HANSON BRIDGETT LLP
KIMON MANOLIUS – 154971
JULIA H. VEIT – 209207
WARREN WEBSTER – 209540
ADAM W. HOFMANN – 238476
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
kmanolius@hansonbridgett.com

FRANCIS F. CHIN – 059231
CYNTHIA E. SEGAL – 179636
Metropolitan Transportation Commission
Joseph P. Bort Metrocenter
101 8th Street
Oakland, Ca 94607-4700
Telephone: (510) 817-5700
Facsimile: (510) 464-7848
fchin@mtc.ca.gov

Attorneys for Defendant
METROPOLITAN TRANSPORTATION COMMISSION

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLVIA DARENSBURG, VIRGINIA MARTINEZ, and VIVIAN HAIN; individuals on behalf of themselves and all others similarly situated; AMALGAMATED TRANSIT UNION 192; COMMUNITIES FOR A BETTER ENVIRONMENT, Plaintiffs, v. METROPOLITAN TRANSPORTATION COMMISSION, Defendant.	No. C 05 01597 EDL **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS AMALGAMATED TRANSIT UNION, LOCAL 192 AND COMMUNITIES FOR A BETTER ENVIRONMENT; MEMORANDUM OF POINTS AND AUTHORITIES** **Fed. R. Civ. P. 56** Date: June 24, 2008 Time: 9:00 a.m. Judge: Hon. Elizabeth D. LaPorte Crtrm: E, 15th Floor

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 24, 2008, at 9:00 a.m. in Courtroom E, 15th Floor of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, Defendant Metropolitan Transportation Commission ("Defendant" or "MTC"), through its attorneys, Hanson Bridgett LLP, will and hereby does move this Court for summary judgment or, in the alternative, partial summary judgment in its favor in this action brought by Plaintiffs Amalgamated Transit Union, Local 192 ("ATU") and Communities for a Better Environment ("CBE").

This motion is made on the grounds that, as a matter of law, ATU and CBE (collectively, "Organizational Plaintiffs") lack standing to pursue the claims raised in their Second Amended Complaint, and this Court lacks subject matter jurisdiction over the Organizational Plaintiffs' claims as a result. In the alternative, to the extent that CBE is found to have standing, MTC moves for partial summary judgment against CBE on the grounds that CBE is barred from pursuing any part of its claims raised to the extent that they are related to the 2005 Regional Transportation Plan because CBE entered into a prior settlement agreement and release with MTC by which it waived its right to these claims. Accordingly, CBE is entitled to partial summary judgment.

This motion will be and hereby is based on this Notice of Motion and Motion (including the supporting Memorandum of Points and Authorities); the Declarations of Adam W. Hofmann and Therese McMillan filed herewith, all pleadings and papers on file in this action any other matters of which judicial notice may be taken by the Court, and upon such oral argument and documentary evidence as may be presented at or before the hearing.

I. INTRODUCTION

Article III of the U.S. Constitution both establishes the power of the federal courts and limits that power to the adjudication of "cases" and "controversies." Under this "case or controversy" requirement of Article III, federal courts may only hear claims asserted by plaintiffs with a sufficient stake in the litigation to ensure that there is a proper controversy, zealously advocated, and requiring judicial resolution. Accordingly, the Constitution requires that plaintiffs demonstrate that they have "standing" to invoke the jurisdiction of a federal court, that is, that the plaintiff has suffered an injury, caused by the defendant, and redressable by a favorable court order. These constitutional principles have also given rise to "prudential" standing limitations, generally refusing to permit an individual to predicate standing on the constitutional or statutory rights of others. If, as is the case here, a plaintiff cannot demonstrate that he or she satisfies both the constitutional and prudential requirements for standing, the court has no jurisdiction to hear the plaintiff's claims, and those claims must be dismissed.

Plaintiffs Amalgamated Transit Union, Local 192 ("ATU") and Communities for a Better Environment ("CBE") seek equitable relief against Defendant Metropolitan Transportation Commission ("MTC"), alleging that MTC has discriminated against minority riders of the Alameda and Contra Cost County Transit District ("AC Transit"). ATU and CBE (collectively "Organizational Plaintiffs") allege that MTC provides more funding to certain other transit service providers, the Bay Area Rapid Transit District ("BART") and the Peninsula Corridor Joint Powers Board ("Caltrain"), which serve communities with a higher percentage of white residents than the communities served by AC Transit. Organizational Plaintiffs purport to represent the interests of their members, some of whom are minority riders of AC Transit. Organizational Plaintiffs also claim that they have been injured in their own right; they allege that MTC's actions force them to allocate resources to related advocacy, rather than to other matters.

MTC strenuously disputes Organizational Plaintiffs' claims. They are completely unfounded and, worse yet, seek remedies that will be deleterious to the communities they purport to serve. Regardless, even if MTC's funding actions were the result of some misplaced racial

1 animus, Organizational Plaintiffs would not be the proper parties to assert those claims and, thus,
2 do not have standing to invoke the Court's jurisdiction. This is, in fact, an excellent illustration of
3 the importance of the standing limitations, a case in which the parties and motives driving
4 litigation are disconnected from the interests of the third parties the litigants claim to represent.
5 As a result, the Court lacks jurisdiction over their claims and must dismiss them.

6 Moreover, in 2004, CBE entered into a settlement agreement (the "Agreement") with
7 MTC in which it waived its right to bring any future claims related to MTC's 2005 Regional
8 Transportation Plan ("2005 RTP"). Nevertheless, CBE now brings three causes of action against
9 MTC which are necessarily based upon MTC's transportation funding plans and policies that
10 MTC made in its preparation, development, and adoption of the 2005 RTP. CBE is barred from
11 bringing these claims to the extent they are based on the 2005 RTP as a matter law.

12 It is undisputed, and CBE concedes, that the RTP is the long range planning document by
13 which MTC identifies the pool of available transportation funding and plans how to allocate
14 those funds to the twenty plus transit agencies in the region. Accordingly, by entering into the
15 Agreement and waiving its right to bring any future claims related to the 2005 RTP, CBE
16 effectively waived its right to bring any future claims regarding MTC's planning decisions and
17 policies contained in the 2005 RTP. Because CBE's claims within the actionable period in this
18 lawsuit are based upon MTC's planning and policy decisions contained in the 2005 RTP, and the
19 adoption or development thereof; it is precluded from bringing any claims related thereto by the
20 Agreement. Accordingly, MTC is entitled to partial summary judgment as a matter of law against
21 CBE on any claim that relates to the RTP.

22 ## II. FACTUAL BACKGROUND

23 ### A. The Amalgamated Transit Union, Local 192

24 ATU is a labor union associated with the AFL-CIO. (*See* Hofmann Decl. at ¶ 3, Exh. A,
25 p. 4.) As stated on its website, ATU represents transit workers, not only bus system employees,
26 but "subway, light rail, and ferry operators" as well. (*See* Hofmann Decl. at ¶ 4, Exh. B.) ATU
27 advocates on behalf of its membership in negotiations with employers, primarily in regard to
28 "wages, benefits, and working conditions." (*See* Hofmann Decl. at ¶ 5, Exh. C, p. 38:16-21.)

