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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BNSF RAILWAY COMPANY,

Plaintiff,

CASE NO. 1:08-cv-01086-AWI-SMS

v.

ORDER DIRECTING
SUPPLEMENTAL BRIEFING

SAN JOAQUIN VALLEY RAILROAD
COMPANY, et al.,

Defendants.

(Doc. 204)

_____ /

The District Court having granted Defendant San Joaquin Valley Railroad Company's ("SJVR") motion for reconsideration of this Court's denial of SJVR's motion to amend its counterclaims, this Court hereby directs supplemental briefing by both parties, addressing those matters on which the District Court based its reversal. Each party shall specifically address the following issues:

1. What is the appropriate standard for review of a motion to amend counterclaims, and how is it properly applied in light of the procedural and factual history of this case?
2. Is SJVR's motion to amend its counterclaims futile or legally insufficient?

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1 3. Do SJVR's proposed amended counterclaims allege cognizable claims for fraud
2 and negligent representation?

3 4. Should SJVR's motion to amend its counterclaims be denied as a result of
4 prejudice, untimeliness, or futility arising from the general California rule that a
breach of contract may not give rise to a tort claim?

5 Both parties are directed to submit their supplemental briefs on or before March 11, 2011.

6 Each party may submit a brief responding to its opponent's supplemental brief on or before April
7 1, 2011. The matter shall then be deemed submitted for decision pursuant to Local Rule 230(h)
8 (Fed. R. Civ. P. 78).
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11 IT IS SO ORDERED.

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14 Dated: February 16, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE