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10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 SYLVIA DARENSBURG and VIVIAN
14 HAIN, individuals on behalf of themselves
15 and all others similarly situated;
16 AMALGAMATED TRANSIT UNION,
17 LOCAL 192; and COMMUNITIES FOR A
18 BETTER ENVIRONMENT,

19 Plaintiffs,

20 v.

21 METROPOLITAN TRANSPORTATION
22 COMMISSION,

23 Defendant.
24
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27
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Case No. C-05-1597-EDL

**DECLARATION OF THOMAS A. RUBIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY ADJUDICATION**

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I, Thomas A. Rubin, declare as follows:

1. I have been retained by Plaintiffs’ counsel to analyze the funding, planning, legislative advocacy, and other decision-making policies and practices of Defendant Metropolitan Transportation Commission (“MTC”) and their impact on the riders of the Alameda-Contra Costa Transit District (“AC Transit”).

2. I have over thirty years of experience in the field of governmental transportation and finance and I have served over 100 transit operators, metropolitan planning organizations, state departments of transportation, the U.S. Department of Transportation, transportation industry trade organizations, transit labor unions, and other governmental, private, and not-for-profit transportation entities with a wide variety of consulting and audit projects. I have served as an expert consultant or expert witness in several legal matters, including *Labor/Community Strategy Center, et al. v Los Angeles County Metropolitan Transportation Authority*, (“MTA”) *et al.* (Central District of California, No. 94-5936 TJH [MCX]) and *Bayview Hunters Point Community Advocates, et al. v Metropolitan Transportation Commission, et al.* (Northern District of California, No. C-01-0750 TEH).

3. This declaration summarizes the opinions expressed in my Expert Report and Declaration and my Rebuttal Expert Report and Declaration as they relate to the Plaintiffs’ Motion for Summary Adjudication. A true and correct copy of my Expert Report and Declaration (with exhibits), dated January 11, 2008, is attached to this declaration as Exhibit 1. A true and correct copy of my Rebuttal Expert Report and Declaration (with exhibits), dated February 25, 2008, is attached to this declaration as Exhibit 2. For ease of reference, an index of the contents of my two reports is attached as Exhibit 3.

4. In Section A of this declaration, I summarize my findings with regard to the services provided by AC Transit, BART and Caltrain, and the shrinking level of service provided by AC Transit as compared to the expanding level of service provided by BART and Caltrain.

5. In Section B, I summarize federal requirements that govern metropolitan planning organizations (“MPOs”), like MTC in connection with the adoption of their long-range

1 transportation plans, also known as Regional Transportation Plans (“RTPs”). In particular, I
2 discuss the requirement to emphasize the preservation of the existing transportation system, the
3 requirement of fiscal constraint, and the requirement to identify and cover shortfalls.

4 6. In Section C, I describe important concepts relating to shortfalls, and explain that
5 transit shortfalls are the best metric for quantifying the extent to which a transit operator lacks the
6 ability to continue to provide an ongoing level of service over time.

7 7. In Section D, I summarize the transit shortfalls that MTC has identified in its four
8 most recent RTPs, and the process by which it identifies those shortfalls.

9 8. In Section E, I summarize MTC’s practice of covering capital rehabilitation
10 shortfalls, but not operating shortfalls, and explain why that practice forces AC Transit to cut
11 service.

12 **Section A:**

13 **AC Transit, BART and Caltrain**

14 9. I focus my analysis on AC Transit, BART, and Caltrain for a number of reasons,
15 including the following: First, AC Transit, BART, and Caltrain are among the region’s major
16 primarily single-mode operators.¹ Second, comparisons between funding for AC Transit and
17 BART are particularly appropriate, given that they are, respectively, the largest bus-only and rail-
18 only operators in the Bay Area, and their service areas overlap to a very significant extent; for
19 example, AC Transit provides service along the entirety of BART’s Richmond-Fremont line, as
20 well as between the East Bay and San Francisco. (See Exhibit 2 at ¶ 100, n. 27.)

21 10. In my opinion, the most meaningful measure of the amount of service that a transit
22 agency provides to transit riders is “Vehicle Revenue Miles” (“VRMi”), which the Federal
23 Transit Administration (“FTA”) defines as “The miles that vehicles ... actually travel while in
24

25 _____
26 ¹ Although AC Transit and BART both provide demand-responsive “Americans with
27 Disabilities Act” services, these are relatively small portions of their total services and the
28 services are not operated by AC Transit or BART directly, but by a shared contractual
arrangement with third-party providers. While I am certainly not saying that these services are
unimportant, for our current purposes, they can be regarded as having only very minor impacts.