1 ATU's national "Constitution and General Laws" sets forth ATU's national "Objects," which
2 include promotion of the quality and efficiency of transit operation, expansion of employment
3 education, opportunities, compensation, and benefits, negotiation with employers, and reduction
4 in labor hours. (*See* Hofmann Decl. at ¶ 6, Exh. D, p. 5.) As stated in its bylaws, ATU's
5 organizational objectives are (1) organization of employees; (2) charitable activities approved by
6 and in the interests of the membership; (3) assistance of other labor organizations; (4)
7 encouragement among the membership to work for the cause of organized labor; (5) promotion of
8 candidates for public office who support organized labor; and (6) improvement in wages, hours,
9 and conditions of employment for members, their families, and working people. (*See* Hofmann
10 Decl. at ¶ 3, Exh. A, p. 4.) ATU is absolutely governed by its constitution and its by-laws. (*See*
11 Hofmann Decl. at ¶ 5, Exh. C, p. 17:10-13.)

12 ATU's organizational activities and agendas are consistent with the purposes set forth in
13 ATU's foundational documents. As published on ATU's national website, "The ATU Agenda"
14 states, "Political Action - at the local, state, provincial, and federal levels - has always been a
15 priority for the ATU. Through legislative action the ATU has been able to fight for the rights of
16 transit and allied workers and suport [sic] what they do on the local level." (*See* Hofmann Decl.
17 at ¶ 7, Exh. E.) As further examples, ATU publishes both state and federal legislative agendas.
18 (*See* Hofmann Decl. at ¶ 8, Exh. F; ¶ 9, Exh. G.) These agendas both emphasize increasing
19 funding for public transportation generally, protecting the safety and security of its membership,
20 enhancing employee rights in the workplace, expanding access to healthcare, and generally
21 advancing the cause of working people. (*See id.*)

22 **B. Communities for a Better Environment**

23 CBE describes itself as "a social justice organization with a focus on environmental health
24 and justice." (*See* Hofmann Decl. at ¶ 10, Exh. H.) "CBE works in urban communities in
25 Northern and Southern California among low-income African Americans, Latinos and other
26 nationalities who are bombarded by pollution from freeways, power plants, oil refineries,
27 seaports, airports, and chemical manufacturers." (*See id.*) According to CBE, "We believe in
28 building community power to help them achieve the basic human right to clean air, clean water,

and clean land and public space." (*See id.*) "The vision of [CBE] is to protect the earth and human life for future generations." (*See* Hofmann Decl. at ¶ 11, Exh. I.) CBE's activities in Northern California are largely consonant with those stated purposes, specifically, addressing the heavy environmental burden placed on the region's working-class communities and communities of color by heavy industries like oil refineries, chemical plants, power facilities, and "heavy diesel engine vehicles." (*See* Hofmann Decl. at ¶ 12, Exh. J.) CBE's list of litigated cases includes efforts to eliminate polluting industry from poor neighborhoods and to reduce or eliminate introduction of polluting chemicals into the air and water supply. (*See* Hofmann Decl. at ¶ 13, Exh. K.) Other than the present matter, CBE's pending cases are comprised of a list of the following projects, "protecting children from dirty diesel," limiting neighborhoods in Richmond where crematoria may operate, stopping the building of new power plants in areas with large poor and minority populations, pursuing enforcement of clean water regulations, and working to limit the building of new oil refineries and to reduce the pollution created by existing refineries. (*See* Hofmann Decl. at ¶ 14, Exh. L.)

C. The 2005 Regional Transportation Plan

Every four years, MTC is required to adopt and submit an updated regional transportation plan ("RTP") to the California Transportation Commission and the Department of Transportation. *See* 23 U.S.C. § 134; 49 U.S.C. § 5303; Cal. Gov. Code § 65080. The RTP is the Bay Area's comprehensive roadmap that guides transportation investment in the region over a twenty-five year horizon:

> The RTP establishes the financial foundation for how the Region invests in our transportation system by identifying how much money is available to address critical transportation needs and sets the policy on how this funding is to be spent on transportation needs.

(Declaration of Therese McMillan in Support of Defendant's Motions for Summary Judgment, or Partial Summary Judgment, and in Opposition to Plaintiffs' Motion for Summary Adjudication ("McMillan Decl.") at ¶ 9 and Exh. D, pp. 1-2 (hereinafter "2007 TIP"); *see also* 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

1 U.S.C. § 2000d, *et seq.*, and Cal. Gov. Code § 11135," Docket No. 137 (the "SAC") at p. 12:23-
2 26.) By law, the RTP must include a financial plan that summarizes the cost of implementation
3 of proposed transportation spending constrained by a realistic projection of available revenues.
4 *See* 49 U.S.C. § 5303(i)(2); Cal. Gov. Code § 65080(3)(A). Any new transportation project in the
5 Bay Area must be included in the current RTP. (*See* McMillan Decl., ¶ 9 and Exh. D, p. 1;
6 Hofmann Decl., ¶ 21 and Exh. S, p. 11:4-6.) The RTP also includes operator by operator
7 operating funds projections. (Declaration of Richard A. Marcantonio in Support of Plaintiffs'
8 Motion for Summary Adjudication, Exh. 22.) Organizational Plaintiffs describes the RTP as
9 follows:

10 One of MTC's most significant responsibilities is the development
11 and adoption of the Regional Transportation Plan ("RTP"), a long-range planning document in which Defendant MTC identifies the
12 total pool of transportation funding available over a twenty-five year horizon, identifies the cost of operating and maintaining the
13 region's transportation system, identifies MTC's regional priorities, and decides how to allocate available funds to identified costs.

14 (SAC at p. 2:1-13.) The 2001 RTP and all prior RTP's are obsolete. (*See* McMillan Decl., ¶ 8,
15 Exh. C.)

16 **D. CBE Waived Any Claims Related To The 2005 RTP**

17 In 2002, CBE, along with Transportation Solutions Defense and Education Fund
18 ("TRANSDEF"), sued MTC, the Bay Area Air Quality Management District ("BAAQMD"), and
19 other government agencies over their adoption of the 2001 San Francisco Bay Area Ozone
20 Attainment Plan For The 1-Hour National Ozone Standard, (hereinafter the "Bayview Lawsuit"),
21 San Francisco Superior Court, Case No. 323849. (*See* Hofmann Decl. at ¶ 24, Exh. V.) In that
22 suit, CBE alleged, *inter alia*, that MTC violated California Health & Safety Code section 40233
23 by failing to develop a Transportation Control Measure plan ("TCM") that would achieve the
24 required emission reductions from transportation sources to meet attainment of state and federal
25 air quality standards. *See id.* At the heart of CBE's claim against MTC was its allegation that
26 MTC failed to increase public transit ridership to required levels thus leading to increased
27 vehicular traffic and pollution:

28 [MTC's] failure to implement TCM #2 and increase transit

> ridership has resulted in substantial increases in the number of single occupancy vehicles on Bay Area roadways. These additional vehicles have added to traffic congestion, increased air pollution, necessitated increased highway capacity projects with attendant environmental impacts, and degraded the quality of life for Bay Area residents.

