ERIN HOLBROOK, Chief Counsel
G. MICHAEL HARRINGTON, Deputy Chief Counsel
LUCILLE Y. BACA, Assistant Chief Counsel
MARK GUENZI, Assistant Chief Counsel
JENNIFER A. FLINT (SBN 344983)
NICHOLAS DYESS (SBN 339828)
California Department of Transportation – Legal Division
111 Grand Avenue, Suite 11-100
Oakland, California 94612
Tel.: (510) 433-9100, Fax: (510) 433-9167

(NO FILING FEE PURSUANT TO GOV'T CODE § 6103)

Attorneys for Respondent
California Department of Transportation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

MARK BAKER,

Petitioner,

v.

BAY AREA TOLL AUTHORITY, et al.,

Respondents,

ILLUMINATE, et al.,

Real Parties in Interest.

Case No. CPF-24-518814

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

[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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

Respondent State of California Department of Transportation ("State") demurs to the Petition for Writ of Mandate and Complaint for Injunctive Relief brought by Mark Baker ("Petitioner") on December 16, 2024 ("Petition"). Petitioner challenges the implementation of the "Bay Lights 360 Project," which consists of an art installation of LED lights on the San Francisco - Oakland Bay Bridge ("Bay Bridge"). (Pet. ¶¶ 1-2.) The Petition alleges five causes of action against the State: the first for violation of the California Environmental Quality Act ("CEQA"); the second for violation of the National Environmental Policy Act ("NEPA"); the third for violation of the Americans with Disabilities Act ("ADA"); the fourth for violation of Section 504 of the Rehabilitation Act ("Section 504"); and the fifth[1] for violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ("Equal Protection Clause").

All causes of action alleged against the State are deficient for uncertainty and failure to allege facts sufficient to establish standing. In addition, the First Cause of Action fails to state a claim against the State under CEQA, because the State is not the lead agency and thus did not make the CEQA determinations challenged by Petitioner. In addition, the First Cause of Action is barred as a matter of law by the CEQA statute of limitations period(s). The Second Cause of Action for alleged violation of NEPA is barred as a matter of law because this Court has no jurisdiction over NEPA challenges, which are federal claims within the exclusive jurisdiction of federal courts. Finally, Petitioner's Third, Fourth, and "Sixth" Causes of Action for alleged violations of the ADA, Section 504, and the Equal Protection Clause fail because Petitioner cites to no law that has allegedly been violated in relation to the use of LED lights and, indeed, he admits there are no such laws. In addition, the Petition otherwise fails to allege facts sufficient to establish claims against the State under the ADA, Section 504, or the Equal Protection Clause.

These fatally deficient causes of action cannot be cured and, accordingly, the State's demurrer to all causes of action should be sustained without leave to amend.

II. FACTUAL AND PROCEDURAL BACKGROUND

[1] Petitioner's fifth claim is listed as the "Sixth Cause of Action." For consistency purposes, this cause of action will be referenced as the "Sixth" Cause of Action.

The Petition was filed on December 16, 2024 and names as Respondents the Bay Area Toll Authority ("BATA"), the Metropolitan Transportation Commission ("MTC"), the State, and the Federal Highway Administration ("FHWA").[2] The Petition broadly alleges that all Respondents began work on the Bay Lights 360 Project without performing the required CEQA, NEPA, and ADA analyses. (Pet. ¶¶1, 4.) The Petition also broadly alleges the Respondents failed to comply with the ADA, Section 504, and the Equal Protection Clause. (Pet. ¶ 4.)

