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 26 CECILIA REA, Individually, as Successor in Interest
 27 of Decedent ANTHONY REA and Personal
 28 Representative of the Estate of ANTHONY REA,
 and DEAN REA

29 **UNITED STATES DISTRICT COURT**
 30 **NORTHERN DISTRICT OF CALIFORNIA**

31 CECILIA REA, Individually, as Successor
 32 in Interest of Decedent ANTHONY REA
 33 and Personal Representative of the Estate
 34 of ANTHONY REA, and DEAN REA,

35 Plaintiffs,

36 v.

37 PENINSULA CORRIDOR JOINT
 38 POWERS BOARD (CALTRAIN); and
 39 DOES 1 through 100, inclusive,

40 Defendants.

Case No. C 09-05538 EDL

~~PROPOSED~~ STIPULATION AND
 PROTECTIVE ORDER

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Plaintiffs Cecilia Rea and Dean Rea (collectively "Plaintiffs") and Defendants Peninsula Corridor Joint Powers Board ("PCJPB") and National Railroad Passenger Corporation ("Amtrak") (collectively "Defendants"), hereby stipulate to the following:

1. PURPOSE. Production of documents does not result in the express or implied waiver of any privilege or protection for the materials produced in the course of this litigation in the above-entitled action. It is the parties' intentions to produce all non-privileged documents to each other in this litigation without worrying about how and for what purpose those documents might be used outside of this litigation. To that end, all documents produced by any party to other parties shall be confidential, without need for being marked as such. The parties agree that production of documents in this case shall be governed by the procedures and terms set forth in this Stipulation and Protective Order. This Order shall also govern resolution of any disputes that arise between or among the parties over the designation of any documents or other materials as privileged.

2. DEFINITIONS.

2.1 Party: Any party to this action, including all of his or her or its officers, directors, employees, consultants, retained experts, and Counsel (as defined below).

2.2 Disclosure or Discovery Material: All items or information, regardless of the medium or manner generated, stored, or maintained that are produced or generated in disclosures or responses to discovery by the parties in this matter.

2.3 Protected Material: Any Disclosure or Discovery Material that is privileged under the attorney-client, work product, or other privileges recognized under state or federal law.

2.4 Counsel: Attorneys, as well as their support staff, who are counsel of record in this matter.

2.5 Confidential: All documents produced by the parties to this matter are confidential, meaning that they shall not be disclosed to anyone outside this litigation. Thus, all documents produced by the parties to this litigation may be disclosed to Counsel and the Parties

1 as defined above, and to no one else other than Professional Vendors (see below) who are
2 retained for document services. Counsel for the respective Parties bear the burden to ensure that
3 their owns staffs, their retained experts, and Professional Vendors they retain, comply with this
4 Stipulation and Protective Order. Counsel may opt to have their own staffs, their retained experts
5 and their Professional Vendors sign on to this Stipulation and Protective Order, but even in that
6 case it is the attorneys' burden to ensure compliance. The confidentiality anticipated by this
7 Stipulation and Protective Order shall not require the filing under seal of any disclosure or
8 discovery material that is filed with the Court. Filing under seal shall only be required if there is
9 an independent basis for that requirement.

10 2.6 Professional Vendors: Persons or entities that provide litigation support
11 services (e.g., scanning, photocopying, videotaping, translating, preparing exhibits or
12 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
13 employees and subcontractors retained in this action.

14 2.7 Producing Party: The Party who originally produced disclosure or
15 discovery materials, or from whom documents were sought.

16 3. SCOPE. This Stipulation and Protective Order shall govern all Disclosure or
17 Discovery Material, and all parties to this action and their Counsel of record shall be bound by the
18 provisions hereof. This includes all materials that have already been or will be produced in any
19 manner in this case, whether through initial or supplemental disclosures, discovery, or other
20 vehicles. This Stipulation and Protective Order prohibits the Parties from revealing any
21 information set forth in the preceding sentence in any way, except as provided for in Paragraph 9.