(Hofmann Decl., ¶ 24 and Exh. V, p. 22:22-28.)

In March 2004, *Bayview* plaintiffs CBE and TRANSDEF entered into an agreement with MTC and BAAQMD resolving the Bayview Lawsuit (hereinafter the "Agreement"). (*See* McMillan Decl. ¶ 42, Exh. AA.) The Agreement required MTC to consider certain additional "smart growth" criteria in the development and preparation of the 2005 Regional Transportation Plan ("2005 RTP") and Draft Environmental Impact Report ("Draft EIR") and to provide CBE and TRANSDEF with data regarding the cost per new rider for each new transit project in the 2005 RTP. (*See id.* at pp. 5; 8.) Furthermore, the Agreement required MTC to prepare annual reports for five years detailing the projects and programs that are recipients of MTC discretionary funding decisions from the following discretionary or partially discretionary funding sources:[1]

> **Funding Categories:** FTA Section 5307, FTA Section 5309, FTA Section 5311, Surface Transportation Program, CMAQ, TEA - MTC-Funded portion, Regional Transportation Improvement Program, TDA - Articles 3, 4, 4.5 and 8, State Transit Assistance - Population Based, AB 664 Bridge Tolls, Regional Measure 1 Bridge Tolls, AB 1107.[2]

(*Id.* at p. 9.) In consideration CBE released related claims as follows:

> CBE and TRANSDEF, on behalf of themselves and their respective directors, officers, employees, agents, representatives, successors in interest or assigns, waive relinquish and release any and all claims, rights, liabilities, demands, obligations, duties, promises, damages, actions, and causes of action of any kind whatsoever, whether known or unknown, arising under any provision of law to challenge judicially MTC's development, preparation and/or adoption of the 2005 RTP or its EIR.

(*Id.* at pp. 10-11.) The Agreement also includes a general release of all claims related to the 2005

[1] Copies of these reports are attached to the McMillan Decl. at ¶ 43, Exh. BB.
[2] Despite defining the "funding categories" it considered to be "discretionary" in the Agreement, CBE's counsel recently attempted to discredit MTC's expert, Stefan Boedeker, for basing his economic analysis on those very funding categories at Mr. Boedeker's deposition. (*See* Hofmann Decl. @ ¶25, Exh. W, pp. 14:2-16:17.)

1 RTP, including CBE's allegations regarding funding policies, AC Transit operating shortfalls,
2 and public participation. The Settlement Agreement also includes a mutual release of "any and all
3 Claims with respect to, pertaining to, or arising from the facts of the Lawsuit" and a waiver of
4 California Civil Code section 1542. (*Id.*, at 11.) The Agreement further provides that: (1) it shall
5 be governed by California law; (2) "no rule of construction to the effect that any ambiguities are
6 to be resolved against the drafting party shall be employed in the interpretation of the agreement";
7 and (3) that it may be plead as a defense by the parties in any action in violation of the agreement.
8 (*Id.* at p. 13.)

9 **III. PROCEDURAL BACKGROUND**

10 The current, operative complaint in this matter is the SAC for Injunctive and Declaratory
11 Relief filed by Plaintiffs, including Organizational Plaintiffs, on November 1, 2007. (*See* SAC.)
12 The SAC alleges that MTC engaged in funding practices that discriminated against the riders of
13 AC Transit in violation of (1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; (2) the
14 Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and, (3)
15 California Government Code § 11135. (*See id.*) Although the SAC lacks temporal limitation and
16 fails to identify any specific funding decision or decisions that caused the harm alleged,
17 Organizational Plaintiffs seek a declaration that MTC has violated each of these three laws
18 "through its prior, current and on-going procedures." (*See id.* at pp. 1:16-2:13.)

19 Specifically, CBE alleges that in exercising its authority over transportation funds, MTC
20 underfunds AC Transit, which serves a relatively higher percentage of low-income minorities, but
21 adequately funds BART and Caltrain, which serve a somewhat smaller percentage of low income
22 minorities on their respective systems.[3] (*See* SAC at pp. 1:16-2:24.) CBE alleges that MTC's
23 funding decisions: (1) result in AC Transit receiving a smaller average capital and operating
24 subsidy per rider than BART and Caltrain riders; and (2) leave AC Transit with operating
25 shortfalls thus forcing service cuts and fare increases. (*See* SAC at pp. 1:21-2:24; Hofmann Decl.
26

27 [3] Even though AC Transit has the relatively highest percentage of minority riders on its system, across the three transit operators, BART actually serves a larger number, and thus percentage of the minority riders for the three operators combined. (Declaration of Stefan Boedeker
28 ("Boedeker Decl.") and Exh. A, pp. 11-12, (Expert Report of Stefan Boedeker).)

1 at ¶ 21, Exh. S, p. 7:13-27.)

2 Plaintiffs seek no retrospective relief. Instead, they seek injunctive relief and ask that

3 MTC be permanently enjoined from:

4 (1) making any funding decision that has an unjustified
5 disproportionately adverse impact on AC Transit riders of color, including decisions that cause an inequitable subsidy per passenger
6 trip and/or inequitable quality or quantity of service for AC Transit riders as compared to Caltrain or BART passengers; and,

7 (2) supporting the funding of or funding any improvement or
8 expansion in service that detracts from the equitable funding of services that benefit AC Transit riders.

9 (*See* SAC at pp. 1:2-3:825:16-27:15; ; Prayer ¶¶ 5,6) Finally, Plaintiffs seek attorneys fees under

10 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5. (*See id.* at p. 3:9-15).

11 These claims concern MTC's RTPs including the 2005 RTP. For example, as alleged in

12 the SAC and Plaintiffs' Motion for Summary Adjudication, MTC's preparation and development

13 of the RTP forms the bases of its claims. (*See* SAC at pp. 2:1-3:8; 12:27-13:3; 14:14-25; 16:12-

14 24.) Specifically, Organizational Plaintiffs allege that as a result of MTC's discriminatory

15 funding policies, "AC Transit has consistently received inadequate money to fund its operating

16 budget, and has suffered a multimillion dollar "transit operating shortfall" in each of MTC's

17 RTP's since 1994." (*See id.*). Organizational Plaintiffs also allege that MTC implements a

18 "policy" by which it prevents funds from being used for AC Transit's operating purposes even

19 though they are statutorily eligible for such use. (*See* Pltfs' MPA ISO Mot. for Sum. Adjud., p. 21

20 n. 22.) Further, Organizational Plaintiffs claim that in the "fourth step" in the RTP process, MTC

21 has devoted billions of dollars to expand BART and Caltrain service levels while failing to

22 preserve existing levels of AC Transit service. (*See id.*). Accordingly, the thrust of

23 Organizational Plaintiffs' claims are based upon MTC's RTPs.

24 **IV. LEGAL ARGUMENT**

25 **A. Legal Standard on Summary Judgment for Lack of Standing**

26 When challenged, it is axiomatic that the party invoking the jurisdiction of the court bears

27 the burden of demonstrating, *inter alia*, the existence of standing throughout the litigation. *See*

