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PENINSULA CORRIDOR JOINT POWERS
9 BOARD

FILED
SAN MATEO COUNTY

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Clerk of the Superior Court
BY DEPUTY CLERK

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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN MATEO**

14 PENINSULA CORRIDOR JOINT
15 POWERS BOARD, a joint powers
16 authority,

17 Plaintiff,

18 v.

19 PARSONS TRANSPORTATION GROUP,
INC., an Illinois corporation; ZURICH
20 AMERICAN INSURANCE COMPANY, a
New York corporation; FEDERAL
21 INSURANCE COMPANY, an Indiana
corporation; FIDELITY AND DEPOSIT
22 COMPANY OF MARYLAND, a Maryland
corporation, and DOE ONE through DOE
23 TWO HUNDRED, inclusive,

24 Defendants.

Case No.

17CIV00888

**COMPLAINT FOR BREACH OF
CONTRACT, PROFESSIONAL
NEGLIGENCE, NEGLIGENT
MISREPRESENTATION AND BREACH
OF PERFORMANCE BOND**

17 - CIV - 00888
CMP
Complaint
395164



25 Plaintiff Peninsula Corridor Joint Powers Board ("JPB") alleges as follows:

26 **GENERAL ALLEGATIONS**

27 **The Parties**

28 1. At all times mentioned herein, JPB was, and now is, a joint powers authority

FAXED ORIGINAL

1 created under Section 6500, *et seq.* of the California Government Code. JPB is the
2 public entity that owns, operates, and is responsible for the commuter rail service in the
3 San Francisco Bay Area commorly referred to as "Caltrain." Caltrain serves San
4 Francisco, San Mateo, and Santa Clara counties, operating commuter rail service from
5 San Francisco to the City of Gilroy. JPB is the owner of the Caltrain Peninsula Rail
6 Corridor (the "Caltrain Corridor"), which includes approximately 52 route miles from the
7 San Francisco northern terminus to Control Point ("CP") Lick, south of San Jose.
8 Caltrain also operates on the Union Pacific Railroad for approximately 22 miles from
9 CP Lick south to the City of Gilroy. Caltrain serves over 18 million passengers per year,
10 owns and maintains 32 stations, and operates up to 92 trains per day. In addition,
11 Caltrain dispatches other railroads' trains on the Caltrain Corridor (*i.e.*, tenants), such as
12 the Union Pacific Railroad freight rail system and the Capitol Corridor, Altamont
13 Commuter Express, and Amtrak passenger rail systems. Caltrain also maintains a
14 central control facility in San Jose that houses Caltrain's rail operations control system
15 and user workstations.

16 2. JPB is informed and believes, and on that basis alleges, that at all times
17 mentioned herein, defendant Parsons Transportation Group, Inc. was, and now is, an
18 Illinois corporation doing business in San Mateo County. Parsons Transportation Group,
19 Inc. holds itself out as a company with expertise in the area of train technology, although
20 it has proven either unwilling or unable to perform the requirements of its contract with
21 JPB.

22 3. JPB is informed and believes, and on that basis alleges, that at all times
23 mentioned herein, defendant Zurich American Insurance Company was, and now is, a
24 New York corporation doing business as a performance bond surety in San Mateo
25 County.

26 4. JPB is informed and believes, and on that basis alleges, that at all times
27 mentioned herein, defendant Federal Insurance Company was, and now is, an Indiana
28 corporation doing business as a performance bond surety in San Mateo County.

1 5. JPB is informed and believes, and on that basis alleges, that at all times
2 mentioned herein, defendant Fidelity and Deposit Company of Maryland was, and now is,
3 a Maryland corporation doing business as a performance bond surety in San Mateo
4 County.

5 6. JPB does not know the true names or capacities of defendants named
6 herein as Doe One through Doe Two Hundred, and therefore, sues these defendants by
7 their fictitious names. JPB will ask leave to amend their true names and capacities when
8 the same have been fully ascertained.

9 7. Defendant Parsons Transportation Group, Inc. and defendants named
10 herein as Doe One through Doe Twenty are hereinafter collectively and severally referred
11 to as "Parsons" in the remainder of this Complaint. Defendant Zurich American
12 Insurance Company and defendants named herein as Doe Twenty-One through Doe
13 Forty are hereinafter collectively and severally referred to as the "Zurich" in the remainder
14 of this Complaint. Defendant Federal Insurance Company and defendants named herein
15 as Doe Forty-One through Doe Sixty are hereinafter collectively and severally referred to
16 as the "Federal" in the remainder of this Complaint. Defendant Fidelity and Deposit
17 Company of Maryland and defendants named herein as Doe Sixty-One through Doe
18 Eighty are hereinafter collectively and severally referred to as the "Fidelity" in the
19 remainder of this Complaint.

