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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PATRIOT RAIL CORP.,

Plaintiff,

v.

SIERRA RAILROAD CO.,

Defendant.

No. 2:09-cv-00009-TLN-AC

**MEMORANDUM AND ORDER**

**AND RELATED COUNTERCLAIMS**

This matter is before the Court on the parties' cross motions. Patriot Rail Corporation and Patriot Rail, LLC filed a motion in limine re punitive damages (ECF No. 453), which Sierra Railroad Co. opposed (ECF No. 454). Sierra then filed a motion for leave to amend its counterclaims (ECF No. 455); Patriot filed a consolidated reply and opposition brief in response (ECF No. 459). The Court heard the parties' oral argument on April 4, 2014, and held an evidentiary hearing to further assess the issues raised in the parties' briefing. The Court then ordered the parties to file supplemental briefs, which the parties did. (Sierra's Supp. Br., ECF No. 464; Patriot's Response Br., ECF No. 467.) The Court has carefully considered the parties' initial briefing, oral argument, the testimony at the hearing, and the supplemental briefing. In light of Patriot's concession that Patriot Rail Company LLC is a continuation of counter-

1 defendant Patriot Rail Corporation, the Court DENIES Patriot’s motion and GRANTS Sierra’s  
2 motion IN PART as set forth below.

3 **I. BACKGROUND<sup>1</sup>**

4 **A. Brief Procedural Posture**

5 This litigation arises out of a dispute between Patriot Rail Corporation and Patriot Rail,  
6 LLC (collectively “Patriot”), on the one hand, and Sierra Railroad Co. (“Sierra”) on the other.<sup>2</sup>  
7 Sierra operated rail switching services at McClellan Business Park (“McClellan”), a rail-served  
8 industrial park in Sacramento County, pursuant to a contract. Patriot and Sierra entered into  
9 negotiations for Patriot to acquire Sierra. During negotiations, Sierra provided financial  
10 information to Patriot. McClellan terminated its contract with Sierra and after soliciting bids,  
11 awarded a contract to Patriot. The parties’ negotiations for Patriot to acquire Sierra broke down;  
12 this litigation ensued.

13 The original complaint was filed by Patriot Rail Corporation in December 2008. (ECF  
14 No. 2.) Sierra answered and asserted counterclaims against Patriot Rail Corporation and Patriot  
15 Rail LLC. (Def.’s Answer, ECF No. 6; Def’s Am. Answer, ECF No. 12.) Throughout the case  
16 several claims have been dismissed either by the Court upon a party’s motion or voluntarily by  
17 the parties.<sup>3</sup> At the time of trial, the remainder of Patriot’s claims against Sierra were that Sierra  
18 committed fraud and breached the binding provisions of the parties’ Letter of Intent, entered into  
19 in March 2008, for Patriot to acquire Sierra. Patriot also claims that Sierra did not negotiate in  
20 good faith and did not intend to complete an acquisition transaction with Patriot.

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23 <sup>1</sup> The proceedings in this case have been ongoing for several years, and the Court does not  
endeavor to set forth all of the facts leading up to this point.

24 <sup>2</sup> At trial the parties stipulated to using “Patriot” to refer to Patriot Rail Corporation and Patriot  
25 Rail LLC. (Joint Proposed Jury Instruction No. 2, ECF No. 404 at 4.) Because the Court later  
26 discusses the parties’ specific business structure, references to “Patriot” will mean both Patriot  
27 Rail Corporation and Patriot Rail LLC as stipulated by the parties at trial. Where necessary the  
Court will refer to Patriot Rail Corporation, Patriot Rail, LLC, and Patriot Rail Company LLC  
specifically.

28 <sup>3</sup> For example, Sierra alleged counterclaims against individual Larry Coe, a counter-defendant  
who has since been dismissed. (Stip. & Order, ECF No. 440.)

1 Sierra claimed that it provided Patriot with confidential and trade secret information  
2 during acquisition discussions pursuant to a non-disclosure agreement. Sierra also claims that  
3 Patriot falsely represented they would hold Sierra's information in confidence and not use it for  
4 any purpose other than Patriot's potential acquisition of Sierra. Sierra alleges that Patriot  
5 breached the non-disclosure agreement and misappropriated its information to outbid Sierra for  
6 the railroad services contract at McClellan.

7 **B. Sierra's Ex Parte Application for a Temporary Restraining Order to Enjoin**  
8 **the Sale of Counter-Defendant Patriot Rail Corporation to SteelRiver**

9 During the pendency of this litigation, Sierra learned that Patriot Rail Corporation  
10 intended to sell itself to SteelRiver Infrastructure Partners ("SteelRiver").<sup>4</sup> On May 14, 2012,  
11 Sierra filed an ex parte application for a temporary restraining order to prevent the sale of Patriot  
12 Rail Corporation to SteelRiver. (ECF No. 228.) Patriot argued that the Surface Transportation  
13 Board ("STB") had exclusive jurisdiction over the transaction, a point that Sierra eventually  
14 conceded. Throughout its briefing and oral argument before this Court, Patriot argued that the  
15 sale would have no impact on the litigation or Sierra's pending claims. (*See, e.g.*, Opp'n Ex Parte  
16 App., ECF No. 231 at 1; Supp. Opp'n, ECF No. 234 at 1–2; Mot. Hr'g Tr., May 31, 2012, ECF  
17 No. 242 at 15.) This Court through the Honorable Judge England denied Sierra's ex parte  
18 application for a restraining order finding that the STB had exclusive jurisdiction. (ECF No. 242  
19 at 16–19.)