28 *Warth v. Seldin*, 422 U.S. 490, 518 (1975); *McNutt v. General Motors Acceptance Corp.*, 298

U.S. 178, 189 (1936). Standing is not a mere pleading requirement, "but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

While at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, "in response to a summary judgment motion, the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,'" demonstrating standing. *Id.*; *see also Spencer v. Kemna*, 523 U.S. 1, 10 (1998) (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990)) (holding that it is not sufficient for standing to be inferred from the arguments and averments in the pleadings, but must affirmatively appear in the record). Thus, where, as here, the moving party demonstrates the absence of jurisdiction, "the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

B. The Organizational Plaintiffs Lack Standing to Assert the Causes of Action Raised in the SAC

"An article III court cannot entertain the claims of a litigant unless that party has demonstrated the threshold jurisdictional issue of whether it has constitutional and prudential standing to sue." *Envtl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F. Supp. 2d 803, 812 (N.D. Cal. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 560). "[T]o challenge government action in federal court, a plaintiff must have been 'injured in fact.'" *Boating Indus. Ass'n v. Marshall*, 601 F.2d 1376, 1380 (9th Cir. 1979) (citing *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972). "This requirement differentiates a person with a direct stake in the outcome of the particular litigation, however small that stake may be, from a person merely concerned with the legal issues raised." *Id.*

Thus, as a prerequisite to bringing or maintaining a suit in federal court, a plaintiff must demonstrate (1) that it has suffered an "injury in fact" that is both "(a) concrete and particularized

1 and (b) actual or imminent, not conjectural or hypothetical;" (2) that the injury is or was caused
2 by the challenged conduct of the defendant(s); and (3) that "it is likely, as opposed to merely
3 speculative, that the injury will be redressed by a favorable decision." *Id.* (citing *Friends of the*
4 *Earth Inc. v. Laidlaw Envtl. Servs. Inc.*, 528 U.S. 167, 181). Organizations, like Organizational
5 Plaintiffs herein, "may have standing to sue 'in [their] own right . . . to vindicate whatever rights
6 and immunities the association itself may enjoy,' and in doing so, 'may assert the rights of its
7 members, at least so long as the challenged infractions adversely affect it members' associational
8 ties.'" *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

9 **1. The Organizational Plaintiffs Lack Standing to Assert These Claims on**
10 **Behalf of Their Members**

11 As stated above, Organizational Plaintiffs' primary contention is that they are pursing this
12 lawsuit to vindicate the rights of certain of their members. In order for the Organizational
13 Plaintiffs to establish standing to assert these claims on behalf of their members, they must each
14 demonstrate that (1) their members would have standing to assert the claims on their own; (2) the
15 interests they seek to protect are germane to their organizational purpose; and (3) neither the
16 claim asserted nor the relief requested requires the participation of the individual members in the
17 lawsuit. *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

18 **a. The individual members of the Organizational Plaintiffs lack standing**
19 **to assert the causes of action raised in the SAC**

20 Both ATU and CBE allege that some of their members are "people of color who utilize
21 AC Transit to serve their transportation needs." (SAC at pp. 6:24-25; 8:8-9.) Accepting this
22 allegation, the Organizational Plaintiffs' individual members lack standing to assert the claims at
23 issue herein for the same reasons that the individual plaintiffs, Sylvia Darensburg, Vivian Hain,
24 and the class they purport to represent lack standing. These reasons are discussed in detail in
25 MTC's Motion for Summary Judgment Against Plaintiffs and Plaintiff Class for Lack of Standing
26 and the supporting evidence, which is hereby incorporated by reference.
27
28

b. The rights at issue in the SAC are not germane to the organizational purposes of either ATU or CBE

Organizational Plaintiffs allege that, by its funding allocations, MTC has and continues to discriminate against riders of AC Transit on the basis of their race and/or national origin. (*See* SAC at p. 1:2-15.) In essence, Organizational Plaintiffs allege that MTC's funding allocations discriminate against AC Transit riders of color who receive lower quantity and quality of transit service than riders of Caltrain and BART. (*See id.* at p. 2:14-17.) On the basis of this alleged discrimination, Organizational Plaintiffs raise three causes of action, each predicated on laws designed to guard against racial discrimination. (*See id.* at pp. 26:23-28:5.) Thus, this lawsuit seeks to promote racial equality in access to public transportation by forcing MTC to allocate more of its funding budget to AC Transit and less to Caltrain and BART. (*See id.* at *passim*; McMillan Decl. at ¶ 6.)

(1) Promoting allocation of public transportation funding to a specific transit operator, at the expense of the other transit operators in specific minority communities, is not germane to ATU's organizational purpose

ATU's publications and foundational documents reveal its organizational purpose, that is, to increase federal and state funding to mass transportation and to promote the work-related interests of its membership. For example, both ATU's national constitution and local by-laws set forth the objectives of the organization, to wit: to promote education, employment, increased compensation, and reduced labor hours for transit workers. (*See* Hofmann Decl. at ¶ 6, Exh. D, p. 5; ¶ 3, Exh. A, p. 4.) ATU also publishes both a state and federal legislative agenda which center around promotion of increased funding to public transportation. (*See* Hofmann Decl. at ¶ 7, Exhibit E; ¶ 8, Exhibit F; ¶ 9, Exhibit G.) These published agendas feature such goals as decreasing reliance on foreign oil, increasing ridership, improving the quality of transportation, protecting against terrorism, increasing safety and security, and, consonant with the objectives stated in ATU's foundational documents, improving working conditions for transit employees.[4]

[4] ATU also states a very broad interest in promoting the interests of its members generally. (*See* Hofmann Decl. at ¶ 6, Exhibit D, p. 5; ¶ 3, Exhibit A, p. 4.) ATU may thus argue that promoting any of its members' interests is germane to its purpose. Such an argument must fail as it would

1 (*See id.*)

2 The race-based interests raised by this lawsuit are not germane to these organizational
3 purposes, and, in some instances, are contrary to ATU's broader agenda. As described in detail
4 above, ATU seeks to promote the interests of its members vis-à-vis improved working conditions
5 and compensation. ATU may claim that its members are minorities who have been harmed by
6 MTC's allegedly biased funding allocations; however, the evidence does not support this
7 contention. ATU's members are of an unknown racial make-up and may or may not live in areas
8 served by AC Transit. (*See* Hofmann Decl. at ¶ 5, Exh. C, p. 31:12-32:10.) In fact, when asked
9 to identify all members of ATU that actually use AC Transit, ATU identified only four
10 individuals out of a membership that includes 1,200 or 1,300 AC Transit drivers. (*See* Hofmann
11 Decl. at ¶ 15, Exh. M, p. 31:8-26; ¶ 5, Exh. C, p. 26:22-25.) Clearly, some of ATU's members
12 may not be minorities and some, minority or white, may not live in areas served by AC Transit
13 and may rely on BART and/or Caltrain to get to work, school, shopping, etc. Thus, setting
14 racially-based policy preferences in favor of transit access for minority communities cannot be
15 part of ATU's organizational purpose because it bears no relationship to ATU's stated goals.

