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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

20 SYLVIA DARENSBURG and VIVIAN
HAIN, individuals on behalf of themselves
21 and all others similarly situated;
AMALGAMATED TRANSIT UNION,
22 LOCAL 192; and COMMUNITIES FOR A
BETTER ENVIRONMENT,

23 Plaintiffs,

24 v.

25 METROPOLITAN TRANSPORTATION
26 COMMISSION,

27 Defendant.
28

Case No. C-05-1597

**SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF PURSUANT TO FOURTEENTH
AMENDMENT TO THE UNITED STATES
CONSTITUTION, 42 U.S.C. § 1983, TITLE
VI OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. § 2000d, ET SEQ., AND CAL.
GOV. CODE § 11135**

[CLASS ACTION]

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INTRODUCTION

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2 1. This action challenges a longstanding pattern of race discrimination by Defendant
3 Metropolitan Transportation Commission (“MTC”) in the funding of public transit services in the
4 San Francisco, California Bay Area. Plaintiffs Sylvia Darensburg and Vivian Hain, along with
5 many members of the organizational plaintiffs, Communities for a Better Environment (“CBE”) and
6 Amalgamated Transit Union, Local 192, are people of color who are riders of the Alameda-
7 Contra Costa Transit District (“AC Transit”), which operates California’s largest bus-only transit
8 system. Defendant MTC wields enormous control over transportation funding in the San
9 Francisco Bay Area and allocates, programs, or otherwise controls significant transit funding
10 sources to each of the Bay Area’s approximately twenty to thirty transit operators, including AC
11 Transit. Through its funding, planning, advocacy, and other decisionmaking policies and
12 practices, Defendant MTC has historically engaged, and continues to engage, in a policy, pattern
13 or practice of actions and omissions that have the purpose and effect of discriminating against
14 poor transit riders of color in favor of white, suburban transit users, on the basis of their race and
15 national origin.

16 2. AC Transit serves a ridership that is nearly 80% people of color. By contrast, the
17 Peninsula Corridor Joint Powers Board (“Caltrain”) and the Bay Area Rapid Transit District
18 (“BART”) were from their very inception intended to serve disproportionately white suburban
19 commuters. Caltrain and BART continue to have much higher percentages of white transit riders
20 than does AC Transit.

21 3. Over many years Defendant MTC has exercised and continues to exercise control
22 over transportation funding for the Bay Area in a manner that disproportionately benefits the
23 white riders of Caltrain and BART, at the expense of the disproportionately minority riders of AC
24 Transit. As a result of Defendant MTC’s discriminatory funding practices, AC Transit bus riders
25 receive a public subsidy of \$2.78 per trip. By contrast, Caltrain riders receive \$13.79, almost five
26 times that received by AC Transit patrons, and BART riders receive \$6.14, more than double that
27 received by AC Transit riders.

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1 4. One of MTC's most significant responsibilities is the development and adoption of
2 the Regional Transportation Plan ("RTP"), a long-range planning document in which Defendant
3 MTC identifies the total pool of available transportation funding available over a twenty-five year
4 horizon, identifies the cost of operating and maintaining the region's transportation system,
5 identifies MTC's regional priorities, and decides how to allocate available funds to identified
6 costs. As a result of defendant MTC's discriminatory funding policies and practices, AC Transit
7 has consistently received inadequate money to fund its operating budget, and has suffered a
8 structural, long-term deficit in its operating budget, reflected in a multimillion dollar "transit
9 operating shortfall" in each of MTC's RTPs since 1994. By contrast, no operating shortfall is
10 reflected for BART in any of these RTPs, and none for Caltrain in three of the four. Since at least
11 as early as 1994, it has been MTC policy and practice to "cover" – that is, to fund – transit *capital*
12 shortfalls, benefiting riders of BART and Caltrain, but not to cover transit *operating* shortfalls,
13 thus hurting riders of AC Transit.

14 5. The funding disparities created by Defendant MTC, and defendant MTC's creation
15 of and failure to cover AC Transit's consistent operating shortfalls, have significant, adverse
16 effects on AC Transit riders of color, who, as a result, receive a lower quality and quantity of
17 transit service from that received by riders of Caltrain and BART. The RTP transit operating
18 shortfalls created by MTC cause AC Transit to cut service and increase fares, to the detriment of
19 AC Transit riders of color. As a result, at the same time that the level of rail service has
20 experienced a steady increase, the level of bus services available to riders of AC Transit has fallen
21 precipitously. And the quality of AC Transit service has deteriorated, while white suburban rail
22 commuters have enjoyed first-rate transit service. These funding disparities also adversely impact
23 the environment and public health and safety of low-income communities of color in Alameda
24 and Contra Costa Counties.

25 6. Defendant MTC's funding preference for projects and programs that benefit
26 Caltrain and BART riders, but leave AC Transit riders behind, Defendant MTC's creation of and
27 failure to cover transit operating shortfalls in its RTPs, and its policy and practice of funding
28 capital shortfalls but not operating shortfalls, are not justified by any transportation planning or

1 business necessity. The Caltrain and BART projects and programs that Defendant MTC funds
2 and advocates for are vastly less cost-effective than the AC Transit projects and programs that
3 Defendant MTC consistently refuses to fund, or under-funds. Defendant MTC’s irrational
4 funding practices undermine the basic and commonly-accepted transportation planning principle
5 of using limited transportation funds in a cost-effective manner. Defendant MTC, moreover, has
6 the ability to allocate funds under its control to cover RTP shortfalls for both transit operations
7 and transit capital purposes. It does so for the enormous capital shortfalls experienced by Caltrain
8 and BART, but refuses to do so for AC Transit’s operating shortfalls.

9 7. Defendant MTC’s funding practices harm transit riders of color who depend on
10 AC Transit to get to work or school, and to meet their daily needs, such as shopping for food and
11 clothing, getting to the doctor, and taking children to day care. Those riders suffer significant
12 adverse effects on a daily basis from Defendant MTC’s funding practices. Plaintiffs file this class
13 action to bring a halt to Defendant MTC’s discriminatory practices and to ensure that minority
14 bus riders share equitably in the improvement of transit services that white suburban commuters
15 enjoy.

16 **JURISDICTION**

17 8. This action arises under the Fourteenth Amendment to the United States
18 Constitution, 42 U.S.C. §1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et*
19 *seq.*, and Cal. Gov. Code §11135. Jurisdiction is conferred on this Court pursuant to 28 U.S.C.
20 §§1331, 1343, and 1367.

21 9. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C.
22 §§2201, 2202, Federal Rules of Civil Procedure 57 and 65, and the general legal and equitable
23 powers of this Court.

24 **VENUE**

25 10. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the events
26 or omissions giving rise to the Plaintiffs’ claims occurred in this district.

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1 11. Pursuant to Local Rule 3-2(d), intra-district assignment to the San Francisco or
2 Oakland division is proper because the acts or omissions which give rise to this action occurred in
3 Oakland, California, where Defendant MTC is headquartered.