20 Before the STB, Sierra filed a petition to reject SteelRiver's request to acquire control of  
21 Patriot Rail and its subsidiary railroads. Patriot Rail Corporation filed a response to the Petition  
22 arguing that the proposed transaction would not affect this litigation or Sierra's ability to recover  
23 judgment. (Weed Decl. Ex. I at 24–25, ECF No. 464-1.) The STB ultimately denied Sierra's  
24 petition, and the sale to SteelRiver was consummated.

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27 <sup>4</sup> The transaction would be such that SteelRiver's subsidiary Patriot Funding, LLC would  
28 purchase all of the outstanding stock of Patriot Rail Corporation from Patriot Rail Holdings, LLC.  
(ECF No. 467 at 9:26–27.)

1           **C. Sierra’s Motion to Add Parties to its Counterclaims and to Serve Unserved**  
2 **Counter-Defendants**

3           After the Court denied Sierra’s ex parte application to enjoin the sale of Patriot Rail  
4 Corporation to SteelRiver, Sierra filed a motion for leave to amend its counterclaims seeking to  
5 add Pacific Rail LLC, Pacific Rail Holdings LLC and Patriot Funding LLC as new parties. (ECF  
6 No. 266.) Sierra further sought to serve unserved counter-defendants Patriot Equity LLC and  
7 Patriot Rail Holdings LLC. Patriot filed a response to the motion (ECF No. 274), to which Sierra  
8 replied (ECF No. 276) and the Court held a hearing. During oral argument, Patriot’s counsel  
9 opposed the addition of new parties and opposed the late service of parties who had not been  
10 served. However, Patriot did not oppose Sierra’s motion to the extent that Sierra sought to  
11 substitute an entity who had already been served and in the case. (Mot. Hr’g Tr., ECF No. 309 at  
12 16:20–17:1 (“MS. LOVETT: Your Honor, we do not oppose -- to the extent that there is an entity  
13 which is already served and in the case, we do not oppose the substitution that’s effectively an  
14 FKA [formerly known as]. To the extent [Sierra is] seeking to now serve a new party, or add an  
15 entirely new party, which would be the new Patriot entity which is a successor in interest, that’s  
16 the crux of our opposition.”).) This Court through the undersigned denied Sierra’s motion  
17 without prejudice for the reasons set forth in the memorandum and order entered on July 15,  
18 2013. (ECF No. 298.)

19           **D. Pretrial Proceedings and Liability Phase of the Trial**

20           The parties filed a joint pretrial statement, which they amended on January 9, 2014. (ECF  
21 Nos. 311, 316.) The Court held a final pretrial conference on January 30, 2014. (Minutes, ECF  
22 No. 380.) The parties agreed to a bifurcated punitive damages phase in their joint pretrial  
23 statement, which the Court confirmed in its final pretrial order. (Final Pretrial Order, ECF No.  
24 384 at 2:11–12 (“Pursuant to the parties’ request, the Court shall bifurcate the trial to determine  
25 punitive damages, if needed, in a separate proceeding before the same jury.”).) No party objected  
26 to the final pretrial order.

27           Jury trial commenced on the liability phase on March 10, 2014, and lasted over two  
28 weeks. (Minutes, ECF No. 407.) The jury began their deliberations on March 27, 2014.

1 (Minutes, ECF No. 439.) On March 28, 2014, the jury returned a verdict in favor of Sierra on all  
2 submitted claims, and awarded compensatory damages in the amount of \$22,282,000. (ECF No.  
3 447.) The jury also found that Sierra was entitled to punitive damages on several claims. (ECF  
4 No. 447.)

5 **E. Punitive Damages Phase Commences**

6 After the jury rendered its verdict on liability, the Court ordered the parties to meet and  
7 confer with respect to the procedure and scheduling of the punitive damages phase. The parties  
8 agreed to conduct discovery during the week of March 31, and that the parties would present  
9 evidence to the jury regarding punitive damages on Friday, April 4, 2014. Based on the parties'  
10 representations, the Court scheduled Friday April 4, 2014, for commencement of the second  
11 phase regarding punitive damages. (Minutes, ECF No. 448.) No party objected to the proposed  
12 punitive damages procedure or schedule.