16 Similarly, ATU exhibits no broader preference for bus service, like AC Transit, as
17 compared with rail service, like BART and Caltrain, a dichotomy that Organizational Plaintiffs
18 have presented as a proxy for racial discrimination in MTC's funding choices.[5] (*See* Hofmann
19 Decl. at ¶ 15, Exh. M, pp. 19:26-20:22; SAC pp. 1:16-20; 2:14-24.) Instead, the local ATU
20 website states, "The ATU includes bus, subway, light rail, and ferry operators. . . ." (*See*
21 Hofmann Decl. at ¶ 4, Exh. B.) It therefore seems unlikely that ATU's organizational purpose
22 includes promotion of bus over rail service, whether as a proxy for racial equality or otherwise.

23 In fact, ATU's true organizational purposes are, at times, directly opposed to the remedies
24 sought in this lawsuit. For example, one of the major complaints asserted by all plaintiffs in this

25

26 render the requirement a nullity by permitting ATU to bring suit on behalf of any member with a cognizable injury.

27 [5] MTC rejects the underlying premise that rail service favors one racial group over another; however, that is the asserted legal interest this suit purports to advance, and ATU's standing must
28 be evaluated accordingly. MTC also rejects the implication that funds allocated to BART and Caltrain may lawfully be allocated to AC Transit instead.

1 lawsuit is that MTC exhibits a preference for allocating resources to "capital funding," rather than
2 "operations funding," allocations ATU claims are racially discriminatory. (*See* SAC at pp. 2:1-
3 13; 2:25-3:8; ¶ 15, Exh. M, at pp. 11:9-10; 14:23-15:28; 21:13-22:4.) ATU complains that these
4 funding allocations caused service cuts beginning in the 1980s through 2003, which resulted in
5 elimination of several bus routes. (*See* Hofmann Decl. at ¶ X, Exhibit Y (ATU's Supplemental
6 Interrogatory Responses) at p. 8:3-13.) Accepting *arguendo* that MTC's funding allocations
7 affect AC Transit's operational budget, which in turn affects service, ATU actually competes
8 with—rather than advocating on behalf of—the riding public for a share of that limited budget.

9 In collective bargaining with AC Transit, ATU advocates for higher wages and increased
10 benefits and vacation time for its members. (*See* Hofmann Decl. at ¶ 5, Exh. C, at pp. 43:4-7;
11 48:4-21; 50:21-51:11.) Salaries and benefits already comprise some 73% of AC Transit's
12 operational budget. (*See* Hofmann Decl. at ¶ 17, Exh. O.) Thus, when ATU seeks increases in
13 pay and benefits, it has a substantial impact on AC Transit's limited operational budget.
14 Naturally, the more each driver receives in compensation, the less operating money is available
15 for "preventative maintenance," hiring more drivers, and increasing service to particular areas.
16 For example, although ATU blames MTC for AC Transit service cuts during the same time, ATU
17 obtained for its members more than a 13% increase in pay between 2001 and 2004, and more than
18 an 8% increase in pay between 2005 and 2007. (*See* Hofmann Decl. at ¶ 5, Exh. C, at pp. 44:20-
19 47:9.) Is it not natural to assume that ATU will continue to advocate for proportionately
20 increased compensation for its members, especially if AC Transit receives the increased
21 operational funding sought in this lawsuit?

22 ATU also advocates for equipment to address the safety and health concerns of the
23 operators, such as ergonomic improvements. (*See* Hofmann Decl. at ¶ 5, Exh. C, at pp. 52:17-
24 53:2.) While it is true that ATU has also negotiated for bus improvements that expressly benefit
25 both operators and the riding public such as increased security and sanitation, (*see id.* at pp. 53:6-
26 21; 57:16-18; 58:18-60:4.), it does not appear that ATU has ever advocated for a benefit to the
27 riding public, even for its members as part of the riding public, that was not clearly associated
28 with a direct benefit to its members as transit operators. Nor does it appear that ATU has ever

advocated for an expansion of service to minority communities. To the contrary, ATU has knowingly forced AC Transit to cut service, rather than permit AC Transit to transfer one line to another service provider, ignoring "the serious financial crisis" that AC Transit faced. (*See* Declaration of Kathleen Kelly in Support of Defendant's Motions for Summary Judgment, or Partial Summary Judgment, and in Opposition to Plaintiffs' Motion for Summary Adjudication at ¶ 4, Exh. I, at p. 5 of 6.) In fact, ATU has even advocated for bus lines to be rerouted for the benefit of the operators, based on their needs, and to the detriment of the communities previously served by the rerouted lines. (*See* Hofmann Decl. at ¶ 5, Exhibit C, at pp. 54:22-55:8.)

ATU accuses MTC of creating funding constraints that result in fare hikes, service cuts, and inferior transit, but ATU ignores its own role in constraining AC Transit's budget. ATU promotes increased pay, benefits, and vacation time for its members, all of which burden AC Transit's finances and constrain its ability to increase and improve service to minority communities and none of which inure to the benefit of the riders. In fact, as the largest single drain on AC Transit's operation budget, ATU has advocated for pay increases at the same time that service was being cut. There is nothing sinister about this. These are the very legitimate interests that ATU exists to promote, the same organizational objectives stated in ATU's foundational documents. These legitimate interests, however, conflict with those of the AC Transit riders this lawsuit purports to protect, and it is disingenuous for ATU to claim that promoting transit access to one community at the expense of another is germane to its organizational purpose.

(2) Promoting allocation of public transportation funding to increase access to public transportation in specific minority communities is not germane to CBE's organizational purpose

As demonstrated by its publications and its activities, CBE is an organization committed to the laudable goal of reducing environmental pollution, especially pollution affecting low income and minority communities. CBE works to eliminate air and water "pollution from freeways, power plants, oil refineries, seaports, airports, and chemical manufacturers." (*See* Hofmann Decl. at ¶ 10, Exhibit H.) This organizational purpose is set forth in CBE's publications and evidenced by its organizational activities. (*See id.*; Hofmann Decl. at ¶ 13, Exh.

1 K; ¶ 14, Exh. L.) Further, there can be little debate that CBE believes that increased funding for
2 and access to public transportation in general has a palliative effect on air pollution in urban
3 areas. (*See* Hofmann Decl. at ¶ 18, Exh. P, at p. CBE-0652; ¶ 19, Exh. Q; ¶ 20, Exh. R, at pp.
4 34:14-20; 45:21-46:8.) In the end, however, CBE's goal is not to increase access to public
5 transportation for its own sake, but to use public transportation as a means to improve air quality
6 in urban areas and, eventually, as a basis upon which to build new land-use policies and
7 community development centered around decreased vehicle use. (*See* Hofmann Decl. at ¶ 20,
8 Exh. R at pp. 60:19-63:1.)

9 In general, CBE's position that increased public transit leads to decreased pollution in
10 urban areas appears unobjectionable. In that vein, the general pursuit of increased funding for
11 public transit appears germane to CBE's organizational aims. In the present case, however,
12 Organizational Plaintiffs set up a false dichotomy between AC Transit and bay area rail service,[6]
13 offering no evidence that a reallocation of funding from one Bay Area transit agency to another
14 will improve the environmental health of the communities CBE purports to represent. In fact,
15 MTC asked CBE in discovery to state the basis for any contention that increased funding to AC
16 Transit would create environmental benefits to local communities. In response, CBE failed to
17 identify any specific basis for that contention. (*See* Hofmann Decl. at ¶ 21, Exh. S, at p. 26:28-
18 29:9; ¶ 22, Exh. T, at pp. 37:3-9; 7:2-27:20.) CBE bears the burden of proving that the interests
19 promoted by this lawsuit are germane to its organizational purpose, and if it fails to do so, as it
20 has in this case, the Court must find that it lacks standing to pursue this case. *See Idaho Farm*
21 *Bureau Fed'n v. Babbitt*, 900 F. Supp. 1349, 1357 (D. Idaho 1995).

22 In contrast, evidence compiled by MTC's expert consultant, Professor Robert B. Cervero,
23 demonstrates that funding BART and Caltrain is more consonant with CBE's general objectives
24 than taking money from rail service for the benefit of AC Transit. Studies demonstrate that high
25 quality, extensive rail service is crucial to CBE's goals of decreasing traffic and consequent
26 pollution because use increases dramatically when rail service becomes extensive and efficient
27

28 [6] *See* Declaration of Robert B. Cervero , Ph.D. in Support of Defendant's Motion for Summary Judgment ("Cervero Decl.") at ¶ 5, Exh. B, p. 18.)

1 enough to be time-competitive with cars and freeway networks. (*See* Cervero Decl. at ¶ 5, Exh. B
2 p. 10 ¶ 4.) Rail funding is also consonant with CBE's long-term goal of influencing land-use
3 policy and development. BART and Caltrain have been a central feature of "smart growth" in the
4 bay area and in reducing car use and, consequently, reducing air pollution. (*See* Cervero Decl. at
5 ¶ 5, Exh. B, p. 7-8, ¶ 1; p. 9-10 ¶ 3; 15 ¶ 3.) If not for BART, there would be greater sprawl in
6 the Bay Area, and more people would have to drive to work in more spread-out locations,
7 increasing car usage and consequent pollution and emissions. (*See* Hofmann Decl. at ¶ 23, Exh.
8 U, p. 70:8-21.) In fact, BART uses its expansion plans to encourage local communities to adopt
9 high-density, transit-centric land-use policies, which in turn increase ridership and decrease
10 commuting by private car, all consistent with CBE's long-term goals. (*See* Cervero Decl. at ¶ 5,
11 Exh. B p. 9-10 ¶ 3.) Moreover, BART's current routes and expansion plans almost exclusively
12 cover the most diverse areas of the Bay Area, both in the traditional urban core and in new urban
13 centers. (*See* Cervero Decl. at ¶ 5, Exh. B, p. 11 ¶ 5; p. 12 ¶ 6; Attachment A.) By contrast,
14 increased bus service appears to have no impact on development policies. (*See* Cervero Decl. at ¶
15 5, Exhibit B, p. 17-18 ¶ 5.)

16 The environmental benefits created by BART do not inure only to white and/or suburban
17 communities. For example, even Organizational Plaintiffs admit that BART riders are 57%
18 minority. (*See* SAC at pp. 11:15-17.) In addition to expanding service at the suburban fringes,
19 MTC has also planned for capital investments in the bay area's urban core as well as racially
20 diverse communities. (*See* Cervero Decl. at ¶ 5, Exh. B, p. 11 ¶ 5; p. 12 ¶ 6; Attachment A.) The
21 consequent reductions in traffic congestion must also be assumed to have a palliative effect on air
22 pollution in communities like Richmond and West Oakland which are surrounded on all sides by
23 freeways. As a result, the interests at issue in this lawsuit cannot be germane to CBE's
24 organizational purpose.

25 **2. Organizational Plaintiffs Lack Standing to Assert These Claims on Their**
26 **Own Behalf**

27 Apart from the alleged injuries suffered by their members, Organizational Plaintiffs also
28 pled that they were injured by MTC's allegedly discriminatory conduct in that each organization

had been, and continued to be, forced to devote resources to "combating the ill effects of these practices by, for example advocating on behalf of transit riders of color who receive a lower quality and quantity of transit services that white transit riders." (SAC at pp. 7:20-27; 8:22-9:2.) In order to demonstrate constitutional standing to assert these claims in their own right, Organizational Plaintiffs must demonstrate injury to the organization, causation, and redressability. *See e.g.*, *Lujan*, 504 U.S. at 560.

a. Organizational Plaintiffs lack standing to assert claims in their own right because there is no evidence that they have suffered an "injury in fact"

Organizational Plaintiffs allege in the SAC that MTC's funding allocations have forced them to devote resources to related advocacy. Such a claim may only give rise to standing if Organizational Plaintiffs can demonstrate that MTC's conduct has "perceptibly impaired" their organizational activities. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *see also Project Sentinel v. Evergreen Ridge Apartments*, 40 F. Supp. 2d 1136, 1138 (N.D. Cal. 1999) (articulating the obvious rule that the resources diverted by the defendant's conduct must be independent of resources devoted to the law suit in which the organization seeks to prove standing).

Organizational Plaintiffs' discovery responses, however, belie the allegations of their complaint. MTC served special interrogatories requesting facts supporting Organizational Plaintiffs' contention that MTC's actions had harmed them. Both ATU and CBE responded:

> MTC's decision-making regarding funding or transportation planning with respect to AC Transit has had a negative impact on Plaintiff insofar as it has had a negative impact on its members. As detailed in Plaintiffs' First Amended Complaint ("FAC") and these documents, Plaintiff contends that MTC's decisions have caused economic and stigmatic injuries and have harmed the quality of life of Plaintiffs and Plaintiff Class Members.

(*See* Hofmann Decl. at ¶ 16, Exh. N, at p. 7:14-19; ¶ 21, Exh. S at p. 7:9-14.)[7] Organizational Plaintiffs cannot meet their burden to demonstrate standing in their own right unless they can introduce concrete evidence of perceptible impairment of their programmatic interests caused by

[7] No additional, relevant facts are raised in either Organizational Plaintiff's supplemental responses to this interrogatory.

their past advocacy in favor of increased funding to AC Transit for the benefit of minority riders. Because the Organizational Plaintiffs have no such evidence, their claims must be dismissed.

b. Organizational Plaintiffs lack standing to assert claims on the basis of violations of the rights of third parties

"[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, [the Supreme Court] has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499; *see also Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 80 (1978).

