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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUCIO CORRAL RODRIGUEZ,)	1:08-cv-0856 OWW GSA
individually, and as Successor)	
in Interest to the decedents,	)	SCHEDULING CONFERENCE ORDER
MARICRUZ CORRAL, and LUCIO)	
ANTHONY CORRAL,	)	Discovery Cut-Off: 6/1/10
)	
Plaintiffs,	)	Non-Dispositive Motion
	)	Filing Deadline: 6/15/10
v.)	
	)	Dispositive Motion Filing
COUNTY OF STANISLAUS, CITY OF	)	Deadline: 7/1/10
MODESTO, CITY OF RIVERBANK,)	
STATE OF CALIFORNIA, AMTRAK	)	Settlement Conference Date:
CALIFORNIA, BURLINGTON NORTHERN	)	6/10/10 10:00 Ctrm. 10
SANTA FE RAILWAY; and DOES 1 to)	
200,	)	Pre-Trial Conference Date:
	)	9/7/10 11:00 Ctrm. 3
Defendants.)	
	)	Trial Date: 10/19/10 9:00
	)	Ctrm. 3 (JT-40 days)

I. Date of Scheduling Conference.
January 30, 2009.

II. Appearances Of Counsel.
Carcione, Cattermole, Dolinski, Okimoto, Stucky, Ukshini, Markowitz & Carcione, LLP by Joseph W. Carcione, Jr., Esq., and Aaron B. Markowitz, Esq., appeared telephonically on behalf of Plaintiffs.

Dan Farrar, Esq., appeared on behalf of Defendant County of

1 Stanislaus.

2 Richard B. Evans, Esq., appeared on behalf of Defendant City
3 of Modesto.

4 Borton Petrini, LLP by Cornelius J. Callahan, Esq., appeared
5 on behalf of Defendant City of Riverbank.

6 Lauren Machado, Esq., appeared on behalf of Defendant State
7 of California, Department of Transportation.

8 Lombardi, Loper & Conant, LLP by Jason B. Shane, Esq.,
9 appeared on behalf of Defendant National Railroad Passenger
10 Corporation, erroneously sued as Amtrak California, and
11 Burlington Northern Santa Fe Railroad.

12 III. Summary of Pleadings.

13 A. Plaintiffs' Summary.

14 1. At the intersection of Claribel Road and Terminal
15 Avenue in the County of Stanislaus, on the border between the
16 City of Modesto and the City of Riverbank, there is a four-way
17 stop sign. Approximately 45 feet west of the stop sign of the
18 eastbound lane of Claribel Road, there is a railroad grade
19 crossing, where a single track of BNSF's Stockton Subdivision
20 crosses Claribel Road, heading in a north-south direction.

21 2. On or about May 8, 2007, Maricruz Corral was
22 traveling eastbound on Claribel Road. She was driving the
23 Chevrolet Tracker owned by Plaintiff Lucio Corral Rodriguez.
24 Ivan Alexander Corral, Lucio Anthony Corral, Diana Villareal-
25 Lopez, Ramona Lopez-Verduga, and Brian Armenta-Lopez were all
26 passengers in the vehicle. As Maricruz Corral approached the
27 railroad grade crossing on Claribel Road, just west of Terminal
28 Avenue, there were cars backed up behind the stop sign at the

1 intersection of Claribel Road and Terminal Avenue. Maricruz
2 Corral pulled up behind the stopped cars as is typical of cars
3 traveling on that road. Similarly, the car behind her pulled up
4 directly behind her. As a train, owned by the State of
5 California and operated by Amtrak-California was approaching,
6 traveling in a northbound direction, Maricruz Corral was unable
7 to move backward and clear the tracks due to the vehicle stopped
8 behind her. Then, the crossing arm came down, further blocking
9 Maricruz Corral's exit from the tracks in a westward direction.
10 Maricruz Corral attempted to clear the tracks in an eastward
11 direction, and the train struck the vehicle.

12 3. All of the vehicle's occupants died at the scene
13 as a result of the collision.

14 4. Plaintiff has brought claims against the County of
15 Stanislaus, the City of Modesto, the City of Riverbank, the State
16 of California, BNSF Railroad, and Amtrak-California, for
17 dangerous conditions of land, and negligence, and Plaintiff is
18 seeking to add National Railroad Passenger Corp. as a Doe to
19 these claims.

20 5. Plaintiff's claims fall into two distinct
21 categories. There are those claims based on the ownership,
22 maintenance, condition, and operation of the train, on the one
23 hand, and those claims based on the condition of the grade
24 crossing and the surrounding area, on the other.

25 6. Plaintiff has brought all claims as against each
26 Defendant, but more specifically, Plaintiff is informed and
27 believes that the State of California owns the subject train, and
28 Amtrak-California is responsible for its operation. Plaintiff is

1 further informed and believes that Amtrak-California is comprised
2 of two other entities, the State of California and National
3 Railroad Passenger Corp.

4 7. National Railroad Passenger Corporation cross-
5 claimed against Plaintiff for negligent ownership and maintenance
6 of the subject vehicle; against decedent Maricruz Corral for
7 negligent operation of the subject vehicle; and against all other
8 Defendants for indemnity and contribution.

9 B. Defendants National Railroad Passenger Corporation and
10 BNSF Railway Company contend as follows:

11 1. At the intersection of Claribel Road and Terminal
12 Avenue in an unincorporated section of the County of Stanislaus,
13 there is a four-way stop sign. Approximately 45 feet west of the
14 stop sign of the eastbound lane of Claribel Road, there is a
15 railroad grade crossing, where a single track of BNSF's Stockton
16 Subdivision crosses Claribel Road, heading in a north-south
17 direction. The railroad crossing is equipped with train-
18 activated warning devices, including, but not limited to, mast-
19 mounted flashing lights, gongs and crossing gates.

20 2. On or about May 8, 2007, Maricruz Corral was
21 traveling eastbound on Claribel Road. She was driving the
22 Chevrolet Tracker owned by Plaintiff Lucio Corral Rodriguez.
23 Ivan Alexander Corral, Lucio Anthony Corral, Diana Villareal-
24 Lopez, Ramona Lopez-Verduga, and Brian Armenta-Lopez were all
25 passengers in the vehicle. As Maricruz Corral approached the
26 railroad grade crossing on Claribel Road, just west of Terminal
27 Avenue, there were cars backed up behind the stop sign at the
28 intersection of Claribel Road and Terminal Avenue. Maricruz

1 Corral pulled up behind the stopped cars and stopped her car on
2 the tracks. As a train, owned by the State of California and
3 operated by the National Railroad Passenger Corporation, was
4 approaching traveling in a northbound direction, Maricruz Corral
5 failed to clear the tracks, and the train struck the vehicle.
6 All of the vehicle's occupants died at the scene as a result of
7 the collision. Defendants National Railroad Passenger
8 Corporation and BNSF Railway Company contend that Maricruz
9 Corral's presence on the tracks and inability to clear the tracks
10 were the result of her own negligence.

11 3. Plaintiff has brought claims against the County of
12 Stanislaus, the City of Modesto, the City of Riverbank, the State
13 of California, BNSF Railroad Company (erroneously sued as
14 Burlington Northern Santa Fe Railway), and National Railroad
15 Passenger Corporation (erroneously sued as Amtrak-California),
16 for dangerous conditions of land, and negligence.

17 4. National Railroad Passenger Corporation cross-
18 claimed against Plaintiff for negligent ownership and maintenance
19 of the subject vehicle; against decedent Maricruz Corral for
20 negligent operation of the subject vehicle; and against all other
21 defendants for indemnity and contribution.

22 5. Finally, Defendants National Railroad Passenger
23 Corporation and BNSF Railway Company object to any and all
24 references herein to "Defendant Amtrak-California."

25 6. Defendant City of Modesto contends that at the
26 intersection of Claribel Road and Terminal Avenue, in an
27 unincorporated section of the County of Stanislaus, there is a
28 four-way stop sign.

1 IV. Orders Re Amendments To Pleadings.

2 1. Any motions to amend pleadings shall be filed within
3 fifteen (15) days following this conference, on or before
4 February 15, 2009. Responses shall be due March 2, 2009. Any
5 reply shall be filed by March 9, 2009. The matter shall be heard
6 on April 13, 2009, at 10:00 a.m. in Courtroom 3.

7 V. Factual Summary.

8 A. Admitted Facts Which Are Deemed Proven Without Further
9 Proceedings.

10 1. At the intersection of Claribel Road and Terminal
11 Avenue in the County of Stanislaus, there is a four-way stop
12 sign.