13 On April 2, 2014, two days before the punitive damages phase, Patriot filed a motion in  
14 limine seeking to exclude any evidence related to any unnamed and unserved parties including an  
15 entity named Patriot Rail Company LLC. (ECF No. 453.) In that motion, Patriot represented that  
16 on May 1, 2013, Patriot Rail Corporation was converted into a Patriot Rail Company LLC, a new  
17 entity. In response Sierra argued that it could not fully respond to the motion in limine filed one  
18 day before the punitive damages phase but argued that Patriot Rail Corporation's conversion to  
19 Patriot Rail Company LLC did not preclude evidence regarding Patriot Rail Company LLC citing  
20 Delaware Code § 266(h) and California Corporations Code § 1158(b)(2) and (3). (ECF No. 454.)  
21 Sierra also filed a motion for leave to add Patriot Rail Company LLC as a counter-defendant  
22 arguing that Patriot Rail Company LLC should be deemed the same entity as Patriot Rail  
23 Corporation. (ECF No. 455.) Patriot filed a consolidated reply to its motion in limine and  
24 opposition to Sierra's motion for leave to amend. (ECF No. 459.) In its consolidated reply,  
25 Patriot continued to argue that Patriot Rail Corporation and Patriot Rail Company LLC were not  
26 the same entity. (ECF No. 459 at 5:10 ("Sierra argues that Patriot Rail Corp. and New Patriot  
27 [Patriot Rail Company LLC] are the same, but that is not the case.").)

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1           The morning of the scheduled punitive damages phase, April 4, 2014, outside of the  
2 presence of the jurors, the parties argued extensively their respective positions in their briefs,  
3 which had been filed less than 48 hours before the hearing. (*See* Minutes, ECF No. 461.) Out of  
4 an abundance of caution, the Court dismissed the jurors for the day and decided to hold a hearing  
5 to determine the threshold issues of what evidence should be admitted before the jury with respect  
6 to Patriot Rail Company LLC. The Court heard testimony from two witnesses, Jennifer  
7 Whiteman, the Vice President of finance and accounting at Patriot Rail Company LLC, and John  
8 Fenton, the President and CEO of Patriot Rail Company LLC. After hearing testimony, the Court  
9 ordered the parties to submit supplemental briefs regarding their pending motions, and  
10 specifically whether Patriot Rail Company LLC should be substituted into the case and whether  
11 evidence of the financial condition of Patriot Rail Company LLC should be admitted during the  
12 punitive damages phase of the trial. (ECF No. 461.)

13           In its supplemental brief, Sierra reiterated its arguments that Patriot Rail Company LLC  
14 was a continuation of Patriot Rail Corporation. In response, Patriot Rail Corporation changed its  
15 previous position and conceded that Patriot Rail Company LLC was in fact a continuation of  
16 Patriot Rail Corporation. (ECF No. 467 at 2:6-7 (“On careful evaluation of the facts and  
17 Delaware law, it has become clear that by operation of Delaware law, PRC, LLC [Patriot Rail  
18 Company LLC] is in fact a continuation of Patriot Rail Corp.”).) However, Patriot argues that  
19 substituting Patriot Rail Company LLC is fundamentally unfair and that imposing punitive  
20 damages in this case is contrary to public policy. (ECF No. 467.)

## 21   **II.   ANALYSIS**

22           As a threshold matter, the Court finds that the issues raised by the parties’ motions, *i.e.*,  
23 whether to admit or exclude evidence before the jury, whether to amend the pleadings, whether to  
24 substitute a party, whether to amend the final pretrial order, how to proceed in a bifurcated  
25 punitive damages proceeding, and whether to impose successor liability are all decisions within  
26 the broad and sound discretion of this Court. *See* Fed. R. Civ. P. 15, 25, 42, 43; Fed. R. Evid.  
27 104; *see also* *Rosales v. Thermex–Thermatron, Inc.*, 67 Cal. App. 4th 187, 196 (1998) (“The  
28 determination whether it is fair to impose successor liability involves similarly broad equitable

1 considerations. We believe the question whether it is fair to impose successor liability is  
2 exclusively for the trial court.”) (internal citation omitted). Therefore, the undersigned evaluates  
3 these motions and makes these findings from the unique perspective of the trial judge who has  
4 presided over these proceedings for the last year, including law and motion hearings, the final  
5 pretrial conference, and a two-and-a-half week trial on liability.

