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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 BNSF RAILWAY COMPANY and UNION  
 17 PACIFIC RAILROAD COMPANY,

18 Plaintiffs,

19 vs.

20 CALIFORNIA STATE BOARD OF  
 21 EQUALIZATION, et al.,

22 Defendants.

Case No. 3:16-cv-04311-RS

**STIPULATION AND ~~[PROPOSED]~~  
 ORDER REGARDING STAY OF  
 PROCEEDINGS**

Judge: Hon. Richard Seeborg  
 Place: Courtroom 3, 450 Golden Gate Ave.,  
 San Francisco, California

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1 Plaintiffs BNSF Railway Company and Union Pacific Railroad Company (collectively,  
2 “Plaintiffs”) and Defendants California State Board of Equalization, David J. Gau, George  
3 Runner, Fiona Ma, Jerome Horton, Diane L. Harkey, Betty Y. Yee, Kamala D. Harris, California  
4 Governor’s Office of Emergency Services, and Mark Ghilarducci (collectively, “Defendants”), by  
5 and through their counsel, hereby stipulate and agree as follows:

6 WHEREAS, Plaintiffs filed a Complaint and a Motion for Preliminary Injunction to  
7 restrain the collection and enforcement of a charge imposed on the transportation by rail in  
8 California of certain hazardous materials, under a California law known as Senate Bill 84 (the “SB  
9 84 charge”), on the ground that the charge is preempted by certain federal statutory and  
10 constitutional provisions;

11 WHEREAS, on August 18, 2016, pursuant to the stipulation of the parties, the Court  
12 stayed Defendants’ obligation to answer or otherwise respond to the Complaint until 40 days after  
13 the Court’s decision on Plaintiffs’ Motion for a Preliminary Injunction, and stayed all discovery-  
14 related obligations and disclosures under Fed. R. Civ. P. 26 until further order of the Court;

15 WHEREAS, by orders filed October 28, 2016 and November 15, 2016, this Court  
16 preliminarily enjoined the collection and enforcement of the SB 84 charge;

17 WHEREAS, on November 18, 2016, Defendants filed a Notice of Appeal with respect to  
18 the Court’s October 28, 2016 and November 15, 2016 Orders;

19 WHEREAS, Defendants’ appeal has been docketed in the United States Court of Appeals  
20 for the Ninth Circuit as No. 16-17130;

21 WHEREAS, under this Court’s order, Defendants are due to respond to the Complaint on  
22 December 7, 2016;

23 WHEREAS, this Court has scheduled a case management conference for January 19, 2017;

24 WHEREAS, the parties believe that judicial and party resources would best be conserved  
25 by a complete stay of proceedings in this Court during the pendency of Defendants’ appeal;

26 WHEREAS, Defendants have agreed, in the event that the Preliminary Injunction is  
27 stayed, vacated, reversed or otherwise dissolved, that they will at that time seek to collect  
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1 prospectively only—and will not seek to collect retroactively, or otherwise impose liability on  
2 Plaintiffs or Plaintiffs’ customers for—any SB 84 charge that is or could have been imposed.

3 ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the  
4 undersigned parties that:

5 1. All proceedings, including Defendants’ obligation to respond to the Complaint, all  
6 discovery, and all disclosures under Fed. R. Civ. P. 26, should be stayed until final resolution of  
7 Defendants’ appeal.

8 2. The case management conference currently scheduled for January 19, 2017 should be  
9 vacated.

10 3. In the event that the Preliminary Injunction is stayed, vacated, reversed or otherwise  
11 dissolved, Defendants will at that time seek to collect prospectively only—and will not seek to  
12 collect retroactively, or otherwise impose liability on Plaintiffs or Plaintiffs’ customers for—any  
13 SB 84 charge that is or could have been imposed.

14 4. The parties will contact the Court within 7 days of the issuance of the Ninth Circuit’s  
15 mandate in Defendant’s appeal to schedule a case management conference.

16 DATED: December 2, 2016

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DAVID J. FEDER

19 By:           /s/ Benjamin J. Horwich            
20 BENJAMIN J. HORWICH\*

21 Attorneys for Plaintiff BNSF Railway Company

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27 \* I attest that the concurrence in the filing of this document has been obtained from the other  
28 signatories.

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Services, and Mark Ghilarducci

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Pursuant to stipulation, and good cause appearing, IT IS SO ORDERED.

DATED: December 5, 2016

By:   
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Hon. Richard Seeborg

UNITED STATES DISTRICT JUDGE