

1 JOHN D. MOORE, Nevada State Bar No. 8581
jdmoore@springerlawnevada.com
2 **LAW OFFICES OF MICHAEL B. SPRINGER, PC**
9628 Prototype Court
3 Reno, NV 89521
Telephone: (775) 786-7445
4 *Attorneys for Plaintiff and Counterdefendant*
NATIONAL RAILROAD PASSENGER CORPORATION and *Counterdefendant and*
5 *Counterclaimant* UNION PACIFIC RAILROAD COMPANY

6 B. CLYDE HUTCHINSON, Calif. State Bar No. 037526
bch@llcllp.com

7 JOHN W. RANUCCI, Calif. State Bar No. 184801
jwr@llcllp.com
8 VINCENT CASTILLO, Calif. State Bar No. 209298
vcastillo@llcllp.com

9 LIZA SIU MENDOZA, Calif. State Bar No. 242493
lsiumendoza@llcllp.com

10 **LOMBARDI, LOPER & CONANT, LLP**
Lake Merritt Plaza
11 1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541
12 Telephone: (510) 433-2600
Facsimile: (510) 433-2699

13 *Attorneys for Plaintiff and Counterdefendant*
NATIONAL RAILROAD PASSENGER CORPORATION and *Counterdefendant and*
14 *Counterclaimant* UNION PACIFIC RAILROAD COMPANY

15 STEVEN T. JAFFE, Nevada State Bar No. 007035
sjaffe@lawhjc.com

16 **HALL JAFFE & CLAYTON, LLP**
7455 West Washington Avenue, Suite 460
17 Las Vegas, NV 89128
Telephone: (702) 316-4111
18 Facsimile: (702) 316-4114

19 *Attorneys for Defendant*
JOHN DAVIS TRUCKING COMPANY, INC.

20 GARY E. DI GRAZIA, Nevada State Bar No. 000198
gdigrazia@frontiernet.net

21 **GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD.**
530 Idaho Street
22 P.O. Box 1358
Elko, NV 89801

23 Telephone: (775) 738-8091
Facsimile: (775) 738-4220
24 *Attorneys for Counterclaimant*
JOHN DAVIS TRUCKING COMPANY, INC.
25
26
27
28

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>FEB 17 2012</p> </div>	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

1 STEPHEN C. THOMPSON, Oregon State Bar No. 0076359
 steve@ktp-law.com
 2 GEORGE KIRLIN, Oregon State Bar No. 0062046
 george@ktp-law.com
 3 KIRKLIN THOMPSON & POPE LLP
 1100 Yeon Building
 4 522 SW 5th Avenue
 Portland, OR 97204
 5 Telephone: (503) 222-1640
 Facsimile: (503) 227-5251
 6 *Attorneys for Counterclaimant.*
 JOHN DAVIS TRUCKING COMPANY, INC.

7
 8
 9
 10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF NEVADA

12 NATIONAL RAILROAD PASSENGER
 CORPORATION,

13 Plaintiff,

14 v.

15 JOHN DAVIS TRUCKING COMPANY,
 16 INC., a Nevada corporation,

17 Defendant.

18 JOHN DAVIS TRUCKING COMPANY,
 19 INC., a Nevada Corporation,

20 Counterclaimant,

21 v.

22 NATIONAL RAILROAD PASSENGER
 23 CORPORATION, UNION PACIFIC
 RAILROAD COMPANY, and DOES 1-5,

24 Counter-Defendants.
 25
 26
 27
 28

Case No. 3:11-cv-00461 HDM VPC

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: February 21, 2012

Time: 9:00 a.m.

Ctrm: 1

Judge: The Honorable Valerie P. Cooke,
 U.S. Magistrate Judge

LOMBARDI, LOPER & CO NANT, LLP
 Lake Merritt Plaza
 1999 Harrison Street, Suite 2800
 Oakland, CA 94612 -3541

1 TO THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE:

2 COME NOW the parties who have appeared in this action and submit the following Joint
3 Case Management Statement pursuant to the Minutes of the Court filed on November 8, 2011
4 (Doc 60).

5 **CASE MANAGEMENT REPORT**

6 **Issues Pertaining to Locomotive Videos and Event Recorder Data**

7 On January 17, 2012, counsel for John Davis Trucking Company raised the following
8 two issues with counsel for National Railroad Passenger Corporation ("Amtrak"). Below is a
9 description of the two issues and their status:

10 1. **Locomotive Videos:**

11 John Davis Trucking Company seeks the "original" locomotive video images because
12 it claims the encryption format in which they were produced to it makes meaningful
13 analysis of the video impossible. Amtrak disagrees. Furthermore, according to John
14 Davis Trucking, the encryption software takes over all operations on the computer to
15 which the video disc is installed, and any attempt to analyze the video images results
16 in an error message and the cessation of the play. Amtrak disagrees. John Davis
17 Trucking also claims the video cannot be stopped and started frame by frame and that
18 there is no manner in which to analyze the speed rate at which the images were
19 recorded or are being played. It further claims the image quality of the videos is poor,
20 particularly given the high resolution quality of the camera system on-board the
21 locomotives. John Davis Trucking claims critical information about the position of
22 the crossing gates is not visible. It believes these difficulties appear due to the
23 encryption software into which Amtrak or its subcontractor placed the video images.
24 Amtrak disagrees.

25 **John Davis Trucking's Additional Claims:**

26 John Davis Trucking claims there is no way to verify that the video in question is
27 genuine. Amtrak disagrees. It claims the encrypted copy provided to defendant
28 includes only Amtrak's logo and the date of the accident. It also claims it is

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

1 impossible for a forensic specialist to analyze the video for genuineness or for any
2 other feature of importance, such as a frame-by-frame study of the video at the times
3 preceding, during, and following the incident. John Davis Trucking further claims the
4 disc prevents any forensic analysis which could detect tampering if such has occurred.
5 Amtrak disagrees. It argues the disc provided by Amtrak is not a video file in any
6 recognized format. It is an ".exe" file that contains its own software which runs the
7 disc and supersedes the computer's controls. It claims Amtrak has thus far refused to
8 provide the video file from which the encrypted disc was made, or the video data as
9 originally recorded by Amtrak's on board digital video recorder. According to John
10 Davis Trucking, the encryption provided to John Davis Trucking was made on
11 November 1, 2011, shortly after the Court's order directing that the video be produced.
12 John Davis Trucking claims that necessarily means that the encryption was made from
13 a video file in native form which could, and should, have been produced. According
14 to John Davis Trucking, the encrypted disc wholly fails to comply with the
15 requirements of FRCP 34, particularly in light of the 2006 Amendment thereto. (See
16 the Official Commentary to that Amendment.) It alleges the disc Amtrak produced is
17 of such poor quality it is impossible to determine whether the gates were down for the
18 full five seconds minimum time preceding arrival of the train at the crossing, as
19 required by federal regulation. Amtrak disagrees with all the contention above.

20 Status:

21 As noted above, Amtrak disagrees with John Davis Trucking's assessment of the
22 locomotive video. Notwithstanding, the parties have met and conferred and are
23 continuing to meet and confer on these issues. Amtrak is currently investigating
24 whether there is a better quality version of the locomotive videos in existence. Based
25 on the information presently known to Amtrak's counsel, the locomotive video camera
26 is set to record images at 30 frames per second. The multiple copies of the locomotive
27 video provided to John Davis Trucking all display images at 30 frames per second.

28 Amtrak is willing to display the video to the Court so that the Court may judge for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

///

Request to Vacate Case Management Conference

The parties stipulate to vacate the Case Management Conference scheduled for February 21, 2012 at 9:00 a.m.

DATED this 16th day of February, 2012.

LAW OFFICES OF MICHAEL B. SPRINGER, PC

By: /s/ John D. Moore
John D. Moore
Nevada State Bar No. 8581
9628 Prototype Court
Reno, NV 89521
(775) 786-7445
Attorneys for Plaintiff and Counterdefendant
NATIONAL RAILROAD PASSENGER
CORPORATION *and Counterdefendant*
and Counterclaimant UNION PACIFIC
RAILROAD COMPANY

DATED this 16th day of February, 2012.

LOMBARDI, LOPER & CONANT, LLP

By: /s/ B. Clyde Hutchinson
B. Clyde Hutchinson
California State Bar No. 037526
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541
(510) 433-2600
Attorneys for Plaintiff and Counterdefendant
NATIONAL RAILROAD PASSENGER
CORPORATION *and Counterdefendant*
and Counterclaimant UNION PACIFIC
RAILROAD COMPANY

DATED this 16th day of February, 2012.

HALL JAFFE & CLAYTON, LLP

By: /s/ Steven T. Jaffe
Steven T. Jaffe

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Nevada State Bar No. 007035
7455 West Washington Avenue, Suite 460
Las Vegas, NV 89128
(702) 316-4111
Attorneys for Defendant
JOHN DAVIS TRUCKING COMPANY,
INC.

DATED this 16th day of February, 2012.

GOICOECHEA, DI GRAZIA, COYLE &
STANTON, LTD.

By: /s/ Gary E. Di Grazia
Gary E. Di Grazia
Nevada State Bar No. 000198
530 Idaho Street
P.O. Box 1358
Elko, NV 89801
(775) 738-8091
Attorneys for Counterclaimant
JOHN DAVIS TRUCKING COMPANY,
INC.

DATED this 16th day of February, 2012.

KIRKLIN THOMPSON & POPE LLP

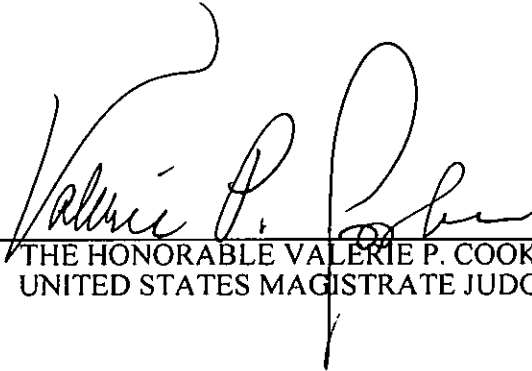
By: /s/ Stephen C. Thompson
Stephen C. Thompson
Oregon State Bar No. 0076359
1100 Yeon Building
522 SW 5th Avenue
Portland, OR 97204
Telephone: (503) 222-1640
Facsimile: (503) 227-5251
Attorneys for Counterclaimant
JOHN DAVIS TRUCKING COMPANY,
INC.

[PROPOSED] ORDER

Per the parties Joint Case Management Statement, the Court hereby vacates the Case Management Conference scheduled for February 21, 2012 at 9:00 a.m. in Courtroom 1.

IT IS SO ORDERED.

DATED: February 17, 2012

By: 
THE HONORABLE VALERIE P. COOKE
UNITED STATES MAGISTRATE JUDGE

LOMBARDI, LOPER & CO NANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612 -3541

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28