6 **A. Patriot Rail Company LLC is Substituted For Patriot Rail Corporation and**  
7 **Sierra Shall Be Permitted to Introduce Evidence of the Financial Condition of Patriot Rail**  
8 **Company LLC**

9 Patriot concedes in its supplemental briefing that Patriot Rail Company LLC is a  
10 continuation of counter-defendant Patriot Rail Corporation. (ECF No. 467 at 2:6-7 (“On careful  
11 evaluation of the facts and Delaware law, it has become clear that by operation of Delaware law,  
12 PRC, LLC [Patriot Rail Company LLC] is in fact a continuation of Patriot Rail Corp.”).)  
13 Delaware law permits a conversion of a domestic corporation to other entities, including a limited  
14 liability company. *See* Del. Code Ann. tit. 8, § 266(a) (West 2010) (“A corporation of this State  
15 may, upon the authorization of such conversion in accordance with this section, convert to a  
16 limited liability company . . .”). The effect of such a conversion is that the new LLC is deemed  
17 to be the same entity as the corporation. Specifically, the statute reads:

18 When a corporation has been converted to another entity or  
19 business form pursuant to this section, the other entity or business  
20 form shall, for all purposes of the laws of the State of Delaware, be  
21 deemed to be the same entity as the corporation. When any  
22 conversion shall have become effective under this section, for all  
23 purposes of the laws of the State of Delaware, all of the rights,  
24 privileges and powers of the corporation that has converted, and all  
25 property, real, personal and mixed, and all debts due to such  
26 corporation, as well as all other things and causes of action  
27 belonging to such corporation, shall remain vested in the other  
28 entity or business form to which such corporation has converted  
and shall be the property of such other entity or business form, and  
the title to any real property vested by deed or otherwise in such  
corporation shall not revert or be in any way impaired by reason of  
this chapter; but all rights of creditors and all liens upon any  
property of such corporation shall be preserved unimpaired, and all  
debts, liabilities and duties of the corporation that has converted  
shall remain attached to the other entity or business form to which  
such corporation has converted, and may be enforced against it to  
the same extent as if said debts, liabilities and duties had originally  
been incurred or contracted by it in its capacity as such other entity

1 or business form. The rights, privileges, powers and interest in  
2 property of the corporation that has converted, as well as the debts,  
3 liabilities and duties of such corporation, shall not be deemed, as a  
4 consequence of the conversion, to have been transferred to the other  
entity or business form to which such corporation has converted for  
any purpose of the laws of the State of Delaware.

5 Del. Code Ann. tit. 8, § 266(h); *CM Record Corp. v. MCA Records, Inc.*, 168 Cal. App. 3d 965,  
6 967 (1985) (“California law recognizes that the continuing legal existence of a corporation  
7 depends on the law state of incorporation.”); *see also* Cal. Corp. Code § 1158 (providing for  
8 corporate entity conversions under California law). Therefore, Patriot Rail Company LLC is  
9 considered the same entity as Patriot Rail Corporation, who is a party in this case. Because  
10 evidence of a party’s financial condition is relevant to determining punitive damages against that  
11 party, evidence of Patriot Rail Company LLC’s financial condition is relevant to this case. *See*  
12 *Adams v. Murakami*, 54 Cal. 3d 105, 109 (1991); *see also* Cal. Civ. Code § 3294 (governing  
13 punitive damages).

14 This analysis is also consistent with Patriot’s representation at the June 20, 2013, hearing  
15 on Sierra’s motion for leave to amend to add new parties and serve unserved counter-defendants.  
16 Although the entity Patriot Rail Company LLC was not specifically at issue at that hearing,  
17 Patriot admitted that it would not oppose the substitution of an entity that was merely a change in  
18 form. (Mot. Hr’g Tr., June 6, 2013, ECF No. 309 at 16:20-17:1 (“MS. LOVETT: Your Honor,  
19 we do not oppose -- to the extent that there is an entity which is already served and in the case, we  
20 do not oppose the substitution that’s effectively an FKA [formerly known as]. To the extent  
21 [Sierra is] seeking to now serve a new party, or add an entirely new party, which would be the  
22 new Patriot entity which is a successor in interest, that’s the crux of our opposition.”).) Here,  
23 because Patriot concedes that Patriot Rail Company LLC is the same entity as Patriot Rail  
24 Corporation and does not argue that Patriot Rail Company LLC is a new or unserved party, the  
25 Court finds that it is proper to substitute. Accordingly, the Court grants Sierra’s request to  
26 substitute Patriot Rail Company LLC for Patriot Rail Corporation to reflect its conversion to an  
27 LLC, and Sierra will be permitted to introduce evidence of Patriot Rail Company LLC’s financial  
28 condition during the punitive damages phase to the jury.



1           **B. Patriot's Arguments that Sierra's Requested Relief is Fundamentally Unfair**

2           Despite its concession that Patriot Rail Corporation converted from its corporate form to  
3 an LLC, Patriot still argues Sierra's requested relief is fundamentally unfair. As set forth below,  
4 the Court finds that these arguments lack merit.

5           Patriot argues that Sierra failed to bring this motion properly under Federal Rule of Civil  
6 Procedure 25. (ECF No. 467 at 2.) Rule 25 governs the substitution of parties; subsection (c)  
7 states that "[i]f an interest is transferred, the action may be continued by or against the original  
8 party unless the court, on motion, orders the transferee to be substituted in the action or joined  
9 with the original party. The motion must be served as provided in Rule 25(a)(3)." Rule 25(a)(3)  
10 requires a party to serve a motion to substitute along with a notice of hearing on the parties as  
11 provided in Rule 5 and on non-parties as provided in Rule 4.