4 **PLAINTIFFS**

5 12. Plaintiff Sylvia Darensburg is a low-income African-American resident of East
6 Oakland, County of Alameda. She has three children. They all depend on AC Transit bus service
7 to meet their transportation needs. She and her family ride AC Transit buses to get to work,
8 school, college classes, medical appointments, grocery shopping, social services and volunteer
9 activities. She and her family have suffered the consequences of repeated bus service cuts and
10 fare increases. Cuts in bus service have reduced her employment opportunities, and often make
11 her tardy for work despite her best planning. Where she previously only needed to ride one bus
12 or two to get to necessary destinations, cuts in service now require that she ride two or three buses
13 in order to arrive at the same destinations. In the evening, when she returns from college classes,
14 Plaintiff Darensburg must now walk a long distance in an unsafe area because evening service on
15 the bus route closest to her home has been discontinued. Defendant discriminates against
16 Plaintiff Darensburg by denying her equal treatment in its funding, planning, advocacy, and other
17 decisionmaking policies and practices, including by providing her with lower transit subsidies
18 than white Caltrain and BART riders, and by creating and failing to cover shortfalls in the
19 operating budget of AC Transit, the transit system she uses. MTC's discriminatory funding,
20 planning, advocacy, and other decisionmaking policies and practices deny Plaintiff Darensburg
21 equal transportation benefits, on the basis of her race.

22 13. Plaintiff Vivian Hain is a low-income Latina resident, formerly of East Oakland,
23 and now of Berkeley, County of Alameda. She has three children. Plaintiff Hain's household
24 owns an old, polluting automobile, which is inoperable for one or more weeks in an average
25 month. During those periods, she and her family depend on AC Transit buses to get to school,
26 college classes, medical appointments, grocery shopping, social services and volunteer activities.
27 She and her family have suffered the consequences of repeated AC Transit bus service cuts. As a
28 result of those service cuts, Plaintiff Hain and her family members have encountered significant

1 obstacles in traveling to a wide variety of destinations. Where previously Plaintiff Hain or her
2 family members only needed to ride one bus or two to get to necessary destinations, cuts in
3 service now require two or three bus trips in order to arrive at the same destinations. Plaintiff
4 Hain's lack of access to a higher quality and quantity of transit service has impeded her ability to
5 complete her college course of study. Similarly, Plaintiff Hain's daughter has difficulty getting to
6 the magnet school in which she is enrolled, which in turn interferes with her daughter's right to
7 obtain a free, quality public education. Defendant discriminates against Plaintiff Hain by denying
8 her equal treatment in its funding, planning, advocacy, and other decisionmaking policies and
9 practices, including by providing her with lower transit subsidies than white Caltrain and BART
10 riders, and by creating and failing to cover shortfalls in the operating budget of AC Transit, the
11 transit system she uses. MTC's discriminatory funding, planning, advocacy, and other
12 decisionmaking policies and practices deny Plaintiff Hain equal transportation benefits, on the
13 basis of her race and national origin.

14 14. Plaintiff Communities for a Better Environment ("CBE") is a California
15 environmental health and justice non-profit organization that seeks to protect and enhance the
16 environment and public health. CBE has fought for cleaner air in the Bay Area for over twenty
17 years by, among other things, increasing and improving transit opportunities in the region. As an
18 environmental justice and health organization, CBE specifically addresses the effects of agency
19 decisions on environmental quality and the distribution of environmental burdens and benefits as
20 they specifically relate to low-income communities of color. CBE recognizes that resource
21 allocation and funding choices disproportionately impact these communities. As an
22 environmental justice organization, CBE seeks to ensure that residents of communities of color
23 have equitable access to healthcare, employment opportunities, and other important opportunities
24 and benefits such as transit services afforded to white communities.

25 15. CBE and another plaintiff organization brought successful litigation in 1989,
26 against, *inter alia*, MTC to enforce national standards for ozone and carbon monoxide to improve
27 air quality in the Bay Area. See *Communities for a Better Environment, et al. v. Deukemejian, et*
28 *al.* (No. C-89-2044-TEH) and *Sierra Club, et al. v. Metropolitan Transportation Commission, et*

1 *al.* (No. C-89-2064-TEH), filed June 13, 1989. Among other things, MTC was forced to adopt
2 contingency transportation control measures to improve air quality. *See id.*

3 16. Nearly twelve years later, CBE and a coalition of environmental, environmental
4 justice and community groups brought suit against MTC to improve Bay Area transit ridership to
5 improve air quality, reduce public health problems caused by air pollution, offer those residents
6 with cars a choice to use transit instead, and afford those residents without vehicles a more viable
7 and affordable public transit system. *See Bayview Hunters Point Community Advocates, et al. v.*
8 *MTC, et al.* (No. C-01-0750 TEH) (“*Bayview*”), filed February 21, 2001. The suit sought to
9 compel MTC to implement a key 1982 transportation control measure that sought to ease the
10 region’s air pollution woes by requiring MTC and transit operators to achieve by 1987 a 15
11 percent increase in Bay Area transit ridership from 1983 levels. The goal was to improve the
12 viability of transit as an alternative to automobile use, in order to shift people from cars onto
13 public transit and thereby reduce motor vehicle emissions. Eighteen years later, the measure had
14 yet to be implemented, and the ridership increase had never been realized. Despite a 30 percent
15 increase in population, there were roughly the same number of people riding transit in 2001 as in
16 1983. While transit ridership in the region as a whole remained roughly at 1983 levels, ridership
17 on the inner city transit systems fared much worse. AC Transit in the East Bay lost
18 approximately eight million annual boardings between 1983 and 2001. In light of the relief
19 plaintiffs in the *Bayview* action sought, *viz.*, to require MTC to achieve a 15 percent increase in
20 ridership over 1983 levels, a major area of litigation focused on MTC’s power to effect an
21 increase in transit ridership. This in turn required extensive litigation over the nature and extent
22 of MTC’s discretion to allocate available transportation funding for various purposes and the
23 relative cost-effectiveness of different transit projects.

24 17. CBE has members who are people of color who utilize AC Transit to serve their
25 transportation needs. CBE brings these claims in this action on behalf of itself and these
26 members, who would have standing to sue in their own right and whose personal participation in
27 this litigation is not necessary. Defendant discriminates against CBE’s people of color members
28 by denying them equal treatment in its funding, planning, advocacy, and other decisionmaking

1 policies and practices, including by providing them with lower transit subsidies than white
2 Caltrain and BART riders, and by creating and failing to cover shortfalls in the operating budget
3 of AC Transit, the transit system they use. MTC's discriminatory funding, planning, advocacy,
4 and other decisionmaking policies and practices deny members of Plaintiff CBE equal
5 transportation benefits, on the basis of their race and national origin. Non-discriminatory
6 funding would allow finite funds available for public transit to be used in a more cost-effective
7 manner and thus increase the quality and quantity of public transit service available, including,
8 among other things, increasing the quality and quantity of AC Transit service, especially in the
9 urban areas in which CBE's members reside. Equitable funding would address disparities in the
10 distribution of environmental benefits, opportunities and access, and would increase the quality
11 and quantity of public transit service, reducing the localized impact on CBE's members of vehicle
12 emissions, emissions which are at their highest when vehicles are started. Non-discriminatory
13 funding would thus further CBE's institutional goals of protecting and enhancing the environment
14 and public health, and providing communities of color with equitable access to healthcare,
15 employment opportunities, and other important opportunities and benefits afforded to white
16 communities. CBE also has members who are deprived of adequate bus service due to
17 Defendant's discriminatory funding practices; as a result, these members have no choice but to
18 drive the only cars they can afford—which are generally older and hence more polluting—thus
19 increasing the harm to the environment and public health.

