

LOMBARDI, LOPER & CONANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541

1 B. CLYDE HUTCHINSON, State Bar No. 037526
bch@llcllp.com
2 VINCENT CASTILLO, State Bar No. 209298
vcastillo@llcllp.com
3 JASON B. SHANE, State Bar No. 253908
jshane@llcllp.com
4 LOMBARDI, LOPER & CONANT, LLP
Lake Merritt Plaza
5 1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541
6 Telephone: (510) 433-2600
Facsimile: (510) 433-2699

7 Attorneys for Defendants
8 NATIONAL RAILROAD PASSENGER
CORPORATION (erroneously sued herein as
9 AMTRAK CALIFORNIA) and BNSF RAILWAY
COMPANY (erroneously sued herein as
10 BURLINGTON NORTHERN SANTA FE
RAILWAY)

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

14 LUCIO CORRAL RODRIGUEZ,
15 individually and as Successor in Interest to
the decedents, MARICRUZ CORRAL,
16 IVAN ALEXANDER CORRAL, and
LUCIO ANTHONY CORRAL,

17 Plaintiffs,

18 v.

19 COUNTY OF STANISLAUS; CITY OF
20 MODESTO; CITY OF RIVERBANK;
STATE OF CALIFORNIA; AMTRAK
21 CALIFORNIA; BURLINGTON
NORTHERN SANTA FE RAILWAY; and
22 DOES 1 to 200,

23 Defendants.

Case No. 1:08-cv-00856 OWW GSA
[Consolidated with Case No. 1:08-cv-01496 OWW GSA]

**STIPULATION AND ORDER
REGARDING CONFIDENTIALITY OF
AGREEMENT BETWEEN NATIONAL
RAILROAD PASSENGER
CORPORATION AND BURLINGTON
NORTHERN RAILROAD COMPANY AND
THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY**

24
25 WHEREAS, on April 20, 2010, the Court ordered that Defendant National Railroad
26 Passenger Corporation (“Amtrak”) produce a copy of the Agreement Between National Railroad
27 Passenger Corporation and Burlington Northern Railroad Company and The Atchison, Topeka and
28 Santa Fe Railway Company (“Agreement”) subject to a protective order;

1 IT IS HEREBY stipulated by and between Plaintiffs Lucio Corral Rodriguez, Atilano
2 Armenta Lopez, Brenda Figueroa Lopez, Jesus Villareal, Aida Lopez Verdugo, Roberto Lopez
3 Valenzuela, Roberto Lopez, Rosario Verdugo, Araceli Armenta Lopez, and Julian Armenta
4 Valenzuela, and Defendants Amtrak, BNSF Railway Company (“BNSF”), County of Stanislaus,
5 City of Modesto, City of Riverbank, and State of California, Department of Transportation
6 (collectively “Parties”), by and through their attorneys of records, as follows:

7 1. The Agreement shall not be used or shown, disseminated, copied, or in any way
8 communicated, orally, in writing, or otherwise, by the Parties, their counsel, or any of their
9 representatives, agents, expert witnesses, or consultants, to anyone for any purpose whatsoever, other
10 than as required by the Parties and their counsel in connection with the instant litigation. Access to
11 the Agreement shall be limited to those persons designated as “Qualified Persons” in paragraph 2
12 below.

13 2. The Agreement may be disclosed only to the following persons (“Qualified
14 Persons”):

15 A. Counsel of record for the Parties and employees and agents of such counsel
16 who are assisting such counsel in the conduct of the instant litigation;

17 B. Experts and consultants retained by the Parties whose assistance is necessary
18 for the conduct of this litigation; provided, however, that, (i) before disclosing the Agreement
19 to any such expert or consultant, counsel of record for the party intending to make that
20 disclosure shall obtain from the expert or consultant a written statement, in the form of
21 Exhibit A attached hereto, signed by the expert or consultant, stating that, to the best of that
22 person’s knowledge, that person is not an employee of or consultant to any entity or person
23 that is a competitor of Amtrak or BNSF; and (ii) no disclosure of the Agreement shall be
24 made to any person who has not provided such a signed statement, which statement shall be
25 retained by counsel of record for the party making the disclosure to the expert or consultant.