12           Patriot's argument that Sierra's motion is procedurally deficient lacks persuasive force as  
13 both parties admittedly filed last-minute motions on the eve of the punitive damages phase.  
14 Therefore, any deficiencies in Sierra's belated motion are equally applicable to Patriot's belated  
15 motion in limine. Furthermore, the final pretrial order did not set forth any specific details with  
16 respect to the order of discovery, testimony to be elicited, or motions with respect to the punitive  
17 damage phase. None of the parties sought clarification and none of the parties objected to the  
18 final pretrial order. Therefore, the Court has broad discretion as to how the bifurcated  
19 proceedings are conducted, and exercises that discretion to permit both Patriot's and Sierra's  
20 belated motions. Moreover, neither Patriot nor Patriot Rail Company LLC has claimed that it  
21 lacked notice of Sierra's proposed substitution; therefore the due process concerns protected by  
22 Rule 25(a)(3) and 25(c) are not implicated here.

23           Patriot also argues that Sierra is the culpable party for failing to bring substitution and  
24 successor-in-interest issues to the Court's attention earlier. (ECF No. 467 at 3–5.) Patriot further  
25 argues that it relied on the final pretrial order that "New Patriot was not relevant." (ECF No. 467  
26 at 7:5–6.) These arguments fail for two reasons. First, the Court excuses the parties' belated  
27 motions based on the parties' representations that the irreconcilable issues of the corporate form  
28 of Patriot Rail Corporation and Patriot Rail Company LLC did not arise until after the punitive

1 damages phase commenced. Second, the Court notes that Sierra did raise these issues earlier,  
2 albeit in a separate motions, an ex parte application to stop the sale of Patriot to SteelRiver and in  
3 a motion to add parties and to serve unserved counter-defendants. Indeed, in the proceedings  
4 regarding the motion to add new parties and serve unserved counter-defendants, Sierra stated its  
5 concerns as follows:

- 6 • “Patriot’s recent disclosure that 100% of its assets have been sold and that two of  
7 the entity defendants have changed their name necessitates amendment of the  
8 Counter Claim to ensure that any judgment on Sierra’s behalf is against the correct  
9 entities who are liable.” (Mem. P.&A. in Supp. of Mot. for Leave to Amend, ECF  
10 No. 266-1 at 8:18–20.)
- 11 • “If the unserved parties are dismissed, and those parties are in fact jointly and or  
12 [sic] severally liable as Sierra alleges and/or Patriot has shifted its assets to those  
13 entities as Sierra suspects, then a dismissal of those parties would bar complete  
14 relief or recovery by Sierra on its claims.” (ECF No. 266-1 at 13:1–4.)
- 15 • “Patriot Rail appears to be a stack of companies, basically held within a shell or a  
16 holding company, which is Patriot Rail Corporation. The companies we seek to  
17 add now, Patriot Rail Holdings and Patriot Equity, LLC, fall within that umbrella.  
18 Our concern, however, is that assets or judgments would be properly rendered  
19 against those companies, but if they’re not added to this we can’t go after them,  
20 and the assets we seek to recover through the litigation could get moved there, or  
21 maybe already have been moved there. Basically, a shell game could get played  
22 with us under all the entities that exist under the holding corporation.” (ECF No.  
23 309 at 7:11–21.)
- 24 • “MR. PLAMONDON: We’re concerned, just given the way the assets have moved  
25 around, and passed around in this case, that we could end up in either extensive  
26 motion practice postjudgment in this case, or that otherwise assets will be secreted  
27 or otherwise transferred ahead of a judgment, or even ahead of trial. And we’re

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1 just trying to be very cautious and careful, Your Honor, to get all the parties that  
2 were holding the assets taken from Sierra Rail.” (ECF No. 309 at 11:23–12:5.)

3 Patriot Rail Corporation filed a response to the motion, and also made representations at  
4 the Court’s hearing on this issue. The Court’s review of Patriot’s statements in its briefing and at  
5 the hearing include, but are not limited, to the following:

- 6 • “To date, however, the issue of the ownership of Patriot stock has not been part of  
7 this lawsuit; Patriot Holdings, LLC was never added as a party to this lawsuit.  
8 (Resp. to Mot. for Leave to Amend, ECF No. 274 at 6:15–16.)
- 9 • Sierra’s attempt to include Patriot Funding is nothing more than a backdoor  
10 attempt to untimely introduce issues at the last minute. Whether Sierra seeks to  
11 add Patriot Holdings, LLC or Patriot Funding, it is adding an issue in this case at a  
12 time at which the parties are completing their Joint Pretrial order and trial is  
13 imminent. None of the allegations in the operative counterclaim concerning their  
14 ‘*alter-ego*’ status have been subject to discovery.” (ECF No. 274 at 6:17–21.)
- 15 • “THE COURT: Well, counsel, let’s cut to the chase here. Isn’t it true that the  
16 unserved counter-defendants in this case, they’ve been on notice of this case the  
17 entire time? MS. LOVETT: Your Honor, it’s true. And they’re interested parties  
18 in the litigation. But interested parties do not equate to defendants in every  
19 instance. And we contend these are improper defendants. They were not part of  
20 the operating entities. And to suggest that -- we take offense, quite frankly, Your  
21 Honor, that there would be any suggestion there would be a switching or moving  
22 of assets. Certainly they would be entitled to postjudgment discovery if, in fact,  
23 there is a judgment, to determine whether or not the assets are in the right place.  
24 But at this late date, there is no point in saying we need to find other funding  
25 sources if this isn’t the proper source. If these were important sources, Your  
26 Honor, respectfully, they should have made sure they were served. Or they should  
27 have taken a default when they didn’t answer if they believed, as they now  
28 contend, that they were served.” (ECF No. 309 at 14:24–15:18.)

1 In light of the past representations, the Court is concerned with Patriot’s failure to raise this issue—  
2 not Sierra’s. Indeed, the Court has serious concerns about Patriot’s motion in limine and  
3 consolidated reply which emphatically asserted that Patriot Rail Company LLC was a non-party;  
4 Patriot’s supplemental brief is a complete reversal of its previous position.<sup>5</sup> It seems paradoxical,  
5 at best, that Patriot needed information from Sierra to discover that Patriot Rail Corporation was  
6 the same entity as Patriot Rail Company LLC.

7 Patriot also argues that changing the names of the parties at the last minute will prejudice  
8 it and Patriot Rail Company LLC because “the jury will be left with the false impression that all  
9 three Patriot entities have engaged in some type of illicit behavior.” (ECF No. 467 at 6:2–4.) To  
10 address Patriot’s concern, the Court shall instruct the jury that Patriot Rail Corporation has  
11 converted itself from a corporation to an LLC, and that the jury is not to consider the change in  
12 form in its consideration of punitive damages. Furthermore, the Court shall also instruct the jury  
13 that they are not to use prejudice or bias in awarding punitive damages, consistent with the Ninth  
14 Circuit model instructions and with California law. *See, e.g.*, Ninth Circuit Model Jury  
15 Instruction 5.5 (“Punitive damages, if any, should be in an amount sufficient to fulfill their  
16 purposes but should not reflect bias, prejudice or sympathy toward any party.”). Contrary to  
17 Patriot’s footnote that the prejudice flows to Patriot “no matter what instructions [the jury is]  
18 given by the Court,” (ECF No. 467 at 6 n. 6) the law presumes that jurors follow instructions that  
19 they are given. *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1270–71 (9th Cir. 2000)  
20 (“There is a strong presumption that the curative instructions given by the district court were  
21 followed by the jury and therefore we so presume.”). Therefore, the jury shall be instructed  
22 consistent with applicable law to protect against any impression that the Patriot entities have  
23 engaged in some type of illicit behavior.<sup>6</sup>

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24  
25 <sup>5</sup> The Court notes that during punitive damages discovery and at hearing Patriot took the position  
26 that Patriot Rail Company LLC was a separate entity, and that Greenberg Traurig did not  
27 represent Patriot Rail Company LLC. The Court requests that Patriot clarify its positions on this  
point on the first day of the punitive damages phase, on the record and outside of the presence of  
the jury.

28 <sup>6</sup> The Court takes no position as to the propriety of the SteelRiver purchase or the conversion of  
Patriot Rail Corporation to Patriot Rail Company LLC. The Court merely finds that it would be

1 Patriot argues any punitive damages award against Patriot Rail Company LLC is against  
2 public policy because “SteelRiver-managed New Patriot is an innocent successor.” (ECF No. 467  
3 at 10:20.) This argument is flawed; SteelRiver is not a party to this litigation and no motion is  
4 before the Court to introduce evidence of SteelRiver’s finances. Rather, the Court is permitting  
5 Sierra to introduce evidence of Patriot Rail Company LLC’s financial condition.

6 To the extent that Patriot argues that the Court should consider substantive changes that  
7 occurred when SteelRiver purchased Patriot Rail Corporation (*see* ECF No. 467 at 10–19), the  
8 Court steadfastly declines to do so. Sierra correctly notes Patriot made numerous representations  
9 to this Court and to the Surface Transportation Board that the sale of Patriot Rail Corporation to  
10 SteelRiver would not change anything with respect to this litigation. Upon the Court’s review,  
11 the statements that Patriot has made with respect to the SteelRiver transaction include, but are not  
12 necessarily limited to the following:

- 13 • “[T]he transaction at issue amounts to nothing more than a sale of stock by one  
14 entity, Patriot Rail Holding, LLC, to another, SteelRiver Infrastructure Fund North  
15 America LP (“SteelRiver”). As Patriot repeatedly explained to Sierra in writing  
16 during the meet and confer process, the stock purchase agreement between these  
17 entities will have no impact on this litigation or Sierra’s pending claims.” (ECF  
18 No. 231 at 1:8–12.)
- 19 • “[R]egardless of the sale of its stock to SteelRiver, Patriot Rail Corp. remains the  
20 Plaintiff and Counter defendant in this action, and will continue to own the same  
21 assets it now has” (ECF No. 231 at 6:28–7:2.)
- 22 • “The Sale Will Have No Impact on Existing Parties or Assets.” (ECF No. 231 at  
23 9:22 (underline in original).)
- 24 • “Perhaps the most compelling reason to deny Sierra’s Application is that the stock  
25 sale at issue will have *no impact on the parties to this litigation or the assets at*  
26 *issue.*” (ECF No. 231 at 9:23–24 (italics in original).)