13 2. Approximately 45 feet west of the stop sign of the
14 eastbound lane of Claribel Road, there is a railroad grade
15 crossing, where a single track of BNSF's Stockton Subdivision
16 crosses Claribel Road, heading in a north-south direction.

17 3. On or about May 8, 2007, Maricruz Corral was
18 traveling eastbound on Claribel Road. She was driving the
19 Chevrolet Tracker owned by Plaintiff Lucio Corral Rodriguez.

20 4. Ivan Alexander Corral, Lucio Anthony Corral, Diana
21 Villareal-Lopez, Ramona Lopez-Verduga, and Brian Armenta-Lopez
22 were all passengers in the subject vehicle.

23 5. A train collided with the vehicle being operated
24 by Maricruz Corral at the above-described grade crossing.

25 6. The subject train was owned by the State of
26 California.

27 7. The subject train was operating on tracks owned by
28 BNSF Railway.

1 8. All of the occupants in the subject vehicle died
2 at the scene as a result of the collision.

3 B. Contested Facts.

4 1. All other facts are contested.

5 VI. Legal Issues.

6 A. Uncontested.

7 1. Removal jurisdiction is contested.

8 2. If jurisdiction exists, venue is proper in the
9 Eastern District of California, Fresno Division, under 28 U.S.C.
10 § 1331.

11 3. Plaintiff contends that California State law
12 governs the entire action. Defendant, National Railroad
13 Passenger Corp., and BNSF Railway Company, contend that Federal
14 law governs to the extent it preempts state law under the Federal
15 Rail Safety Act, and any other applicable Federal statutes and
16 related case law.

17 B. Contested.

18 1. As an example, state law claims of unreasonable
19 train speed are pre-empted if the train was traveling within the
20 speed restrictions set by the Federal Railroad Administration.
21 *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 675-76 (1993).

22 2. Ownership of the subject train, whether the State
23 of California is legal owner.

24 3. Whether Plaintiff is entitled to recover damages
25 for wrongful death under California law, C.C.P. § 377.60, or
26 under the State Survival Statute, California Code of Civil
27 Procedure § 377.20.

28 VII. Consent to Magistrate Judge Jurisdiction.

1 1. The parties have not consented to transfer the
2 case to the Magistrate Judge for all purposes, including trial.

3 VIII. Corporate Identification Statement.

4 1. Any nongovernmental corporate party to any action in
5 this court shall file a statement identifying all its parent
6 corporations and listing any entity that owns 10% or more of the
7 party's equity securities. A party shall file the statement with
8 its initial pleading filed in this court and shall supplement the
9 statement within a reasonable time of any change in the
10 information.

11 IX. Discovery Plan and Cut-Off Date.

12 1. The parties agree that discovery shall be phased.

13 2. The first phase, which shall commence February 2, 2009,
14 and continue through and including April 6, 2009, shall address
15 ownership and control issues, status and capacity of the parties,
16 legal relationship of the parties, and all other facts that
17 concern the ownership, operation, and maintenance of the track
18 grade crossing, train, and any other instrumentalities that are
19 involved in this case and the status and relationship of all
20 potentially responsible parties as well as the claimants.

21 A. Plaintiff's Proposed Discovery Plan

22 1. Plaintiff intends on seeking discovery including
23 depositions of individuals; deposition(s) pursuant to Rule
24 30(b) (6); and request for production of documents pursuant to
25 Rule 34 on Defendant Amtrak-California and the State of
26 California as follows:

27 a. Documents and a PMK on the nature of the
28 relationship between the State of California and National

1 Railroad Passenger Corp.

2 b. Documents and a PMK on any and all agreements
3 between the State of California and National Railroad Passenger
4 Corp.

5 c. Documents and a PMK on any and all
6 correspondence between the State of California and National
7 Railroad Passenger Corp. concerning any and all agreements.

8 d. Documents and a PMK on any and all
9 correspondence between the State of California and National
10 Railroad Passenger Corp. concerning the operation of the Amtrak-
11 California train routes.

12 e. Documents and a PMK on any division of
13 responsibility between the State of California and National
14 Railroad Passenger Corp. for operation of the Amtrak-California
15 train routes.

16 f. Documents and a PMK on the State of
17 California's participation in operation of trains owned by the
18 State and operated by Amtrak-California.

19 g. Documents and a PMK on the State of
20 California's participation in safety oversight on trains owned by
21 the State and operated by Amtrak-California.