20 18. Plaintiff CBE has already devoted resources to fighting transit discrimination in
21 the Bay Area. If MTC's discriminatory funding practices continue, Plaintiff CBE will also have
22 to devote resources to combating the ill effects of these practices by, for example advocating on
23 behalf of transit riders of color who receive a lower quality and quantity of transit services than
24 white transit riders. Plaintiff CBE has limited institutional resources and if it did not have to
25 expend resources responding to MTC's discriminatory funding policies and practices, it could and
26 would instead allocate these resources to other critical activities in furtherance of its mission of
27 advocating on behalf of communities of color.

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1 19. Plaintiff Amalgamated Transit Union, Local 192 (“ATU 192”) is a labor
2 organization that represents employees who live and work in the Bay Area. The objects and
3 principles of ATU 192, as set forth in the Constitution and General Laws of its International
4 Union, include: “To engage in such legislative, political, educational, cultural, social, and welfare
5 activities as will further the interests and welfare of the membership of the organization.” ATU
6 192 therefore advocates on behalf of its members’ rights in the workplace and also in the
7 community at large. ATU 192 is committed to equality of opportunity and therefore works to
8 fight discrimination in all its forms. ATU 192 has members who are people of color who use AC
9 Transit to serve their transportation needs. ATU 192 brings this suit on behalf of itself and these
10 members, who would have standing to sue in their own right and whose personal participation in
11 this litigation is not necessary. Defendant MTC discriminates against ATU 192’s people of color
12 members by denying them equal treatment in its funding, planning, advocacy, and other
13 decisionmaking policies and practices, including by providing them with lower transit subsidies
14 than white Caltrain and BART riders, and by creating and failing to cover shortfalls in the
15 operating budget of AC Transit, the transit system they use. MTC’s discriminatory funding,
16 planning, advocacy, and other decisionmaking policies and practices deny members of Plaintiff
17 ATU 192 equal transportation benefits, on the basis of their race and national origin. An order
18 prohibiting Defendant from discriminating against ATU 192’s people of color members on the
19 basis of their race and national origin would further the interest and welfare of ATU 192’s
20 members by vindicating their right to be free from discrimination and providing them with equal
21 transit opportunities and benefits.

22 20. Plaintiff ATU 192 has already devoted resources to fighting transit discrimination
23 in the Bay Area. If MTC’s discriminatory funding practices continue, Plaintiff ATU 192 will also
24 have to devote resources to combating the ill effects of these practices by, for example advocating
25 on behalf of transit riders of color who receive a lower quality and quantity of transit services
26 than white transit riders. Plaintiff ATU 192 has limited institutional resources and if it did not
27 have to expend resources responding to MTC’s discriminatory funding policies and practices, it
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1 could and would instead allocate these resources to other critical activities in furtherance of its
2 mission of advocating on behalf of its members.

3 **DEFENDANT**

4 21. Defendant MTC is the transportation planning, financing and coordinating agency
5 for the Bay Area, which consists of the Counties of Alameda, Contra Costa, Marin, Napa, San
6 Mateo, Santa Clara, Solano, and Sonoma and the City and County of San Francisco.

7 22. Pursuant to state law, Defendant MTC is a local area planning agency, and not a
8 part of the executive branch of the state government. Cal. Gov. Code §66502.

9 23. Defendant MTC is the metropolitan planning organization and designated recipient
10 of federal transportation funds for the San Francisco Bay Area. 23 U.S.C. §134(b); 49 U.S.C.
11 §5303; 49 U.S.C. §5307(a)(2). Defendant MTC also receives tens of millions of dollars annually
12 in funds or financial assistance directly from the State of California by grant, contract, or
13 otherwise. It regularly employs five or more persons.

14 24. Defendant MTC makes funding decisions on a “continuous” basis. Cal. Gov.
15 Code §66513.

16 25. At all relevant times, Defendant MTC was acting and continues to act under color
17 of state law, within the meaning of 42 U.S.C. §1983.

18 **CLASS ALLEGATIONS**

19 26. Plaintiffs Darensburg and Hain bring this action pursuant to Rule 23 of the Federal
20 Rules of Civil Procedure on behalf of a class of all people of color who are current and potential
21 patrons of AC Transit.

22 27. The members of the class are sufficiently numerous that joinder of all members is
23 impracticable. AC Transit delivers approximately 250,000 passenger trips per day. Even if
24 individual bus riders take more than one trip per day, approximately 100,000 and potentially more
25 individuals ride AC Transit each day. And because nearly 80% of AC Transit’s riders are people
26 of color, plaintiffs are informed and believe that the class encompasses tens of thousands of
27 people of color who are current AC Transit patrons. When potential AC Transit patrons of color
28 are included, the number of class members increases further.

1 travel, blue-collar employment, and inner-city travel needs of minorities.” The study found that
2 “BART was designed primarily to carry long-distance suburban commuters (who are
3 predominantly white) to downtown San Francisco and Oakland BART has not made a
4 noticeable impact upon the mobility of ethnic minority residents. In particular, it has had very
5 limited impact upon the mobility of low-income central city minorities.” In its summary of the
6 BART studies it commissioned in the 1970s, Defendant MTC wrote, “BART planning objectives
7 did not place special emphasis on service to minorities”

8 34. For the same reasons, Caltrain – which like BART was designed primarily to carry
9 long-distance suburban commuters – serves a population that is predominantly white and
10 suburban. In fact, long before Caltrain took over operation of the Peninsula commuter lines from
11 the state and a private company in 1992, the predecessor service was recognized, in another study
12 commissioned by Defendant MTC, as “provid[ing] very poor service to transit dependents,” a
13 term defined by the authors of the study as “minority, elderly, handicapped or low income”
14 persons.

15 35. Caltrain and BART continue to serve a disproportionately white ridership. While
16 whites make up 35% of the collective ridership of AC Transit, Caltrain and BART, they account
17 for 60% of Caltrain riders and 43% of BART riders. And while African Americans have a
18 collective ridership on these three operators of 22%, they account for only 4% of Caltrain riders
19 and only 14% of BART riders. While 65% of transit riders on these three transit systems are
20 people of color, AC Transit, with a ridership that is nearly 80% people of color, serves a
21 disproportionately high percentage of people of color. While African Americans account for only
22 22% of all riders on these three transit systems, they account for more than one-and-a-half times
23 that percentage, 37%, of AC Transit’s riders.

24 36. Caltrain and BART riders are also wealthier than AC Transit riders. Only 13% of
25 Caltrain riders have yearly household incomes below \$30,000. Over half (52%) of all Caltrain
26 riders have annual household incomes above \$75,000, and more than one third (35%) report
27 annual household incomes over \$100,000. Only 25% of BART’s riders have annual household
28 incomes of less than \$30,000. In contrast, AC Transit’s riders are predominantly low-income:

1 57% have annual household incomes below \$30,000 and 72% qualify as either extremely low
2 income (up to 30% of the area median income) or very low income (31 to 50% of the area median
3 income).

4 37. Sixty-one percent of adult AC Transit riders rely entirely on public transit for their
5 everyday transportation needs. By contrast, only 14% of Caltrain riders and only 22% of BART
6 riders are transit dependent.

7 38. Defendant MTC exerts substantial control over funding the capital and operating
8 budgets of each of the transit operators within its jurisdiction, including Caltrain, BART, and AC
9 Transit, determining the amount of money that flows to each transit operator as well as the
10 purposes for which such funds may be used. In exercising this substantial control over the
11 budgets of transit operators, Defendant MTC discriminates against projects and programs that
12 benefit the disproportionately minority ridership of AC Transit in favor of projects and programs
13 that benefit the disproportionately white riders of Caltrain and BART, on the basis of these riders'
14 race and national origin.

15 39. In its roles as regional transportation planning agency, federal metropolitan
16 planning organization, and designated recipient of federal transportation funds, Defendant MTC
17 is responsible for the planning, programming, and allocation of a variety of federal, state, and
18 local transportation funds, totaling over \$1 billion each year, to the 20 to 30 transit operators
19 within its jurisdiction, including AC Transit, Caltrain and BART. "Programming" refers to
20 Defendant MTC's assigning the planned use of a fund source to a project or activity.

21 40. One of MTC's most significant responsibilities is the adoption of its Regional
22 Transportation Plan ("RTP"). Cal. Gov. Code §§ 65080, 66509-13; 23 U.S.C. § 134 (f)-(g); 49
23 U.S.C. §§ 5303. The RTP sets forth the region's long-range plan for transportation development,
24 based on projected available financial resources. 49 U.S.C. §5303(f). The Plan is a long-range
25 planning document in which Defendant MTC identifies the total pool of available transportation
26 funding available over a twenty-five year horizon and decides how to allocate those funds.

27 41. New transportation projects in the region generally cannot be implemented without
28 MTC's approval: This is so because new projects must be reviewed and approved by MTC for

1 inclusion in the RTP in order to be eligible for virtually any state or federal funding. Cal. Gov.
2 Code §66520; 49 U.S.C. § 5309(d). Defendant MTC establishes the policies, priorities and
3 criteria that govern the selection of projects for funding and inclusion in the RTP.

4 42. Defendant MTC acts as an advocate, asking state and federal legislatures and
5 administrative agencies to allocate funding for specific transit projects, or to specify particular
6 allocation rules. For instance, when the new federal reauthorization bill, known as SAFETEA-
7 LU (Pub. L. 109-59), was being developed in Congress, Defendant MTC successfully advocated
8 a change in the law that would provide for allocating funds in the Jobs Access and Reverse
9 Commute (“JARC”) funding program on a formula basis, despite its awareness that distribution
10 of JARC funds on a formula basis would, and in fact does, reduce funding available to AC Transit
11 by several million dollars a year. Defendant MTC sometimes also acts as the sponsor for funding
12 from these and other sources for specific transit projects. Often, the specific projects for which
13 Defendant MTC advocates cannot receive funding without Defendant MTC’s action or support.

14 43. Defendant MTC has broad control over the amount and use of AC Transit’s
15 operating funds, both directly and indirectly.

16 44. Defendant MTC, by its own account, exercises direct control over at least 40% of
17 AC Transit’s budget. Defendant MTC attaches conditions to the funds that it does grant to AC
18 Transit, designating the purpose(s) for which such funds may be used. In this way, Defendant
19 MTC directly controls how AC Transit spends certain funds that it receives from Defendant
20 MTC. Defendant MTC also exercises direct control over AC Transit’s budget by determining the
21 overall size of that budget: Defendant MTC has the power to and has in the past decided to deny
22 or delay AC Transit funding, and Defendant MTC has failed to take steps within its power to
23 provide AC Transit with additional funds, including operating funds. Such actions reduce the
24 overall size of AC Transit’s budget.

25 45. Indirectly, Defendant MTC controls significantly more of AC Transit’s budget,
26 Defendant MTC exercises substantial indirect control over AC Transit’s operating budget in
27 numerous respects. For instance, decisions by Defendant MTC affect other funding streams,
28 including those over which MTC might not exercise direct control. Thus, MTC has the authority

1 to allow transit operators to use certain funds normally available for capital purposes for
2 “preventive maintenance” (otherwise considered an operating cost); such flexibility frees up
3 scarce operating funds for other purposes. Defendant MTC also reduces the overall size of AC
4 Transit’s budget by, *inter alia*, choosing not to allocate to AC Transit funds within MTC’s control
5 and choosing to lobby for funding for projects that benefit riders of Caltrain or BART, to the
6 exclusion of projects that benefit AC Transit riders. Defendant MTC further indirectly controls
7 AC Transit’s expenditure of scarce operating funds when it attaches conditions to the funds that it
8 does allocate to AC Transit. For instance, MTC has granted AC Transit funds subject to the
9 condition that AC Transit “match” those funds with other funds that AC Transit could have used
10 to provide greater service or lower fares to Plaintiffs, thus restricting AC Transit’s independence
11 to allocate funds over which it exerts nominal control. Defendant MTC imposes such conditions
12 on AC Transit’s funding more often than it does on funding for any other transit system,
13 particularly Caltrain or BART.

14 46. As part of its responsibility to create the RTP, MTC requires each Bay Area transit
15 operator to prepare a ten-year plan called a Short Range Transit Plan (“SRTP”). Based on its
16 funding policies and practices, MTC issues an estimate of the revenues each operator can expect
17 to receive over a ten-year period. MTC requires each operator to adopt a fiscally constrained ten-
18 year SRTP budget projection using MTC’s revenue estimate. MTC then uses the operator’s
19 balanced-budget projection in the SRTP as the starting point for the 25-year financial plan of
20 MTC’s RTP. MTC’s funding policies and practices consistently leave AC Transit with a long-
21 term operating shortfall in MTC’s RTPs. Moreover, MTC fails to cover that operating shortfall.
22 In adopting its RTP, MTC assigns certain funding sources (including federal CMAQ and STP
23 funds) to “cover” certain identified shortfalls, in whole or in part. Although MTC has the
24 authority to use those funds to cover transit operating shortfalls, it has a practice and policy of not
25 doing so.

26 47. AC Transit has reduced the quality and quantity of service that had previously
27 been available to Plaintiffs and/or implemented fare increases that injured Plaintiffs because of
28 MTC’s funding, planning, and advocacy, and decisionmaking policies and practices, including

1 decisions to deprive AC Transit of operating funds and/or flexibility and to create and not cover
2 shortfalls in AC Transit's operating budget. Conversely, the amount of service that AC Transit
3 provides to Plaintiffs Darensburg and Hain, and the members of Plaintiffs ATU 192 and CBE
4 (hereinafter collectively "Plaintiffs") and members of the Plaintiff Class would increase if
5 Defendant MTC provided AC Transit with additional operating funds and flexibility. In
6 overseeing and allocating transportation funds for the Bay Area, Defendant MTC determines the
7 amount of money that flows to each of these transit operators for new capital projects and existing
8 programs, including operations and maintenance of these systems. It also decides which of
9 several permissible uses of the funds that it distributes or "programs" will be allowable ones in
10 the Bay Area. By way of example, Defendant MTC is responsible for the decision to curtail AC
11 Transit's ability to make flexible use of federal "formula" funds to cover preventive maintenance
12 costs, an allowable use of those funds under federal law. Despite Defendant MTC's knowledge
13 of the importance of having preventive maintenance funding available to sustain AC Transit
14 service, Defendant MTC has recently adopted a policy which restricts the availability of such
15 funding to two years out of the next twelve. This decision has the effect of injuring Plaintiffs
16 Darensburg and Hain, and members of Plaintiffs ATU 192 and CBE, and members of the Plaintiff
17 Class by, *inter alia*, forcing AC Transit to divert scarce operating funds to use for preventive
18 maintenance, thereby necessarily reducing the amount of operating funds available to AC Transit
19 to provide service for Plaintiffs and members of the Plaintiff Class. Through the power of the
20 purse strings, Defendant MTC decides which transit needs, among those of the Bay Area's
21 diverse communities, will be met and, if so, the quantity and quality of service; conversely, it
22 decides which transit opportunities Plaintiffs and members of the Plaintiff Class will be denied,
23 by virtue of denying funding to AC Transit, in whole or in part, for those opportunities. It also
24 attaches conditions to the allocation and/or release of essential funds, conditions that dictate the
25 transit opportunities that AC Transit may provide, or that make it less feasible or infeasible for
26 AC Transit to provide needed transit opportunities to Plaintiffs and members of the Plaintiff
27 Class. Defendant MTC also monitors the budgets of the transit operators within its jurisdiction,
28 and evaluates their service and overall performance.

1 48. By virtue of its roles as regional transportation planning agency and metropolitan
2 planning organization for the Bay Area, Defendant MTC exercises significant influence, through
3 its advocacy efforts or lack thereof, before the state and federal governments, over the
4 transportation projects and programs that are selected to receive funding from state and federal
5 sources and the level at which these projects and programs are funded. Thus, even where state or
6 federal legislation earmarks transportation funds, rather than granting Defendant MTC discretion
7 to allocate the funds, Defendant MTC is often responsible for, or is the active advocate behind,
8 the allocation set forth in the legislation. Even when opportunities have arisen for Defendant
9 MTC to support changes in state or federal law that would provide funding benefits to AC Transit
10 passengers, Defendant MTC has either been hostile to such changes or has declined to play more
11 than a perfunctory role in attempting to secure the changes.

12 49. Defendant MTC systematically discriminates against low-income people of color
13 in the selection of transit projects, with an explicit two-tiered approach to transit projects that
14 benefit minority passengers and white passengers, fully funding the latter, but leaving an
15 unfunded shortfall of several billion for the former. For the latter, Defendant MTC has selected
16 costly and cost-ineffective transit (mostly rail) expansion projects, and has committed to fund
17 them fully in its 2001 Regional Transit Expansion Plan. For the former, by contrast, MTC
18 created the Lifeline Transportation Program, stating that this program was “intended to work in
19 tandem with [the] new Regional Transit Expansion Program, to ensure that all population groups
20 benefit from an improved and expanded transit system for their work and non work trip needs.”
21 Yet Defendant MTC has failed to select projects to meet even these minimum “lifeline” transit
22 needs, much less to commit to fund those projects fully. Its 2005 RTP seeks only \$216 million in
23 new revenues over twenty-five years to address mobility needs for residents of low-income
24 communities of color – a shortfall of well over a billion dollars.

25 50. In the case of most public transit operators, including AC Transit, Caltrain and
26 BART, the fare paid by a passenger does not support the actual cost of the trip that the passenger
27 takes. “Subsidy per passenger trip” is the most appropriate way to measure subsidization of
28 public transit systems. This figure is calculated from data contained in the National Transit

1 Database, which is maintained by the Federal Transit Administration. By exercising its
2 significant discretion over the region's transportation purse strings, Defendant MTC plays a
3 determinative role in the amount of the subsidy per passenger trip received by the riders on each
4 of the region's public transit operators. The subsidy per passenger trip received by a transit
5 operator has a determinative effect on the quantity and quality of service available to the riders of
6 that operator.

7 51. Between 1989 and 2003, the most recent year for which data is publicly available,
8 AC Transit riders, who are disproportionately people of color, each received an average subsidy
9 per passenger trip of approximately one-fifth that received by Caltrain riders and less than half
10 that received by BART riders. The greater the white ridership of the transit operator, the greater
11 the subsidy per passenger trip. Conversely, the more the ridership is composed of people of
12 color, including African Americans, the smaller the subsidy per passenger trip.

13 52. Although Defendant MTC has long known that its funding policies have an
14 adverse impact on poor, transit dependent AC Transit riders of color, it has consistently refused
15 and continues to refuse to implement recommendations that would mitigate the harmful effects of
16 its funding decisions or to refrain from engaging in actions that exacerbate such effects. For
17 example, in 2001 a group of 39 African-American ministers wrote to Defendant MTC seeking
18 equity in the per passenger funding between AC Transit and local rail services. The ministers
19 pointed out that Defendant MTC ranked a bus project that could be provided by AC Transit in the
20 Richmond area of western Contra Costa County, with a population that is 69% minority, as the
21 most cost-effective project considered in Defendant MTC's Regional Transportation Plan,
22 adopted in 2001. Nevertheless, Defendant MTC devoted almost half of the funds it refers to as
23 "discretionary" funds committed to transit in its 2001 Regional Transportation Plan (\$2.3 billion
24 out of \$4.8 billion) to the least cost-effective projects, two rail projects – one for Caltrain and the
25 other for BART – both designed to serve disproportionately white, suburban populations, and
26 chose not to fund the extraordinarily cost-effective bus project for which the Richmond ministers
27 had advocated. Because MTC rejected the proposal for the AC Transit Richmond bus project,
28 AC Transit was unable to obtain the funding that it needed in order to provide this service, thus

1 depriving Plaintiffs and the members of the Plaintiff Class of the benefits of greater mobility that
2 the project would have afforded them. A recent example of MTC's inequitable distribution of
3 discretionary funds occurred in the Spring of 2005. In adopting the 2004 Transportation
4 Improvement Plan ("TIP"), MTC did not distribute its full allocation of federal funds under two
5 programs, known as the CMAQ and STP programs. After adopting the federally-mandated TIP,
6 and with no prior public process or public input of any kind, MTC staff proposed allocating an
7 additional \$105.5 million in CMAQ and STP funds. Of the \$22.5 million in funds that staff
8 proposed to allocate to transit operators, \$6.9 million was directed to BART and \$9.28 million to
9 Caltrain. MTC proposed to allocate none of this \$105 million to AC Transit, despite the fact that
10 AC Transit has projects that could have been funded under the "strategic expansion" category, to
11 which MTC proposes to allocate \$55 million. MTC's failure to allocate a share of these funds to
12 AC Transit left AC Transit unable to provide new services that would have benefited Plaintiffs
13 and members of the Plaintiff Class.

14 53. If Defendant MTC refrained from engaging in its discriminatory funding,
15 planning, advocacy, and other decisionmaking policies and practices, it could instead, but has
16 repeatedly declined to, support and fund projects and programs that improve transit for transit
17 dependent and inner-city / urban dwellers, which are an effective means of improving air quality
18 by removing some of the most polluting vehicles from the road and by substantially reducing auto
19 vehicle miles traveled. Defendant MTC could also support and fund projects and programs that
20 would provide low-income transit riders of color with bus shelters, greater security, night routes,
21 seating during peak and non-peak hours, and greater access to doctors and hospitals; Defendant
22 MTC has the power to specifically place conditions on funds to ensure that the money it provides
23 to a transit operator such as AC Transit would actually go to these purposes. Because Defendant
24 MTC has engaged, and continues to engage, in its discriminatory funding, planning, advocacy,
25 and other decisionmaking policies practices, AC Transit has repeatedly been unable to implement
26 projects and programs that would have improved transit opportunities for Plaintiffs and Plaintiff
27 Class members, and AC Transit has repeatedly been forced to reduce services that had previously
28 been available to Plaintiffs and Plaintiff Class members, or to implement fare increases that injure

1 Plaintiffs and Plaintiff Class members, or a combination of the two. The discriminatory funding,
2 planning, advocacy, and other decisionmaking policies and practices of Defendant MTC have
3 repeatedly forced AC Transit to increase the fares Plaintiffs and Plaintiff Class members pay for
4 bus service. Those fare increases have outpaced the rate of inflation, and have outpaced the rate
5 of increase of fares paid by riders of Caltrain and BART. Plaintiffs and many members of the
6 Plaintiff Class are non-discretionary transit riders with low incomes who have no alternative but
7 to rely on AC Transit bus service. Accordingly, Plaintiffs suffer significant economic injury
8 when fares increase as a result of Defendant MTC's discriminatory practices.

9 54. If Defendant MTC ceased its discriminatory funding, planning, advocacy, and
10 other decisionmaking policies and practices the result would be greater funding for AC Transit,
11 much or all of which AC Transit would use to provide improved transportation opportunities for
12 Plaintiffs and members of the Plaintiff Class. AC Transit has formally adopted a plan (known as
13 its "Strategic Vision") to provide a truly world-class local transit system for its riders, including
14 Plaintiffs and Plaintiff Class members, and is thus committed to implementing this plan if
15 Defendant MTC allocates it sufficient funding to do so. Pursuant to its plan, AC Transit intends
16 to make overall service improvements, including providing fast, frequent, reliable service on a
17 wide variety of routes with attractive vehicles and an easy-to-use fare structure at affordable
18 levels. Phase One of that plan would provide "comprehensive enhancements throughout the [AC
19 Transit] system," including "capital and operating improvements" on the ten busiest East Bay
20 corridors. Of the ten bus routes slated for these enhancements, none is a Transbay route. Nine of
21 those ten routes serve Oakland, where Plaintiff Darensburg lives. One of those ten routes serves
22 Richmond. The plan also contemplates a free bus pass for low-income students, including the
23 children of Plaintiffs. This local service, including essential service to get children to school, is to
24 be supplemented by a comprehensive combination of bus services. These overall improvements
25 in AC Transit's service and fare structure will inure to the benefit of each and every AC Transit
26 rider, including Plaintiffs and Plaintiff Class members, regardless of which route individual riders
27 use on any given day, because each rider's mobility depends on the efficacy of the entire network
28 of AC Transit service and the affordability of fares.

1 55. None of the routes that AC Transit's Strategic Vision targets for enhancement are
2 Transbay routes. In any event, nearly half of AC Transit's Transbay routes "serv[e]
3 predominantly minority census tracts," according to AC Transit's 2000 Title VI report. In
4 addition, many of AC Transit's Transbay routes also serve communities that lack ready access to
5 BART and/or provide local service before they cross the bay.

6 56. If Defendant MTC ceased its discriminatory funding, planning, advocacy, and
7 other decisionmaking policies and practices, AC Transit would provide improved services and/or
8 reduced fares that would directly benefit Plaintiffs and other minority riders of AC Transit's core
9 local service. A small proportion of all trips on AC Transit are Transbay trips. AC Transit has
10 procedures in place by which it ensures its compliance with Title VI of the federal Civil Rights
11 Act before it changes the service it provides or the fares it charges; in particular, AC Transit has
12 procedures by which it ensures that all such proposed changes will benefit minority riders to at
13 least the same extent as other riders, and will not burden minority riders more than other riders.
14 Moreover, if there were any doubt that AC Transit might not expend additional funding from
15 Defendant MTC in a manner that benefited minority riders, Defendant MTC is empowered to
16 ensure that minority riders benefit by attaching conditions to additional funding it provides to AC
17 Transit; Defendant MTC has not been reluctant to impose conditions on AC Transit's funding in
18 the past.

19 57. Defendant MTC's discriminatory funding, planning, advocacy, and other
20 decisionmaking policies and practices have prevented and continue to prevent AC Transit from
21 implementing some or all of the transit improvements that AC Transit has planned to implement
22 that would benefit Plaintiffs and the Plaintiff Class. The Strategic Vision policy clearly states that
23 AC Transit will implement its plan to the extent that it receives the additional funds through
24 Defendant MTC that are needed to implement and operate the plan, benefiting Plaintiff and
25 members of the Plaintiff Class with greater mobility, economic and other benefits. Conversely, to
26 the extent that it does not receive the additional funds through Defendant MTC that are needed to
27 implement its plan, AC Transit will be unable to do so, and Plaintiffs and members of the Plaintiff
28 Class will not receive these benefits. Indeed, AC Transit's financial projections indicate that, if it

1 does not receive additional funds from Defendant MTC, the service that AC Transit is able to
2 provide to Plaintiffs and members of the Plaintiff Class will decline further.

3 58. If Defendant MTC ceased its discriminatory funding, planning, advocacy, and
4 other decisionmaking policies and practices, a further result would be to equalize the subsidy per
5 passenger trip received by Plaintiffs and Plaintiff Class members, and by the disproportionately
6 white riders of Caltrain and BART.

7 59. While Defendant MTC is required by federal law to include the public in its
8 transportation planning process, including the process of making crucial funding decisions,
9 Defendant MTC pays little if any heed to public input, suggestions, or constructive criticism
10 designed to mitigate the harm of its funding practices on Plaintiffs, Plaintiff Class members, and
11 low-income communities of color. In this, and other ways, Defendant MTC departs from
12 procedural transportation planning norms.

13 60. Defendant MTC also consistently departs from and indeed undermines substantive
14 transportation planning norms. It is a central guiding principle of long-range transportation
15 planning that transportation projects should provide the greatest transportation benefits for the
16 greatest number of people, in other words, they should be cost effective. Because achieving cost
17 effectiveness is a transportation planning norm, an exceedingly important method used by
18 transportation planners in determining which of several potential capital projects to fund is to
19 compare each proposed project's cost per new rider. Data regarding the cost per new rider of
20 potential capital projects consistently demonstrates that proposed expansions of and
21 improvements to existing bus service are much more cost-effective than proposed expansions of
22 and improvements to rail service. Defendant MTC nevertheless consistently channels scarce
23 transportation funds to cost-ineffective rail expansion projects that benefit the disproportionately
24 white riders of Caltrain and BART riders at the expense of Plaintiffs and Plaintiff Class members.

