officer of the Authority,
14 confirmed in a news release the Authority’s commitment to: (i) getting high-speed rail operating
15 in the Central Valley; (ii) completing the environmental work state-wide; (iii) continuing the
16 Authority’s investments in the Bay Area and Anaheim portions of the high-speed rail system; and
17 (iv) pursuing additional funding for future project expansion.

18 **VII. TERMINATION OF THE FY 10 GRANT AGREEMENT**

19 79. In addition to endorsing the expanded Central Valley construction plan, in his
20 State of the State address Governor Newsom challenged President Trump’s claim that there was
21 an emergency at the border between the United States and Mexico. “The border ‘emergency,’”
22 the Governor said, “is a manufactured crisis.” Declaring that “California will not be part of this
23 political theater,” Governor Newsom announced that two-thirds of the California National Guard
24 forces currently on the border would be redeployed to assist Cal Fire in preparing for fire season
25 and to boost the National Guard’s statewide Counterdrug Task Force.

26 80. The next day, on February 13, 2019, President Trump inaccurately tweeted that
27 “California has been forced to cancel the massive bullet train project” and that “[t]hey owe the
28 Federal Government three and a half billion dollars. We want that money back now.”

1 81. That same day Governor Newsom clarified that the high-speed rail project had not
2 been “cancelled,” and affirmed that California is “building high-speed rail, connecting the Central
3 Valley and beyond.”

4 82. Five days later, on February 18, 2019, California led a coalition of 16 states in
5 filing a lawsuit challenging President Trump’s declaration of an emergency at the border and his
6 announcement that he would use funds *not* appropriated by Congress for the border wall to
7 construct portions of the wall for which Congress had denied appropriations requests.

8 83. The following morning, on February 19, 2019, President tweeted a response
9 directly linking the border wall litigation with California’s high-speed rail project: “[a]s I
10 predicted, 16 states, led mostly by Open Border Democrats and the Radical Left, have filed suit
11 in, of course, the 9th Circuit! California, the state that has wasted billions of dollars on their out
12 of control Fast Train, with no hope of completion, seems in charge!”

13 84. One minute later, President Trump tweeted that “[t]he failed Fast Train project in
14 California, where the cost overruns are becoming world record setting, is hundreds of times more
15 expensive than the desperately needed Wall.”

16 85. Later that same day, in a three-page letter FRA notified the Authority of its intent
17 to terminate the FY 10 Grant Agreement effective March 5, 2019, and to de-obligate the funds
18 immediately after that. A true and correct copy of the notice of termination letter is attached
19 hereto as Exhibit A and incorporated herein by this reference.

20 86. The letter asserted four grounds for termination. First, it asserted that California
21 has failed to make required expenditures based on its supposed failure to meet contribution rates
22 described in its quarterly Funding Contribution Plan. Second, it asserted that the FRA had
23 determined that the Authority would not complete the Project by 2022 based on the reports from
24 the Authority’s Board of Directors. Third, it asserted that the Authority had failed to submit
25 critical grant deliverables. Fourth, it asserted that the Authority had failed to take appropriate
26 corrective action.

27 87. The FRA’s letter asserted as well that there had been “a significant change in the
28 State of California’s plans for its high-speed rail,” and that in the State of the State address,

1 Governor Newsom “presented a new proposal that represents a significant retreat . . . and
2 frustrates the purpose for which Federal funding was awarded (i.e., an initial investment in the
3 larger high-speed rail system).”

4 88. The FRA gave the Authority two weeks to respond to the assertions in its letter. In
5 addition, FRA stated that it was “exploring all available legal options, including termination of
6 [the ARRA Grant Agreement] and the recovery of the Federal funds expended under” that
7 agreement.

8 89. The Authority timely responded to FRA’s notice of intent to terminate on March 4,
9 2019. A copy of the Authority’s response letter is attached hereto as Exhibit B and incorporated
10 herein by this reference.