26 C. Any person expressly named and agreed to in writing by the Parties.

27 3. Before being given access to the Agreement, each Qualified Person (other than
28 counsel of record, and the officers, directors, employees, and agents of the party that produced the

1 Agreement) shall be advised of the terms of this Stipulation, shall be given a copy of this Stipulation,
2 and shall agree in writing, in the form attached hereto as Exhibit A, to be bound by the terms of this
3 Stipulation and to be subject to the jurisdiction of the United States District Court for the Eastern
4 District of California—Fresno Division, for the purposes of any proceeding relating to the
5 performance under, compliance with, or violation of this Stipulation. Counsel for each party shall
6 maintain a list of all Qualified Persons to whom they or their client have provided the Agreement,
7 and that list shall be available for in camera inspection by the United States District Court for the
8 Eastern District of California—Fresno Division. In addition, each of the Parties and their attorneys
9 expressly stipulates to be subject to the personal jurisdiction of the United States District Court for
10 the Eastern District of California—Fresno Division for purposes of any proceeding brought by a
11 party to this action to enforce this Stipulation.

12 4. Except to the extent otherwise permitted by this Stipulation, every Qualified Person
13 provided copies of or access to the Agreement pursuant to this Stipulation shall keep all such
14 materials and information, and any copies, notes, extracts, summaries, or descriptions of such
15 material, within their exclusive possession and control, shall treat all such copies, notes, extracts,
16 summaries, or descriptions of the Agreement or any portion thereof as Confidential, shall take all
17 necessary and prudent measures to maintain the confidentiality of all such materials or information,
18 and shall not disseminate the Agreement.

19 5. If any counsel of record distributes copies of the Agreement to one or more Qualified
20 Persons, all such copies, notes, extracts, summaries, or descriptions of the Agreement shall be
21 returned to that counsel of record at the completion of the Qualified Person's consultation or
22 representation in this case. Counsel of record shall, upon request by opposing counsel or the Court,
23 execute an affidavit stating that to the best of counsel's knowledge the Agreement, and all copies,
24 notes, extracts, summaries, or descriptions of the Agreement have been returned as required. If a
25 Qualified Person destroys such material, rather than returning it to that counsel of record, the
26 Qualified Person shall promptly provide to that counsel of record an affidavit stating that the
27 Agreement, and all copies, notes, extracts, summaries, or descriptions of the Agreement, have been
28 destroyed. That counsel of record shall, upon request by opposing counsel or the Court, provide to

1 opposing counsel (a) an affidavit stating that the Agreement, and all copies, notes, extracts,
2 summaries, or descriptions of any such material, have, to the best of that counsel of record's
3 knowledge, been returned as required, and (b) all affidavits of Qualified Persons who provided that
4 counsel of record with affidavits pursuant to the provisions of this paragraph.

5 6. All documents which may be filed with the Court which relate to the Agreement or
6 portions thereof shall be filed under seal, in a sealed manila envelope and that the envelope must
7 have on its back (on the unsealed side) the warning: "CONFIDENTIAL: SUBJECT TO
8 STIPULATION," the case number and caption, and the title(s) of the paper(s) enclosed; and in
9 parenthesis beneath the title(s) of the paper(s) as they appear on the envelope, there must be a
10 reference to the confidentiality Stipulation, by file date and title [as, for example, (FILED UNDER
11 SEAL PURSUANT TO STIPULATION DATED JANUARY 1, 2010)], under which the papers are
12 submitted. These papers must then be maintained in the Court's regular public file but in their sealed
13 envelopes. If the papers are exhibits to a motion or other paper, the manila envelope, with the stated
14 identifying features, must not be attached to the principal paper, but there must be reference made in
15 the motion, memorandum of points and authorities, or declaration, as appropriate, to the confidential
16 materials filed under seal.