22 4. DURATION. Even after the termination of this litigation, the obligations imposed
23 by this Order shall remain in effect until the parties agree otherwise in writing or a court order
24 otherwise directs.

25 5. MANNER OF PRODUCTION.

26 5.1 Defendants have produced, and both Parties anticipate that they will be
27 producing documents (including making documents available for inspection) to each other in this
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action. The procedures that follow are meant to allow the production to go forward without any Party having to worry about inadvertent disclosure of Privileged or Protected documents and to limit the use of such documents to this matter.

5.2 Where the Parties provide documents for inspection by other parties, the Parties hereby agree that either Party may make selections of those documents for reproduction by a mutually agreed upon Professional Vendor. Selected documents will be scanned by the Professional Vendor and "Bates" stamped. The Parties shall each bear one half of the cost of scanning and "Bates" numbering and will be separately responsible to the Professional Vendor for such costs. No Party shall be deemed to waive any privilege that may apply to the documents selected for copying by other parties. Each Party shall specify the format of production of the documents it requires from the Professional Vendor directly to the Professional Vendor. In addition to their respective responsibilities for one half of the costs of scanning and "Bates" numbering, each Party shall bear all of its own costs for the production of documents it has specified from the Professional Vendor.

6. INADVERTENT DISCLOSURE OF PROTECTED MATERIAL. The inadvertent disclosure of Protected Material that a Party later claims should not have been produced because of a privilege belonging to that entity, including but not limited to the attorney-client privilege or work-product privilege, will not be deemed to waive any privileges. A Producing Party may request the return of any Protected Material. A request for the return of any Protected Material shall identify the Protected Material from the production. If a Producing Party requests the return of any Protected Material, the other Parties must immediately return the material(s) in question to the Party that produced it and destroy all copies, including all information copied or extracted the Protected Material. Parties returning such Protected Material shall not assert as a ground for entering an order compelling production of the Protected Material the fact or circumstances of the inadvertent production.

If a Party identifies information during its inspection, which it believes may be Protected Material, it must immediately notify and/or return the material. Should the Producing Party assert

1 a claim of privilege over the identified material, it may request the return of the Protected
2 Material and any information copied or extracted there from by other Parties.
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4 7. CHALLENGING PRIVILEGE CLAIMS

5 7.1 Meet and Confer. A Party that elects to initiate a challenge to a Producing
6 Party's privilege claim must do so in good faith and must meet and confer. A challenging Party
7 may proceed to the next stage of the challenge process only if it made reasonable efforts to
8 engage in this meet and confer process first.

9 7.2 Judicial Intervention. A Party that elects to press a challenge to a privilege
10 claim after considering the justification offered by the Producing Party may promptly file and
11 serve a motion under Civil Local Rule 7 under seal in compliance with Civil Local Rule 79-5 that
12 identifies the challenged material and sets forth in detail the basis for the challenge for the court
13 to undertake an *in camera* review. Each such motion must be accompanied by a competent
14 declaration that affirms that the movant has complied with the meet and confer requirements
15 imposed in the preceding paragraph and that sets forth with specificity the justification for the
16 privilege claim in the meet and confer dialogue. A Party may seek judicial intervention in
17 accordance with this section at any time in the litigation and intervention sought hereunder is not
18 dependent on discovery deadlines or document production date(s).

19 The burden of persuasion in any such challenge proceeding shall be on the Producing
20 Party. Until the court rules on the challenge, the information must be preserved.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a Party
22 learns that, by inadvertence or otherwise, he or she or it has disclosed Protected Material to any
23 person or in any circumstance not authorized under this Stipulation and Protective Order, the
24 Party must immediately: (a) notify in writing the Producing Party of the unauthorized
25 disclosures; (b) inform the person or persons to whom unauthorized disclosures were made of all
26 the terms of this Order; (c) request that the persons or persons immediately return, sequester or
27 destroy the Protected Materials, including all copies, abstracts, compilations, summaries or any
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1 other form of reproducing or capturing any of the Protected Material to the Producing Party and
2 use his or her or its best efforts to ensure that the person or persons comply with this request; and,
3 (d) whether the Protected Material is returned or destroyed, the person or persons must submit a
4 written certification to the Producing Party within five (5) days that identifies (by category, where
5 appropriate) all the Protected Material that was returned or destroyed and that no copies have
6 been retained.