BATA is the lead agency that approved and is carrying out the Project. (Pet. ¶¶ 7, 36; see also Aug. 15, 2023 Notice of Exemption, attached as Exh. C to BATA and MTC's Feb. 21, 2025 Request for Judicial Notice [RJN], which the State incorporates in full herein.) On August 15, 2023, BATA, as the lead agency, filed a Notice of Exemption with the San Francisco County Clerk-Recorder. (Pet. ¶ 36; RJN, Exh. C.) BATA determined that the Project is exempt from CEQA on the basis it would not result in significant effects on the environment. (RJN, Exh. C.) The Petition alleges that an Environmental Impact Report ("EIR") should have been prepared instead and that the August 15, 2023 Notice of Exemption was "unjustified." (Pet. ¶¶ 4, 21.) The Petition seeks a writ of mandate requiring all Respondents to prepare an EIR. (Pet. ¶¶ 21, 72.)

Prior to bringing this demurrer, and pursuant to California Code of Civil Procedure section 430.41, counsel for the State met and conferred with the Petitioner via exchanged letters and emails, and via videoconference. (Flint Decl. ¶¶ 2-7.) The Petitioner declined to dismiss the Petition against the State. (Flint Decl. ¶ 8.)

III. LEGAL ARGUMENT

A. Demurrer Is Proper

A demurrer shall be sustained when a court does not have jurisdiction over the action, where the court lacks jurisdiction over a cause of action alleged, and/or where the petition fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., §§ 430.10, subds. (a), (e); 430.50, subd. (a); *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1158-1159.) A demurrer is proper where a defense that would bar recovery is disclosed on the face of the complaint, in exhibits attached to the complaint, or in matters judicially noticed. (Code Civ. Proc., § 430.30; *Dwan*

[2] FHWA was dismissed with prejudice on December 24, 2024.

v. Dixon (1963) 216 Cal.App.2d 260, 265; Code Civ. Proc., § 430.30, subd. (a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) When there is no reasonable possibility that a pleading can be cured, a demurrer should be sustained without leave to amend. (*Blank v. Kirwan, supra,* 39 Cal.3d 311, 318; *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304; *City of Chula Vista v. County of San Diego* (1994) 23 Cal.App.4th 1713, 1721.)

Although the court is to treat a demurrer as admitting all material facts of the complaint as true, this does not apply to contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967.) Moreover, a demurrer cannot be defeated by allegations of fact contrary to facts that are judicially noticed. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *City of Chula Vista v. County of San Diego, supra,* 23 Cal.App.4th 1713, 1719.) Thus, while allegations of a pleading are ordinarily deemed to be true on demurrer, where an allegation is contrary to law or to a fact of which a court may take judicial notice, such allegation is to be treated as a nullity. (*Dale v. City of Mountain View* (1976) 55 Cal.App.3d 101, 105; *Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955.)

B. All of Petitioner's claims are subject to demurrer on multiple grounds.

1. Petitioner fails to establish standing for his requested writ(s) of mandate.

Petitioner requests a writ of mandate be issued for each of his causes of action. (Pet. ¶¶ 71-77.) To have standing to seek a writ of mandate, Petitioner is required to be "beneficially interested" in the writ's issuance—a standard that is "equivalent to the federal 'injury in fact' test, which requires a party to prove … it has suffered an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." (*California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 706-707, emphasis added.) Here, the Petition does not allege that Petitioner has or will suffer any injury. Petitioner does not allege that he has a disability that would be impacted by the LED lights, does not allege that he has ever been injured due to LED lights on the Bay Bridge, that he has or will visit the Bay Bridge, or that he even lives near the Bay Bridge. In short, Petitioner fails to establish that he is beneficially interested in the writs requested.

Relatedly, the Petition fails to allege facts sufficient for "public interest standing," because

that exception "is usually applied in cases where an association sues on behalf of its members," and here Petitioner has sued as an individual (albeit without alleging any personal injury). (See *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1004-1005 [declining to grant public interest standing due, in part, to the petitioner suing on behalf of only himself].)

Because the Petition fails to state facts sufficient to establish the requisite standing for a writ action, it fails as a matter of law. The State's demurrer as to all causes of action should therefore be sustained.

