

1 Robert García
2 Senior Attorney
3 Environmental Defense Fund
4 10951 West Pico Blvd., Suite 300
5 Los Angeles, California 90064
6 Telephone: (310) 441-5604
7 Fax: (310) 441-0296

8 Thomas J. Graff
9 Senior Attorney
10 Environmental Defense Fund
11 5655 College Avenue
12 Oakland, California 94618
13 Telephone: (510) 658-8008
14 Fax: (510) 658-0360

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 BEFORE SPECIAL MASTER DONALD T. BLISS, JR.

18 Labor/Community Strategy Center, et al.,
19 Plaintiffs,
20 vs.
21 Los Angeles County Metropolitan
22 Transportation Authority, et al.,
23 Defendants

24 CV 94-5936 TJH (MCx)

25 **Memorandum for Amicus Curiae**
26 **Environmental Defense Fund in Response**
27 **to MTA's Motion for Clarification and**
28 **Modification of the Special Master's March**
29 **6, 1999, Memorandum Decision and Order**

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1 Transportation Plan ("RTP") adopted by the Southern California Association of Governments
2 ("SCAG") requires MTA to implement the Consent Decree. MTA should adopt creative
3 alternatives to improve transit in an equitable, efficient and environmentally sound way. Such
4 alternatives include a rapid busway system that draws on the lessons of the Curitiba bus system, as
5 illustrated in the video *In Our Lifetime* submitted as EDF Exhibit 1. Other alternatives include
6 lower fares; equitable, market based polices such as off-peak pricing; and integrated
7 transportation, urban form and land use plans. More and better bus service is part of a broader
8 transportation reform agenda that simultaneously addresses these access, mobility, economic and
9 environmental objectives. Implementing the Consent Decree and the March 6 Order not only
10 remedies legal wrongs to communities of color and low income communities, it benefits the entire
11 Los Angeles community.

15 **III. Argument**

16 **A. Implementing the MTA Consent Decree To Improve Transit in Los Angeles**

17 The single most important step to improve transit in Los Angeles in an equitable, efficient
18 and environmentally sound way is to implement the terms of the MTA Consent Decree. Plaintiffs
19 and the class documented an extensive history of disparate impact and intentional discrimination
20 over the past 30 years before the Court signed the Consent Decree. MTA discriminated against
21 low-income people of color through vast overspending on its rail projects, and through its funding
22 for suburban buses and for MTA's own buses which served a disproportionately white ridership.
23 Plaintiffs and the class prevailed because they provided ample evidence of such discrimination,
24 there was a broad spectrum of support for the settlement, and the settlement provided the most
25 equitable, efficient and environmentally sound solution to L.A.'s transportation problems. It is
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1 important to keep in mind the inequities that led the MTA to settle the case in 1996 in reviewing
2 MTA's present claims.

3 **1. The Court's Findings of Fact and Procedural Background**

4
5 Plaintiffs filed the complaint on August 31, 1994, seeking preliminary and permanent
6 injunctive relief against defendants Los Angeles County Metropolitan Transportation Authority
7 ("MTA") and MTA's chief executive officer. The complaint alleged that MTA violated the
8 Fourteenth Amendment, 42 U.S.C. §§ 1981 and 1983, and Title VI of the Civil Rights Act of
9 1964, 42 U.S.C. § 2000d, by intentionally discriminating against racial and ethnic minority groups
10 and perpetuating a pattern of racially discriminatory delivery of transportation services. The
11 complaint also alleged that, as a recipient of federal funds, MTA violated the implementing Title
12 VI regulations, codified by the United States Department of Transportation ("DOT") at 49 C.F.R.
13 Part 21, by maintaining transportation policies that disproportionately impact racial and ethnic
14 minorities without a justifying business necessity and without regard to less discriminatory
15 alternatives. *Complaint (Aug. 31, 1994)*. Plaintiffs filed a First Amended Complaint with leave of
16 Court on March 26, 1996.

17
18 After a hearing on September 1, 1994, the Court entered a temporary restraining order
19 that restrained defendants from raising cash bus fares from \$1.10 to \$1.35 and eliminating bus
20 passes that provide unlimited bus use for \$42 per month. *Temporary Restraining Order (Sept. 1,*
21 *1994)*.

22
23 After a second hearing, the Court entered a preliminary injunction enjoining the defendants
24 from raising fares and eliminating monthly bus passes. *Findings of Fact and Conclusions of Law*
25 *re: Preliminary Injunction (Sept. 21, 1994)*. The Court found that the proposed fare
26 restructuring would "cause minority bus riders substantial losses of income and mobility that, for a
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1 significant number, will result in the loss of employment and housing, and the inability to reach
2 medical care, food sources, educational opportunities, and other basic needs of life." *Id. at 1-2.*

3
4 The Court held that the balance of hardships tipped decidedly in plaintiffs' favor because any harm
5 to the defendants from enjoining the fare changes paled in comparison to the harm to plaintiffs if
6 the fare changes were implemented, and that plaintiffs had made a sufficient showing on the
7 merits. *Id. at 4-5.*

8
9 The Court held that, on the abbreviated preliminary injunction record, plaintiffs had
10 presented "more than sufficient evidence" to support their disparate impact claims for preliminary
11 relief and had "raised serious questions going to the merits" on the claims of intentional
12 discrimination:

13
14 Plaintiffs have presented the Court with more than sufficient evidence to meet their
15 burden of preliminarily showing that MTA's actions have adversely impacted minorities;
16 that MTA's actions were not justified by business necessity; and that the MTA has
17 rejected less discriminatory alternatives.

