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ASSOCIATION OF BAY AREA  
7 GOVERNMENTS

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN FRANCISCO**

NEW LIVABLE CALIFORNIA (d/b/a  
Livable California), a California public benefit  
corporation, and COMMUNITY VENTURE  
PARTNERS, INC., a California public benefit  
corporation,

Petitioners/Plaintiffs,

v.

ASSOCIATION OF BAY AREA  
GOVERNMENTS, a California joint powers  
authority, and DOES 1-20,

Respondent/Defendant.

Case No. CPF-19-516690

**MEMORANDUM IN SUPPORT OF  
RESPONDENTS' DEMURRER TO  
PETITIONERS' VERIFIED PETITION  
FOR WRIT OF MANDATE AND  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF FOR  
VIOLATIONS OF THE RALPH M.  
BROWN ACT**

Date: August 12, 2019  
Time: 9:30 a.m.

Judge: Hon. Ethan P. Schulman  
Dept.: 302

Reservation No.: 07120812-19  
Action Filed: May 31, 2019

[Filed concurrently with Motion to Strike  
Portions of Petitioners' Verified Petition for  
Writ of Mandate and Complaint for Injunctive  
and Declaratory Relief for Violations of the  
Ralph M. Brown Act]

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## I. INTRODUCTION

After a lengthy meeting of its Executive Board (the “Board”), the Association of Bay Area Governments (“ABAG”) voted to authorize execution of a regional housing- and transportation-development compact. Consistent with the requirements of the Ralph M. Brown Act, that vote was taken by roll call, and the vote of each director was reported publicly. Nonetheless, petitioners New Livable California and Community Venture Partners, Inc. (“Petitioners”), who oppose the regional compact, seek to invalidate ABAG’s decision on the grounds that, earlier in the evening, the Board, without a roll call, rejected a procedural vote to delay consideration of the compact. Petitioners’ claims fail as a matter of law and should be dismissed.

*First*, Petitioners’ attempt to invalidate ABAG’s vote on the regional compact fails as a matter of law. The applicable statutes authorize courts to invalidate “*an* action taken” by a public agency if that action violated the Brown Act and the violation is shown to have prejudiced an individual or the public. But no statute or other authority supports Petitioners’ request to invalidate a fully lawful, Brown Act-compliant vote based on a prior procedural vote taken without a roll call. Contrary to Petitioners’ arguments, the Brown Act recognizes no “fruit of the poisonous tree” doctrine to invalidate a series of votes based on a single violation early in the series.

*Second*, Petitioners cannot sustain their attack on ABAG’s procedural vote. Although they have alleged that vote violated the Brown Act, they have not alleged any cognizable prejudice from that violation. Specifically, they have not alleged ABAG’s Board would have taken a different action if its directors’ votes had been recorded, which is the minimum type of prejudice recognized by case law. To the contrary, their allegations affirmatively demonstrate that a roll-call vote would not have changed the result on the unsuccessful, procedural motion. Moreover, ABAG has since committed publicly to hold roll-call votes on all future actions where support for or against a given action is less than unanimous. Thus, there remains no live controversy for the Court to resolve.

Petitioners’ claims cannot be sustained and should be dismissed.

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## II. STATEMENT OF FACTS<sup>1</sup>

**A. ABAG is a local government agency whose objectives include increasing and improving the housing supply in the San Francisco Bay Area.**

ABAG is a joint powers authority of the nine, San Francisco Bay Area counties—Alameda, Contra Costa, Marin, Napa, Sonoma, San Mateo, San Francisco, Santa Clara, and Solano—as well as the 101 cities located therein. (Pet., ¶ 4; see Gov. Code, § 66536.1(b).) ABAG’s governing body is its Board, which is composed of county supervisors, mayors, and city councilmembers from across all nine counties and a cross section of the 101 cities. (Pet., ¶¶ 4-5, 8.) ABAG’s operational objectives include increasing the housing supply according to the region’s needs, maintaining and improving existing housing within the region, and expanding and conserving housing opportunities for lower income people. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 376.)

**B. Petitioners are two non-profits who advocate for, and report on local land use, zoning, housing, and transportation.**

Petitioner New Livable California is a non-profit, public-benefit corporation comprised of a statewide coalition of elected officials and community leaders advocating for land use, zoning, housing, and transportation issues. (Pet., ¶ 2.) Community Venture Partners, Inc. is also a non-profit, public-benefit corporation whose mission is to promote and defend the principles of open government. (Pet., ¶ 3.) It publishes the *Marin Post*, which reports on land-use policies and decision making. (*Ibid.*)

**C. ABAG holds a public meeting and considers a motion to authorize Board President David Rabbitt to sign a regional housing- and transportation-development compact.**

On January 17-18, 2019, ABAG held a regularly noticed and agendized Board Meeting.<sup>2</sup>

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<sup>1</sup> Consistent with the standard on demurrer, ABAG assumes for the sake of this motion the truth of material facts alleged, but ignores conclusory and argumentative statements. (See *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

<sup>2</sup> There was a simultaneous webcast during the meeting and webcast recordings of the proceedings were officially published online. (See Pet., ¶ 15.) This recording remains publicly accessible. (*Ibid.*)

1 (See Pet., ¶ 14.) The meeting was convened to consider, among other things, Agenda Item No. 12:  
2 a motion to authorize Board President David Rabbitt to sign a regional housing and transportation  
3 proposal called the CASA Compact. (Pet., ¶¶ 1, 14.) Consideration of that item (the “CASA  
4 Motion”) began at around 7:30 p.m. and spanned over five hours of discussion, stretching into the  
5 early morning of January 18, 2019. (Pet., ¶¶ 14, 16.) The majority of this time was spent on staff  
6 presentation and public comment, as well as discussion amongst members of the Board. (Pet., ¶  
7 16.)

8 At one point, Director Cindy Chavez moved to authorize President Rabbitt to sign the  
9 CASA Compact with certain qualifications. (Pet., ¶¶ 14.) Subsequently, Director Liz Gibbons  
10 made a substitute motion (the “Substitute Motion”), to postpone consideration of the CASA  
11 Motion until the next regularly scheduled Board meeting to allow ABAG staff to collect and  
12 correlate data regarding financial impacts. (Pet., ¶¶ 17-18.) Director Barbara Halliday seconded  
13 that Substitute Motion. (Pet., ¶ 17.)

14 The Board heard then comments on the Substitute Motion for approximately one hour.  
15 (Pet., ¶ 18.) Thereafter, two motions were on the floor for the Board to consider: the CASA  
16 Motion and the Substitute Motion. (Pet., ¶ 19.)

17 **D. At a little after 1 in the morning, the Board votes on the substitute motion by raised**  
18 **hands.**

19 The Board began with a vote on the Substitute Motion. (*Ibid.*) Prior to taking that vote,  
20 President Rabbitt asked Board Clerk Fred Castro if he wanted to take a roll-call vote. (Pet., ¶ 20.)  
21 Clerk Castro responded by saying: “It’s your call.” (*Ibid.*) President Rabbitt did not proceed with  
22 a roll-call vote on the Substitute Motion. (See Pet., ¶ 21.) Instead, he asked the members to raise  
23 their right hand if they were in favor of the motion. (*Ibid.*) This was to ensure that Clerk Castro,  
24 and any member in the public audience for that matter, could see and count the votes. (See *ibid.*)  
25 President Rabbitt repeated the same procedure to record the votes of those members voting against  
26 the Substitute Motion. (Pet., ¶ 22.) Absences and abstentions were not recorded in this manner.  
27 (Pet., ¶ 24.) The Substitute Motion failed with 18 votes against, nine votes for, four abstentions,  
28 and one absent, as announced by Clerk Castro. (Pet., ¶ 22; see, also Pet., Exh. A, p. 3.)

1 **E. The Board votes on the CASA Motion, as amended, by roll-call vote.**

2 After the Substitute Motion failed, Director Chavez amended her original CASA Motion  
3 (“Amended CASA Motion”), and Director Jesse Arreguin seconded that amended motion. (Pet.,  
4 ¶¶ 25, 49.) President Rabbitt then proceeded with a vote to call the question on the Amended  
5 CASA Motion, though the record does not reflect why President Rabbitt believed a motion was  
6 necessary. (Pet., ¶ 26.) Clerk Castro stated that no roll-call vote was required on the procedural  
7 motion to call the question, but a roll-call vote would be required on the actual amended motion.  
8 (*Ibid.*) Accordingly, at the request of President Rabbitt, the Board decided by show of hands to  
9 call the question, and Clerk Castro did not record or announce the positions of the various  
10 directors, except to note that the Board was ok to proceed. (*Ibid.*)

11 Then the Board proceeded with a roll-call vote on the Amended CASA Motion, which  
12 passed with twenty-one votes in favor, nine votes against, no abstentions, and three absent. (Pet.,  
13 ¶ 27.) The vote of each member was recorded and later published in the Board’s meeting minutes.  
14 (See Pet. Exh. A, p. 3)