1 revenue service.” A train with six passenger cars in service to the public traveling one mile
 2 would produce six VRMi. A bus traveling one mile would produce one VRMi. (See Exhibit 1 at
 3 ¶ 102.)

4 11. Between FY93 and FY06, the Vehicle Revenue Miles operated by AC Transit,
 5 BART, and Caltrain changed as follows:

6 Operator	FY93 VRMi	FY06 VRMi	% Change
7 AC Transit	23,460,309	21,198,605	(9.6%)
8 BART	41,893,212	62,088,502	48.2%
9 Caltrain	3,445,358	6,215,464	80.4%

10 (See Exhibit 1 at ¶ 103 and Ex. E.)

11 12. During this period, as the population of its service area increased by approximately
 12 11.3% and the transit needs at least as much, and as the VRMi operated by BART and Caltrain
 13 increased substantially, AC Transit’s VRMi decreased. The reason for this decrease is that AC
 14 Transit did not have sufficient operating funds to maintain the desired level of service, leading to
 15 reductions in services offered to the public. By contrast, BART and Caltrain did have, and
 16 continue to have, sufficient operating funding, not only for their then-existing service, but also for
 17 their significant service expansions over this same period. (See Exhibit 1 at ¶ 106 and Ex. F.)

18 **Section B:**

19 **Federal requirements that govern MPOs in connection with the adoption of their RTPs.**

20 13. Federal law makes it very clear to MPOs like MTC that preserving existing transit
 21 operations is the highest priority of transit planning and transit funding. While this does not mean
 22 that no existing transit service should ever be eliminated – for example, if a new form of transit
 23 can provide faster and better service to an existing service population, or do it more cost-
 24 effectively, then eliminating the pre-existing service and replacing it with the new service can
 25 very often be justified – it does mean that, under Federal law, preserving existing transit service is
 26 a higher priority than expanding transit service, if a choice must be made. Indeed, MTC appears
 27 to agree with this prioritization because its own planning process claims to assign preservation of
 28 the existing system priority over expansion. (See Exhibit 1 at ¶ 56.) I discuss the requirement

1 that MTC prioritize system preservation in greater detail in my opening and rebuttal reports, its
 2 basis in federal statutory law, federal regulation, and federal agency guidance, as well as MTC's
 3 adoption of system preservation as a stated funding priority. (See Exhibit 1 at ¶ 56-73; Exhibit 2
 4 at ¶¶ 36-44.)

5 14. Since the adoption of the federal Intermodal Surface Transportation Efficiency Act
 6 of 1991 (Public Law 102-240), known as "ISTEA," MTC's RTP has also been subject to the
 7 requirement of "fiscal constraint." For financial plans that support metropolitan long-range
 8 transportation plans, 23 CFR 450.322(b)(11) specifies that:

9 The estimated revenue by existing revenue source (local, State, Federal and
 10 private) available for transportation projects shall be determined and any
 11 shortfalls identified. Proposed new revenues and/or revenue sources to
 12 cover shortfalls shall be identified, including strategies for ensuring their
 availability for proposed investments. Existing and proposed revenues
 shall cover all forecasted capital, operating, and maintenance costs.

13 This regulation governed the RTPs MTC adopted in 1998, 2001 and 2005. As stated by the
 14 federal transportation agencies in "FHWA-FTA Fiscal Constraint Guidance," dated June 27,
 15 2005, "The basic question to be answered [in the fiscally-constrained RTP] is 'Will the
 16 revenues... identified in the [RTP] cover the anticipated costs of the projects included in this
 17 [RTP], along with operation and maintenance of the existing system?'" (See Exhibit 1 at ¶ 32.)
 18 (This document may be found on the FHWA website, at
 19 <http://www.fhwa.dot.gov/planning/fcguid62705.htm>.)

20 15. In developing financially constrained plans, federal law requires MPOs to
 21 eliminate "shortfalls." A "shortfall," quite simply, is the difference between revenues and
 22 expenditures. (See Exhibit 1 at ¶ 77.)