18
19 . . . Through their evidence, plaintiffs raise serious questions going to the merits of their
20 disparate impact claims under Title VI, as well as their intentional discrimination claim
21 under Title VI, the Fourteenth Amendment, and 42 U.S.C. §§ 1981 and 1983. A serious
22 question is one that is so substantial and difficult as to warrant more deliberate
23 investigation and, thus, creates a fair basis for litigation.

24
25 *Id. at 4-5 (Sept. 21, 1994) (citation omitted).*

26
27 The Court contrasted MTA's decision to restructure bus fares to the detriment of the
28 minority poor while contemporaneously proceeding with rail projects that serve a
29 disproportionate share of white riders. The Court found that:

1 On July 1, 1993, MTA's Operations Committee was given an internally produced
2 report which concluded that the inequitable service provided to inner city areas, which
3 are overwhelmingly minority and poor, stemmed from "the absence of adequate public
4 funds." The report identified a significant need for transit service improvements and
5 noted that inner city residents are extremely dependent on public transit, have very
6 intense transit use, and suffer from significantly more limited access to transportation
7 alternatives. The report documented that "service delivery problems have more severe
8 impact in the [i]nner [c]ity than in most other areas of the County." The report
9 concluded that MTA maximizes the benefits of the highly cost-effective inner city bus
10 lines, in part, by routinely permitting overcrowding levels of 140% of capacity.

11 At an MTA Board meeting in August, 1993, plaintiff Labor/Community Strategy
12 Center formally requested that the MTA impose a moratorium on all rail projects, which
13 allegedly serve a non-minority ridership, in light of the Board's plan to raise bus fares and
14 cut service. MTA Board member Villaraigosa urged his fellow MTA Board members to
15 avoid the need to harm bus service later by refusing to approve a \$59 million
16 discretionary fund allocation to plan the Pasadena rail project. The MTA Board,
17 ignoring Mr. Villaraigosa and the plaintiff, voted to allocate the \$59 million to that
18 project. Plaintiffs claim that the \$59 million should have been spent on bus services to
19 avert the bus fare increases and pass elimination.

20 White received a staff memorandum, dated January 21, 1994, which concluded
21 that the proposed fare increases and pass elimination would disproportionately effect
22 minority and poor transit users. The memorandum acknowledged that "[f]or the most
23 part, cash and most pass categories are comprised of people of color with lower
24

1 household incomes" and that "the ethnic mix of non-senior disabled pass holders is
2 equivalent to that of our general ridership." The report went on to state that general
3 ridership of the buses is 80 percent minority and "profoundly poor" and is the population
4 that would be most adversely affected by a fare hike and pass cut.
5

6 On July 13, 1994, the MTA Board voted to increase the one way cash bus fare
7 by 23% from \$1.10 to \$1.35, to eliminate the bus pass that provided unlimited bus use
8 for \$42.00 a month, and to retain 90 cent single-ride tokens.
9

10 On July 20, 1994, the MTA Board voted to spend another \$123 million on the
11 rail project designed to serve Pasadena.
12

13 *Id. at 2-3 (brackets by the Court, paragraph numbers omitted).*

14 On January 25, 1995, the Court entered a stipulated order which modified the preliminary
15 injunction by allowing the cash fare to be raised from \$1.10 to \$1.35 and by allowing the price of
16 the monthly pass to be raised from \$42 to \$49. As modified, the preliminary injunction remained
17 in effect pending trial.
18

19 On March 7, 1995, the Court certified the action as a class action on behalf of "[a]ll poor
20 minority and other riders of MTA buses who are denied equal opportunity to receive
21 transportation services because of the MTA's operation of a discriminatory mass transportation
22 system," a class consisting of approximately 350,000 individuals.
23

24 The proposed Consent Decree was submitted two weeks before the scheduled October 8,
25 1996, trial date, after discovery was complete. The Consent Decree was the product of mediation
26 to which all parties agreed. After a fairness hearing, the Court approved the Consent Decree on
27 October 29, 1996.
28
29

1 Plaintiffs and the class attached an extensive "Revised Statement of Contentions of Fact
2 and Law" ("Statement") to their October 28, 1996, Memorandum in Support of Proposed
3 Consent Decree. The Statement summarized the evidence concerning discriminatory allocation of
4 resources and funds by the MTA. An earlier edition of that Statement served as the basis for
5 discussions during the mediation process. A summary of that evidence follows.¹

7 **2. The Racial Ridership Disparities**

8 Plaintiffs presented largely undisputed evidence of ridership disparities in service between
9 MTA bus riders and riders on other modes of MTA-operated or funded transit. Given the 80%
10 minority ridership on MTA generally, one would expect an 80% minority ridership on other
11 modes of transit in the absence of any racial or ethnic headwinds. This was not the case when the
12 Consent Decree was signed. For example, the ridership of the approximately 18,000 daily riders
13 of Metrolink was 28 percent minority. The actual minority ridership on Metrolink varied by 173
14 standard deviations from the expected 80% minority ridership. The likelihood that such a
15 substantial departure from the expected value would occur by chance is infinitesimal. *See*
16 *Castaneda v. Partida*, 430 U.S. 482, 496 n.17, 97 S. C. 1272, 51 L. Ed. 2d 498 (1977)
17 (*differences of two or three standard deviations are suspect*); *Statement* § 544.