Even if Organizational Plaintiffs can demonstrate an injury in the form of impaired resources, this is not an injury to a right protected by the laws referenced in the SAC. (*See* U.S. Const. amend. XIV (due process and equal protection under the law); 42 U.S.C. § 2000d (discrimination on the basis of race, color, or national origin); Cal. Gov't Code § 11135 (discrimination on the basis of race, gender, religion, disability, etc.). For example, in order to state a cause of action under Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d, Organizational Plaintiffs must prove that they are the intended recipients of federal funding to a program in which MTC participated. *See Epileptic Foundation v. City and County of Maui*, 300 F. Supp. 2d 1003, 1011 (D. Haw. 2003). Organizational Plaintiffs both admit that they are not intended beneficiaries of Title VI related funding. (*See* Hofmann Decl. at ¶ 16, Exh. N, at pp. 26:21-27:14; ¶ 21, Exh. S, at pp. 29:11-30:4.) Similarly, there is no allegation in the SAC to suggest that MTC has discriminated against either ATU or CBE, *qua* organization, on the basis of race, color, or national origin, and both Organizational Plaintiffs have admitted this in discovery. (*See* Hofmann Decl. at ¶ 16, Exh. N, at pp. 8:14-9:11; ¶ 21, Exhibit S, at pp. 8:7-9:5.) Instead, Organizational Plaintiffs necessarily assert injury caused by MTC's alleged violation of the rights of others to enjoy racial equality. (*See* SAC at pp. 7:20-27; 8:22-9:2.)

As noted above, however, prudential limitations on standing generally forbid litigants from asserting standing on the basis of the rights of others, or "*jus tertii*," *Warth*, 422 U.S. at 499, and those few exceptions that are permitted do not apply here. Aside from the rights of

associations to assert the rights of their members as discussed above, the Supreme Court only recognizes standing to assert *jus tertii* when the right at issue implicates the plaintiff's relationship with the third party, in effect, when the plaintiff is prevented from providing some good or service that the third party has a right to obtain or utilize. *See Craig v. Boren*, 429 U.S. 190, 195 (1976) (beer vendor had standing to assert eighteen to twenty-one year old, male customers' equal protection challenge to law permitting sale of alcohol to women over eighteen, but only to men over age twenty-one); *Doe v. Bolton*, 410 U.S. 179, 188 (1973) (doctors permitted to challenge statute criminalizing abortion on the basis of the constitutional rights of women seeking abortions); *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965) (drug store owners had standing to assert the constitutional rights of their married customers to purchase contraceptive devices); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (private schools had standing to assert the constitutional rights of parents and children to choose to attend private school).

There is no evidence that either ATU or CBE has this kind of relationship with members of the minority community whose constitutional and statutory rights this lawsuit purports to protect. Instead, it appears that Organizational Plaintiffs are "merely concerned with the legal issues raised," not organizations "with a direct stake in the outcome of the particular litigation" as required to demonstrate standing. *Boating Indus. Ass'n*, 601 F.2d at 1380.

Moreover, courts will generally not permit a plaintiff to assert the rights of third parties unless there is some reason to believe that those third parties will be unable to pursue their rights on their own. *See Warth*, 422 U.S. at 510. In light of the pending class action, no reason appears to believe that the minority third parties whose rights are implicated "are disabled from asserting their own right in a proper case." *Id.* Because Organizational Plaintiffs' claimed injury arises out of the alleged violation of the rights of others, and because Organizational Plaintiffs have no special, relevant relationship with the third parties whose rights are at issue, they are barred by prudential standing requirements from asserting the causes of action raised in the SAC. *See Warth*, 422 U.S. at 499.

1 **C. Legal Standard on Partial Summary Judgment**

2 "A party against whom relief is sought may move at any time, with or without supporting
3 affidavits, for summary judgment on all or part of the claim." Fed. R. Civ. P. 56(b). For
4 example, a motion for partial summary judgment is an appropriate vehicle for establishing, *inter*
5 *alia*, issue preclusion. *See Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1441-42. Partial summary
6 judgment "may be appropriate on clearly defined, distinct issues." *Church Mut. Ins. Co. v.*
7 *United States Liability Ins. Co.*, 347 F. Supp. 2d 880, 882 (citing *FMC Corp. v. Vendo Co.*, 196 F.
8 Supp.2d 1023, 1029 (E.D. Cal. 2002). "An order under Rule 56(d) narrows the issues and
9 enables the parties to recognize more fully their rights, yet it permits the court to retain full power
10 to completely adjudicate all aspects of the case when the proper time arrives." *Id.* (*citing* 10B
11 Wright & Miller, Federal Practice and Procedure (3d ed. 1998), § 2737 at 316-18.) Thus, under
12 Rule 56(d), the Court may "ascertain what material facts exist without substantial controversy and
13 what material facts are actually and in good faith controverted" and may "make an order
14 specifying the facts that appear without substantial controversy, and direct[] such further
15 proceedings in the action as are just." *Id.*

16 **D. The Applicable Statute Of Limitations Limits The Bases For CBE's Claims**

17 In order to form the bases of their SAC, the alleged discrimination of which CBE
18 complains under the Equal Protection Clause, Title VI and Government Code § 11135 must have
19 occurred in the prescribed time period. *See Taylor v. The Regents of the Univ. of California*, 993
20 F.2d 710, 712 (9th Cir. 1993) (upholding the dismissal of plaintiffs' §§ 1981, 1983, 1985 and
21 200d [Title VI] claims as barred by the statute of limitations for personal injury actions). In
22 California, that time period is two years. *See* Cal. Code of Civ. Proc. § 335.1. That two-year
23 statute of limitations applies to Organizational Plaintiffs' injunctive claims. *See Cholla Ready*
24 *Mix, Inc. v. Chivish*, 382 F.3d 969 (9th Cir. 2004). Here, Organizational Plaintiffs filed this
25 action in April 2005, alleging "an equitable challenge to MTC's present and ongoing policy of
26 discriminatory funding." (SAC at pp. 1:2-3:8; 25:16-27:15.) Accordingly, any claim
27 Organizational Plaintiffs may have regarding the prior RTPs, including the 1994, 1998, and 2001
28 RTPs, is not actionable. Instead, all claims herein are limited to MTC's actions, decisions, and/or

policies taken or developed by MTC on or after April 2003.

E. CBE Is Barred From Bringing Those Parts Of Its Claims Based Upon MTC's Preparation, Development, and Adoption of the 2005 RTP

As set forth above, Organizational Plaintiffs allege in the SAC that MTC discriminates against their members of color in the way that MTC allocates transportation funding, claims based in large part on the 2005 RTP. (*See* SAC at pp. 2:1-3:8; 12:27-13:3; 14:14-25; 16:12-24.) By waiving its right to bring any claims related to the 2005 RTP, CBE waived its right to bring this action to the extent its claims relate to the 2005 RTP, or the adoption and development thereof.

In California, the interpretation of a release or settlement agreement is governed by the same principles applicable to any other contractual agreement.[8] *See Winet v. Price*, 4 Cal.App.4th 1159, 1165 (Cal. Ct. App. 1992); *Edwards v. Comstock Ins. Co.*, 205 Cal.App.3d 1164, 1167-69 (Cal. Ct. App. 1988). The court's objective in construing the language used in a settlement agreement is to determine and effectuate the intention of the parties. *See Winet*, 4 Cal.App.4th at 1166; *Appalachian Ins. Co. v. McDonnell Douglas Corp.*, 214 Cal.App.3d 1, 11 (Cal. Ct. App. 1989). The language of a contract governs its interpretation so long as the language is clear and unambiguous and does not involve absurdity. *See* Cal. Civ. Code § 1638; *Appalachian Ins. Co.*, 214 Cal.App.3d at 11. It is the outward expression of the agreement, rather than a party's unexpressed intention, that the court will enforce. *See Winet*, 214 Cal.App.4th at 1166; *Edwards*, 205 Cal.App.3d at 1169.