17 7. No electronic copies of the Agreement shall be made by the Parties, with the
18 exception of Amtrak and BNSF, for any purpose.

19 8. Promptly after the instant litigation is completed, all materials containing the
20 Agreement shall be returned to counsel for Amtrak. If material containing the Agreement is
21 destroyed, rather than returned, counsel of record shall promptly provide to opposing counsel of
22 record written confirmation that all materials containing the Agreement have been destroyed.

23 9. After this litigation is completed, the provisions of this Stipulation shall continue to
24 be binding. The terms of this Stipulation constitute, and shall be deemed to be, an enforceable
25 agreement between the Parties (and their agents and attorneys, to the extent permitted by the Rules of
26 Professional Conduct in this jurisdiction), and the terms of this Stipulation may be enforced by
27 specific performance in any court of competent jurisdiction.

28 ///

1 10. This Stipulation shall be binding on the Parties, their attorneys, and the Parties' and
2 their attorneys' successors, executors, personal representatives, administrators, heirs, legal
3 representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, and
4 other persons or organizations over whom or which the Parties have control.

5 11. This Stipulation does not constitute a waiver of any party's right to object to
6 discovery on any ground, including the ground that information sought contains proprietary
7 information.

8 12. By producing the Agreement for review and inspection, the Parties do not waive any
9 evidentiary objections such as to relevance for summary judgment or other purposes or to the
10 admissibility at trial of the Agreement.

11 13. By stipulating herein, no party waives any right it may have to withhold or redact
12 information protected from disclosure by the attorney-client privilege or other applicable privilege,
13 the work-product doctrine, or any other protection, law, or regulation, or to seek appropriate
14 protective Stipulations respecting documents asserted to be subject to any such privilege, doctrine,
15 protection, law or regulation.

16 14. The Stipulation shall be without prejudice to the rights of the Parties, or any one of
17 them, or of any non-party, to assert or apply for additional or different protection or relief from this
18 Stipulation and Order.

19 15. This Stipulation shall not be construed as an admission or agreement that the
20 Agreement, in fact, is confidential or contains proprietary information or otherwise is entitled to any
21 protective relief whatsoever.

22 16. This Stipulation does not apply to and shall have no effect upon evidence offered at
23 trial.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. Nothing in this Stipulation shall limit any party's right to disclose to any person, or use for any purpose, its own information and documents.

Dated: April 28, 2010

CARCIONE, CATTERMOLE, ET AL.

By: /s/ Aaron B. Markowitz
JOSEPH W. CARCIONE
AARON B. MARKOWITZ
Attorneys for Plaintiff
LUCIO CORRAL RODRIGUEZ,
individually and as Successor-in-Interest to
the decedents MARICRUZ CORRAL,
IVAN ALEXANDER CORRAL, and
LUCIO ANTHONY CORRAL

Dated: April 28, 2010

MORENO, BECERRA & CASILLAS

By: /s/ Danilo Becerra
DANILO BECERRA
Attorneys for Plaintiffs
ATILANO ARMENTA LOPEZ,
BRENDA FIGUEROA LOPEZ, JESUS
VILLAREAL, AIDA LOPEZ VERDUGO,
ROBERTO LOPEZ VALENZUELA,
ROBERTO LOPEZ, ROSARIO
VERDUGO, ARACELI ARMENTA
LOPEZ, and JULIAN ARMENTA
VALENZUELA

Dated: April 28, 2010

LOMBARDI, LOPER & CONANT, LLP

By: /s/ Jason B. Shane
B. CLYDE HUTCHINSON
VINCENT CASTILLO
JASON B. SHANE
Attorneys for Defendants
NATIONAL RAILROAD PASSENGER
CORPORATION and
BNSF RAILWAY COMPANY