20 8. JPB is informed and believes, and on that basis alleges, that each of the
21 fictitiously named defendants is in some way legally responsible for the acts alleged in
22 this Complaint.

23 **The Federal Mandate to Implement Positive Train Control**

24 9. In 2008, a Union Pacific freight train and a Metrolink commuter passenger
25 train collided head-on in the Chatsworth district of Los Angeles, causing injuries to
26 hundreds of passengers as well as causing 25 deaths.¹ The accident was primarily

27 _____
28 ¹ Rubin, Simmons, and Landsberg, 'Total Destruction': At Least 17 Die in Head-on

1 attributable to human error, in the form of a distracted engineer. Had a Positive Train
2 Control ("PTC") system² been installed on the trains, the horrific collision may have been
3 prevented. The National Transportation Safety Board ("NTSB") has been recommending
4 positive train control for over 40 years. Between 2004 and 2014, the NTSB has
5 completed investigations of 25 train accidents – which took approximately 65 lives,
6 injured thousands, and caused millions of dollars in damages – which the NTSB believes
7 would have been prevented or mitigated had PTC been implemented.³

8 10. In direct response to the tragic Chatsworth train collision and upon NTSB
9 recommendation, Congress enacted the Railroad Safety Improvement Act of 2008, which
10 mandated the development and implementation of PTC on all Class I and commuter
11 railroads by December 31, 2015.⁴ PTC systems use integrated technologies to prevent
12 train-to-train collisions, overspeed derailments, and movement of trains through switches
13 left in the wrong position, as well as prevent train incursions into work areas. PTC
14 systems allow a train to receive information about its location, understand where it can
15 safely travel, communicate with other trains on nearby tracks, and prevent unsafe
16 movement. The U.S. Department of Transportation, Federal Railroad Administration
17 ("FRA") published a final rule in 2010 regulating PTC systems design, installation, testing,
18 and implementation, and is also authorized to assess significant fines and penalties, and
19 even prevent operation, where railroads fail to comply with the PTC mandate.⁵

20
21 _____
22 Metrolink Crash, Los Angeles Times (September 13, 2008)
<http://www.latimes.com/local/la-me-traincrash13-2008sep13-story.html> [as of November
28, 2016],

23 ² In general, positive train control systems allow for the monitoring and controlling of train
24 movements, with a safety backup to automatically stop trains.

25 ³ See National Transportation Safety Board, Most Wanted List, Implement Positive Train
26 Control Systems (2014) http://www.nts.gov/safety/mwl/Pages/mwl8_2014.aspx [as of
November 2016].

27 ⁴ See Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (2008),
at Section 104.

28 ⁵ See 49 C.F.R Part 236, Subpart I.

1 11. The public safety risks associated with delayed implementation of PTC are
2 significant. Even after the Chatsworth collision and enactment of the Railroad Safety
3 Improvement Act, preventable train accidents continue to occur. For example, in
4 December 2013, a Metro-North Railroad Hudson Line train derailed in New York City,
5 caused in part by an engineer falling asleep, killing four and injuring dozens.⁶ In May
6 2015, an Amtrak train derailed in Philadelphia, likely caused by engineer distraction,
7 killing eight and injuring more than 200.⁷ Most recently, in September 2016, a New
8 Jersey Transit train crashed at the Hoboken Terminal in New Jersey during rush hour,
9 killing one and injuring more than 110 others, including the train operator.⁸ All of these
10 accidents could have been prevented had the trains been operating with PTC. NTSB
11 Chairman Christopher Hart believes that, "[e]very PTC-preventable accident, death and
12 injury on tracks and trains affected by the law will be a direct result of . . . the delayed
13 implementation of this life-saving technology."⁹

14 12. Caltrain is an integral part of the economic engine driving Silicon Valley,
15 providing public commuter rail passenger service between San Francisco and Gilroy.
16 Based on the annual ridership count conducted in January and February of 2016,
17 Caltrain serves an average of 62,416 passengers per weekday, an increase of 7.2
18 percent over 2014 and 83 percent since 2010. Supported by this growing ridership —

19 _____
20 ⁶ Flegenheimer, Matt, Metro-North Train Sped at 82 M.P.H. Ahead of Curve in Fatal
21 Crash, New York Times (December 2, 2013),
[http://www.nytimes.com/2013/12/03/nyregion/metro-north-train-accident-
22 bronx.html?pagewanted=all](http://www.nytimes.com/2013/12/03/nyregion/metro-north-train-accident-bronx.html?pagewanted=all) (as of November 23, 2016).

23 ⁷ Mele, Christopher, Amtrak Agrees to \$265 Million Settlement in Philadelphia Crash that
24 Killed Eight, New York Times (October 27, 2016),
[http://www.nytimes.com/2016/10/28/us/amtrak-265-million-settlement-philadelphia-crash-
25 that-killed-eight.html](http://www.nytimes.com/2016/10/28/us/amtrak-265-million-settlement-philadelphia-crash-that-killed-eight.html) (as of November 23, 2016).

26 ⁸ McGeehan, Rosenberg and Fitzsimmons, Hoboken Train Crash Kills 1 and Injures
27 Over 100, New York Times (September 29, 2016),
[http://www.nytimes.com/2016/09/30/nyregion/new-jersey-transit-train-crash-hoboken.html
28](http://www.nytimes.com/2016/09/30/nyregion/new-jersey-transit-train-crash-hoboken.html) (as of November 23, 2016).

⁹ NTSB "2016 Most Wanted List," available at [http://www.nts.gov/news/press-
releases/Pages/PR20160113.aspx](http://www.nts.gov/news/press-releases/Pages/PR20160113.aspx).

1 which is anticipated to keep growing due to the continued job growth in Silicon Valley and
2 increased vehicular traffic congestion along the U.S. 101 corridor — Caltrain's primary
3 concern continues to be the safety of its riders and the rail system. JPB believes that
4 implementing PTC is not only federally required, but it is also a critical tool for assuring
5 Caltrain's safe, reliable, and efficient rail operations. JPB has acted quickly to fulfill the
6 federal mandate to implement PTC.

7 **FIRST CAUSE OF ACTION**

8 **Breach of Contract**
9 **(Against Parsons, Including Doe One through Doe Twenty)**

10 13. JPB realleges and incorporates herein by reference paragraphs 1, 2, and 6
11 through 12, above.

12 14. On October 6, 2011, the JPB Board of Directors awarded Contract Number
13 10-PCJPB-T-021 to Parsons (the "Contract"), for Parsons to design, procure, test, and
14 install Caltrain's Communications Based Overlay Signal System ("CBOSS") PTC
15 system.¹⁰ While JPB followed a public and competitive solicitation process, JPB did not
16 select the lowest cost proposal for contract award. Instead, JPB selected Parsons
17 because Parsons: (1) represented itself as the foremost leader in train technology;
18 (2) promised to exercise the degree of professional care, skill, efficiency and judgment of
19 contractors with special expertise in railroad technology and train control systems; and
20 (3) promised to comply with all current and successor laws and regulations.¹¹ In addition,
21 Parsons promised to staff its positions with qualified personnel, and Parsons emphasized
22 that it was committed to maintaining the continuity of its key personnel. Parsons'
23 proposal is incorporated into the Contract, a true and correct excerpt of which is attached

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25 ¹⁰ See Peninsula Corridor Joint Powers Board, Resolution No. 2011-43 (October 6,
2011).

26 ¹¹ See Exhibit A, Contract, Sections 2 and 15. The attachments and documents
27 incorporated into the Contract are extremely voluminous, and for that reason are not
28 attached to this Complaint. An excerpt of the Contract is attached to this Complaint, and
the entire Contract will be made available at trial.

1 hereto as Exhibit A and incorporated herein by reference. Since 2011, the Contract has
2 been amended to incrementally increase the scope of work and related costs, with a total
3 current Contract amount of \$159,761,261.

4 15. Given the federally-mandated requirement to implement PTC by
5 December 31, 2015, and the equally important, if not more important critical public safety
6 concerns, Parsons' proposed schedule was a crucial component of the Contract. JPB
7 issued Notice to Proceed to Parsons on January 27, 2012 and the Contract required
8 **Initial In-Service Acceptance¹² no later than October 31, 2015**, with Final Acceptance
9 two hundred and ten days thereafter.¹³

10 16. JPB has performed all terms, conditions, and obligations of the Contract to
11 be performed on its part, excepting only those that have been waived or excused by
12 Parsons' actions or failures of performance.

13 17. Unfortunately for JPB, and the over 18 million people served by Caltrain
14 each year, Parsons has breached the Contract in numerous ways, including but not
15 limited to the following:

16 **Parsons' Failure to Deliver the Complete CBOSS PTC System in 2015**

17 18. Despite its repeated assurances, made both orally and in writing, that it
18 would meet the In-Service Acceptance deadline, Parsons failed to deliver the CBOSS
19 PTC system on October 31, 2015. Prior to October 2015, Parsons submitted numerous
20 monthly reports promising that it would achieve the In-Service Acceptance deadline of
21 October 31, 2015. Unfortunately, despite its many assurances, Parsons failed to meet

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23 ¹² To achieve "In-Service Acceptance" Parsons must complete over 20 steps to JPB's
24 satisfaction, including fully testing and configuring for CBOSS PTC system operation and
25 receipt of the Federal Railroad Administration's written approval for placing the CBOSS
26 PTC system in revenue service. For a more detailed description of In-Service
27 Acceptance, see Exhibit A, Contract, Attachment A, Part 2, Scope of Work, section 2.O.1.

