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UNION PACIFIC RAILROAD COMPANY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF FRESNO

* * *

SANDRA GONZALEZ, an individual; and,
SARAH VEGA, an individual;

Plaintiffs,

vs.

DEMMA NUTRITION COMPANY, an Arizona
corporation; UNION PACIFIC RAILROAD
COMPANY, a Delaware corporation; COUNTY
OF FRESNO, a public entity; ZIM
INDUSTRIES, INC., a California corporation;
ESTATE OF MICHAELA SMITH, DECEASED;
GREGORY ANELLO, an individual; R.D.
GREEN, an individual; YOSH KAMINE, an
individual; JACOB KAMINE, an individual;
RAYMOND FERNANDEZ, an individual;
CARLOS VELASQUEZ, an individual; and,
DOES 1 to 110, inclusive,

Defendants.

CASE NO. 14CECG00134
Complaint filed: 1/14/14

**DEFENDANT, UNION PACIFIC
RAILROAD COMPANY'S
TRIAL BRIEF**

AND CONSOLIDATED ACTIONS

TRIAL: January 9, 2017
TIME: 9:00 a.m.
DEPT: TBD

Defendant, UNION PACIFIC RAILROAD COMPANY (“Union Pacific”) submits the
following Trial Brief.

At just shy of 2:00 a.m. on August 19, 2013, a car driven by MICHAELA SMITH ran a stop
sign and caused a collision at a rural intersection near Fowler. The intersection complied with the law,
the other driver was going below the posted speed limit and had a green light, and the vehicle that

1 collided with the car, a locomotive, fully complied with the law and could not stop in time to avoid the
2 collision.

3 Union Pacific railroad crossing 756877N (California XING FRE-1417), where the incident
4 occurred, is a private at-grade intersection that has been in existence since the early 1900's. As with all
5 grade crossings in the State of California, the CPUC expressly and exclusively regulates it. As of
6 August 19, 2013, the Crossing was required to be, and was, in compliance with CPUC General Order 75-
7 D. The Crossing had in place all warnings and signage required by CPUC General Order 75-D. The
8 Crossing had in place a blue sign noting the crossing's U.S. Department of Transportation assigned
9 number and an emergency notification number as required by CPUC General Order 75-D § 5.1. The
10 Crossing had in place the Private Crossing ("1-X") sign required by CPUC General Order 75-D § 7.3,
11 stating "Private railroad crossing. No Trespassing. Right to pass by permission. Subject to control of
12 owner. Section 1008 Civil Code." Crossing had in place the STOP ("R1-1") sign required by CPUC
13 General Order 75-D § 7.4.

14 While travelling at speeds below the 60-mph limit on this area of track, the engineer, Romel
15 Green, sounded his train horn four times in the following sequence: two long blasts, one short blast
16 and one long blast. 49 C.F.R. 222.21. The engineer initiated this horn sequence 18 seconds before
17 reaching the Crossing, which was within the required 15 seconds, *but no more than*, 20 seconds,
18 before his lead locomotive entered the Crossing per 49 C.F.R. 222.21. Those blasts are designed to
19 audibly warn motorists at an intersection that a train was coming.

20 Mr. Green had the dual headlight and dual ditch lights fully illuminated on the lead locomotive.
21 The legally-required triangular light pattern was designed to notify people in front of the train that it
22 was a locomotive as opposed to a car or tractor trailer. Eighteen (18) seconds before entering the
23 Crossing, Mr. Green commenced the first, long, horn blast at the "X" whistle board sign located on the
24 right side of the tracks, just beyond the "1/4" mile marker. This activation of the first horn blast
25 automatically activated the locomotive's warning bell, which continued to ring throughout the train's
26 approach until after the collision. The automobile involved in the collision first appears in the distance
27 to the right of the track approximately fifteen (15) seconds before entering the Crossing. Twelve (12)
28 seconds before entering the crossing the engineer commenced the second, long horn blast. Five (5)

seconds before entering the crossing the engineer sounded the third, short, horn blast. Two (2) seconds before entering the crossing the automobile's brake lights came on as it approached the Stop sign. One (1) second before entering the crossing the engineer began the fourth, long, horn blast. The automobile did not stop at the Stop sign, and instead, drove into the path of the train. The horn upon the lead locomotive, 7778, was tested and found to be in full compliance with the decibel level requirements of 49 C.F.R. 229.129.

UNION PACIFIC'S COMPLIANCE WITH THE
LAW RENDERS IT NOT NEGLIGENT

Plaintiffs must demonstrate that the intersection created an unreasonable risk of harm that Union Pacific knew or should have known about. Put simply, Plaintiff's theory is that the intersection did not provide enough warning for Ms. Smith. They posit that had there been more warnings besides a stop sign, a sign with a cross buck emblem, the train's equivalent of stadium lights oscillating back and forth, a whistle blasting loud enough to hear inside neighborhood homes, and the railroad tracks, Ms. Smith would not have driven her car into the path of the oncoming train. The correct inquiry, though, is whether there was adequate warning *for the reasonable driver*. For all reasonable motorists over the past twenty-five years who traversed this intersection without incident, these warnings have been sufficient. For those who, for whatever reason, are not paying attention and violate the law, like Ms. Smith, the result can be catastrophic.

The uncontroverted evidence is that crossing's warnings complied with the law. The evidence further shows the locomotive engineer provided additional warnings by having his lights on and by blowing his horn at the correct time and sequence. For a reasonable motorist, Union Pacific complied with its legal obligations and was reasonable under the circumstances.

So, rather than point to a specific action or condition and claim it is unreasonable or illegal, Plaintiff instead hopes to apply duties to Union Pacific that simply don't apply. That list includes:

- The crossing should be treated like a public road, with additional warnings, despite its designation by the state and federal government as a private crossing;
- There should be a contract in place between the adjacent landowners and Union Pacific despite the fact this crossing was established long before the establishment rule was enacted;

- That the MUTCD regulations apply to this crossing despite clear language in the MUTCD that it does not apply to private crossings;
- That the government-mandated signs, like a reflective stop sign and additional sign with a cross buck are not sufficient to warn motorists of their legal obligation to stop, look, and listen at railroad intersections.

Union Pacific's motions in limine address in more detail why these additional duties should not be imposed on Union Pacific.

**MICHAELA SMITH'S VIOLATION OF THE LAW AND NEGLIGENCE IS THE
SOLE CAUSE OF THIS TRAGIC COLLISION**

Michaela Smith broke the law when she ran a stop sign and caused the collision with the Union Pacific train. Public Utilities Code § 7538. Plaintiffs hypothesize that had there been just one more light, or a limit line on the asphalt, or a contract in place between Union Pacific and an adjacent landowner, then Ms. Smith would have complied with the law and not driven her car into the train's path. They surmise that she must have been confused by the stop sign and, instead of stopping, continued to drive into the path of the train. Yet, when a defendant suggests she was distracted by a car full of friends coming from their second party of the night at 2:00 a.m., Plaintiff's shout, "speculation!"

Plaintiffs must prove, with non-speculative evidence, that a negligent act by Union Pacific was a substantial factor in causing the harm. A substantial factor is one that a reasonable person, not Ms. Smith, would consider to have contributed to the harm. It must be more than a remote or trivial factor.

Here, but for Ms. Smith not complying with the law, this collision would not have happened. To suggest she would have done something differently had a condition been different requires the jury to contemplate the thoughts of a witness who tragically is no longer with us.

**UNION PACIFIC, DESPITE NO LEGAL OBLIGATION TO DO SO, PAID THE FUNERAL
EXPENSES FOR MS. SMITH, MR. FERNANDEZ, AND MS. VELASQUEZ**

Plaintiffs have not incurred significant funerary expenses as Union Pacific paid \$10,000, with no strings attached, for each decedent's funeral.

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As described in further detail in Union Pacific's first motion in limine, Debra Smith, who owned the car her daughter Michaela was driving when she ran the stop sign, is barred from recovering general damages because she failed to insure the car. *CA Civ. Code 3333.4*.

Union Pacific has moved to exclude the testimony of three Smith experts, which may require a 402 hearing outside the presence of the jury. Union Pacific further requests to use a jury questionnaire to help streamline jury selection in what is anticipated to be a 30-day trial. There are no other unusual trial issues anticipated.

FLESHER SCHAFF & SCHROEDER, INC.

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DEFENDANT UNION PACIFIC RAILROAD COMPANY’S TRIAL BRIEF

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DOES 1 to 110, inclusive,

Defendants.

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PROOF OF SERVICE

AND CONSOLIDATED ACTIONS

I, Jeremy J. Schroeder, certify and declare as follows:

I am a citizen of the United States, over 18 years of age, employed in the County of Placer, and
not a party to the within above-entitled action. My business address is 2202 Plaza Drive, Rocklin,
California 95765.

///

On January 4, 2017, I caused to be served the following documents:

○ **UNION PACIFIC RAILROAD COMPANY'S TRIAL BRIEF**

on the following parties in said action as follows:

SEE ATTACHED SERVICE LIST

____ [By Facsimile Machine (FAX)] On _____, at _____ a.m., by use of facsimile machine telephone number (916) 672-6602, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission.

____ [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices at Rocklin, California, addressed as set forth above.

X_ [By Email] By agreement between the parties, I caused a copy of such documents to be sent via email to the addressee(s) below.

____ [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: FedEx.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 4, 2017 at Rocklin, California.

/s/ Jeremy J. Schroeder
Jeremy J. Schroeder

Gonzalez v. Vemma, et al.

Fresno County Superior Court Case No. 14CECG0034

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