2. Demurrer is proper because the Petition is vague and uncertain.

Petitions are subject to demurrer if they fail to "furnish the defendants with certain definite charges which can be intelligently met." (*Zumbrun v. Univ. of Southern California* (1972) 25 Cal.App.3d 1, 8, internal citation omitted; see also Code Civ. Prov. § 430.10, subd. (f).) The allegations here are inexact—broadly asserting all causes of action against all Respondents and requesting the Court to direct all Respondents to simply comply with CEQA, NEPA, the ADA, Section 504, and the Equal Protection Clause. (Pet. ¶¶ 71-77.) This is impermissibly vague and uncertain. It is not the State's responsibility to decipher Petitioner's sweeping claims to find a potentially viable one in order to defend against it. It should not be this Court's task either. Accordingly, the demurrer should be granted as to all causes of action against the State.

3. All claims are barred by laches.

The State joins fully in the arguments made by BATA and MTC in their Demurrer, that all causes of action are barred based on laches; and incorporates the same herein.

C. The First Cause of Action for Alleged Violations of CEQA Fails as a Matter of Law as Against the State.

1. The State is not the lead agency; therefore, the first cause of action fails to state a CEQA claim against the State.

The crux of Petitioner's first cause of action is that CEQA has been violated because a full EIR was allegedly required and that the use of a CEQA categorical exemption as reflected in the Notice of Exemption was unjustified. (Pet. ¶¶ 1, 4, 6, 21, 49-60.) Petitioner seeks an order directing all Respondents—including the State—to develop a "full CEQA analysis," including an EIR. (Pet.

¶¶ 60, 73.) Petitioner's CEQA claims fail as a matter of law as against the State because the State is not the lead agency—a fact the Petition expressly acknowledges. (Pet. ¶¶ 7, 36.)

Under CEQA, it is the lead agency that has the responsibility for determining whether an EIR is required for a project. (Pub. Res. Code § 21080.1, subd. (a).) And, that determination by the lead agency is final and conclusive on all persons, including responsible agencies. (*Id.*) It is also the lead agency's responsibility to determine whether a project is exempt from CEQA. (Cal. Code Regs., tit. 14 [CEQA Guidelines], § 15061, subd. (a).) Thus, whether the project was exempt from CEQA or whether an EIR was required were determinations the State simply had no responsibility to—and accordingly did not—make. As a matter of law, the Petition fails to state a claim under CEQA against the State. The State's demurrer to the First Cause of Action should therefore be sustained without leave to amend.

2. The First Cause of Action is also barred by the CEQA statute(s) of limitations period(s).

"CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act." (CEQA Guidelines, § 15112, subd. (a).) The Legislature intentionally created these short limitation periods because "the public interest is not served unless CEQA challenges are promptly filed and diligently prosecuted." (*Stockton Citizens for Responsible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 500 (hereafter *Stockton*), internal quotes omitted.) "Decisions applying those strict limits account for 'the Legislature's clear determination'" that short limitations were intentional to adequately serve the public interest." (*Guerrero v. City of Los Angeles* (2024) 98 Cal.App.5th 1087, 1102, review denied (Apr. 24, 2024).)

Failure to file a CEQA challenge within the prescribed statute of limitations is grounds for demurrer and is fatal to the CEQA action. (*Comm. for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (hereafter *Green Foothills*) [demurrer sustained without leave to amend for failure to file action within the CEQA statute of limitations]; *Stockton*, *supra*, 48 Cal.4th at pp. 494-497, 500-501, 504 [same]; *Save Lafayette Trees v. East Bay Regional Park Dist.* (2021) 66 Cal.App.5th 21, 35, 40-43 [same].) Thus, "[a]n untimely filed challenge is to be dismissed." (*Guerrero v. City of Los Angeles*, *supra*, 98 Cal.App.5th at p. 1099; see also *Green Foothills*, *supra*, 48 Cal.4th at p. 42 [demurrer based on the CEQA statute of limitations is properly

sustained where the untimeliness of the action "clearly and affirmatively appear[s] on the face of the complaint" and matters judicially noticed].)