15 **F. Petitioners demand that ABAG rescind its vote on the amended CASA Motion and**  
16 **then sue when ABAG refuses.**

17 Three months after the vote on the Amended CASA Motion, on April 17 and May 15,  
18 2019, Petitioners wrote to ABAG claiming that the Board’s failure to take a roll-call vote on the  
19 Substitute Motion and motion to call the question violated the Brown Act. (Pet., ¶¶ 28, 29; see  
20 also Exhs. A, B.) Petitioners argued that these alleged Brown Act violations nullified and voided  
21 the action taken on the Amended CASA Motion. (Pet., Exh. A, p. 7.)

22 ABAG responded on May 16, 2019, denying that Petitioners had identified a basis to  
23 invalidate the Board’s votes on the Substitute Motion or the Amended CASA Motion. (Exh. C.)  
24 At all times, ABAG has maintained that the Board will continue to comply with the Brown Act  
25 and oversee that all actions taken at its governing Board meetings are compliant with the Brown  
26 Act. (*Ibid.*) And to avoid any confusion in the future, the ABAG Board formally announced  
27 during its May 16 Board meeting that all future votes would be taken by roll call. (See Request  
28 for Judicial Notice in Support of Respondent’s Demurrer to Petitioners’ Verified Petition for Writ

1 of Mandate and Complaint for Injunctive Relief; see also Code Civ. Proc., § 430.30, subd. (a)  
2 [providing Court may consider judicially noticeable facts on demurrer].)

3 The present writ proceeding followed.

### 4 III. LEGAL ARGUMENT

5 The Petition fails to state facts sufficient to constitute any cognizable cause of action and  
6 should be dismissed as a result. (See Code Civ. Proc., § 430.10, subd. (e).)

#### 7 A. **Petitioners’ challenge to the Amended CASA Motion fails as a matter of law because** 8 **the ABAG Board approved that motion by roll-call vote, as the Petition reflects.**

9 Petitioners’ single cause of action for alleged violation of the Brown Act primarily seeks to  
10 invalidate the ABAG Board’s approval of the Amended CASA Motion. (See generally Pet.,  
11 Introduction, ¶¶ 39, 40, 42, 43, 52, 76, Prayer ¶¶ 1, 3.) Indeed, Petitioners’ interest in this case  
12 stems first and foremost from their opposition to the CASA Compact itself. (Pet., ¶¶ 2, 3, 76, 77.)  
13 They claim that approval should be declared null and void exclusively because ABAG “fail[ed] to  
14 publicly report the vote or abstention of each member present” as required by Government Code  
15 section 54935, subdivision (c)(2). (See, e.g., Pet., ¶ 34-37, Conclusion, Exs. A, B.) Their  
16 arguments, however, cannot be sustained.

17 The Court is authorized to declare null and void “an action taken by a legislative body of a  
18 local agency in violation of Section 54953. . . .” (Gov. Code, § 54960.1, subd. (a).) There is no  
19 dispute that the ABAG Board is a “legislative body of a local agency” within the meaning of the  
20 Brown Act. (Compare Pet., ¶¶ 4-5, 8, with Gov. Code, § 54952.) And there is no dispute that the  
21 Amended CASA Motion constituted “action taken.” (Compare Pet., ¶¶ 14, 27, with Gov. Code, §  
22 54952.6 [defining “action taken” as “a collective decision,” “a collective commitment or  
23 promise,” or “an actual vote . . . upon a motion, proposal, resolution or ordinance.”].) Still,  
24 Petitioners’ challenge to the Amended CASA Motion fails as a matter of law because, as  
25 Petitioners admit, that motion was adopted by a valid, roll-call vote. (Pet., ¶¶ 14, 27.)

26 Notably, Petitioners *do not claim otherwise*. Instead, they assert that the vote on the  
27 Amended CASA Motion may be declared null and void because the earlier vote on the Substitute  
28 Motion violated the Brown Act. (Pet., ¶ 39.) They note that the rules of parliamentary procedure

1 adopted by some legislative bodies would have required ABAG to resolve the Substitute Motion  
2 first, and so they claim that the Amended CASA Motion was “fruit of the poisonous tree,” a vote  
3 that could not have been taken if the Substitute Motion had not validly failed. (See Pet., ¶ 40, 42,  
4 Ex. A p.1.) Not so. No case or other authority has ever acknowledged a “fruit of the poisonous  
5 tree” doctrine in the Brown Act context.<sup>3</sup> Nor should this Court be the first to do so; the concept  
6 has no applicability.