22 2. Plaintiff intends on seeking discovery including
23 depositions of individuals; deposition(s) pursuant to Rule
24 30(b)(6); and requests for production of documents pursuant to
25 Rule 34 on Defendant County of Stanislaus, City of Modesto,
26 and/or City of Riverbank as follows:

27 a. Documents and a PMK on title to the subject
28 land.

1 b. Documents and a PMK on any easements and/or
2 rights of way for the subject crossing and subject intersection.

3 c. Documents and a PMK on any agreements between
4 County of Stanislaus and any other public or private entity for
5 control, maintenance, design, repair, and/or oversight of the
6 subject intersection and subject crossing.

7 B. Plaintiff's Discovery Plan - Phase II

8 Plaintiff intends on seeking discovery including depositions
9 of individuals; deposition(s) pursuant to Rule 30(b)(6); and
10 request for production of documents pursuant to Rule 34 on
11 Defendant Amtrak-California, BNSF Railway, National Railroad
12 Passenger Corp., and/or the State of California as follows (it
13 should be noted that this is a preliminary list, and additional
14 discovery will be formulated as this case progresses):

15 1. Deposition of the conductor(s) on the subject
16 train.

17 2. Deposition of the engineer(s) on the subject
18 train.

19 3. Deposition of the Manager of Operating Practices.

20 4. Documents and PMK on Defendant's document
21 retention policy for 10 years before the subject accident to the
22 present.

23 5. Documents and PMK on policies and procedures
24 relating to an engineer observing a vehicle fouling the tracks at
25 a grade crossing.

26 6. Documents and PMK on operation of the trains on
27 the subject route, including such things as schedules, shift
28 times, number of personnel, operating procedures, safety

1 procedures, etc.

2 7. Documents and PMK on training provided to
3 engineers.

4 8. Documents and PMK on safety training of engineers.

5 9. Discovery of any and all video from any and all
6 trains operating on the subject route, including but not limited
7 to the subject train on the date of the accident.

8 10. Discovery of any and all video from the subject
9 crossing.

10 11. Discovery of any and all video from any and all
11 trains that were in the area at or around the time of the subject
12 accident.

13 12. Documents and PMK on the safety committee minutes
14 from 10 years before the subject accident to the present.

15 13. Documents and PMK on any and all near misses of
16 vehicles crossing at grade crossings throughout the Amtrak-
17 California system.

18 14. Documents and PMK on any and all collisions with
19 vehicles crossing at grade crossings throughout the Amtrak-
20 California system.

21 15. Documents and PMK on the engineer's safety
22 training.

23 16. Documents and PMK on safety issues that have
24 arisen in the engineer's history.

25 17. Documents and PMK on the consist of the train,
26 including the Train Consist Report, Consist List, Conductor's
27 Wheel Report, and/or Switch List, as well as specifications of
28 each car such as weight and dimensions, manufacturer, model, and

1 type of car, capacity.

2 18. Documents and PMK on the defendant's Operating
3 Rules; Safety Rules; Railroad Train Handling/Air Brake Rules.

4 19. Documents and PMK concerning the braking system of
5 the train, including the braking system (e.g., pneumatic,
6 electro-pneumatic, electronically-controlled pneumatic, etc.);
7 the specifications of the braking system and wheels.

8 20. Documents and PMK on any testing of the braking
9 system, for the past 10 years, for all locomotives on the train.

10 21. Documents and PMK on any known or potential
11 defects in the subject train.

12 22. Documents and PMK on data from all train,
13 locomotive, crossing, wayside, or remote recording devices
14 showing the performance of the subject train and the signals at
15 the crossing.

16 23. Documents and PMK on the load of the train,
17 including passengers, baggage, freight, etc.

18 24. Documents and PMK on any and all operating,
19 service, and technical manuals for the locomotive and its control
20 system, as well as the development of those manuals.

21 25. Documents and PMK on any and all inspection,
22 maintenance, and test reports for the lead locomotive, horn,
23 lights, and brakes for the history of the subject locomotive.

24 26. Documents and PMK on any data downloaded from the
25 train after the subject accident/incident.

26 27. Documents and PMK on any data downloaded
27 concerning the signals at the subject crossing, after the subject
28 accident/incident.

1 28. Documents and PMK on any inspections, for the past
2 10 years, for all locomotives on the train.

3 29. Documents and PMK on the General Code of Operating
4 Rules.

5 30. Documents and PMK on any and all safety procedures
6 provided to engineers.