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27 inappropriate to have the jury speculate as to why the sale and change in corporate form took  
28 place in these proceedings.

- 1 • “Sierra fails to understand simple corporate law and its Application is premised on  
2 the purposeful disregard or erroneous belief that the stock sale to SteelRiver  
3 somehow affects this matter. It does not.” (ECF No. 231 at 10:1–3.)
- 4 • “The purchase price of Patriot Rail Corp.’s stock by SteelRiver from Patriot Rail  
5 Holdings LLC is well in excess of \$200,000,000. After the close of the  
6 transaction, Patriot Rail Corp. will continue to own and operate all the properties,  
7 railroads and assets it owned and operated prior to the transaction, including,  
8 without limitation, [Sacramento Valley Railroad LLC]. No separate valuation of  
9 any of those individual properties or assets was performed by Patriot or its agents  
10 or provided in connection with the transaction. As in all stock sales, it transfers all  
11 assets and liabilities of Patriot Rail Corp.” (Marks Decl., ECF No. 231-1 at ¶ 6.)
- 12 • “Sierra failed to address or establish that the stock sale will have any impact on  
13 this litigation (it will not) . . . .” (ECF No. 234 at 1:23–24.)
- 14 • “MS. LOVETT: . . . And the bottom line is that the transaction changes nothing  
15 with respect to this litigation. Companies are bought and sold while they’re in  
16 litigation all the time. None of the assets changed. This is a stock sale. Patriot  
17 Rail will continue with the McClellan contract. They will continue to own 13  
18 railroads throughout the country. It changes nothing with respect to this  
19 litigation.” (ECF No. 242 at 15:8–14.)
- 20 • “[N]or does Sierra show that the Proposed Transaction will irreparably harm Sierra  
21 (rather, it attempts to obscure the fact that all entities in the Court Case will remain  
22 unchanged after the consummation of the Proposed Transaction).” (ECF No. 464-  
23 1, Ex. I at 12.)
- 24 • “Only the ownership of Patriot Rail will change. None of the parties to the Court  
25 Case are changing, so nothing that Sierra is concerned about will be different  
26 because of the Proposed Transaction (*i.e.*, there will be no harm).” (ECF No. 464-  
27 1, Ex. I at 18.)

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- 1 • “In addition, Applicants are not trying to shield Patriot Rail from the Court Case.  
2 Patriot Rail is a counter-defendant in the Court Case today. If the Proposed  
3 Transaction is consummated, Patriot Rail will continue to be a counter-defendant  
4 in the Court Case subject to the rulings of Judge England. Given that nothing will  
5 change with respect to the parties in the Court Case as a result of the Proposed  
6 Transaction, there are no concerns here like there were in *Riffin Acquisition*, and  
7 that case is not valid precedent for considering the Proposed Transaction.” (ECF  
8 No. 464-1, Ex. I at 23-24.)
- 9 • “Sierra seeks to use these inapposite opinions to create the illusion that the Court  
10 Case makes the Proposed Transaction non-routine and controversial. The only  
11 reason that the Proposed Transaction is non-routine and controversial is because  
12 Sierra has decided to try to stop the Proposed Transaction. The Court Case has no  
13 effect on the Proposed Transaction and the Proposed Transaction has no effect on  
14 the Court Case.” (ECF No. 464-1, Ex. I at 25.)
- 15 • “Sierra consistently ignores that Patriot Rail is the counter-defendant in the Court  
16 Case, and Patriot Rail will remain so following the consummation of the Proposed  
17 Transaction. If there is a judgment against Patriot Rail, then Patriot Rail will have  
18 to satisfy that judgment, just as would be the case absent the Proposed  
19 Transaction.” (ECF No. 464-1 at 26.)
- 20 • “***Sierra will not suffer irreparable harm absent a stay.*** Patriot Rail is the counter-  
21 defendant today and will be the counter-defendant once the Board denies Sierra’s  
22 stay request and the Proposed Transaction is allowed to proceed. If Sierra  
23 prevails, Patriot Rail will have its assets available to satisfy any judgment.” (ECF  
24 No. 464-1, Ex. I at 29) (italics and bold in original).)
- 25 • “Thus, with respect to the Court Case, Sierra is effectively better off and more  
26 insulated from potential harm as a result of the Proposed Transaction than it would  
27 be absent the Proposed Transaction.” (ECF No. 464-1, Ex. I at 30.)