28 ¹³ "Final Acceptance" also requires Parsons to complete over 20 provisions, including
that the Caltrain PTC system continue to meet the PTC interoperability requirements.
For a more detailed description of Final Acceptance, see Exhibit A, Contract,
Attachment A, Part 2, Attachment A, Part 2, Scope of Work, section 2.O.2. and Exhibit A,
Section 1001, Part 1.02.

1 the October 31, 2015 deadline. Parsons must have known that it could not meet the
2 October 31, 2015 deadline, because Parsons continually failed to meet crucial interim
3 milestones without notifying JPB that such failures would impact the overall deadline of
4 October 31, 2015.

5 19. With the December 31, 2015 deadline looming, on October 29, 2015
6 Congress extended the PTC implementation deadline by three years to December 31,
7 2018.¹⁴ This deadline did not require delay in PTC implementation, but merely permitted
8 it. Mindful of the critical public safety issues involved, JPB did not relax the Contract
9 requirements that Parsons achieve Initial In-Service Acceptance no later than
10 October 31, 2015 and Final Acceptance two hundred and ten days thereafter.¹⁵

11 20. Following the Congressional extension, which did not alter the Contract
12 schedule, Parsons began to unilaterally delay the In-Service Acceptance deadline without
13 JPB approval. This was a clear breach of the Contract requirement that JPB approve
14 schedule changes. For example, Parsons began submitting monthly progress schedules
15 beginning in April 2015 (even before any Congressional extension), using December 31,
16 2015 as its new In-Service Acceptance date.¹⁶ Beginning on February 5, 2016, Parsons
17 advised JPB in writing that it would deliver the CBOSS PTC system by October 31, 2016
18 – a full year later than the Contract requirement – even though JPB did not approve the
19 extended schedule. It subsequently became clear that Parsons could not even meet this
20 extended October 31, 2016 deadline, and on or about August 31, 2016 Parsons
21 acknowledged that it would deliver the CBOSS PTC system at least two years late,
22 predicting an October 31, 2017 delivery date. Most recently, at a meeting on or about
23 October 19, 2016, Parsons admitted to JPB that the October 2017 deadline would be

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25 ¹⁴ See Surface Transportation Extension Act, Pub. L. No. 114-73, 129 Stat. 568 (2015),
26 at Section 1302.

27 ¹⁵ In fact, had Parsons complied with the Contract schedule, JPB would not have needed
28 an extension to the original December 31, 2015 deadline.

¹⁶ The Contract required In-Service Acceptance by October 31, 2015.

1 further delayed to an unspecified date in 2018. As of October 2016, Parsons essentially
2 did not know when, if at all, it could deliver the CBOSS PTC system. Parsons' failure to
3 deliver the CBOSS PTC system by October 31, 2015 is an unequivocal breach of the
4 Contract.

5 **Failure to Deliver the On-Board Subsystem**

6 21. Parsons subcontracted with GE Transportation Systems Global Signaling,
7 LP to design and install the core subsystem of the CBOSS PTC, the On-Board System,¹⁷
8 by June 2014. However, instead of achieving the delivery date of June 2014, Parsons
9 delivered to JPB an Excel spreadsheet entitled "30 Step Plan to Completion," proposing
10 a new completion date of May 18, 2015. This date was almost a year behind schedule,
11 and Parsons' spreadsheet failed to describe the impact this delay would have on the
12 overall Project schedule. Parsons also proposed to release various iterations of the
13 system in a piecemeal approach rather than delivering the entire subsystem as required.
14 In July 2014, JPB notified Parsons that the delays were unacceptable, the piecemeal
15 approach was unlikely to succeed, and JPB was seriously concerned with Parsons' lack
16 of progress. Nonetheless, Parsons persisted in its approach. In addition, on or about
17 July 8, 2014, Parsons notified JPB that its subcontractor GETS had created "an alliance"
18 with Alstom, and that the On-Board System would be supplied by Alstom rather than
19 GETS. Under the Contract, JPB reserved the right to approve all subcontractors, yet
20 Parsons never requested, and JPB never provided, formal approval of Alstom, who
21 nevertheless began work as the key On-Board System subcontractor.

22 22. Parsons continued to fall further behind schedule throughout 2014. Only on
23 May 8, 2015 did Parsons formally notify JPB that Parsons would fail to meet even its

24

25 ¹⁷ The On-Board System is a complex Interoperable-Incremental Train Control System
26 that includes an on-board computer that will use its location, onboard database, and
27 information received from the back office and wayside equipment to monitor and control
28 train movements (e.g., location determination, target enforcement, predictive braking,
speed enforcement, wireless crossing activation). The On-Board System will also allow
for interoperability so that the Caltrain system can communicate with other PTC systems.