11 90. The Authority’s response included a detailed, point-by-point refutation of the
12 assertions in the FRA’s letter. For example, the Authority’s response showed that California had
13 accepted a much higher matching percentage, nearly 50 percent of the total Project cost, than
14 ordinarily required for railroad construction grants, and the expanded Central Valley construction
15 plan endorsed by Governor Newsom would increase California’s share of the cost to over 70
16 percent. As of December 2018, the Authority already had submitted for FRA approval \$970
17 million in state-funded invoiced expenditures, which is 39 percent of California’s \$2.5 billion
18 match requirement, even though only 26 percent of the period for making these expenditures had
19 expired.

20 91. The Authority’s response also showed that the notice’s assertion the Authority will
21 not complete the Project by December 31, 2022 contradicts the Board of Directors reports upon
22 which the FRA purported to rely. Those reports in fact project that most work on the Project will
23 be completed by March 2022, and the four remaining tasks will be completed by the end of that
24 year. The response also showed that there is no time-is-of-the-essence clause in the ARRA Grant
25 Agreement and that failure to meet the December 31, 2022 deadline would not be a material
26 breach of the Agreement.

27 92. The Authority’s response showed as well that the Authority has made substantial
28 submissions to the FRA and, far from finding these submissions inadequate, FRA implicitly

1 acknowledged their sufficiency by making 459 payments under the ARRA Grant Agreement
2 through September 2017. The response also showed that the FRA has issued only one demand
3 for corrective action, and the Authority took that action in 2014.

4 93. Finally, the Authority's response showed that Governor Newsom's plan was not
5 new and that it did not retreat from or frustrate the ultimate goal of California's high-speed rail
6 system. To the contrary, Governor Newsom endorsed a plan that expands the construction
7 project authorized by the ARRA Grant Agreement and FY 10 Grant Agreement and that furthers
8 the overall goal of the high-speed rail program by ensuring that the first segment will provide
9 tangible benefits to the region and transportation connectivity both north and south.

10 94. Nevertheless, on May 16, 2019, FRA sent a letter to the Authority that announced
11 its "final decision . . . that [FRA] has, effective today, terminated the [FY 10 Grant Agreement]."
12 (A copy of FRA's letter is attached hereto as Exhibit C and incorporated herein by this reference.)

13 95. In sharp contrast to its earlier notice letter, which devoted only a single paragraph
14 to the supposed failure to submit grant deliverables, the termination letter makes the failure to
15 submit grant deliverables the primary ground for termination and devotes over a dozen full pages
16 to discussing the issue. While the notice letter refers vaguely to "over 40 reports and
17 deliverables," without specifying any particular deliverable or deficiency, the termination letter
18 discusses in detail a long list of supposed problems with various reports, budgets, and other
19 documents.

20 96. The termination letter also finds that the Authority will not complete the Project by
21 2022. It does not dispute, however, that the Authority reports cited in the notice letter show
22 completion by that date. Instead, the FRA purports to base its final termination decision on an
23 "independent assessment, including its risk analysis," that was not previously disclosed.
24 Moreover, the termination letter discloses only the supposed results of that analysis, not the
25 analysis itself.

26 97. The termination letter also finds that the Authority has not achieved its necessary
27 contribution rates, based largely on the fact that "to date" the FRA has not accepted all of the
28 expenditures submitted by the Authority.

1 98. Finally, the termination letter accuses California of retreating from a “foreseeable
2 statewide HSR system,” though it acknowledges that this retreat “may not, standing alone,
3 constitute a violation of the FY10 Agreement.”

4 99. The final decision stated that FRA will “deobligate the \$928,620,000 in funding
5 obligated by the FY 10 Agreement,” and that it plans to award the “deobligated FY10
6 Appropriation funds” to other inter-city passenger rail projects.

7 **VIII. THE FRA’S DEPARTURE FROM ORDINARY AGENCY PRACTICE**

8 100. The FRA’s final decision to abruptly terminate the FY 10 Grant, rather than work
9 with the Authority and impose graduated sanctions as needed in an attempt to secure compliance,
10 was a sharp departure from ordinary agency practice.

11 101. At the time the FY 10 Grant Agreement was executed, DOT regulations provided
12 that the remedies imposed for non-compliance with a grant or cooperative agreement should be
13 “appropriate in the circumstances” and range from “[t]emporarily withholding cash payments
14 pending correction of the deficiency” to more serious measures such as disallowing the use of
15 funds and matching credit for “all or part of the cost of the activity not in compliance,” to “wholly
16 or partly suspend[ing] the current award” or “withholding future awards.” 49 C.F.R.
17 § 18.43(a)(1)-(5).

18 102. DOT’s Financial Assistance Guidance Manual (“DOT FAGM”), issued March
19 2009, similarly provided that “[e]nforcement measures should match the seriousness of the
20 problem,” that the agency official “should apply sound judgment in determining what
21 enforcement measures are appropriate for a situation,” and suggested escalating sanctions if
22 needed to secure compliance rather than termination.

23 103. Effective December 26, 2014, the federal government adopted uniform remedies
24 provisions for DOT and other agencies that administer federal grants. Under these regulations,
25 when a grantee fails to comply with the terms and conditions of an award, the awarding agency
26 may “impose additional conditions.” Additional actions, such as suspension or termination, may
27 be taken only “if noncompliance cannot be remedied by imposing additional conditions.”
28 2 C.F.R. § 200.

1 awarded under the Agreement it is contrary to its policies, procedures, and regulations, as well as
2 its ordinary practices, which require that FRA first work with a grantee to address any non-
3 compliance and, if that fails, proceed to issue a demand for corrective action, before it considers
4 suspension, much less termination of a grant. Moreover, the FRA's termination letter failed to
5 provide any explanation for departing from its policies and ordinary practices.

6 110. Defendants' rationale for terminating the FY 10 Grant Agreement is also
7 inconsistent with the parties' performance and course of dealings under the Agreement, including
8 but not limited to the fact that, prior to the change in presidential administrations, FRA had
9 consistently determined that the Authority was in compliance with the ARRA Grant Agreement
10 (and by extension, the FY 10 Grant Agreement, which does not even kick in until the State has
11 finished matching the ARRA grant funds).

12 111. Plaintiffs are informed and believe and thereupon allege that Defendants'
13 termination decision was not based on an examination of the relevant data, and that Defendants
14 did not provide or articulate a satisfactory explanation for their action, including a rational
15 connection between the facts found and the choice made. Rather, the decision was precipitated
16 by President Trump's overt hostility to California, its challenge to his border wall initiatives, and
17 what he called the "green disaster" high-speed rail project.

18 112. Defendants' unilateral decision to terminate the FY 10 Grant Agreement and to
19 refuse to continue the cooperative work on the Project also is directly contrary to the statutory
20 requirement and congressional mandate that the Secretary "make grants for high-speed rail
21 projects . . . and capital investment grants to support intercity passenger rail service." Pub. Law
22 11-117, 123 Stat. at p. 3056 (Dec. 16, 2009). FRA's termination of the FY 10 Grant Agreement
23 will cause significant damage to the only true high-speed rail project being developed in the
24 United States.

25 113. Accordingly, the Court should set aside the FRA's termination decision and
26 preliminarily and permanently enjoin Defendants from re-obligating or otherwise transferring the
27 funds to other activities, programs, or recipients.
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PRAYER FOR RELIEF

WHEREFORE, the Authority respectfully requests that this Court enter judgment in its favor, and grant the following relief:

1. That the Court issue a judicial declaration that Defendants’ decision to terminate the FY 10 Grant Agreement was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. That the Court enter a judgment setting aside the termination decision;
3. That the Court enter a preliminary injunction, followed by a permanent injunction, enjoining Defendants from re-obligating the grant funds to another grantee or otherwise transferring the funds; and

That the Court grant such other relief as the Court may deem just and proper.

Dated: May 21, 2019

Respectfully submitted,

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