7 31. Documents and PMK on any and all safety training
8 provided to engineers.

9 32. Documents and PMK on Defendant's drug policies.

10 33. Documents and PMK on defendant's drug testing
11 policies, including those policies for testing after a fatal
12 collision.

13 34. Discovery of any and all results of any and all
14 drug testing of the engineer on the subject train.

15 35. Documents and a PMK on the nature of the
16 relationship between BNSF Railway and Amtrak-California.

17 36. Documents and a PMK on any and all agreements
18 between BNSF Railway and Amtrak-California.

19 37. Documents and a PMK on any and all correspondence
20 between BNSF Railway and Amtrak-California concerning the subject
21 route.

22 38. Documents and a PMK on any and all correspondence
23 between BNSF Railway and Amtrak-California concerning the subject
24 crossing.

25 39. Documents and a PMK on any and all maintenance
26 performed on the subject train.

27 40. Documents and a PMK on the identity of any and all
28 engineers that have operated trains on the subject route in the

1 past 10 years.

2 41. Documents and a PMK on any easements and/or rights
3 of way that defendant had or has as to the subject crossing.

4 42. Documents and a PMK on any easements and/or rights
5 of way that defendant had or has as to the subject crossing.

6 43. Documents and a PMK on the Track Chart or Track
7 Profile encompassing an area of at least five (5) miles either
8 side of the location of the accident/incident.

9 44. Discovery on witness statements, interview
10 transcripts and summaries, and affidavits taken by or provided to
11 any defendant's personnel or their consultants or agents;
12 measurements of the accident site and vehicles taken by the
13 defendant or any of its consultants or agents.

14 45. Any and all accident/incident reports filed by the
15 train crew.

16 46. Documents and PMK on the number of train movements
17 through the subject crossing, and the nature of those movements
18 (freight, passenger, identity of rail operator, etc.).

19 47. Documents and a PMK on Defendant's Internal
20 Control Plan as required per 49 CFR 225.33.

21 48. Discovery of Dispatcher's Train Sheet and
22 Dispatcher's Train Graph for the division/subdivision and train
23 involved in the accident/incident.

24 49. Discovery and PMK on the whistle posts and/or horn
25 sounding requirements for the subject crossing.

26 50. Documents and PMK on the operation of the horn
27 and/or whistle, and its performance on the day of the subject
28 accident.

1 51. Documents and a PMK on any train braking tests,
2 re-enactments, or sight distance or visibility studies related to
3 the accident/incident or investigation of the accident/incident.

4 52. Documents and PMK on any inspections of the grade
5 crossing and/or the subject intersection, the reason for such
6 inspections, and the results of those inspections.

7 53. Discovery of any correspondence with the County of
8 Stanislaus or any other third-party concerning the grade crossing
9 and/or the subject intersection.

10 54. Documents and PMK on any internal memorandum,
11 reports, or meeting minutes concerning the grade crossing and/or
12 the subject intersection.

13 55. Discovery of dispatcher-train crew audio tapes for
14 at least one hour before the accident/incident until the crew
15 involved in the accident/incident went off duty.

16 56. Documents and a PMK on All Railroad-generated
17 reports, summaries, sheets, and attachments filed with the FRA
18 and related to the subject accident or incident, including but
19 not limited to: Form FRA F 6180.54-Rail Equipment
20 Accident/Incident Report; Form FRA F 6180.55-Railroad Injury and
21 Illness Summary; Form FRA F 6180.55a-Railroad Injury and Illness
22 (Continuation Sheet); Form FRA F 6180.57-Highway-Rail Grade
23 Crossing Accident/Incident Report; Form FRA F 6180.81-Employee
24 Human Factor Attachment; Form FRA F 6180.78-Notice to Railroad
25 Employee Involved in Rail Equipment Accident/Incident Attributed
26 to Employee Human Factor; Employee Statement Supplementing
27 Railroad Accident Report.

28 57. Documents and PMK on any reports or complaints of

1 near misses of vehicles at crossings with trains owned by the
2 State and operated by Amtrak-California.

3 58. Documents and PMK on any reports or complaints of
4 collisions with vehicles at crossings with trains owned by the
5 State and operated by Amtrak-California.

6 59. Documents and PMK on any reports or complaints of
7 vehicles fouling the tracks on the subject route.

8 60. Documents and PMK on policies and procedures for
9 braking when a vehicle is fouling the tracks in front of a moving
10 train.