25 61. For example, in the 2001 Regional Transportation Plan, the potential package of
26 new bus projects considered as a whole by Defendant MTC was 750% more productive in
27 converting transit funds into new riders than the list of new rail projects. In the "Blueprint" for
28 the Regional Transportation Plan, 19 of the 20 most cost-effective projects that Defendant MTC

1 evaluated were bus projects. Despite the greater cost-effectiveness of these bus projects,
2 Defendant MTC chose to fund cost-ineffective rail projects and deny funds to cost-effective bus
3 projects. The Regional Transportation Plan's extension of BART to San Jose had a projected cost
4 per new rider of as much as \$100, while the electrification of Caltrain and its extension to
5 downtown San Francisco were projected to cost as much as \$26 per new rider. The total
6 estimated cost of the BART extension was over \$4 billion and the estimated cost of the Caltrain
7 project was approximately \$1.5 billion. While approving these enormously expensive rail
8 projects, Defendant MTC refused to fund a project for bus riders in the poor, largely African-
9 American Richmond area in Western Contra Costa County that would have cost merely \$0.75 per
10 new rider, for a total estimated project cost of only \$700,000. At about the same time, Defendant
11 MTC refused to adequately fund a pilot project designed to ensure that low-income middle-and-
12 high school students in the AC Transit service area (the vast majority of whom are persons of
13 color) could receive free bus passes so that they could regularly access school, work, and other
14 essential activities.

15 62. Bus programs also operate more cost-effectively than rail programs. By
16 channeling disproportionate sums of available capital funds to cost-ineffective rail projects, which
17 have alternative fund sources for which they are eligible, Defendant MTC creates an ever-
18 expanding rail system with, by MTC's own admission, unsustainable and ever-increasing needs
19 for operating and capital subsidies. This practice not only limits the pool of funds available to
20 improve bus service through new projects, but it also starves the existing bus system by draining
21 the limited pool of funds available for allocation to bus programs for operations, maintenance,
22 capital, and related purposes. This has the determinative effect of (1) reducing AC Transit's
23 ability to implement planned service improvements that would benefit Plaintiffs and the members
24 of the Plaintiff Class, and/or (2) forcing AC Transit to reduce services that had previously been
25 available to Plaintiffs and members of the Plaintiff Class, or to implement fare increases that
26 injure them, or a combination of the two.

27 63. State and federal statutes and regulations require MTC to include in its RTP a
28 financial plan. MTC has at all relevant times been required in the financial plan of its RTP (a) to

1 compare the estimated revenue from existing and proposed funding sources that can reasonably
2 be expected to be available for transportation uses, including public transit, with the estimated
3 costs of maintaining and operating the existing public transit system over the horizon of the RTP;
4 (b) to identify any shortfalls; and (c) to identify proposed new revenues and/or revenue sources to
5 cover shortfalls, including strategies for ensuring their availability for proposed investments; and
6 (d) to ensure that existing and proposed revenues shall cover all forecasted capital, operating, and
7 maintenance costs. MTC departs from these transportation planning norms to the detriment of
8 AC Transit riders by failing to cover the transit operating shortfalls affecting AC Transit service
9 that MTC has identified.

10 64. Defendant MTC continues to engage in these and other discriminatory funding
11 policies and practices, even though it knows they are discriminatory.

12 65. Defendant MTC ostensibly employs both subjective and objective funding criteria
13 in deciding how to allocate funds to, and in advocating for state and federal moneys for, the
14 projects and programs that benefit riders of the region's transit operators. Its funding decisions
15 nevertheless reflect a subjective policy, pattern or practice of preferring projects and programs
16 that discriminatorily benefit the disproportionately white riders of Caltrain and BART riders over
17 those that benefit Plaintiffs and Plaintiff Class members for funding.

18 This policy, pattern or practice of discriminatory advocacy, planning and funding includes, but is
19 not limited to, the following: (1) Defendant MTC establishes funding criteria that favor projects
20 and programs that benefit rail riders over bus riders; (2) Defendant MTC applies its own funding
21 criteria and financial controls over transit operators inconsistently, to the disadvantage of AC
22 Transit riders; (3) Defendant MTC declines to allocate or program discretionary funds for the
23 benefit of AC Transit riders in a manner comparable to its allocation or programming of
24 discretionary funds for the benefit of Caltrain and BART riders; (4) Defendant MTC advocates
25 with state and federal legislatures more aggressively on behalf of Caltrain and BART riders than
26 AC Transit riders, for example, by giving Caltrain and BART projects a higher priority than AC
27 Transit projects, requesting more money for projects and programs that benefit Caltrain and
28 BART riders than AC Transit riders, and advocating for funds to be committed by law to projects

1 and programs that benefit Caltrain and BART riders, but not advocating at all, or with comparable
2 vigor, for similar earmarking of funds for projects and programs that benefit AC Transit riders;
3 (5) Defendant MTC consistently creates a structural, long-term deficit in AC Transit's operating
4 budget, reflected in a recurring multimillion dollar "transit operating shortfall" in each of MTC's
5 RTPs since 1994, but rarely if ever creates similar structural, long-term deficit shortfalls in the
6 operating budgets of BART and Caltrain; and (6) Defendant MTC covers transit *capital*
7 shortfalls, primarily benefiting riders of BART and Caltrain, but fails to cover AC Transit's
8 *operating* shortfalls, harming riders of AC Transit.

9 66. Plaintiffs allege in the alternative and on information and belief that Defendant
10 MTC's policy, pattern or practice of discriminatory funding is not separable for purposes of
11 analysis.

12 67. Pursuant to Defendant MTC's pattern or practice of discriminatory funding,
13 Defendant MTC has exercised and continues to exercise control over transportation funding for
14 the Bay Area in a manner that channels more money to support projects and programs that benefit
15 the disproportionately white riders of Caltrain and BART than to projects and programs that
16 benefit the disproportionately minority riders of AC Transit. MTC intentionally engages in its
17 policy, pattern, or practice of favoring projects and programs that benefit the disproportionately
18 white riders of Caltrain and BART at the expense of projects and programs that benefit the
19 disproportionately minority riders of AC Transit because of the race and national origin of
20 Plaintiffs and Plaintiff Class members. Defendant MTC for instance fails to provide equal
21 treatment to projects and programs for "transit dependent" riders and AC Transit riders, treating
22 these classifications of riders as code words for riders of color.

23 68. MTC's discriminatory funding, planning, advocacy, and other decisionmaking
24 policies and practices are a substantial and determinative factor in creating the subsidy disparity
25 discussed above. That subsidy disparity harms Plaintiffs and Plaintiff Class members. Defendant
26 MTC is aware of the subsidy disparity caused by its funding policies and practices and the
27 continuing harms that it causes to Plaintiffs and Plaintiff Class members. MTC's discriminatory
28 funding, planning, advocacy, and other decisionmaking practices, including MTC's creation of,

1 and failure to cover, AC Transit's long-term operating shortfalls, are a substantial and
2 determinative factor in causing cuts to AC Transit service, as RTP transit operating shortfalls
3 translate directly into service cuts and fare increases for riders of AC Transit.

4 69. Defendant MTC's funding, planning, advocacy, and other decisionmaking policies
5 and practices are also a substantial and determinative factor in denying equal transit opportunities
6 and benefits to Plaintiffs and Plaintiff Class members, and in imposing economic harm on them,
7 including fare increases. For example, due to Defendant's funding practices, Plaintiffs and
8 Plaintiff Class members receive a quality and quantity of service that is inferior to that received
9 by Caltrain and BART riders. Historically, while Caltrain and BART riders have enjoyed
10 increasing service, Plaintiffs and Plaintiff Class members have suffered service cuts, including
11 cuts to critical evening and night-time service which for many provides their only means for
12 commuting to and from work and getting to and from other essential destinations. These service
13 cuts were caused by Defendant MTC's funding practices, which had a determinative and coercive
14 effect in forcing AC Transit to discontinue service for which MTC did not provide sufficient
15 funding, or to increase fares, or both.