Thus, in California, a settlement agreement and release of all known or unknown claims accompanied by a waiver of California Civil Code section 1542[9] ("Section 1542") is sufficient to preclude a party from bringing future related claims regardless of whether it was the party's unexpressed subjective intention to release those claims at the time that party signed the

[8] CBE and MTC stipulated that California law governs the interpretation and enforcement of the *Bayview* Settlement Agreement. (McMillan Decl., ¶ 42, Exh. AA, p. 13.)

[9] California Civil Code § 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

1 agreement. *See Winet,* 214 Cal.App.4th at 1172-73. In *Winet,* the appellant, 15 years after
2 entering into a settlement agreement and release of all claims related to legal services provided by
3 the respondent, brought a malpractice suit against the respondent regarding those same legal
4 services. *See id.* at 1164. The court rejected appellant's argument that the release did not bar his
5 claims because, at the time he signed the agreement, he neither intended to waive all possible
6 claims nor knew of the possibility of claims at issue. *See id.*

7 Rather, the court held that the release and the Section 1542 waiver barred the appellant's
8 claims because the appellant's subjective, unexpressed beliefs were not admissible to contradict
9 the express and unambiguous terms of the release to the contrary. *See id.* at 1166. In so holding,
10 the court relied on the fact that: (1) the appellant was represented by counsel in negotiating and
11 executing the agreement; (2) the parties fashioned language in the agreement to preserve claims
12 outside the scope of the agreement; and, (3) the appellant was advised about the implications of
13 waiving his rights under Section 1542. *See id.* at 1167-68. Thus, "[i]f [a person's] words or acts,
14 judged by a reasonable standard, manifest an intention to agree in regard to the matter in question,
15 that agreement is established, and it is immaterial what may be the real but unexpressed state of
16 his mind on that subject." *Id.* at 1172.

17 Here, as in *Winet,* CBE entered into a settlement agreement and release accompanied by a
18 waiver of California Civil Code section 1542, releasing MTC from the present claims.
19 Specifically, it is undisputed that as part of the Bayview Settlement Agreement, CBE released all
20 claims, whether known or unknown, related to the development, preparation, or adoption of the
21 2005 RTP *and* all claims with respect to, pertaining to, or arising from the facts of the Bayview
22 Lawsuit. (McMillan Decl. at ¶ 42, Exh. AA, p. 10-11.) Moreover, the same factors relied upon
23 in *Winet* are present here. The release included a waiver of all rights and benefits that the parties
24 may have under Section 1542; the parties entered into the Agreement with the advice of counsel;
25 and the parties were not induced to execute the Agreement by reason of non-disclosure or
26 suppression of any fact. (*See id.* at p. 13.) Indeed, CBE's then Legal Director executed the
27 Agreement on behalf of CBE. (*See id.* at p. 14.)

28 Thus, CBE's release of all claims related to 2005 RTP in the Bayview Lawsuit precludes

CBE from bringing any claims that are based on the preparation, development and/or adoption of the 2005 RTP as part of this lawsuit. It is undisputed that the majority of CBE's claims are based upon MTC's policies and decisions regarding the allocation of transportation funds. (*See* SAC at pp. 1:2-3:8; 25:16-27:15.) CBE does not seek retrospective relief, rather it is bringing "an equitable challenge to MTC's present and ongoing policy of discriminatory funding." (*See id.*) Moreover, it is undisputed that the 2005 RTP is the currently operative RTP. *See* 49 U.S.C. § 5303(i)(2); Cal. Gov. Code § 65080(b)(3)(A); McMillan Decl., ¶ 9 at Exh. D, p. 2 (2007 TIP).)

And as specified in the SAC, CBE specifically alleges that MTC has harmed it through the use of the RTP by failing to cover the operating shortfall of AC Transit in the 2005 RTP. (*See* SAC at pp. 2:1-3:8; 12:27-13:3; 14:14-25; 16:12-24.) CBE also alleges that MTC implements a "policy" by which it prevents funds from being used for AC Transit's operating purposes even though they are statutorily eligible for such use in assessing need for the RTP. (*See* Plaintiffs' MSA at p. 21 n. 22.). Finally, CBE claims that MTC has devoted billions of dollars to expand BART and Caltrain service levels while failing to preserve existing levels of AC Transit service when dedicating funds as part of the RTP process. (*See id.*). Based on the Agreement, all of these claims should be barred, as should any other allegations related to the 2005 RTP.

While MTC does develop other transportation planning documents such as the statutorily required Transportation Improvement Plan, all projects included in those plans must be consistent with the funding decisions in the current RTP in order to receive funding. (*See* McMillan Decl. at ¶ 9, Exh. D, pp. 1-2.) Moreover, in 2004 when it entered into the Agreement, CBE knew of the various sources of discretionary transportation funds and how MTC allocates such funds to various transit projects. (McMillan Decl. at ¶ 9, Exh. D, pp. 8-9 (detailing MTC's obligations under the Agreement regarding the allocation of discretionary funds and preparation of the 2005 RTP).)

Accordingly, CBE is precluded from bringing its claims to the extent they are based on the 2005 RTP, and the adoption or development thereof, because CBE explicitly released MTC from any claims related to the 2005 RTP by entering into the Agreement. Partial summary judgment on this issue is warranted.

1
V. CONCLUSION

2 Like all litigants invoking the jurisdiction of a federal court, Organizational Plaintiffs must
3 demonstrate standing in order to maintain their suit. Without standing, the Court lacks subject
4 matter jurisdiction to adjudicate the claims. Herein, Organizational Plaintiffs implicitly assert
5 standing to vindicate the rights of their members and their own interests in using resources for
6 purposes other than those at issue in this suit. As discussed above, Organizational Plaintiffs lack
7 standing to sue on behalf of their members because (1) their members lack standing to sue on
8 their own; and (2) the rights this suit purports to enforce are not germane to either organization's
9 purpose. Organizational Plaintiffs also lack standing to sue in their own right because (1) they
10 have each failed to demonstrate that MTC's actions have "perceptibly impaired" their
11 organizational activities; and (2) they are barred by prudential concerns from asserting the rights
12 of third parties. As a result, Organizational Plaintiffs lack standing to assert the claims raised in
13 the SAC, and the Court must dismiss those claims for lack of jurisdiction.

14 Moreover, by entering into the Agreement, CBE expressly waived its right to bring any
15 future claims related to the 2005 RTP. Because CBE's claims are based upon MTC's decisions
16 regarding the allocation of discretionary funds, and most of those decisions were made in the
17 preparation, development and adoption of the 2005 RTP, CBE has effectively waived its right to
18 bring those parts of its claims. For the foregoing reasons, MTC is entitled partial summary
19 judgment as a matter of law.

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HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY, LLP

21
22
23 By: /s/
ADAM HOFMANN
24 Attorneys for Defendant
METROPOLITAN TRANSPORTATION
25 COMMISSION
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