Here, the Petitioner alleges his CEQA action was timely brought because it was filed within 180 days of the commencement of the Bay Lights 360 project (which allegedly commenced on December 9, 2024). (Pet. ¶ 16.) In so alleging, Petitioner cites Public Resources Code section 21167, subdivision (a). (*Id*.) But the limitations period set forth in Public Resources Code section 21167, subdivision (a) does not apply here—where the lead agency has determined a project is exempt from CEQA and has filed a Notice of Exemption. Instead, the applicable statute of limitations is set forth in Public Resources Code section 21167, subdivision ***(d)***, which mandates that an action challenging a CEQA categorical exemption by a local agency be commenced within 35 days of the local public agency's filing of a notice of exemption with the clerk of the county in which the project will be located. (Pub. Res. Code, § 21167, subd. (d), [former] § 21152, subd. (b); CEQA Guidelines, § 15112, subd. (c)(2); *Stockton, supra*, 48 Cal.4th at p. 512 [the filing of a notice of exemption triggers the 35-day limitations period in Pub. Res. Code, § 21167, subd. (d)].)

The Petition acknowledges that a Notice of Exemption was issued and that BATA, the lead agency, filed its Notice of Exemption with the San Francisco County Clerk on August 15, 2023. (Pet. ¶¶ 4, 36.) Indeed, BATA's Notice of Exemption was issued on July 21, 2023 and was filed with the county clerk on August 15, 2023. (RJN, Exh. C.) At the time BATA filed its Notice of Exemption, Public Resources Code section 21152, subdivision (b) called only for the filing of a local agency's notice of exemption with the county clerk. (See [former] Public Res. Code, § 21152, subd. (b).)[3]

Thus, under Public Resources Code section 21167, subdivision (d) and (former) Public Resources Code section 21152, subdivision (b), Petitioner had thirty-five days from August 15, 2023 to file an action under CEQA (i.e., until September 19, 2023). The Petition, however, was not filed until December 16, 2024—***over one year after*** CEQA's 35-day statute of limitations had expired. As a result, the CEQA claim is barred as a matter of law.

In addition to the above, the State hereby adopts in full the other statute(s) of limitations

[3] Section 21152, subdivision (b) was amended, effective January 1, 2024, and now provides that a local agency which chooses to file a notice of exemption must file it with both the county clerk and the State Clearinghouse.

arguments asserted by BATA and MTC in their Demurrer, including all judicially noticed matters relied on, and incorporates the same herein. In summary, on the face of the Petition and all judicially noticed matter(s), Petitioner's CEQA action is barred by the statute(s) of limitations. This defect cannot be cured by amendment. For this reason, the First Cause of Action must be sustained without leave to amend. (Code Civ. Proc., § 430.10, subd. (a).)

D. This Court Lacks Jurisdiction over the Second Cause of Action for Alleged Violation of NEPA

Petitioner's Second Cause of Action alleges all Respondents, including the State, have failed to comply with NEPA. (Pet. ¶¶ 61-63.) Challenges under NEPA, however, are federal question claims over which state courts have no jurisdiction.

It is well settled that the mechanism for challenging an agency's compliance with NEPA is under the judicial review provisions of the federal Administrative Procedure Act ("APA"). (*Ctr. for Biol. Diversity v. Bernhardt* (9th Cir. 2020) 982 F.3d 723, 733 [NEPA challenges must be reviewed under the federal APA]; *Cetacean Cmty. v. Bush* (9th Cir. 2004) 386 F.3d 1169, 1179 [same, citing *Lujan v. Nat'l Wildlife Fed'n* (1990) 97 U.S. 871, 882]; 42 U.S.C. §§ 4321 et seq. [NEPA codification]; 5 U.S.C. §§ 551 et seq. [APA codification].) State courts do not have jurisdiction over federal APA actions; rather, Congress has specifically limited jurisdiction over actions brought under the APA ***to the federal courts***. (*Califano v. Sanders* (1977) 430 U.S. 99, 105-107 [the jurisdictional basis for APA claims is 28 U.S.C., section 1331, which grants original jurisdiction over federal questions to the federal district courts].) Consistent with this rule, state courts have no jurisdiction over NEPA actions. (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 832-833, 835 [federal courts have exclusive jurisdiction over APA actions; state courts have no jurisdiction over NEPA actions]; see also generally 5 U.S.C. §§ 702-706.)

Under Code of Civil Procedure section 430.10, subdivision (a), demurrer is proper where the court has no jurisdiction of the subject of the cause of action alleged in the pleading. Because, as a matter of settled law, state courts have no jurisdiction to hear NEPA claims, the demurrer to the Second Cause of Action against the State must be sustained without leave to amend.

E. The ADA Claim Must Be Dismissed as a Matter of Law Under Code of Civil Procedure § 430.10(e)

Petitioner's Third Cause of Action alleges all Respondents, including the State, have failed to comply with ADA requirements and seeks a writ of mandate directing respondents to "develop an ADA analysis." (Pet. ¶¶ 67, 75.) The Third Cause of Action must be dismissed because Petitioner fails to identify any violation of law that would allow the Court to grant the injunctive relief sought, and otherwise fails to state facts sufficient to constitute an ADA cause of action against the State.

First, injunctive relief cannot be granted for any claim where there is no violation of existing law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 445-446 [injunction not an available remedy to require a government to take action that is not required by law].) Petitioner seeks a writ of mandate ordering the performance of an "ADA Analysis," but the Petition itself concedes that "there is no specific law that requires an 'ADA analysis' for a project." (Pet. ¶¶ 6, 67.) Indeed, nothing in the ADA or its implementing regulations requires an "ADA analysis" as part of an environmental impact report or other process prior to the implementation of the public entity's program or construction of the improvement or facility. (See 42 U.S.C. §§ 12131 – 12165; 28 C.F.R. § 35.101, et seq.) The Petition makes the conclusory statement that "public agencies must take some type of action to ensure that the Project complies with ADA requirements, including 28 C.F.R. § 35.151(b)(1)" but alleges nothing so requiring as to the State and, instead, admits that the Federal Food and Drug Administration—the agency responsible for regulating LED products—has no performance standards for such products. (Pet. ¶¶ 24, 67.) Further, compliance with 28 C.F.R. § 35.151 is determined by the ADA Accessibility Standards, which do not contain any standards addressing LED lights. (See 28 C.F.R. § 35.151(c)(3); *Oliver v. Ralphs Grocery Co*. (9th Cir. 2011) 654 F.3d 903, 905 ["In general, a facility is 'readily accessible to and usable by individuals with disabilities' if it meets the requirements promulgated by the Attorney General in the 'ADA Accessibility Guidelines'"], internal citations omitted; RJN Exh. G.)

As such, there simply is no legal basis supporting Petitioner's claim for a writ of mandate ordering an "ADA analysis" in an EIR or otherwise; or for the corresponding request for injunctive relief until "full compliance" with the ADA occurs. The demurrer to the ADA claim should therefore be sustained without leave to amend.

Second, Petitioner otherwise fails to state a claim under the ADA. To properly state a claim

for a violation of Title II[4] of the ADA, Petitioner is required to allege that:

> (1) he is a qualified individual with a disability;
>
> (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity ("injured"); and
>
> (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.

(*Weinreich v. Los Angeles County. Metro. Transp. Auth.* (9th Cir. 1997) 114 F.3d 976, 978.)