23 16. While there are virtually always "shortfalls" in the original and subsequent
 24 working drafts of the financial component of long-range plans like MTC's RTPs, they must be
 25 eliminated in the final, adopted version, which must be fiscally constrained. This almost always
 26 requires MPOs to make hard choices by pursuing a combination of two strategies: reducing
 27 operating and/or capital *expenditures* by eliminating lower-priority projects and programs and/or
 28 finding additional sources of *revenues*. (See Exhibit 1 at ¶ 80. See also Exhibit 2 at ¶ 15.)

1 17. Federal law does not distinguish between the types of shortfalls that an MPO is
 2 required to cover in its financially constrained plans, and instead requires *both* operating and
 3 capital shortfalls to be covered. As noted above, 23 CFR 450.322(b)(11) states that “Existing and
 4 proposed revenues *shall cover all forecasted capital, operating, and maintenance costs.*”
 5 (emphasis added). This regulation not only does not differentiate shortfalls as “operating” and
 6 “capital,” but specifically commingles into a single, unified “shortfall” concept, requiring all
 7 shortfalls, whether for operating or capital purposes, to be covered. (See Exhibit 1 at ¶ 81.)

8 Section C:

9 **Transit shortfalls are the best metric for quantifying the extent** 10 **to which an operator lacks the ability to continue** 11 **to provide an ongoing level of service over time**

12 18. There are three main components of transit expenditures: transit operations, capital
 13 renewal and replacement,² and capital expansion. Both transit operations and capital renewal and
 14 replacement expenses are necessary to operate the existing systems, while capital expansion
 15 expenses relate to the capital cost of expanding the existing transportation system. (See Exhibit 1
 16 at ¶ 36.)

17 19. Many sources of transit funding have significant statutory, regulatory, and/or
 18 contractual restrictions on the purposes for which they can be expended. Certain sources may be
 19 primarily for transit *operations*, a wide range of other sources may be utilized for *all three*, and
 20 others may only be used for capital purposes. (See Exhibit 1 at ¶ 37.)

21 20. MTC sets policy with respect to the use of significant sources of transit funding;
 22 for instance, it uses Federal “formula” funds under 49 U.S.C. § 5307 (which by statute can be
 23 used for both capital *and* certain significant operating costs) virtually entirely for *capital*
 24 *replacement*, rather than statutorily-authorized operating costs. (See Exhibit 1 at ¶ 38; *see also*,
 25 *id.* at ¶¶ 117-132 and Exhibit C; Exhibit 2 at ¶¶ 233-235.)

26 21. MTC also has indirect control over funding sources that are within the direct
 27 purview of others (such as transit fares, which are directly controlled by the transit operators that

28 ² Capital renewal and replacement is also referred to as “capital rehabilitation.”

1 collect them) and the substantial revenues collected pursuant to county sales tax measures (which
2 are governed by expenditure plans). (See Exhibit 1 at ¶ 39 & Exhibit C.)

3 22. An operating shortfall measures the extent to which a transit operator is unable to
4 deliver the baseline of service against which that shortfall is measured. As a result, the amount of
5 an operator's unfunded operating shortfall is directly calculated to quantify the degree to which
6 that operator is unable to continue to provide existing service. Similarly, the degree to which
7 MTC covers operating and capital rehabilitation shortfalls is directly calculated to quantify the
8 amount of assistance MTC provides to operators to enable them to continue to provide existing
9 service. (See Exhibit 1 at ¶ 178; Exhibit 2 at ¶ 8(c).) In my opinion, the extent of unfunded
10 operating and capital rehabilitation shortfalls – combined – is the best measure of whether a
11 particular transit operator has adequate funding to continue to provide existing service over time.
12 (See Exhibit 2 at ¶ 8(c).)

13 23. As noted above, federal law emphasizes the paramount importance of preserving
14 the existing system, and operating expenses are no less necessary to preserving the existing
15 system than are capital rehabilitation needs. Indeed, while federal law does not distinguish
16 between the types of shortfalls that an MPO is required to cover in its long-range plan, the
17 principle of prioritizing preservation of the existing transportation system would, if anything,
18 prioritize operating shortfalls over capital rehabilitation shortfalls. This is so because operating
19 shortfalls more immediately jeopardize the existing system, while capital rehabilitation shortfalls
20 do not. If there is not enough funding for capital rehabilitation, there may not be significant
21 impact on current levels of operations for some time. As MTC itself acknowledges, a shortfall
22 for transit capital replacement simply means deferred maintenance, not that unsafe transit vehicles
23 are being operated. However, if an operator faces a shortfall in its operations funding, the
24 standard result is an immediate reduction in transit service operated, as MTC acknowledges.
25 Transit agencies operate on the basis of balanced annual budgets, where revenues must not be less
26 than operating expenses; when there is not sufficient funding to operate the desired level of
27 service and there is limited or no opportunity to increase revenues or reduce costs, the only
28 available option to balance the budget is to reduce expenses. (See Exhibit 1 at ¶ 82.)

1 been assigned to maintaining and sustaining the existing system, MTC (a) first funds “prior
2 commitments” to existing projects (projects already included in a prior RTP or TIP), and then (b)
3 with any remaining funds, MTC funds “new projects.” (See Exhibit 1 at ¶¶ 41-48.)

4 26. The starting point for MTC’s 25-year RTP cost projections for a particular transit
5 operator’s operating costs is the operator’s ten-year projections in its most recent Short-Range
6 Transit Plan (“SRTP”). (See Exhibit 1 at ¶ 44.) Based on its policy decisions about how funds
7 should be spent, MTC prepares revenue projections for each operator and requires each operator
8 to prepare a balanced budget, including proposed service levels, that conforms to the revenues
9 that are assigned to that operator by MTC policy. MTC’s SRTP Guidelines explicitly require
10 operators to tailor their service levels to fit MTC’s revenue projections. For instance, the 2000
11 SRTP Guidelines state that, “Where reductions in service levels are required in order to achieve a
12 balanced operating budget, the SRTP shall document how the reductions are to be made and
13 assess the impacts of the cuts on the communities involved.” The 2004 SRTP Guidelines state,
14 similarly, “Where reductions in service levels are required in order to achieve a balanced
15 operating budget, describe the reductions and assess their impact on the affected service areas and
16 communities.” (See Exhibit 1 at ¶¶ 49-55; see also, *id.* at ¶¶ 50-55.)

17 27. Before describing the operating shortfalls that MTC has identified for AC Transit
18 in its last four RTPs, I note that MTC itself has created those operating shortfalls. (See Exhibit 1
19 at ¶ 21.) MTC sets policy with respect to the use of significant sources of transit funding under
20 its control. (See, e.g., ¶¶ 19-21 of this Declaration above.) As I described earlier, the operating
21 shortfalls identified in the initial stage of the RTP planning process are based on MTC’s policy
22 decisions. (See Exhibit 1 at ¶¶ 37-40, 114-162; Exhibit 2 at ¶¶ 60-88.)

23 28. MTC’s last four RTPs identified operating shortfalls reflecting insufficient revenue
24 to allow AC Transit to operate its then-existing service levels. BART and Caltrain did not suffer
25 similar shortfalls in the revenue necessary to operate existing service. At the same time, these
26 RTPs also reflect capital rehabilitation shortfalls for each of the three operators. As described in
27 Section E, below, MTC chose *not* to cover AC Transit’s operating shortfalls and instead covered
28

1 capital rehabilitation shortfalls, directing a major share of RTP funds to cover the capital
2 rehabilitation shortfalls of BART and Caltrain. (See Exhibit 1 at ¶ 92.)

3 29. In each of these four RTPs, MTC identified an *operating shortfall* for AC Transit:
4 \$360.5 million in the 1994 RTP, \$136.2 million in the 1998 RTP, \$27.3 million in the 2001 RTP,
5 and \$64.355 million in the 2005 RTP. (See Exhibit 1 at ¶ 93.)

6 30. BART does not have an operating shortfall in any of the RTPs, and has a capital
7 shortfall in the three most recent RTPs. BART's \$2.5 billion capital shortfall in the most recent
8 RTP comprises nearly 70% of the total for the three operators. (See Exhibit 1 at ¶ 94(b).)

9 31. Caltrain has an operating shortfall only in the 2005 RTP of \$22.9 million.
10 Caltrain's 2005 RTP operating shortfall, however, unlike AC Transit's, does not reflect an
11 inability to operate its existing level of service. Rather, it is due to the additional cost of
12 operating the "Baby Bullet" train service *expansion*, and – unlike AC Transit – its operating
13 shortfall does not represent a shortfall in funding to operate its pre-existing service. (See Exhibit
14 1 at ¶ 94(c).)