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21 The comparisons between the contemporaneous 80 percent minority MTA bus system and
22 the majority white LADOT Commuter Express and 47 percent white Foothill Transit lines are
23 also statistically significant under *Castaneda*. *Id.*

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28 ¹ While virtually all consent decrees contain disclaimers of any liability on the part of the defendants, the Consent
29 Decree in the MTA case contains no disclaimer. MTA's failure to deny liability is important. This constitutes a
tacit admission. *See, e.g., Fed. R. Evid. 801(d)(2)(A) and advisory committee notes* (admission by adoption,
acquiescence or silence where person would, under the circumstances, protest the statement made if untrue.

1 As to MTA-operated rail lines, MTA presented projections for the ethnic origin of riders
 2 on rail lines at the end of MTA's 20-year transportation plan, based on 1990 census data, prepared
 3 by their expert Professor Peter Stopper of Louisiana State University. These projections showed
 4 substantial differences from the MTA system wide 80 percent minority ridership: the Long Beach
 5 Blue Line ridership would be 71 percent minority, the Green Line 72 percent minority, the Red
 6 Line 66 percent minority, and the Pasadena Line 63 percent minority. *Peter Stopper, Report on*
 7 *Methodology for Ethnicity Calculations at 29 (1995), E00001, E000030.* If these percentages
 8 are applied to contemporaneous daily ridership levels of 38,000 Long Beach Line riders, 12,000
 9 Green Line riders, and 18,000 Red Line riders, and to the 35,000 Pasadena Line riders that MTA
 10 anticipates, the following are the results under the *Castaneda* analysis of deviations from the
 11 expected 80 percent minority ridership.
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<u>Rail Line</u>	<u>Number of Standard Deviations</u>
Long Beach	43
Green Line	22
Red Line	47
Pasadena Line	79

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 21 The adverse disparity showing far exceeds the two or three standard deviations test of *Castaneda*.
 22 The likelihood that such departures from the expected value would occur by chance is
 23 infinitesimal. *Statement* § 545.
 24

25 These calculations, in fact, are exceedingly conservative because the pre-existing bus
 26 ridership in the rail corridors is likely to be higher than the system wide minority percentage.
 27 MTA admitted in a document, for instance, that the pre-existing bus ridership in the Long Beach
 28 corridor was fully 95 percent minority before the Blue Line began service. Compared to the
 29

1 expected 95 percent minority ridership, the 71 percent minority ridership that MTA projects yields
2 a difference of 128 standard deviations under the *Castaneda* analysis. The likelihood that such a
3 substantial difference could have occurred by chance is, for all practical purposes, zero.
4

5 *Statement* § 546.

6 **3. Adverse Subsidy and Service Disparities**

7 After 1984, MTA and its predecessors embarked on a massive program of rail
8 development, and the expansion of Foothill Transit and LADOT bus lines, which impoverished
9 one of the nation's largest bus systems. As a result, the MTA's minority bus ridership has been
10 subjected to severe adverse disparate impact in the subsidies and services provided in contrast to
11 the well-funded quality services provided to the disproportionately white ridership on Metrolink,
12 on MTA rail lines, and on the municipal bus operators. *Id.* § 547.
14

15 **a. Adverse Subsidy Disparities**

16 While 94 percent of its ridership were bus riders at the time of the signing of the Consent
17 Decree, MTA customarily spent 70 percent of its budget on the six percent of its ridership that
18 were rail passengers. MTA had spent or planned on spending almost nine billion dollars on its rail
19 program. It has spent hundreds of millions of dollars on Metrolink. In contrast, MTA reduced its
20 peak hour bus fleet from 2200 to 1750 buses in the preceding decade in spite of increasing
21 demand. *Id.* § 548.
22
23

24 MTA documents showed that the total subsidy per boarding in 1992, including both
25 capital and operating expenses, for an MTA bus rider was \$1.17, while the comparable subsidy
26 for a Metrolink rider was 18 times higher (\$21.02), for a Blue Line passenger it was more than
27 nine times higher (\$11.34), and for a Red Line passenger it was two-and-a-half times higher
28 (\$2.92). These inter-modal comparisons understate the disparity because rail lines are usually
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1 located only in the most heavily-traveled transit corridors. The comparison with the \$0.34
2 subsidy on the heavily-traveled Vermont Avenue MTA bus line shows that the Metrolink subsidy
3 is 62 times higher, the Blue Line subsidy 33 times higher and the Red Line subsidy nine times
4 higher. Controlling for distance traveled, large bus-rail disparities continue to exist. *Id.* ¶ 549.

6 The subsidy levels for MTA bus riders were only two-thirds of the average of the other
7 municipal operators with local bus service, although the cash fare was more than twice the
8 average fare of the other municipal operators. *Id.* ¶ 550.