7 9. DISCLOSURE AND DISCOVERY MATERIAL SHALL BE USED ONLY FOR
8 PURPOSES OF THIS LITIGATION. The Parties agree that all documents produced in this
9 litigation shall be used only for purposes of litigating this case. Documents shall be disclosed
10 only to parties in this litigation and shall not be disclosed to anyone except to the following:

- 11 a. Counsel to Parties in this lawsuit and their agents/servants/employees;
12 b. experts retained by Counsel in this lawsuit;
13 c. the Parties in this lawsuit;
14 d. the Court, Court personnel, Court reporters, and the jury for this lawsuit;
15 and,
16 e. Professional Vendors.

17 10. ALL DISCOVERY OR DISCLOSURE MATERIAL TO BE RETURNED TO
18 PRODUCING PARTY UPON FINAL DISPOSITION OF THIS ACTION - On final disposition
19 of this case, all parties shall within 30 days of the conclusion of this action (whether by
20 settlement, final judgment or dismissal, including the exhaustion of all appeals), without request
21 or further order of this Court, return all Discovery or Disclosure Material produced in this action
22 to the Producing Party, or provide a declaration under penalty of perjury stating that all Discovery
23 or Disclosure Material produced under this protective order, and any and all copies of that
24 information made in any media, have been destroyed in such a way as they cannot be read or
25 recreated.

26 11. ADMISSIBILITY - This Stipulation and Protective Order addresses only those
27 measures and procedures for handling Discovery or Disclosure Material during this litigation
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1 before trial, and does not address the admissibility of any document produced pursuant to this
2 Stipulation and Protective Order on any motion or at trial. The Court will make its own
3 determinations as to the admissibility of any Discovery or Disclosure Material produced under
4 this Stipulation and Protective Order when the need for that determination arises.

5 12. MODIFICATION - This Stipulation and Protective Order may be modified at any
6 time by written agreement of the Parties and order by the Court, or by the Court on a noticed
7 motion by one or more of the Parties.

8 13. JURISDICTION - The Court shall retain jurisdiction to enforce the terms of this
9 Stipulation and Protective Order after the conclusion of this action.

10 14. MISCELLANEOUS

11 (a) Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 (b) Right to Assert Other Objections. By stipulating to the entry of this Order
14 no Party waives any right he or she or it otherwise would have to object to disclosing or
15 producing any information or item on any ground not addressed in this Order. Similarly, no Party
16 waives any right to object on any ground to use in evidence of any of the material covered by this
17 Order.

18 IT IS SO STIPULATED.
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DATED: June 18, 2010

HANSON BRIDGETT LLP

By: *Warren R. Webster*

KIMON MANOLIUS
WARREN R. WEBSTER
ROSHAN JAIN
EMILY M. CHARLEY
Attorneys for Defendants
PENINSULA CORRIDOR JOINT POWERS
BOARD and NATIONAL RAILROAD
PASSENGER CORPORATION

DATED: June 16, 2010

MARY ALEXANDER & ASSOCIATES

By: *Mary & Alexander*

MARY ALEXANDER
JENNIFER L. FIORE
Attorneys for Plaintiffs
CECILIA REA, Individually, as Successor in
Interest of Decedent ANTHONY REA and
Personal Representative of the Estate of
ANTHONY REA, and DEAN REA

IT IS SO ORDERED.

DATED: June 18, 2010

By: *Elizabeth D. Laporte*

ELIZABETH D. LAPORTE
United States Magistrate Judge