7 First, it is not supported by the statutory text. As noted, Government Code section 54960.1  
8 allows courts to declare null and void “*an* action taken . . . in violation of Section 54953. . . .”  
9 And “action taken” is defined as “*a* collective decision,” “*a* collective commitment,” or “*an* actual  
10 vote. . . .” (Gov. Code, § 54952.6.) In other words, the text of the statute allows for the  
11 invalidation of “an” individual vote if *that* vote violated the Brown Act. Nothing in any part of the  
12 Brown Act authorizes courts to declare null and void a series of votes based on one violation as  
13 Petitioners ask the Court to do here.

14 Second, Petitioners’ “fruit of the poisonous tree” theory rests on the premise that the  
15 ABAG Board could not have reached the Amended CASA Motion without first holding a roll-call  
16 vote on the Substitute Motion. That premise is mistaken. While courts may declare null and void  
17 action taken in violation of the Brown Act, such action is not rendered immediately null and void  
18 upon the violation. To the contrary, as discussed in more detail in Section III.B.1, *infra*, a  
19 challenger must prove prejudice from the violation before a court will declare the action null and  
20 void (a standard Petitioners cannot satisfy in this case). And, in any event, nothing in the Brown  
21 Act requires compliance with the procedures outlined in Robert’s or Rosenberg’s Rules of Order.  
22 (See 75 Ops.Cal.Atty.Gen. 89 (1992) [noting that California governments have discretion to adopt,  
23 alter, and even suspend their own rules of order].)<sup>4</sup> In short, nothing in the Brown Act prevented  
24 ABAG’s Board from proceeding with the Amended CASA Motion, even if there was some  
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26 <sup>3</sup> “Fruit of the poisonous tree” is a constitutional rule requiring exclusion of evidence collected by  
27 law enforcement that would not have been found but for an earlier violation of a criminal  
28 defendant’s constitutional rights. (See, e.g., *Wong v. U.S.* (1920) 371 U.S. 471, 487-488.)

<sup>4</sup> Petitioners have not alleged that ABAG has adopted Robert’s or Rosenberg’s Rules of Order.

1 technical problem with its vote on the Substitute Motion.

2 Petitioners' "fruit of the poisonous tree" theory is baseless, and its attempt to invalidate the  
3 Amended CASA Motion vote accordingly fails as a matter of law.

4 **B. The Petition cannot withstand demurrer based on a challenge to the Substitute**  
5 **Motion alone.**

6 Petitioners may respond that demurrer cannot be sustained because, even though they are  
7 unable to invalidate the Amended CASA Motion, their single cause of action also seeks to  
8 invalidate the Board's vote on the Substitute Motion and to have that vote declared a violation of  
9 the Brown Act. (See Pet., ¶¶ 1, 34-38, 41, 44, 45, 47, 51, 77, 78, Prayer ¶¶ 1, 3; see also *PH II*,  
10 *Inc. v. Sup. Ct.* (1995) 33 Cal.App.4th 1680, 1682-1683 (*PH II*) [holding that a demurrer will not  
11 lie to dismiss part of a cause of action, if the remainder states a viable claim].) But Petitioners'  
12 claims regarding the Substitute Motion also fail to state a cognizable, justiciable cause of action.

13 1. **Any attempt to invalidate the Substitute Motion fails as a matter of law**  
14 **because Petitioners have not alleged facts demonstrating cognizable prejudice.**

15 To have "an action taken" declared "null and void," a challenger must not only  
16 demonstrate a violation of the Brown Act; they must also demonstrate prejudice from the  
17 violation. (Gov. Code, § 54960.1; *Galbiso v. Orosi Public Utility Dist.* (2010) 182 Cal.App.4th  
18 652 (*Galbiso*); *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555-556 (*Cohan*).)  
19 More specifically, a challenger must demonstrate that the agency would have taken some different  
20 action but for the violation. (*Ibid.*)

21 For example, in *Cohan*, a city council added an administrative appeal to a meeting's  
22 agenda with less than the 72 hours normally required by the Brown Act. (*Cohan, supra*, 30  
23 Cal.App.4th at pp. 552-553.) The city council later held a regularly noticed hearing on the appeal  
24 and ultimately ruled in favor of the appellants, overturning prior approval of a real estate  
25 development. (*Id.* at p. 553.) The developer was present at both meetings, but later challenged the  
26 decision claiming, amongst other things, that adding consideration of the appeal to the first  
27 meeting's agenda violated the Brown Act's notice requirements. (*Ibid.*) The trial court found that  
28 the first meeting had been improperly agendized, but concluded that the agency's decision could