15 32. When assessing the costs of maintaining the "existing transportation" system in the
16 RTP and, in turn, identifying "shortfalls", MTC uses a "baseline" for the "existing" system that is
17 defined as "those services in operation, under construction, or that have full funding
18 commitments." Thus, an operating shortfall that appears in its RTP can represent a shortfall in
19 revenue to operate existing service ("those services in operation") or *expanded service* ("under
20 construction" or with "full funding commitments"). (See *id.*)

21 33. Indeed, MTC has spent billions of dollars in capital expansion (plus the additional
22 operating and capital rehabilitation costs that capital expansion brings with it) for new BART and
23 Caltrain service, while its capital expansion costs for AC Transit have been minimal in
24 comparison. (See Exhibit 1 at ¶ 98; *see also, id.* at ¶ 99.)

25 34. At the same time, MTC's RTPs understate the full extent of AC Transit's
26 operating shortfalls, for several reasons: First, because AC Transit has had consistent long-range
27 operating shortfalls in each of the RTPs, it has been forced to reduce the level of service it
28 provides, thus establishing ever-lower levels of service as the new baseline level for the next

1 RTP. Second, the baseline of service on which an RTP operating shortfall for AC Transit is
 2 predicated is not even the same as the lower baseline that results from the preceding RTP
 3 operating shortfall; rather, it is even lower than that. As previously described, MTC's calculation
 4 of the RTP shortfalls is based on the level of service included in the operator's SRTP. That level
 5 of service, however, is not necessarily the level of service that an operator is actually running –
 6 which is what federal requirements mean when they talk about preserving the “existing” system –
 7 but the amount that can be sustained with the revenue MTC allots. (*See* Exhibit 1 at ¶ 108.)

8 35. For instance, AC Transit's operating shortfall of \$64.355 million reflected in the
 9 2005 RTP understates the magnitude of the shortfall in funds required by AC Transit to operate
 10 the level of existing service it was running at the time MTC determined operator shortfalls as part
 11 of the 2005 RTP process. AC Transit suffered a very significant reduction in bus operations just
 12 prior to the establishment of the “baseline” used to calculate RTP expenditures. When these
 13 service cuts are accounted for, AC Transit's operating shortfall for the 2005 RTP period was
 14 actually more than half a billion dollars higher – \$564.5 million. Even this figure is conservative
 15 because it does not account for an additional 4% service cut AC implemented before the 2003-04
 16 fiscal year. (*See* Exhibit 2 at ¶ 95; *see also*, Exhibit 1 at ¶ 108; Exhibit 2 at ¶¶ 96-98.)

17 Section E:

18 **MTC's practice of covering capital rehabilitation shortfalls, but not operating shortfalls,**
 19 **forces AC Transit to cut service by leaving AC Transit without the funds necessary to**
 20 **operate its existing level of service.**

21 36. After making its initial shortfall calculations (*see* ¶ 25 above, describing Steps 1
 22 through 3), MTC assigned “regional discretionary funding” (also referred to as “Track 1
 23 funding”) to cover certain transit shortfalls. In its RTP process since 1994, MTC has never
 24 covered operating shortfalls, but it has regularly covered part or all of the capital rehabilitation
 25 shortfalls. (*See* Exhibit 1 at ¶ 96; *see also id.* at ¶ 97.)

26 37. The chart below shows MTC's application of this “regional discretionary funding”
 27 to the capital rehabilitation shortfalls that it identified in the final 1998, 2001 and 2005 RTPs. It
 28 shows the percentage of Track 1 funding assigned to AC Transit, BART, and Caltrain, based on

1 the total Track 1 funding assigned to these three operators. It also shows the proportion of each
2 operator's total shortfall (operating plus capital rehabilitation) that MTC funded.