11 61. Documents and PMK on any procedures that the State
12 requires for the operation of trains owned by the State.

13 Plaintiff intends on seeking discovery including depositions
14 of individuals; deposition(s) pursuant to Rule 30(b)(6); and
15 request for production of documents pursuant to Rule 34 on
16 Defendant County of Stanislaus, City of Modesto, and/or City of
17 Riverbank as follows (it should be noted that this is a
18 preliminary list, and additional discovery will be formulated as
19 this case progresses):

20 1. Documents and PMK on any prior accidents at grade
21 crossings in the County of Stanislaus for 10 years prior to the
22 subject accident.

23 2. Any photologs for the subject crossing, the
24 subject intersection, and the two roads intersecting at the
25 subject intersection.

26 3. Documents and PMK on the design of the subject
27 intersection.

28 4. Documents and PMK on the design of the subject

1 crossing.

2 5. Documents and PMK on the decision to put stop
3 signs at the subject intersection rather than traffic signals.

4 6. Documents and PMK on changes in population in the
5 area of the subject crossing and subject intersection.

6 7. Documents and PMK on changes in traffic patterns
7 on the subject roadways and at the subject intersection since the
8 design of the subject crossing and intersection.

9 8. Documents and PMK on any warrants for the subject
10 intersection and roadways.

11 9. Documents and PMK on any recommendations by other
12 government entities for changes to the design of the subject
13 intersection and crossing.

14 10. Documents and PMK for any meetings by defendant
15 where accidents at the subject crossing were discussed.

16 11. Documents and PMK for any meetings by defendant
17 where changes to the subject crossing and/or intersection were
18 discussed.

19 12. Documents and PMK for any investigation by
20 defendant of the subject crossing and/or intersection.

21 13. Documents and PMK on any studies, reports, traffic
22 counts, calculations, hazard indices, forms, inspections, and
23 correspondence relating to the subject crossing and/or
24 intersection.

25 14. Discovery of identity of what entity placed each
26 of the traffic control devices at the subject crossing and
27 intersection, and what entity has responsibility to maintain,
28 repair, etc., those devices.

1 15. Documents and PMK on whether any modifications to
2 the grade crossing, the intersection and/or other traffic control
3 that had been proposed, approved, or planned prior to the time of
4 the accident, and the nature of those modifications, plans, etc.

5 16. Documents and PMK as to whether the subject
6 crossing was ever within the limits of or near the terminus of a
7 Federal-aid highway project for construction of a new highway or
8 improvement of the existing roadway, and if so, the nature of
9 that involvement.

10 Plaintiff intends to subpoena documents and witnesses from
11 third parties as follows (it should be noted that this is a
12 preliminary list, and additional discovery will be formulated as
13 this case progresses):

14 1. All photographs and unedited video of the
15 accident/incident site and vehicles taken by the police, media,
16 or other third parties.

17 2. Any notes, reports, articles, or accounts of the
18 accident produced by any third-parties.

19 3. Any notes, reports, articles, or accounts of any
20 prior accidents at the subject crossing and/or on the subject
21 route, produced by any third-parties.

22 4. Police accident report(s).

23 5. Discovery of any reports, data, or information on
24 the subject accident from any governmental agencies or entities
25 including the police, DOT, FRA, NTSB and/or the PUC.

26 6. Discovery of any reports, data, or information on
27 any prior accidents at the subject crossing and/or on the subject
28 route, from any governmental agencies or entities including the

1 police, DOT, FRA, NTSB and/or the PUC.

2 7. Any security camera video of the accident.

3 8. Recorded interviews and witness statements.

4 9. Cell phone records for the engineer.

5 Additionally, Plaintiff objects to Defendants' proposal of
6 reducing the amount of Requests for Production of Documents and
7 Requests for Admissions. As this is a complex matter composed of
8 two entirely separate bases for liability, each against multiple
9 defendants, with dozens of witnesses, and hundreds of issues,
10 arbitrarily reducing the number of discovery requests would deny
11 Plaintiff a fair opportunity to acquire the necessary discovery
12 in this matter.

13 C. Defendant's Discovery Plan.

14 Defendants reserve the right to conduct all discovery
15 permitted by law. Further, Defendants propose the following
16 limits on discovery in this matter:

17 1. Oral depositions taken by Plaintiff: 15

18 2. Oral depositions taken by Defendants: 10 (total).

19 3. Written interrogatories: 25 per party (per the
20 FRCP).