1 not be invalidated because the developer was not prejudiced by the violation. (*Ibid.*)

2       The court of appeal affirmed. The developer argued that the public was prejudiced by the  
3 inadequate notice of the first meeting, which deprived supporters of an opportunity to appear and  
4 express to the agency board their views favoring the development. (*Cohan, supra*, 30 Cal.App.4th  
5 at p. 556.) The court rejected that argument. (*Ibid.*) The evidence could not support a conclusion  
6 that the agency would have reached a different decision if it had provided proper notice. (*Ibid.*)  
7 As the court explained, it was "highly unlikely more persons would have attended the July 7  
8 meeting to dissuade the Council from considering whether to appeal the decision than appeared to  
9 support the project on the merits." (*Ibid.*) Thus, the developer failed to demonstrate prejudice  
10 from the notice violation. (*Ibid.*)<sup>5</sup>

11       Similarly, *Galbiso* arose from a challenge to a public agency's decision to sell certain  
12 property in a tax sale. (*Galbiso, supra*, 182, Cal.App.4th at p. 658.) The property's owner  
13 claimed that the agency had decided to conduct the tax sale in a secret closed meeting in violation  
14 of the Brown Act. (*Id.* at p. 669.) The trial court sustained the agency's demurrer without leave to  
15 amend, and the Court of Appeal affirmed. Relevantly, the court found that statements by the  
16 agency's attorneys did not demonstrate the existence of a Brown Act violation and, in any event,  
17 the owner was familiar with the agency's legal position and plans and so had not pled prejudice  
18 from any purported violation. (*Id.* at p. 671.)

19       Similarly, Petitioners here have alleged facts constituting a violation of the Brown Act's  
20 roll-call vote requirement, but have not alleged cognizable prejudice. They claim that ABAG's  
21 failure to hold a roll-call vote on the Substitute Motion prejudiced their right to monitor and report  
22 on each Director's individual vote. (Pet., ¶¶ 36, 37, 76, 78.) They also allege prejudice based on  
23 their thwarted desire to have seen the Substitute Motion pass. (Pet., ¶ 77.) But they do not allege  
24 facts supporting the conclusion that the Substitute Motion would have passed if the Directors  
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26 \_\_\_\_\_  
27 <sup>5</sup> Although the developer's claim of inadequate notice failed to demonstrate prejudice, the court  
28 ultimately concluded that other violations of the developer's substantive and procedural due-  
process rights stated grounds for invalidating the agency's decision. (*Cohan, supra*, 30  
Cal.App.4th at p. 561.)

1 votes had been recorded. To the contrary, their own allegations reflect that the Substitute Motion  
2 failed by a vote of 18 to nine. (Pet., ¶¶ 22.) The Amended CASA Motion then passed on a roll-  
3 call vote of 21 to nine. (Pet., ¶ 27.) Petitioners have alleged no basis to believe that any Directors  
4 who voted against the Substitute Motion would have changed their vote on a roll call, when they  
5 were willing to have their votes in favor of the Amended CASA Motion publicly reported. And it  
6 is noteworthy that the motion to delay consideration of the CASA Compact received the some  
7 number of favorable votes as were cast against the Amended CASA Motion on the later roll call.  
8 Petitioners have not pled and cannot plead that ABAG's Board would have taken a different  
9 course of action but for the allegedly improper Substitute Motion. Therefore they have not pled  
10 and cannot plead cognizable prejudice.

11 Moreover, New Livable California attended the meeting, and so could observe the votes of  
12 each member, even if some votes were not caught on video as Petitioners allege. (See Pet., ¶¶ 2,  
13 21.) As a result, they actually had the opportunity to monitor the votes, even in the absence of  
14 reporting and cannot claim prejudice. (See *Galbiso, supra*, 182, Cal.App.4th at p. 658.)

15 Regardless, Petitioners mere desire to learn the voting details that would have been  
16 revealed by a roll-call vote on the Substitute Motion cannot constitute a meaningful form of  
17 prejudice. Recognizing such a claim would swallow the prejudice requirement whole. Literally  
18 every Brown Act violation imaginable would deprive some interested person of information they  
19 would otherwise have been able to obtain but for the violation. Thus, if a thwarted desire to know  
20 were sufficient, prejudice would result from every violation, and the longstanding requirement that  
21 a challenger prove both a violation and prejudice would cease to have any meaning. That is not  
22 and cannot be the law.