10 Although MTA buses carried 85 percent of the County's bus passengers and account for
11 86 percent of passenger-miles, MTA received only 80 percent of operating funds under MTA's
12 allocation formula. More startling, MTA's funding allocation formula for capital funds resulted in
13 allocations to MTA of only 66 percent to 77 percent in any year from 1989-95. As a result, in
14 1994, MTA buses had the highest mileage (338,830 miles), while the average mileage of the rest
15 of the County was only 54 percent as high (185,331). LADOT buses had one fifth the mileage of
16 MTA buses, and Foothill Transit buses just over a third the mileage. Using the Federal Transit
17 Administration standard that buses should be replaced that have a mileage of 500,000 miles, MTA
18 in 1994 had 93 percent of the buses in the County with more than 500,000 mileage. *Id.* ¶ 551.

21 **b. Adverse Crowding Disparities**

22 With respect to overcrowding, the District Court found that the MTA and its predecessors
23 customarily tolerated overcrowding levels of 140 percent of capacity on its buses. *Findings of*
24 *Fact and Conclusions of Law re: Preliminary Injunction at 2 (Sept. 21, 1994)*. Overcrowding on
25 MTA buses was a designed defect in the service provided. MTA acknowledged the problem in
26 numerous documents, but did little to alleviate it. Supervisor Yvonne Burke initiated a
27 demonstration project that successfully eased overcrowding and security problems on the
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1 Vermont Avenue bus line (which at the time carried eight percent of MTA's bus ridership) for
2 several months in 1993 at an annualized cost of \$5.8 million, but MTA failed to follow through
3 with any remedial program of that scale, devoting only pitifully small sums to large numbers of
4 overcrowded lines. *Statement* ¶ 552.

6 In contrast, there was no overcrowding of riders on Metrolink, MTA-operated rail, and
7 commuter lines such as Foothill Transit, LADOT Commuter Express, Antelope Valley and Santa
8 Clarita. The riders of these modes enjoyed excellent service. *Id.*

10 **c. Adverse Security Disparities**

11 MTA documents showed huge disparities in spending by MTA for the personal security of
12 its riders. While only three cents was spent by MTA for the security of each bus passenger in
13 fiscal year 1993, 43 times as much was spent for the security of each passenger of Metrolink and
14 the Long Beach Blue Line (\$1.29) and 19 times as much for each passenger on the Red Line. *Id.*
15 ¶ 553.

17 **d. Intra-MTA Bus Disparities**

18 Plaintiffs' experts Professor Martin Wachs of the University of California at Berkeley and
19 Professor Brian Taylor of UCLA confirmed MTA's own studies showing that even among MTA
20 bus riders, minority riders on local lines received lower subsidies and received lower quality
21 service than the disproportionately white riders of express buses. An MTA study of downtown
22 riders in 1990-93 showed that minority riders accounted for 87 percent of local bus riders, but
23 only 64 percent of express buses. The study showed that the great majority of local riders (63
24 percent) had household incomes less than \$15,000, while only 29 percent of express riders had
25 such a low income. *Id.* ¶ 554.

1 The MTA's own 1993 Inner City Transit Needs Assessment Study found as well that the
2 subsidy levels were lowest in poor, minority areas and the farebox recovery ratios highest,
3 indicating that the highest levels of crowding were in South Central, Hollywood, and other poor,
4 minority areas. The 1995 update to the Assessment submitted by MTA expert Williams
5 confirmed the persistence of these disparities. *Id.* As the District Court found, in reliance on the
6 Inner City Transit Needs Assessment Study, "service delivery problems have more severe impact
7 in the Inner City than in most other areas of the County" because "inner city residents are
8 extremely dependent on public transit, and suffer from significantly more limited access to
9 transportation alternatives." *Findings of Fact and Conclusions of Law re: Preliminary*
10 *Injunction, at 2 (Sept. 21, 1994).*

14 **4. The History of Discrimination**

15 In 1965, the McCone Commission determined that the "inadequate" and "prohibitively
16 expensive" bus service provided by MTA's predecessors in South Central Los Angeles
17 contributed to the social conditions leading to the Watts Riots of 1964. Although the
18 Commission called for a more affordable fare, MTA's predecessors essentially maintained in
19 constant dollars the fare decried as too costly for the next three decades, except for the 1982-85
20 period when Proposition A mandated that funds be used to cut the fare. The 1994 increase from
21 \$1.10 to \$1.35 that the District Court initially enjoined pushed the bus fare above the level in
22 constant dollars that the McCone Commission condemned as prohibitively expensive. *Statement* 6
23 *606.*

24 With respect to service, MTA responded with great recalcitrance in implementing the
25 Commission recommendations, eventually initiating only one new east-west bus line. The MTA
26 and its predecessors ultimately failed to provide adequate service for minority areas, as reported in
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1 the Inner City Transit Needs Assessment Study and other MTA documents, devoted billions of
2 funds for rail projects without any commensurate effort on behalf of minority bus riders over the
3 last decade, and split off suburban lines with heavy white ridership for Foothill Transit and
4 LADOT Commuter Express. Ironically, the 1993 Inner City Transit Needs Assessment Study
5 echoes the findings of the earlier McCone Commission Report. *Id.* ¶ 607.

7 In developing rail lines and creating municipal bus lines to serve former MTA bus routes
8 with disproportionately high white riders, MTA took deliberate, purposeful actions to benefit a
9 tiny portion of its ridership at the expense of minority bus riders. MTA built the Long Beach
10 Blue Line, for instance, not for the benefit of the pre-existing minority bus ridership, but for white
11 commuters who account for the incremental change from the 5% white ridership on pre-existing
12 buses to the 29% white ridership MTA projects. Initially, MTA's predecessors planned no stops
13 in the heavily minority middle section of the Long Beach Line. *Id.* ¶ 605.