28 ///





1 Cal. App. 4th 1128 (1998), in support but this case is inapposite and contradicts Patriot's position.  
2 The Court in *Weeks* affirmed that an employer and an employee's liability for punitive damages  
3 are separate, and that punitive damages are only appropriate against the employer entity if the  
4 employer is found to have committed a malicious, oppressive, or fraudulent act. *Id.* at 1154  
5 ("Civil Code section 3294, subdivision (b) does not authorize an award of punitive damages  
6 against an employer for the employee's wrongful conduct. It authorizes an award of punitive  
7 damages against an employer for the employer's *own* wrongful conduct.") (italics in original).  
8 Here, the jury's verdict is consistent with *Weeks*. The jury found that Patriot Rail Corporation  
9 had committed malicious, oppressive, or fraudulent acts, not any one particular officer in their  
10 individual capacity. (*See, e.g.*, ECF No. 447 at 6 ("With respect to this claim, do you find that  
11 Sierra proved that conduct constituting malice, oppression, or fraud was committed by one or  
12 more officers, directors, or managing agents of Patriot?").)

13 The Court concludes that determining successor liability for punitive damages is a case-  
14 by-case, fact-intensive inquiry. Although the Court can hypothesize cases where successor  
15 liability may not be appropriate, that is not the case here. Patriot made repeated representations to  
16 this Court (through briefs and during oral argument) and to the Surface Transportation Board that  
17 nothing regarding its sale to SteelRiver, the purchase of its stock, or the failure to add interested  
18 but non-related entities, would affect Patriot Rail Corporation. Furthermore, at a motion hearing  
19 on June 20, 2013, Sierra expressed a concern that Patriot would attempt a shell game involving  
20 asset shifting or corporate structure changes in order to avoid liability. Although Sierra did not  
21 raise the specific issue of assessing punitive damages, Sierra did represent to the Court in its  
22 attempt to prohibit the sale of Patriot and in its motion for leave to amend, that it was concerned  
23 that Patriot would engage in moving assets or creating shell corporations necessitating extensive  
24 law and motion practice. While Patriot's representations to the Court may have been technically  
25 correct, the Court notes that Sierra's concerns were not unfounded given the extensive briefing  
26 regarding this issue, the delay of the punitive damages phase, and Patriot's confusing and

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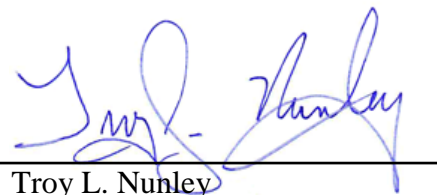
1 ultimately abandoned position that it is a separate entity from Patriot Rail Company LLC.<sup>8</sup> The  
2 Court therefore finds that public policy weighs against Patriot's position, not in favor of it.<sup>9</sup>

3 **III. CONCLUSION**

4 For the reasons stated on the record and in this order, the Court DENIES Patriot's motion  
5 in limine (ECF No. 453). The Court GRANTS IN PART Sierra's motion for leave to amend its  
6 counterclaims (ECF No. 455). Patriot Rail Company LLC shall be substituted for Patriot Rail  
7 Corporation in these proceedings. Furthermore, Sierra will be permitted to introduce evidence of  
8 Patriot Rail Company LLC at the punitive damages phase before the jury subject to the  
9 instructions and limitations set forth in this order. To the extent that Sierra's motion seeks leave  
10 to amend its counterclaims to add new parties, the motion is DENIED. The Court expects that  
11 with this ruling the parties shall be ready to proceed with the punitive damages phase without  
12 delay on Monday, April 28, 2014.

13 **IT IS SO ORDERED.**

14 Dated: April 25, 2014

15   
16 \_\_\_\_\_  
17 Troy L. Nunley  
18 United States District Judge  
19  
20  
21

22 <sup>8</sup> In addition to Patriot completely reversing its representation about its own corporate structure  
23 and conceding the issue, other Patriot conduct has come to light during this trial including: (1)  
24 Patriot eliciting testimony from a witness, Stanley Wlotko, that he independently computed and  
25 derived figures to put in Patriot's bid to McClellan contrary to judicial admissions contained in  
26 Patriot's complaint that it derived the information from figures distributed by McClellan to all  
27 bidders, and (2) Patriot's refusal to produce documents that it had agreed to produce and then  
28 faulting Sierra for its failure to move to compel.

<sup>9</sup> Although not raised in its initial motion in limine, Patriot "renews" its motion for a mistrial.  
(ECF No. 467.) The Court is unaware of Patriot's first motion for a mistrial but in any event  
denies Patriot's motion for a mistrial without prejudice to re-raise its arguments in the motion for  
a new trial contemplated in its ex parte request for a page-limit extension. (*See Ex Parte App.*,  
ECF No. 452.)