23 2. **Petitioners' cannot secure mandate or declaratory relief regarding the**  
24 **substitute motion because ABAG agrees that all actions must be taken by roll-**  
**call vote and has publicly committed to do so in the future.**

25 Having failed to plead a claim to invalidate the ABAG Board's votes on the Amended  
26 CASA Motion or Substitute Motion, Petitioners may still attempt to avoid demurrer by focusing  
27 on their request for a retrospective judgment simply declaring that the ABAG Board violated the  
28 Brown Act when it voted on the Substitute Motion and/or directing the Board to vote exclusively

1 by roll call in the future. (See Gov. Code, § 54960, subd. (a) [allowing determination of past  
2 Brown Act violations under specified circumstances].) Even that narrow claim cannot be  
3 sustained, however.

4 To grant declaratory relief, a party must demonstrate a live controversy. (Code Civ. Proc.,  
5 § 1060.) Similarly, mandate will not lie to direct an idle act. (*Cal. High-Speed Rail Auth. v.*  
6 *Superior Court* (2014) 228 Cal.App.4th 448, 684; *County of San Diego v. State of California*  
7 (2008) 164 Cal.App.4th 580, 595-596.) Here, while ABAG was unwilling to accede to  
8 Petitioners' demand that it rescind its approval of the CASA Compact, its Board *did* publicly  
9 commit to ensuring that all future votes are conducted by roll call where support for or against a  
10 given action is less than unanimous. (See Request for Judicial Notice; see also Code Civ. Proc., §  
11 430.30, subd. (a) [allowing courts to consider judicially noticeable facts on demurrer].) As a  
12 result, there is no disagreement between the parties, no threat of future violations, and no basis for  
13 the Court to order equitable relief. Petitioners have not pled facts showing otherwise.

14 **3. To the extent Petitioners believe they can maintain a separate challenge to the**  
15 **Substitute Motion, the Petition is subject to demurrer for vagueness.**

16 Notwithstanding the foregoing, to the extent that Petitioners demonstrate that some aspect  
17 of their single cause of action has potential merit, the Court should still sustain ABAG's demurrer  
18 and grant Petitioners leave to amend. When two or more "causes of action are improperly joined  
19 and mingled together in one statement, without being separately set forth as distinct causes of  
20 action," the claim is subject to demurrer. (*Nevada County & Sacramento Canal Co. v. Kidd*  
21 (1869) 37 Cal. 282, 308; see also Code Civ. Proc., § 430.10(f).) Here, as noted, Petitioners have  
22 combined their challenge to the Amended CASA Motion with their challenge to the Substitute  
23 Motion into a single cause of action. Accordingly, at a minimum, Petitioners should be required  
24 to amend their Petition to separate their claims related to each motion.<sup>6</sup>

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28 <sup>6</sup> In the alternative, ABAG has also filed a concurrent motion to strike to address this same  
concern. (See *PH II, supra*, 33 Cal.App.4th at p. 1683.)

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DATED: July 15, 2019

By:

W. HOFMANN  
C. CASARRUBIAS

1 **PROOF OF SERVICE**

2 *New Livable California, et al. v. Association of Bay Area Governments*  
3 San Francisco County Superior Court Case No. CPF-19-516690

4 At the time of service, I was over 18 years of age and not a party to this action. I am  
5 employed in the County of San Francisco, State of California. My business address is 425 Market  
6 Street, 26th Floor, San Francisco, CA 94105.

7 On July 15, 2019, I served true copies of the following document(s) described as:

8 **MEMORANDUM IN SUPPORT OF RESPONDENTS' DEMURRER TO PETITIONERS'**  
9 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**  
10 **INJUNCTIVE AND DECLARATORY RELIEF**

11 on the interested parties in this action as follows:

12 Jason A. Bezis Attorney for Petitioners/Plaintiffs  
13 3661-B Mosswood Drive  
14 Lafayette, CA 94549-3509  
15 Telephone: (925) 708- 7073  
16 Email: Bezis4Law@gmail.com

17 **BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the  
18 Service List by submitting an electronic version of the document(s) to One Legal, LLC, through  
19 the user interface at [www.onelegal.com](http://www.onelegal.com).

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed on July 15, 2019, at San Francisco, California.

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Grace M. Mohr