3 **MTC's Assignment of Track 1 Funding to Cover Shortfalls**

4 Agency	5 Capital		6 Percent Track 1	7 Operating		8 Percent Covered	9 % Operating
	10 Millions Shortfall	11 Covered		12 Millions Shortfall	13 Covered		14 +Capital Covered
1998 RTP							
15 AC Transit	\$205.909	\$154.400	14.5%	\$136.151	-0-	0.0%	45.1%
16 BART	797.772	598.300	56.2%	-0-	-0-	0.0%	75.0%
17 Caltrain	416.076	312.100	29.3%	-0-	-0-	0.0%	75.0%
18 Total	\$1,419.757	\$1,064.800	100.0%	\$136.151	-0-	0.0%	68.4%
2001 RTP							
19 AC Transit	\$188.400	\$188.400	23.4%	\$36.700	-0-	0.0%	83.7%
20 BART	472.800	472.800	58.7%	-0-	-0-	0.0%	100.0%
21 Caltrain	143.800	143.800	17.9%	-0-	-0-	0.0%	100.0%
22 Total	\$805.000	\$805.000	100.0%	\$36.700	-0-	0.0%	95.6%
2005 RTP							
23 AC Transit	\$458.474	143.386	\$11.8%	\$64.355	-0-	0.0%	27.4%
24 BART	2,460.594	1,073.005	88.2%	-0-	-0-	0.0%	43.6%
25 Caltrain	515.545	-0-	0.0%	22.868	-0-	0.0%	0.0%
26 Total	\$3,434.613	\$1,216.391	100.0%	\$87.223	-0-	0.0%	34.5%

18 As noted above, in the 1998 RTP, MTC covered only 45.1% of AC Transit's total shortfall, while
19 covering 75% of BART and Caltrain's. In the 2001 RTP, MTC covered only 83.7% of AC
20 Transit's total shortfall, as compared to 100% of BART and Caltrain's. And in the 2005 RTP,
21 MTC allocated \$1.073 billion to BART to cover 43.6% of its total shortfall, but only covered
22 27.4% of AC Transit's total shortfall, as identified by MTC in the 2005 RTP. (See Exhibit 1 at ¶
23 95.)

24 38. In the 2005 RTP, MTC assigned nearly \$9 billion in what it refers to as
25 "discretionary" or "Track 1" funding – funding which was assigned by Commission policy in the
26 RTP itself, as a part of the financially-constrained element. (See Exhibit 1 at ¶ 181.) These funds
27 are comprised primarily of three funding sources over which MTC exercises control: Surface
28

1 Transportation Program (“STP”), Congestion Mitigation and Air Quality Program (“CMAQ”)
 2 funds, and State Transportation Improvement Program (“STIP”) funds. (See Exhibit 2 at ¶ 87.)

3 39. As noted above, AC Transit’s true operating shortfall in the 2005 RTP was more
 4 on the order of \$564.5. (See Exhibit 2 at ¶ 98; see also, Exhibit 1 at ¶ 108; Exhibit 2 at ¶¶ 95, 97-
 5 98.) When the chart reflected in ¶ 37 above is revised to account for AC Transit’s true operating
 6 shortfall, the actual disparity is even greater: MTC covered 43.6% of BART’s total shortfall, but
 7 only covered 14.02% of AC Transit’s total shortfall:

8 **MTC’s Assignment of Discretionary (“Track 1”) Funding to Cover Actual Shortfalls**

Capital		Operating		%		
Agency	Millions	Percent Track 1	Millions	Percent Covered	+Capital Covered	
2005 RTP						
AC Transit	\$458.474	143.386	\$11.8%	\$500.498	-0- 0.0%	14.02%
BART	2,460.594	1,073.005	88.2%	-0-	-0- 0.0%	43.6%
Caltrain	515.545	-0-	0.0%	22.868	-0- 0.0%	0.0%
Total	\$3,434.613	\$1,216.391	100.0%	\$87.223	-0- 0.0%	34.5%


15 (See Exhibit 2 at ¶ 102.)

16 40. MTC’s practice of failing to cover the operating shortfalls (shortfalls that its
 17 funding policies create, see ¶ 27 above) forces AC Transit to reduce service levels. (See Exhibit 1
 18 at ¶¶ 24; see also, id. at ¶¶ 170-82.) As noted above, MTC acknowledges that transit operating
 19 shortfalls can require an operator to reduce service. Indeed, principles of fiscal constraint
 20 discussed above mean that, if MTC is not going to provide the necessary funding to cover AC
 21 Transit’s operating shortfall, it must ensure that AC Transit cuts service, at least to the extent that
 22 fare increases do not cover that shortfall. It does so by withholding from AC Transit the funds
 23 necessary to operate that service. (See Exhibit 2 at ¶ 20.)

24 41. MTC has the ability, the flexibility and the control to cover these operating
 25 shortfalls. (See, e.g., Exhibit 1 at ¶¶ 165-69.)

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of April, 2008 at Los Angeles, California.



Thomas A. Rubin