The Petition does not allege any of the required elements or facts in support thereof. Instead, his allegations only generally reference unspecified "individuals with disabilities[.]" (Pet. ¶¶ 3, 4, 21, 22, 23, 30, 44, 64, 66, 68, 69, 70.) But the ADA does not permit private plaintiffs to bring claims as private attorneys general to vindicate other people's injury. (See *McInnis-Misenor v. Maine Medical Center* (1st Cir. 2003) 319 F.3d 63, 69.) Having failed to allege the requisite elements or any facts supporting an ADA claim, the claim must be dismissed. (See *Chapman v. Pier 1 Imports (U.S.) Inc.* (9th Cir. 2011) 631 F.3d 939, 954 [dismissing ADA claim due to lack of standing where plaintiff never alleged that he personally suffered discrimination under the ADA on account of his disability][5]; *Elbert v. New York State Dept. of Correctional Services* (S.D.N.Y. 2010) 751 F.Supp.2d 590, 596 [failure to state an ADA claim where plaintiff had not sufficiently alleged that he was excluded from participation in a program or activity, or otherwise treated differently, because of his disability]; *Bouslog v. Care Options Management Plans and Supportive Services, LLC* (N.D. Cal. 2020) 459 F.Supp.3d 1281, 1286-1287 (hereafter *Bouslog*) [dismissing plaintiff's ADA and Section 504 claims when plaintiff did not plead she was denied services by reason of her disabled status].)

For all of the forgoing reasons, the demurrer to the Third Cause of Action should be sustained without leave to amend.

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[4] The statutory framework applicable here falls within Title II of the ADA. (42 U.S.C. §§ 12131 – 12165; 28 C.F.R. § 35.101, et seq.)

[5] While *Chapman* involved challenges under Title III of the ADA (which addresses discrimination in public accommodations, rather than Title II (which applies to discrimination in public services), courts have considered both Title II and Title III cases when analyzing injury pleadings. (*Kirola v. City and County of San Francisco*, *supra*, 860 F.3d at p. 1174, n.3.)

F. The Section 504 Claim Must Be Dismissed as a Matter of Law Under Code of Civil Procedure § 430.10(e)

Petitioner's Fourth Cause of Action alleging violations of Section 504 should be dismissed for the same reasons as his ADA claim. Title II of the ADA and Section 504 are "interpreted coextensively because 'there is no significant difference in the analysis of rights and obligations created by the two Acts.' [Citation.]" (*Payan v. Los Angeles Cmty. Coll. Dist.* (9th Cir. 2021) 11 F.4th 729, 737.) As discussed above, the Petition admits there is no law require an ADA analysis. As further discussed, Petitioner does not identify any existing violation of law that would allow the Court to grant him the requested relief; nor has Petitioner made the requisite allegations that he is a qualified individual with a disability who has suffered a concrete, individual injury. As such, he correspondingly fails to state a claim under Section 504. (See 29 U.S.C. § 794(a); see also *Bouslog, supra*, 459 F.Supp.3d at pp. 1286-1287 ["[b]ecause [Section 504] incorporates [all the elements of] a claim under Title II of the ADA, if plaintiff fails to allege her claim under Title II of the ADA, [plaintiff] will also fail to allege [a] claim under [Section 504]"].)

Accordingly, the demurrer to the Fourth Cause of Action should be sustained without leave to amend.

G. The "Sixth" Cause of Action for Alleged Violation of the Equal Protection Clause Fails as a Matter of Law as Against the State.

Petitioner alleges the State has violated the Equal Protection Clause for failing to implement a policy "to equally protect individuals with disabilities from exposure to LED lights[.]" (Pet. ¶ 70.) The Equal Protection Clause claim fails for three distinct and independent reasons.

First, identification of a specific law that is being challenged is a threshold Equal Protection claim requirement. (*HSH, Inc. v. City of El Cajon* (S.D. Cal. 2014) 44 F.Supp.3d 996, 1006 ["to accomplish [the first step in equal protection analysis], a plaintiff can show that *the law* is applied in a discriminatory manner or imposes different burdens on different classes of people"], emphasis added; see also *People v. Moore* (2021) 68 Cal.App.5th 856, 862 ["'we ask at the threshold whether two classes that are different in some respects are sufficiently similar with respect to *the laws in question* to require the government to justify its differential treatment of these classes under those

laws.'"] internal citation omitted, emphasis added.)

Petitioner's Equal Protection Clause claim does not point to any law that contains an improper classification or that has allegedly been applied in a discriminatory manner. Instead, his claim turns on the *lack of* a "policy" that protects individuals from exposure to LED lights. (Pet. ¶ 70.) But, again, Petitioner has not—and cannot—point to any law that requires consideration of the impact of LED lights on persons with disabilities, in any context. Indeed, his own Petition concedes that there are no performance standards for LED products. (Pet. ¶ 24.) Accordingly, Petitioner's Equal Protection claim fails as a matter of law and the demurrer should therefore be sustained without leave to amend. (See *HSH, Inc. v. City of El Cajon*, *supra*, 44 F.Supp.3d 996 at pp. 1008-1009 [equal protection claim dismissed for failure to point to portion of challenged Ordinance that imposed different burdens on different classes of people].)

Second, the Equal Protection Clause broadly requires the government to treat similarly situated people equally. (*Hartman v. California Dep't of Corr. and Rehabilitation* (9th Cir. 2013) 707 F.3d 1114, 1123.) To state an equal protection claim, a plaintiff must allege that defendants *acted* with an intent or purpose to discriminate *against him* based upon *his* membership in a protected class. (*Furnace v. Sullivan* (9th Cir. 2013) 705 F.3d 1021, 1030.) Indeed, "[t]o state an equal protection claim of any stripe, whatever the level of scrutiny it invites, a plaintiff must show that the defendant treated *the plaintiff* differently from similarly situated individuals." (*Pimentel v. Dreyfus* (9th Cir. 2012) 670 F.3d 1096, 1106, emphasis added.)[6]

As addressed above, Petitioner alleges no harm to himself; he does not allege that *he* was treated differently by the State. He merely alleges the State and other Respondent do not have a policy that protects "individuals with disabilities" from exposure to LED light. (Pet. ¶ 70.) Further, Petitioner fails to allege that he was treated differently from similarly situated individuals—a threshold requirement for any equal protection claim. (*Pimentel v. Dreyfus*, *supra*, 670 F.3d at p. 1106.) Having failed to allege one or more threshold elements of an equal protection claim, the demurrer to Petitioner's "Sixth" Cause of Action should be sustained without leave to amend as

[6] Although it is unnecessary to reach this aspect of an equal protection analysis, it is noted that disability is not a suspect class for Equal Protection purposes. (See *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1225.)

against the State. (See *Voronin v. Garland* (C.D. Cal., Apr. 20, 2021, No. 2:20-CV-07019-ODW (AGRX)) 2021 WL 1546957, at *5 [equal protection claim dismissed with prejudice where plaintiff failed to make both a threshold showing of disparate treatment of plaintiff among similarly situated individuals or the actual imposition of the challenged statute on him]; *Gama v. Board of Trustees of California State University* (9th Cir. 2020) 808 Fed.Appx. 591, 592-593 [affirming dismissal of equal protection claim where plaintiff did not allege he was treated differently from any similarly situated person].)

Third, as set forth in BATA and MTC's Demurrer, which the State has joined, Petitioner's constitutionally based cause of action is precluded as a matter of law because he has a statutory remedy.

For all of these reasons, the "Sixth" Cause of Action fails, and the State's demurrer should be sustained without leave to amend.

IV. CONCLUSION

For the forgoing reasons, all causes of action alleged against the State are fatally deficient. The State's demurrer should therefore be sustained without leave to amend.

DATE: March 3, 2025

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

By: 

JENNIFER A. FLINT
Attorneys for Respondent
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
OF TRANSPORTATION

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):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

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

Illuminate the Arts P.O. Box 194210 San Francisco, CA 94119-4210	ben@illuminate.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 3, 2025, at Oakland, California.

ROSALIE NGUYEN SOLOMON, Declarant