21 4. Requests for Production of Documents: 25 per
22 party.

23 5. Requests for Admissions: 25 per party.

24 Defendants continue to maintain that any party may, for good
25 cause shown, move the Court for additional discovery.

26 Additionally, Defendants National Railroad Passenger Corporation
27 and BNSF Railway Company request that discovery be coordinated
28 between the instant matter and the matter of *Estate of Bryan*

1 *Lopez, supra*. More specifically, Defendants request that should
2 any party to the instant litigation wish to notice a deposition,
3 that party provide notice of said deposition in both actions.

4 Defendants object to Plaintiff's characterization of this
5 matter as "complex" and believe that Plaintiff's Discovery Plan
6 is so staggering simply for the purposes of harassing Defendants.
7 Because Defendants believe that this is a simple and
8 straightforward matter, they request that the Court adopt their
9 Discovery Plan and require that the parties file a motion with
10 the court showing good cause should they wish to conduct
11 additional discovery beyond that allowed in the Discovery Plan.

12 If the defendants believe discovery should be limited, they
13 may seek a Discovery Conference to decide the matter.

14 D. The Court

15 1. The parties shall make their Rule 26 initial
16 disclosures on or before March 13, 2009.

17 2. The parties agree that the second phase of
18 discovery shall commence April 1, 2009, and shall continue
19 through April 1, 2010, whereupon all percipient and fact
20 discovery shall be concluded. The parties shall designate
21 experts April 1, 2010.

22 3. The parties are directed to disclose all expert
23 witnesses, in writing, on or before April 1, 2010. Any rebuttal
24 or supplemental expert disclosures will be made on or before May
25 3, 2010. The parties shall comply with the provisions of Federal
26 Rule of Civil Procedure 26(a)(2) regarding their expert
27 designations. Local Rule 16-240(a) notwithstanding, the written
28 designation of experts shall be made pursuant to F. R. Civ. P.

1 Rule 26(a)(2), (A) and (B) and shall include all information
2 required thereunder. Failure to designate experts in compliance
3 with this order may result in the Court excluding the testimony
4 or other evidence offered through such experts that are not
5 disclosed pursuant to this order.

6 4. The parties are ordered to complete all expert
7 discovery on or before June 1, 2010.

8 5. The provisions of F. R. Civ. P. 26(b)(4) shall
9 apply to all discovery relating to experts and their opinions.
10 Experts may be fully prepared to be examined on all subjects and
11 opinions included in the designation. Failure to comply will
12 result in the imposition of sanctions.

13 X. Pre-Trial Motion Schedule.

14 1. All Non-Dispositive Pre-Trial Motions, including any
15 discovery motions, will be filed on or before June 15, 2010, and
16 heard on July 16, 2010, at 9:00 a.m. before Magistrate Judge Gary
17 S. Austin in Courtroom 10.

18 2. In scheduling such motions, the Magistrate
19 Judge may grant applications for an order shortening time
20 pursuant to Local Rule 142(d). However, if counsel does not
21 obtain an order shortening time, the notice of motion must comply
22 with Local Rule 251.

23 3. All Dispositive Pre-Trial Motions are to be
24 filed no later than July 1, 2010, and will be heard on August 2,
25 2010, at 10:00 a.m. before the Oliver W. Wanger, United States
26 District Judge, in Courtroom 3, 7th Floor. In scheduling such
27 motions, counsel shall comply with Local Rule 230.

28 XI. Pre-Trial Conference Date.

1 1. September 7, 2010, at 11:00 a.m. in Courtroom 3, 7th
2 Floor, before the Oliver W. Wanger, United States District Judge.

3
4 2. The parties are ordered to file a Joint Pre-
5 Trial Statement pursuant to Local Rule 281(a)(2).

6 3. Counsel's attention is directed to Rules 281
7 and 282 of the Local Rules of Practice for the Eastern District
8 of California, as to the obligations of counsel in preparing for
9 the pre-trial conference. The Court will insist upon strict
10 compliance with those rules.

11 XII. Motions - Hard Copy.

12 1. The parties shall submit one (1) courtesy paper copy to
13 the Court of any motions filed that exceed ten pages and any
14 motions that have exhibits attached. Exhibits shall be marked
15 with protruding numbered or lettered tabs so that the Court can
16 easily identify such exhibits.

17 XIII. Trial Date.

18 1. October 19, 2010, at the hour of 9:00 a.m. in Courtroom
19 3, 7th Floor, before the Honorable Oliver W. Wanger, United
20 States District Judge.

21 2. This is a jury trial.

22 3. Counsels' Estimate Of Trial Time:

23 a. 40 days.

24 4. Counsels' attention is directed to Local Rules
25 of Practice for the Eastern District of California, Rule 285.

26 XIV. Settlement Conference.

27 1. A Settlement Conference is scheduled for June 10, 2010,
28 at 10:00 a.m. in Courtroom 10 before the Honorable Gary S.

1 Austin, United States Magistrate Judge.

2 2. Unless otherwise permitted in advance by the
3 Court, the attorneys who will try the case shall appear at the
4 Settlement Conference with the parties and the person or persons
5 having full authority to negotiate and settle the case on any
6 terms at the conference.

7 3. Permission for a party [not attorney] to attend
8 by telephone may be granted upon request, by letter, with a copy
9 to the other parties, if the party [not attorney] lives and works
10 outside the Eastern District of California, and attendance in
11 person would constitute a hardship. If telephone attendance is
12 allowed, the party must be immediately available throughout the
13 conference until excused regardless of time zone differences.
14 Any other special arrangements desired in cases where settlement
15 authority rests with a governing body, shall also be proposed in
16 advance by letter copied to all other parties.

17 4. Confidential Settlement Conference Statement.
18 At least five (5) days prior to the Settlement Conference the
19 parties shall submit, directly to the Magistrate Judge's
20 chambers, a confidential settlement conference statement. The
21 statement should not be filed with the Clerk of the Court nor
22 served on any other party. Each statement shall be clearly
23 marked "confidential" with the date and time of the Settlement
24 Conference indicated prominently thereon. Counsel are urged to
25 request the return of their statements if settlement is not
26 achieved and if such a request is not made the Court will dispose
27 of the statement.

28 5. The Confidential Settlement Conference

1 Statement shall include the following:

2 a. A brief statement of the facts of the
3 case.

4 b. A brief statement of the claims and
5 defenses, i.e., statutory or other grounds upon which the claims
6 are founded; a forthright evaluation of the parties' likelihood
7 of prevailing on the claims and defenses; and a description of
8 the major issues in dispute.

9 c. A summary of the proceedings to date.

10 d. An estimate of the cost and time to be
11 expended for further discovery, pre-trial and trial.

12 e. The relief sought.

13 f. The parties' position on settlement,
14 including present demands and offers and a history of past
15 settlement discussions, offers and demands.

16 XV. Request For Bifurcation, Appointment Of Special Master,
17 Or Other Techniques To Shorten Trial.

18 1. The Defendants will request bifurcation of liability
19 and damages. This is not agreed to, and will be addressed by
20 motion.

21 XVI. Related Matters Pending.

22 1. *Estate of Bryan Armenta Lopez, et al., v. National*
23 *Railroad Passenger Corp.*, 1:08-cv-1496 LJO GSA (previously in
24 Stanislaus County Superior Court, Case No. 627076). Also, *State*
25 *Farm Mutual Automobile Insurance Co.*, (Interpleader) Stanislaus
26 County Superior Court Case No. 634210.

27 XVII. Compliance With Federal Procedure.

28 1. The Court requires compliance with the Federal

1 Rules of Civil Procedure and the Local Rules of Practice for the
2 Eastern District of California. To aid the court in the
3 efficient administration of this case, all counsel are directed
4 to familiarize themselves with the Federal Rules of Civil
5 Procedure and the Local Rules of Practice of the Eastern District
6 of California, and keep abreast of any amendments thereto.

7 XVIII. Effect Of This Order.

8 1. The foregoing order represents the best
9 estimate of the court and counsel as to the agenda most suitable
10 to bring this case to resolution. The trial date reserved is
11 specifically reserved for this case. If the parties determine at
12 any time that the schedule outlined in this order cannot be met,
13 counsel are ordered to notify the court immediately of that fact
14 so that adjustments may be made, either by stipulation or by
15 subsequent scheduling conference.

16 2. Stipulations extending the deadlines contained
17 herein will not be considered unless they are accompanied by
18 affidavits or declarations, and where appropriate attached
19 exhibits, which establish good cause for granting the relief
20 requested.

21 3. Failure to comply with this order may result in
22 the imposition of sanctions.

23
24
25 IT IS SO ORDERED.

26 Dated: January 30, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE