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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PATRIOT RAIL CORP., a  
Delaware corporation,,

No. 2:09-cv-00009-MCE-EFB

Plaintiff,

v.

**ORDER**

SIERRA RAILROAD COMPANY,  
a California corporation,

Defendant.

\_\_\_\_\_  
And Related Counterclaim.  
\_\_\_\_\_

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Defendant and Counterclaimant Sierra Railroad Company  
("Sierra") requests, through the motion presently before the  
Court, an order enforcing the terms of Amended Protective Order,  
filed on January 24, 2012, and now in place with respect to the  
above-captioned matter.

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1 Due to ongoing acquisition negotiations between Sierra and a  
2 prospective purchaser, Iowa Pacific Holdings ("IPH"), and due  
3 diligence disclosures requested by IPH as to pending litigation,  
4 including the present case, Sierra filed a motion to permit  
5 amendment of the initial May 21, 2009 Protective Order to permit  
6 such disclosure. That Motion was granted by order dated  
7 January 24, 2012 (ECF No. 189) and, as indicated above, an  
8 Amended Protective Order (ECF No. 190) was issued that same day.

9 Under the terms of the Amended Protective Order, Sierra was  
10 permitted to disclose its litigation files to a prospective  
11 purchaser like IPH, in order to satisfy due diligence requests,  
12 so long as 1) said prospective purchase executes a stipulation to  
13 be bound by the terms of the Amended Protective Order; 2) a "list  
14 of documents" proposed to be disclosed is provided to Defendant  
15 Patriot Rail Corporation ("Patriot"); and 3) Patriot is given the  
16 opportunity to designate a "certain narrow category of documents"  
17 as "highly confidential." and subject to only restricted  
18 disclosure. In discussing use of the "highly confidential"  
19 designation, Patriot was warned to avoid resort to "mass,  
20 indiscriminate, or routinized" categorization. ECF No. 190,  
21 2:25-26.

22 Sierra now asks the Court to enforce the terms of the  
23 Amended Protective Order on grounds that Patriot has sought to  
24 designate virtually "the entire contents of Sierra's litigation  
25 file, even documents produced by third parties or by Sierra  
26 itself, as 'highly confidential.'" Motion, 3: 21-22. According  
27 to Sierra, that amounts to just the kind of mass designation that  
28 the Amended Protective Order prohibited.

1 Sierra also argues that Patriot makes the same kind of due  
2 diligence requests of its own potential acquisition targets,  
3 including the aborted purchase negotiations that underlie the  
4 present litigation.

5 Patriot counters that Sierra has failed to satisfy the  
6 second prerequisite for disclosure,<sup>1</sup> which requires that Sierra  
7 provide a "list of documents" to be provided so that Patriot, in  
8 turn, can designate within five days which of those documents  
9 should be classified as "highly confidential".

10 By its own admission, Sierra has simply "described the  
11 contents of its litigation file in categorical fashion." Motion,  
12 2:8. It accordingly provided counsel for Patriot with only eight  
13 general categories of documents it sought to disclose. See Decl.  
14 of Louis A. Gonzalez, Ex. B. Patriot's counsel objected by email  
15 dated February 1, 2001 (see id.), stating that the terms of the  
16 Amended Protective Order "clearly directs Sierra to Provide a  
17 concise list of **documents**- not **categories**." Id., emphasis in  
18 original. Patriot went on to designate, in extremely broad  
19 fashion, the documents it sought to protect as "highly  
20 confidential" in the face of the general categories of documents  
21 identified by Sierra.

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25 <sup>1</sup> Although there appears to have been an argument advanced  
26 by Patriot to the effect that IPH must demonstrate that it  
27 remains engaged in acquisition discussions, that contention is  
28 misguided. IPH's General Counsel, Daniel Marko, previously  
submitted a declaration to that effect (ECF No. 171), and it  
appears uncontroverted that IPH has executed a stipulation to be  
bound by the Amended Protective Order, as that order requires.

1           The Court agrees that the specific terms of the Amended  
2 Protective Order provide that a "list of documents be provided"  
3 before Patriot is obligated to designate any documents so listed  
4 as "highly confidential". The eight broad categories identified  
5 by Sierra do not suffice in that regard. While the Court is  
6 sympathetic to Sierra's claim that it has to make its litigation  
7 files available to IPH to satisfy IPH's due diligence request,  
8 and cannot predict just what documents IPH chooses to examine,  
9 that does not obviate the terms of the Amended Protective Order  
10 which unequivocally require that a "list of documents" be  
11 furnished to Patriot beforehand.

12           Although the Court recognizes that a document by document  
13 listing may be onerous and even largely unnecessary to the extent  
14 various groups of documents have been generated by Patriot, it is  
15 equally clear that more particularity has to be provided by  
16 Sierra in order to meet the requirements of the Amended  
17 Protective Order. The parties are encouraged to work together on  
18 a mutually acceptable means of identification, short of a serial  
19 description of each and every piece of paper in Sierra's  
20 litigation file, that will satisfy their concerns. In the  
21 meantime, however, the categorical description offered by Sierra  
22 is not adequate and cannot support the present motion.

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1 Defendant Sierra's Motion to Enforce Amended Protective Order  
2 (ECF No. 197) is accordingly DENIED, without prejudice, at this  
3 time.<sup>2</sup>

4 IT IS SO ORDERED.

5 Dated: March 13, 2012

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8 MORRISON C. ENGLAND, JR.  
9 UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> Because oral argument was not of material assistance, the  
28 Court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).