16 70. Moreover, service reductions fall harder on Plaintiffs and Plaintiff Class members
17 than on Caltrain and BART riders. A majority (61%) of AC Transit riders are transit-dependent
18 (compared to only 22% of BART riders and 14% of Caltrain riders) and thus have no alternative
19 means of getting to work, school, and other essential locations. Diminished transit services thus
20 inflict other injuries on Plaintiffs and Plaintiff Class members, such as lost job opportunities, and
21 diminished access to education and health care.

22 71. Plaintiffs and Plaintiff Class members also experience an inferior quality of transit
23 service and fewer amenities than Caltrain or BART riders in ways that are not easily quantified.
24 For example, bus service is less reliable and generally less frequent, waiting conditions are less
25 safe, convenient, and pleasant for Plaintiffs and Plaintiff Class members than Caltrain or BART
26 riders. Plaintiffs and Plaintiff Class members also ride dirtier vehicles and feel less personally
27 secure while waiting for service than Caltrain or BART riders. If Defendant MTC did not engage
28 in its discriminatory funding, planning, advocacy, and other decisionmaking policies and

1 practices, it would provide AC Transit with greater funding, and AC Transit would improve and
2 mitigate these inferior conditions, as set forth in AC Transit's Strategic Vision, thereby benefiting
3 Plaintiffs and members of the Plaintiff Class. Defendant MTC's discriminatory practices,
4 however, make it impossible for AC Transit to do so by denying AC Transit the money it needs to
5 improve and mitigate these inferior conditions.

6 72. Furthermore, MTC's refusal to extend equal treatment to Plaintiffs and Plaintiff
7 Class members on the basis of their race and national origin in its funding and decisionmaking
8 processes and practices, and the subsidy disparity resulting from Defendant's discriminatory
9 policy, pattern or practice of discriminatory funding, constitute harms to Plaintiffs and Plaintiff
10 Class members in themselves. For instance, Defendant's unequal treatment of Plaintiffs and
11 Plaintiff Class members on the basis of their race sends the message that, in the eyes of the
12 government, they are not equal participants in the community and are worth less than their white
13 counterparts on Caltrain and BART. Moreover, the subsidy per passenger trip constitutes an
14 economic benefit conferred by the government on Plaintiffs and Plaintiff Class members, much in
15 the way food stamps, a free public education, or any other public subsidies constitute an
16 economic benefit, and the fact that Plaintiffs and Plaintiff Class members receive a lower subsidy
17 per passenger trip than the disproportionately white passengers of Caltrain and BART injures
18 Plaintiffs and Plaintiff Class members economically.

19 73. Defendant MTC itself, as discussed above, has documented that both Caltrain and
20 BART were originally planned and designed to serve disproportionately white suburban
21 communities, rather than urban and inner city areas in which disproportionate numbers of people
22 of color reside, and has done nothing to bring about equity for the latter.

23 **FIRST CAUSE OF ACTION**

24 **(Fourteenth Amendment and 42 U.S.C. §1983 - Equal Protection)**

25 74. Plaintiffs incorporate paragraphs 1 to 73 by reference.

26 75. Defendant MTC's prior, current, and on-going policies, patterns, practices,
27 procedures and/or customs of funding, advocacy and other decisionmaking in regard to
28 transportation projects and services on AC Transit, Caltrain and BART deprive Plaintiffs and

1 Plaintiff Class members of their rights under the Equal Protection Clause of the Fourteenth
2 Amendment to the United States Constitution and 42 U.S.C. §1983 because they have the purpose
3 of discriminating against transit riders on the basis of race and national origin.

4 76. As a direct and proximate result of Defendant MTC's unlawful conduct, Plaintiffs
5 and Plaintiff Class members have suffered irreparable harm and this harm will continue absent
6 injunctive relief.

7 **SECOND CAUSE OF ACTION**

8 **(Title VI and 42 U.S.C. §1983 - Purposeful Discrimination)**

9 77. Plaintiffs incorporate paragraphs 1 to 76 by reference.

10 78. Defendant's prior, current, and on-going policies, patterns, practices, procedures
11 and/or customs of funding, advocacy and other decisionmaking in regard to transportation
12 projects and services on AC Transit, Caltrain and BART deprive Plaintiffs and Plaintiff Class
13 Members of their rights under Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.
14 §2000d, *et seq.* and 42 U.S.C. §1983 because they have the purpose of discriminating against
15 transit riders on the basis of race and national origin. Defendant receives federal funds.

16 79. As a direct and proximate result of Defendant MTC's unlawful conduct, Plaintiffs
17 and Plaintiff Class members have suffered irreparable harm and this harm will continue absent
18 injunctive relief.

19 **THIRD CAUSE OF ACTION**

20 **(Cal. Gov. Code §11135 - Purposeful and Disparate Impact Discrimination)**

21 80. Plaintiffs incorporate paragraphs 1 to 79 by reference.

22 81. Defendant's prior, current and on-going policies, patterns, practices, procedures
23 and/or customs of funding transportation projects and programs on AC Transit, Caltrain and
24 BART has the purpose and effect of discriminating against transit riders on the basis of race,
25 national origin, and ethnic group identification. Defendant unlawfully denies Plaintiffs and
26 Plaintiff Class members the full and equal access to the benefits of the public transit system in the
27 Bay Area. Defendant is funded directly by the State of California. Defendant receives financial
28

1 assistance from the State of California. Accordingly, Defendant has violated and continues to
2 violate Cal. Gov. Code §11135 and regulations promulgated thereunder.

3 82. As a direct and proximate result of Defendant MTC's unlawful conduct, Plaintiffs
4 and Plaintiff Class members have suffered irreparable harm and this harm will continue absent
5 injunctive relief.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs ask this Court:

8 1. to certify the case as a class action on behalf of the proposed Plaintiff Class and to
9 designate Plaintiffs Darensburg and Hain as representatives of the class and their counsel of
10 record as Class Counsel;

11 2. to declare that Defendant MTC has violated the Equal Protection Clause of the
12 Fourteenth Amendment through its prior, current and on-going discriminatory policies, practices,
13 procedures and/or customs of funding transportation projects and services that benefit AC Transit,
14 Caltrain, and BART passengers;

15 3. to declare that Defendant MTC has violated Title VI of the Civil Rights Act
16 through its prior, current and on-going discriminatory policies, practices, procedures and/or
17 customs of funding transportation projects and services that benefit AC Transit, Caltrain, and
18 BART passengers;

19 4. to declare that Defendant MTC has violated Cal. Gov. Code §11135 through its
20 prior, current and on-going discriminatory policies, practices, procedures and/or customs of
21 funding transportation projects and services that benefit AC Transit, Caltrain, and BART
22 passengers;

23 5. to permanently enjoin Defendant MTC from making any funding decision that has
24 an unjustified disproportionately adverse impact on AC Transit riders of color, including
25 decisions that cause (a) AC Transit to experience an unfunded transit operating shortfall while not
26 causing operating shortfalls that affect BART or Caltrain, or while funding capital shortfalls that
27 disproportionately benefit BART or Caltrain, (b) an inequitable subsidy per passenger trip for AC
28 Transit passengers as compared to Caltrain or BART passengers, and/or (c) an inequitable

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