16 MTA, moreover, has built no rail line to serve minority communities, although the Inner
17 City Crenshaw Line and a line to East L.A. have been proposed for many years. MTA and its
18 predecessors set up and funded Foothill Transit and LADOT to serve majority or
19 disproportionately high white portions of its bus ridership while taking no such actions on behalf
20 of poor, minority bus riders, as documented by the Inner City Transit Needs Assessment Study
21 and reports prepared in its aftermath. As an RTD document put it, "the [Foothill Transit]
22 experiment is beginning to turn Los Angeles into a two-class transit County" with new,
23 comfortable buses serving suburban areas and older, overcrowded buses serving the central city.
24
25
26 *Id.*

27 **5. Departures from Regularity**

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1 The record as of the time that MTA Signed the Consent Decree showed that MTA in the
2 preceding decade departed from substantive public transit norms by proceeding with rail and
3 commuter bus programs that had marginal or no rider, fiscal, environmental, economic
4 development or other benefit. The departures from regularity also demonstrated the lack of
5 business or public transit necessity to justify the MTA's actions. MTA's allocation of resources to
6 the disadvantage of its bus riders was inconsistent with its policy statement that the MTA's highest
7 priority is improving bus service, inconsistent with federal requirements that new rail construction
8 not diminish preexisting service, and inconsistent with state requirements that affordable bus
9 service be safeguarded. *Id.* § 608.

12 In 1980 and 1990, Los Angeles County voters approved MTA-sponsored ballot
13 propositions that made sales tax revenues available for public transit, including lowered bus fares,
14 freeway improvements, and rail development. For the fiscal year 1995-96, sales tax revenues
15 available from these propositions totaled \$782 million. As required by law, MTA initially lowered
16 its bus fare. In the wake of the reduction, MTA bus ridership skyrocketed to the highest levels
17 since World War II. After the legally mandated period of low bus fares ended, however, MTA
18 began using sales tax revenues and other funds principally for rail construction, including
19 discretionary funds designed for bus and freeway improvements. The rail construction program
20 has consumed huge resources, but it has produced little benefit for most MTA riders. *Id.* § 609.

24 For example, over two-thirds of the riders on the light rail Long Beach Blue Line that runs
25 between Long Beach and downtown Los Angeles were former local and express bus riders.
26 While the bus lines that the Long Beach Line replaced were only 5% white, MTA projected that
27 the ridership of the Long Beach Line would be 29% white. The Long Beach Line and the buses it
28 replaced took approximately the same time to travel between Long Beach and downtown Los
29

1 Angeles, but the Blue Line cost approximately \$1 billion. MTA considered and rejected a \$6
2 million bus alternative presented in the environmental impact statement prepared for the Long
3 Beach Line. The bus alternative provided comparable environmental and regional transportation
4 benefits. According to comments submitted by the City of Los Angeles in 1985, "[the] bus
5 alternative seems to negate the necessity of a fixed rail system in this location." *Id.* ¶ 610.
6

7 MTA designed the Long Beach Blue Line with an at-grade roadbed along its congested,
8 and overwhelmingly minority, middle section. Trains run through the middle section at speeds of
9 55 miles per hour at street level. Although the environmental impact report predicted safety
10 problems in the middle section, MTA went ahead as planned. As a result, the Long Beach Line
11 was the most dangerous and deadly light rail line in the nation as of the signing of the Consent
12 Decree. *Id.* ¶ 611.
13
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15 Although the Long Beach Line runs through minority communities, it was not planned to
16 achieve economic development along its route. The Long Beach Line secured its ridership by
17 charging the least per passenger mile of any light rail line in the nation. The fare on the Long
18 Beach Line, indeed, was lower than on parallel MTA express bus lines. While imposing distance-
19 based pricing on express buses, including those with parallel routes, MTA had never imposed
20 distance-based fares on the Long Beach Line. MTA also forced local bus riders onto the Long
21 Beach Line by canceling and rerouting bus lines, replacing conveniently spaced local bus stops
22 with Long Beach Line stops that average a mile apart. *Id.* ¶ 612.
23
24

25 MTA opened the Green Line, which runs from Norwalk to El Segundo in the central
26 median of the Imperial Freeway, I-105, for service in 1995. The Green Line, unlike the Long
27 Beach Line, did not replace any pre-existing express bus line. In order to obtain ridership, MTA
28 modified many surrounding bus lines to divert riders. The Green Line terminated within sight of -
29

1 - but does not reach -- the Los Angeles International Airport. The *Los Angeles Times* has
2 appropriately referred to the Green Line as "the train to nowhere." The Green Line, which cost
3 approximately one billion dollars, was finished only with the infusion by MTA of \$300 million in
4 discretionary highway improvement funds that could have been used for high occupancy vehicle
5 and busways. According to former MTA CEO Franklin White, these "activities . . . are more
6 desirable than the Green Line today" because they provide greater congestion relief for the region
7 than rail construction. *Id.* ¶ 613.
8

9
10 At the same time that the MTA Board voted to raise fares and eliminate the monthly bus
11 pass in 1994 purportedly for lack of funds, the Board voted to use discretionary highway
12 improvement funds for the proposed Pasadena light rail line. Former MTA CEO White
13 characterized the Board's decision to proceed with the Pasadena Line under such circumstances as
14 "idiocy." *Id.* ¶ 615. As noted above, MTA projected that the Pasadena Line would have the
15 highest white ridership, 37%, and the lowest minority ridership, 63%, of any MTA-operated rail
16 line. In planning the Pasadena Line, the MTA did not consider any bus alternative. The budget
17 for the Pasadena Line was found in 1995 to be "without precedent in the industry and does not
18 appear to be warranted by the complexity of the project." *Id.* ¶ 614.
19

20
21 Instead of expanding the use of cost effective commuter buses, MTA developed
22 Metrolink, a suburban commuter rail system. RTD studies showed that the travel time on
23 commuter buses was shorter and the fares lower than on Metrolink. Metrolink carried 18,000
24 riders a day as of the signing of the Consent Decree. Any one of the MTA's 20 busiest bus lines
25 carried more than that number. *Id.* ¶ 616.
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1 The construction of the Red Line, which is currently projected by MTA to cost \$5.8
2 billion dollars, has been marked by cost overruns, incompetent management and route changes
3 that cannot be justified on any grounds but political exigency. *Id.* ¶ 617.
4

5 **B. The March 6 Order Remedies MTA's Failure to Comply with the Consent Decree**

6 On March 6, 1999, the Special Master issued a ruling to remedy MTA's violations of the
7 Consent Decree ("the March 6 Order"). MTA and plaintiffs, through the "Joint Working Group,"
8 agree that MTA has not met the target load factors under the Consent Decree. *March 6 Order at*
9 *2, 3.* Because the parties were unable to agree upon the remedy for these violations, the March 6
10 Order presents the Special Master's determination of remedies necessary for compliance with the
11 October 1996 Consent Decree. *Id. at 9, 52-56.*
12

13 EDF supports implementation of the March 6 Order. On March 23, 1999, EDF wrote to
14 each member of the MTA Board, to MTA Chief Executive Officer Julian Burke, and to MTA
15 Chief Operating Officer Allan Lipsky urging MTA to make compliance with the Consent Decree
16 and the March 6 Order the highest priority for MTA. EDF urged the MTA board to adopt an
17 implementation plan to comply with the March 6 Order within 30 days. EDF urged MTA to
18 refrain from spending new funds, transferring local funds or incurring new costs for any
19 suspended rail projects until MTA demonstrates that it has sufficient funding to implement the
20 March 6 Order and the Consent Decree.
21
22

23 There is widespread support for implementation of the Consent Decree and the March 6
24 Order in Los Angeles, contrary to suggestions in the MTA brief. For example, the Los Angeles
25 Times published an editorial stating that "MTA ought to drop its legal wrangling over the consent
26 decree, save the legal expense and do its best to comply with the court order, period." *Editorial:*
27 *MTA Should Get Back on Bus, L.A. Times, April 20, 1999; EDF Exhibit 5.*
28
29

1 **C. The SCAG RTP Is Committed To Implementing the Consent Decree**



2 The Southern California Association of Governments (SCAG) adopted a regional
3 transportation plan (RTP) in April 1998 that specifically addresses the following points.
4



5 (1) The SCAG transportation plan includes a commitment to implement the MTA Consent
6 Decree.



7 (2) SCAG contemplates the creation of eleven busways, a feeder system of thousands of
8 buses and shuttles, and restructuring to make the bus system more equitable, efficient and
9 environmentally sound.
10

11 (3) SCAG is explicitly committed to achieving compliance with Title VI of the Civil
12 Rights Act.

13 (4) SCAG analyzes the impact of its transportation proposals on low income communities
14 and communities of color.
15

16 *See generally Declaration of Mark Pisano, April 16, 1999, submitted with MTA's current*
17 *motion, at*   *1-3, 6-8, 12. SCAG adopted these provisions of the RTP in response to the*
18 *advocacy of EDF, LDF and others.*
19

20 MTA raises the speculative suggestion that implementing the March 6 Order might make
21 it difficult for MTA to conform to the SCAG RTP and other transportation and environmental
22 law requirements. *See MTA Motion at 16-23.* These arguments have little if any support in fact
23 or in the record. *See generally Declaration of Thomas A. Rubin, April 26, 1999, submitted with*
24 *LDF's response to the present motion ("Rubin Declaration"), at*   *11-63. See also id. at*
25 *109-17 (responding to declaration of Mark Pisano.).* In reality, MTA is not in compliance with
26 the RTP now to the extent that MTA is not in compliance with the Consent Decree. Moreover,
27 MTA has not adopted a plan consistent with the RTP's call for transitways, a feeder system, and
28
29

1 restructuring. Indeed, it is difficult to assess MTA's speculative arguments in part because MTA
2 has not adopted a current long range plan. MTA's two prior plans have been discredited, and in
3 any event do not incorporate the requirements of the Consent Decree since MTA adopted them
4 before the Consent Decree was signed. *See generally Statement at*   384-419.

6 MTA's arguments seem motivated by a strategy of creating a dichotomy between bus
7 riders on the one hand and everyone else in Los Angeles. This is a false dichotomy. The bus
8 system is important even for people who will never ride a bus. For example, hundreds of
9 thousands of riders use the bus to get to their jobs in plants, in offices, in private homes. Buses
10 keep workers in Los Angeles moving.

12 **D. Alternatives For MTA To Improve Transit In Los Angeles**

14 **1. Rapid Busways and the Lessons of Curitiba**

15 MTA, EDF and others are studying the lessons of the Curitiba busway system to develop
16 rapid busways for Los Angeles. The Curitiba system is relevant for five reasons, as demonstrated
17 by the video *In Our Lifetime* submitted as EDF Exhibit 1.

- 19 • Curitiba shows how a well-designed transit system can work -- and at a fraction of the
20 price that MTA has invested on transit in Los Angeles.
- 21 • The video illustrates the lessons of the Curitiba system that are directly relevant to
22 designing a rapid busway system in Los Angeles, as discussed below.
- 23 • The rapid busway system is relevant to developing a five-year bus improvement plan
24 under the Consent Decree, an issue which is currently pending before the Special
25 Master. *See March 6 Order at 8; Consent Decree Section II.C.2.*
- 26 • A rapid busway system is relevant to implementing the transitways and feeder system
27 required under the SCAG RTP.
- 28
- 29

- 1 • The video documents the change in attitudes by public officials in Los Angeles. Public
2 officials now take buses and the transit dependent seriously in the wake of the MTA
3 litigation.
4

5 *In Our Lifetime* is part of a project by EDF and Martha Welborne of the Surface Transit
6 Project to publish a "vision report" citing the lessons of the busway system in Curitiba, Brasil, for
7 Los Angeles and other cities across the nation in the fall of 1999. Los Angeles Mayor Richard
8 Riordan, Los Angeles County Supervisors Zev Yaroslavsky and Yvonne Burke, California State
9 Assemblyman Bob Hertzberg, MTA chief operating officer Allan Lipsky, California
10 Transportation Commission ("CTC") member David Fleming, other transportation officials, EDF
11 economist Michael Cameron, EDF attorney Robert García, and Martha Welborne traveled to
12 Curitiba, Brasil, in January 1999. *In Our Lifetime* documents the trip.² (A transcript of the video
13 is included as EDF Exhibit 2. A *Scientific American* article about the Curitiba busway system is
14 included as EDF Exhibit 3.)
15
16

17 *In Our Lifetime* demonstrates some of the important lessons of Curitiba for Los Angeles.
18 The most important lesson can be summed up in one word: "Simplicity. . . . [W]e never were
19 afraid to propose simple solutions," according to Parana Governor Jaime Lerner, the architect of
20 the Curitiba system. *EDF Ex. 2 at p. 4*. MTA is only now beginning to absorb this lesson
21 through the simple solution of improving bus service in Los Angeles.
22
23

24 CTC member David Fleming asked Governor Lerner: "You have a lot of cars in this town.
25 What prompted people to get out of their cars and ride transit? As Governor Lerner correctly
26 points out:
27

28
29 ² Martha Welborne produced the video with funding from the W. Alton Jones Foundation and EDF. The trip itself and the broader study is funded by the W. Alton Jones Foundation.

1 You'll never have the change -- the people, they won't change from their car for a public
2 system, if the public system has no quality, if it's not reliable, if there is no good frequency.

3 I think the frequency is the major part of the system.
4

5 *Id. at p. 5.* Seventy-five percent of Curitiba's commuters use the transit system, drastically
6 reducing the use of automobiles for daily commuting. *Id. at p. 3.*

7 The lessons of Curitiba for Los Angeles include: high quality, reliable, frequent service;
8 faster total travel times; low fares to promote bus use and to subsidize the neediest; an integrated
9 system of busways and feeders; dedicated bus lanes; traffic signal priority for buses; limited stops;
10 prepayment before boarding (for example, through the use of passes made possible by the
11 Consent Decree); level boarding and alighting (for example, through low floor buses); quality bus
12 stops; multiple doors for faster entry and exit; color coded buses and routes; coordinated
13 transportation and land use policies; and high-capacity buses.
14

15
16 *In Our Lifetime* also documents the change in attitudes by public officials in Los Angeles,
17 who now take buses and the transit dependent seriously in the wake of the MTA litigation. For
18 example, Republican Mayor Richard Riordan eloquently expresses his vision for transit in Los
19 Angeles:
20

21 I have a vision for transportation in Los Angeles County that includes dedicated bus lanes
22 with Curitiba-like subway cars on tires connected by local buses with smart shuttles that
23 roam the city and pick up people in their neighborhoods, connect them to express buses,
24 connect them to subways, connect them to light rail, and have a system that fits the
25 diversity, the diffusion of people in Los Angeles.
26
27
28
29

1 *Id.* The Mayor concludes: "[W]e are going to take what we learned back to Los Angeles and
2 make our transportation system better. . . . [T]his is a simple concept. We just have to have the
3 political will, the backbone, to start implementing it." *Id.*
4

5 Democratic Los Angeles County Supervisor Zev Yaroslavsky emphasizes the applicability
6 of rapid busways for Los Angeles:

7 I don't think there is any question that there is applicability to Los Angeles and since I've
8 been back, I've actually put pencil to paper and I've mapped out a system that would be a
9 Curitiba-based system. We are fortunate in that we have a number of wide boulevards, as
10 wide as any European boulevard, that serve some of the most transit-dependent
11 communities of our region. We've got right of ways. We've spent half a billion dollars on
12 right of ways in the San Fernando Valley and southwest part of Los Angeles and
13 elsewhere. Let's use the right of ways. We can either sit here and wait 50 years until
14 everybody in this area has a light rail or a subway, and I think 50 years may be optimistic,
15 or you can try to do something in our lifetime.
16
17
18

19 *Id. at p. 6.*




20 Supervisor Yvonne Burke agrees that dedicated busways and traffic preemption for buses
21 are necessary for Los Angeles:

22 The Curitiba bus system, I thought, was very impressive, a number of things. I was
23 impressed by the bus itself and it's ability to move large numbers of people in a very short
24 time for long distances. A dedicated busway is something that is very applicable. It's
25 something that I think that the time has come that we really need to find places where we
26 do that. We need to also give preemption for bus transportation in order for us to cut
27 down the time of travel. That's something we have to do.
28
29

1 *Id. at 6.*

2 MTA Chief Operating Officer Allan Lipsky discusses the lessons that MTA staff is already
3 prepared to implement:

4 I believe that the rapid bus pilot project which we will present to our Board very shortly
5 will incorporate some of the elements of the Curitiba bus system, obviously not all of
6 them, but some of the important ones. It will be a premium form of bus service, there will
7 be limited stops. We're looking at rapid boarding techniques and other elements that exist
8 in Curitiba that we haven't seen here in Los Angeles. So it'll be a good test of the system,
9 not the full system, but something that we can get up and operating quickly, that I think
10 will be a chance for Los Angeles bus passengers to examine to see whether they can buy
11 into this concept.

12
13
14
15 *Id. at 5.* Unfortunately, while the MTA board endorses the rapid bus pilot project, MTA has not
16 yet funded it. The dichotomy between improving the bus system under the Consent Decree and
17 the March 6 Order on the one hand and the rapid bus pilot program is unwarranted. *See Rubin*
18 *Declaration*   68-74; *EDF Ex. 4; Declaration of Julian Burke in support of MTA's present*
19 *motion, April 16, 1999,*  15.

20
21 **2. Other Alternatives Available to MTA**

22 MTA maintains that it has few alternatives to improve transit and increase revenues.

23
24 MTA has not adequately considered many creative transportation policies for Southern California.

25 For example, MTA could and should increase ridership by lowering fares. This creates the
26 opportunity for the transit dependent to ride the bus, and provides financial incentives for others
27 to use the bus instead of their cars. The demand for transit is highly price-sensitive. Two major
28 examples prove this point. When MTA lowered fares from 85 cents to 50 cents for three years
29

1 from 1983 to 85, ridership rose 42% to reach its all-time peak of 497 million passengers per year.
2 This was the most successful ridership experiment in the post-War history of the transit industry.
3 Since then MTA has raised the fare and cut the number of buses. Ridership has dropped
4 dramatically, even though the population has grown. *Statement* ¶ 609. Similarly, New York
5 effectively lowered fares in the last year by providing a monthly pass and allowing free transfers to
6 and from buses and trains. Transit ridership has risen by one third in an area in which it was
7 thought that the demand for transit had been saturated.
8
9

10 Professor Martin Wachs has outlined the history of transportation policy in Los Angeles
11 and alternatives that MTA would do well to consider. Pricing the automobile appropriately,
12 influencing transportation by policies affecting urban form and land use, providing a wider range
13 of mass transportation choices, and developing technological improvements for bus transportation
14 and HOV lanes would contribute significantly to developing a transportation system that is
15 equitable, efficient and environmentally sound. *See Marty Wachs, The Evolution of*
16 *Transportation Policy in Los Angeles: Images of Past Policies and Future Prospects, chapter in*
17 *The City: Los Angeles and Urban Theory at the End of the Twentieth Century, edited by Allen J.*
18 *Scott and Edward W. Soja (1996); EDF Exhibit 6.*
19
20

21 One major reason people use cars and not transit is that the automobile is so heavily
22 subsidized through direct and indirect policies. With the automobile so far below its full social
23 cost, we are all encouraged to make greater use of it than we would if its price reflected its true
24 cost to society. Market-based transportation policies, such as congestion pricing and high-
25 occupancy toll (HOT) lanes, could align the charge for automobile use with the social cost of
26 travel, and significantly reduce congestion and pollution in Southern California in an equitable
27 manner. *See generally Michael Cameron, Efficiency and Fairness on the Road: Strategies for*
28
29

1 *Unsnarling Traffic in Southern California (EDF 1994); Transportation Efficiency: Tackling*
2 *Southern California's Air Pollution and Congestion (EDF 1991).*
3

4 **CONCLUSION**

5 For the reason stated and under the authorities cited above, the MTA's motion should be
6 denied in all respects.
7

8 Dated: April 28, 1999

Respectfully submitted:

9
10 Fred Krupp
Executive Director

11
12 By: _____
13 Robert García
14 Senior Attorney
Environmental Defense Fund
10951 West Pico Blvd., Suite 300
15 Los Angeles, California 90064

16 Thomas J. Graff
17 Senior Attorney
Environmental Defense Fund
5655 College Avenue
18 Oakland, California 94618
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21
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