1 unauthorized extended deadline of May 18, 2015. Moreover, on May 8, 2015, Parsons
2 provided a new plan that fragmented the On-Board System delivery milestones even
3 further, stating that its plan was to design a "Revenue Service Demonstration" ("RSD")
4 version of the On-Board System by May 22, 2015. But the RSD version would not be
5 interoperable — meaning it could not communicate with the PTC system of another host
6 railroad, a key requirement of the Contract — and it would not include other important
7 functionalities required in the Contract. Parsons told JPB on May 8, 2015 that it would
8 not deliver these functions until December 31, 2015. Furthermore, on May 12, 2015,
9 Parsons admitted to JPB that the December 31, 2015 deadline was not actually feasible
10 and the full delivery was more likely to occur during the first quarter of 2016.

11 23. As time progressed, Parsons' repeated delay in providing the On-Board
12 System obviously made it impossible that Parsons could meet the stated deadline for In-
13 Service Acceptance deadline. Nonetheless, Parsons' monthly schedules continued to
14 include entirely unrealistic time frames for In-Service Acceptance. For example, on
15 November 4, 2015, after Parsons had already breached the Contract by failing to meet
16 the October 31, 2015 deadline, Parsons made a presentation to JPB that included a
17 patently false schedule, stating that it would have the RSD application ready to be
18 submitted to the U.S. Department of Transportation, Federal Railroad Administration by
19 December 6, 2015. This would have allowed Parsons essentially one month to complete
20 all testing and in any event would have made the December 31, 2015 deadline for In-
21 Service Acceptance impossible. Indeed, by December 3, 2015, Parsons was
22 backpedaling from its commitment to submit the RSD application in December, made
23 less than one month previously, and was already suggesting that a more realistic date
24 was June 2016. As a purported leader in train technology, Parsons must have known
25 that its repeated submission of inaccurate schedules was false and unachievable.

26 24. Following Parsons' unilateral and unauthorized decision to extend the In-
27 Service Acceptance deadline to October 31, 2016, Parsons made a similar unilateral and
28 unauthorized decision to extend its deadlines to deliver the On-Board System. For

1 example, on or around February 2016, Parsons stated that the On-Board System version
2 3.3.3, which does not meet the Contract's requirements, would not be delivered until
3 March 17, 2016. Parsons told JPB that it would deliver the final version 3.3.4, with
4 functionalities required by the Contract, on August 9, 2016. Unfortunately, Parsons also
5 missed that deadline. To date, Parsons still has not provided the On-Board System, and
6 has failed to commit to a date certain for when it will provide the On-Board System.

7 **Failure to Exercise Specialized Knowledge, Skill and Expertise**

8 25. Parsons also loaded and tested its software without following required
9 protocols, potentially causing significant problems. The FRA sets safety standards for all
10 stages of PTC development, including field testing requirements.¹⁸ In compliance with
11 the regulations, JPB submitted a Test Waiver Request to the FRA on October 30, 2014,
12 so that it could test an early version of the On-Board System. The FRA conditionally
13 approved the Test Waiver by letter dated December 9, 2014. In order to comply with the
14 FRA Test Waiver procedures, Parsons, through JPB, was required to send software
15 release notes to the FRA prior to loading the software on the test train. This procedure
16 was critical, since failure to follow the proper FRA protocol could jeopardize JPB's ability
17 to rely on the Test Waiver going forward. Parsons was well aware that it was required to
18 follow the FRA-mandated Test Waiver procedures, as well as obtain JPB's consent, prior
19 to loading or testing software. Such requirements were clearly stated in the Contract and
20 should have been known by any contractor with specialized rail expertise. Despite this,
21 on or about May 24, 2016, Parsons loaded software on the test train without receiving
22 JPB consent, and without confirming whether the JPB had sent the software release
23 notes to the FRA. Parsons' conduct was in flagrant disregard of the regulations and
24 established procedures, and could have caused a significant problem had the software
25 malfunctioned. As a purported expert in train technology, Parsons' actions are
26 particularly reprehensible.

27 _____
28 ¹⁸ See 49 CFR 236.1001 *et seq.*

1 26. Parsons also failed to use its specialized knowledge and/or perform the
2 diligence necessary to develop and follow viable implementation schedules when it
3 developed its methodology for delivering a PTC system ready for RSD. For example, not
4 only did Parsons' fragmented approach to achieving RSD conflict with the Contract terms,
5 the approach also conflicted with the FRA's earlier approval of the JPB's PTC
6 Development Plan. In or around June 2016, Parsons discussed its newly proposed
7 methodology for the On-Board System with the FRA. The new methodology included
8 less functionality than what was approved in the PTC Development Plan, in that it did not
9 include an on-board translator. Rather than understanding that its proposal conflicted
10 with the underlying PTC Development Plan and that the FRA must approve any changes
11 to the Development Plan prior to achieving RSD, on August 1, 2016, Parsons had JPB
12 submit Parsons' "white paper" to the FRA describing the technical proposal in a further
13 attempt to seek FRA buy-in. Not surprisingly, in an August 15, 2016 email to JPB, the
14 FRA promptly rejected Parsons' approach as inconsistent with the PTC Development
15 Plan. In its rejection, the FRA reminded Parsons that, as it should have been aware,
16 such change must first be formally submitted to the FRA as a request for approval
17 included with a revised PTC Development Plan. Parsons should have known that its
18 proposed methodology would be rejected by the FRA.

19 27. Moreover, because of Parsons' piecemeal releases of system software,
20 each release required testing. JPB provided a test train, train crew, management, diesel
21 fuel, dispatchers, and JPB witnesses, plus other owner's team support services, for a
22 much longer duration than envisioned in the original baseline schedule. For example, as
23 of November 14, 2016, JPB had made its test train available to Parsons for
24 approximately 486 calendar days, and of those days, approximately 262 full nights, as
25 well as some partial nights, were utilized by Parsons. This utilization of JPB resources is
26 significantly greater than was originally contemplated under the Contract. Had Parsons
27 adhered to the original Contract terms and baseline schedule, JPB would not have
28 incurred the costs associated with the additional testing support.

1 28. In addition, Parsons failed to use its specialized knowledge, skill and
2 expertise to ensure that its subcontractor's Back Office System ("BOS") design met all
3 program requirements. The FRA's approval of the CBOSS system was predicated upon
4 the BOS including a "Transformation Check." This aspect of the CBOSS system
5 supports the protection of specific sections of a railroad by checking both permanent
6 speed restrictions and any temporary speed restrictions. The Transformation Check is a
7 significant part of the protection as it verifies that any temporary speed restrictions or
8 well-defined work limits are correctly translated in real time to the PTC system. Parsons
9 reviewed and approved its subcontractor's BOS design, even though the BOS design
10 failed to include a Transformation Check. Even more egregious, Parsons billed JPB for
11 payment of the BOS installation and verification milestones, and accepted payment from
12 JPB for this work, despite this critical defect in the BOS design.

13 **Failure to Properly Staff Key Positions**

14 29. Because of the critical nature of the CBOSS PTC schedule, the Contract
15 required Parsons to dedicate specific experts to fill Key Personnel positions. In fact, JPB
16 awarded the Contract to Parsons, in significant part, in reliance on the expertise of
17 Parsons' proposed team. Section 14 of the Contract requires that Key Personnel must,
18 at all times, undertake, render, and oversee the Project, dedicate 100% of their time to
19 the Project, be exclusive to the Project, and must not be reassigned without JPB's written
20 approval.¹⁹ Section 29 of the Contract defines a breach as including a failure to provide
21 specified Key Personnel.²⁰ At the time of Contract execution, the Key Personnel included
22 the following eleven positions: (1) Project Manager: Gary Rehm; (2) Safety Officer: Mike
23 Nelson; (3) Systems Safety Engineer: Sal Gilardi; (4) Project Controls
24 Manager/Scheduler: Thomas O'Neill; (5) Signal Engineer: Richard Chan; (6) Signal Field
25 Manager: James (Bo) Duffy; (7) Training Manager: Dave Schlesinger; (8) Systems

26 _____
27 ¹⁹ See Exhibit A, Contract, Section 14.

28 ²⁰ See Exhibit A, Contract, Section 29.

1 Engineer (Integrator): David Nolle, PE; (9) Communications Engineer: Jon Richards, PE;
2 (10) Backup Central Control Facility Systems Integrator: Aaron Parets, PE, PMP, RCDD;
3 (11) Vehicle Engineer: TBD.

4 30. Almost immediately after Contract award, Parsons failed to provide the
5 specified Key Personnel and then failed to keep the Key Personnel fully staffed
6 throughout its performance under the Contract. Moreover, Parsons changed Key
7 Personnel positions without receiving JPB approval. In addition, other Key Personnel left
8 Parsons very early in the conduct of the Project.

9 31. Parsons' failure to staff the Key Personnel position of Project Manager —
10 perhaps Parsons' most important position of all — is particularly illustrative of the
11 indifference Parsons has demonstrated towards its performance on the Contract. First,
12 Parsons replaced Project Manager Gary Rehm with Ian Choudri. Then, in an email dated
13 May 30, 2014, Parsons notified JPB that Mr. Choudri was promoted to the position of
14 "Western North American Sector Manager," and that Parsons was in the process of
15 finding a new Project Manager for the CBOSS Project. JPB responded the same day,
16 denying approval of the Project Manager replacement, expressing its disappointment in
17 losing the Key Personnel, and reminding Parsons that it must obtain JPB approval any
18 Key Personnel reassignment. However, despite JPB's disapproval of the reassignment,
19 Mr. Choudri was largely absent from the CBOSS Project from around June 2014
20 onwards. In Mr. Choudri's absence, Parsons was repeatedly non-responsive to JPB,
21 with the result that Parsons' failure to meet deadlines only grew worse.

22 32. In addition, on or around March 1, 2012, Parsons removed the Project
23 Controls Manager/Scheduler position from its organization chart. When JPB questioned
24 the removal, Parsons explained that the position would instead be managed by the
25 Project Controller and Project Scheduler, despite the Contract requirement that Parsons
26 staff this Key Personnel position. Parsons provided no assurance as to whether the
27 Project Controls Manager/Scheduler position would be reinstated.

28 ///

1 33. Although Parsons indicated that Aaron Parets would serve as the Backup
2 Central Control Facility Systems Integrator, Mr. Parets never appeared onsite. When
3 JPB asked about his absence sometime on or about April 12, 2012, it took Parsons over
4 a month to respond, stating that the activities needed to fill the role were being filled by
5 other individuals. JPB determined that this response was unacceptable and notified
6 Parsons that an appropriate person must fill the role as required under the Contract.
7 Parsons did not attempt to fill the position until August 2012. Ultimately, rather than
8 assigning Mr. Parets or seeking JPB's approval of another individual with the requisite
9 experience to fill the role, Parsons assigned Marc Gouyon, the Deputy Project Manager,
10 to also serve as the BCCF Systems Integrator. JPB notified Parsons of its concern that
11 Mr. Gouyon did not have the necessary experience, and JPB never approved his
12 appointment to BCCF Systems Integrator. Nonetheless, Parsons never assigned a full-
13 time BCCF System Integrator, and instead assigned this role to Mr. Gouyon as an
14 additional duty.

15 34. Overall, Parsons failed to fully staff its Key Personnel at all times during the
16 Project, failed to obtain JPB approval prior to reassigning positions, failed to ensure that
17 the Key Personnel would devote 100% of their time to the Project, and failed to
18 adequately undertake, render, and oversee the Project.

19 **Breach of Implied Covenant of Good Faith and Fair Dealing**

20 35. In every contract or agreement there is an implied promise of good faith and
21 fair dealing. This means that each party will not do anything to unfairly interfere with the
22 right of any other party to receive the benefits of the contract. The benefits that JPB
23 contracted to receive from Parsons include, without limitation, Parsons' purported special
24 expertise in railroad technology and train control systems and Parsons' diligent and
25 timely efforts in applying that expertise in the performance of work required by the
26 Contract, all for the purpose of improving public safety. Parsons' breaches of the
27 Contract described above have deprived JPB of the benefits of the Contract, and
28 therefore constitute a breach of the implied covenant of good faith and fair dealing.

1 **Formal Notice of Breach of Contract and Demand to Cure**

2 36. Because of Parsons' continuous delays and failure to meet contractual
3 deadlines, and in particular the In-Service Acceptance date of October 31, 2015, JPB
4 delivered Parsons a Notice of Breach and Demand to Cure ("Notice of Breach") on or
5 about February 26, 2016. A true and correct copy of the Notice of Breach is attached
6 hereto as Exhibit B and incorporated herein by reference. Pursuant to Section 29.2 of
7 the Contract, the Notice of Breach included the opportunity for Parsons to cure its breach
8 by providing a plan acceptable to JPB by March 14, 2016. Consistent with its prior
9 conduct under the Contract, as its attempt to cure the breach Parsons submitted an
10 unrealistic baseline schedule based in part on impractical, incomplete, and/or inaccurate
11 assumptions, and/or omitted required milestones. JPB notified Parsons that the cure
12 plan was unacceptable by letter dated April 6, 2016.

13 37. In the interest of moving the Project forward, JPB refrained from
14 immediately terminating the Contract. On May 10, 2016, JPB sent Parsons a letter again
15 rejecting its cure plan, but agreeing to cooperate with Parsons' attempt to meet three
16 proposed milestones: (1) Submission of the RSD application to the FRA by July 22,
17 2016; (2) Full approval by the FRA of RSD on the Caltrain right of way, fully interoperable
18 with all Caltrain tenants, by October 24, 2016, and (3) Final Acceptance by April 26,
19 2017.

20 38. Almost immediately after JPB sent the May 10, 2016 letter, and despite
21 JPB's good faith efforts to help Parsons succeed, Parsons' performance began to
22 deteriorate. On May 26, 2016, JPB and Parsons held a partnering session at which
23 Parsons agreed, in writing, to achieve In-Service Acceptance by October 24, 2016.
24 Following the FRA rejection of Parsons' proposed methodology for obtaining FRA
25 approval for RSD, Parsons notified JPB on August 31, 2016 that this milestone in fact
26 would be delayed until October 2017. In an October 19, 2016 meeting, Parsons notified
27 JPB that the October 2017 deadline would be even further delayed, to an unspecified
28 date in 2018. Effective February 22, 2017, JPB terminated the Contract for default.

1 e. Designing and developing a data communications subsystem which,
2 among other things, provide interoperability with tenant operators on Caltrain tracks;

3 f. Designing, developing and testing software used on the Project;

4 43. Parsons was required to perform its work in full compliance with the
5 requirements in the contract documents.

6 44. Parsons owed a duty of care to JPB. Specifically, Parsons was required to
7 provide that degree of professional care, skill, efficiency and judgment exercised by
8 contractors with special expertise in railroad technology and train control systems.
9 Moreover, the nature and purpose of the Project resulted in the formation of a special
10 relationship between JPB and Parsons, such that Parsons knew or should have known
11 that JPB would suffer economic and other losses if Parsons failed to exercise reasonable
12 care and skill in providing its services to JPB, and Parsons owed JPB a duty of care to
13 prevent such losses from occurring.

14 45. JPB is informed and believes, and on that basis alleges, that Parsons
15 breached its duty of care by, among other things, doing the following:

16 a. Failing to properly perform design integration tasks, which resulted in
17 Parsons fragmenting the design and designing by trial and error;

18 b. Failing to properly integrate the On-Board System with other portions
19 of the Project;

20 c. Designing and seeking approval of an On-Board System that did not
21 provide for operation of Caltrain trains on Caltrain tracks, due to the lack of an on-board
22 translator. This approach was disapproved by the FRA, resulting in delays to the Project;

23 d. Subcontracting for and approving the design of a BOS that failed to
24 include a Transformation Check;

25 e. Designing an overall system that did not provide for interoperability
26 of tenant trains on Caltrain tracks, or Caltrain trains on Union Pacific Railroad tracks, due
27 to Parsons' continued use of an outdated BOS version for the system, resulting in delays
28 to the Project;

1 f. Failing to create a working environment for tenant trains on Caltrain
2 tracks, resulting in delays to the Project; and

3 g. Failing to properly design and implement software testing
4 procedures, which resulted in Parsons testing software without required protocols.

5 46. As a direct and proximate result of Parsons' breach of its duty of care, JPB
6 has and continues to suffer damages in an amount which JPB currently believes to be
7 not less than \$98,000,000.00. JPB will insert the exact amount of damages herein by
8 amendment when ascertained or according to proof at trial.

9 **THIRD CAUSE OF ACTION**

10 **Negligent Misrepresentation**
11 **(Against Parsons, Including Doe One through Doe Twenty)**

12 47. JPB realleges and incorporates herein by reference paragraphs 1, 2, 6
13 through 12, and 14 through 40, above.

14 48. In its proposal, Parsons made a number of representations to JPB. For
15 example, Parsons represented to JPB that it was the foremost leader in train technology
16 and had a unique, high performance team. Parsons further represented that it would
17 exercise the degree of professional care, skill, efficiency and judgment of contractors with
18 special expertise in railroad technology and train control systems, and Parsons promised
19 to comply with all current and successor laws and regulations. In addition, Parsons
20 promised to staff its positions with qualified personnel, and emphasized that it was
21 committed to maintaining the continuity of its key personnel for the duration of the
22 Project. In part in reliance upon Parsons' representations, JPB awarded the Contract to
23 Parsons.

24 49. During the Project, Parsons periodically submitted schedules to JPB that
25 Parsons represented were accurate and reasonable.

26 50. The representations made by Parsons were false. As evidenced by
27 Parsons' failures on the Project, Parsons was anything but the foremost leader in train
28 technology, and it did not have a high performance team. Moreover, Parsons failed to

1 exercise the degree of professional care, skill, efficiency and judgment of a contractor
2 with special expertise in railroad technology and train control systems and Parsons did
3 not comply with all current and successor laws and regulations. Furthermore, Parsons
4 failed to staff its positions with qualified personnel, and did not maintain the continuity of
5 its key personnel during the Project, failing to fill some key positions, and changing the
6 personnel assigned to others. In addition, Parsons submitted schedules to JPB that were
7 unreasonable and in some cases unachievable.

8 51. When Parsons made these representations, it had no reasonable grounds
9 for believing them to be true.

10 52. JPB, at the time the representations were made by Parsons, was unaware
11 of the falsity of Parsons' representations and believed them to be true. In reliance on
12 these representations, JPB was induced to award the Contract to Parsons and
13 unknowingly allowed Parsons to continue to follow its proposed approach on the Project
14 and continue to receive payments from JPB. Had JPB known the actual facts, it might
15 not have awarded the Contract to Parsons, would not have allowed Parsons to continue
16 to follow its proposed approach on the Project, and would have terminated Parsons for
17 default much earlier. JPB's reliance on Parsons' representations was justified because
18 Parsons gave no indication of the falsity of its representations.

19 53. As a direct and proximate result of Parsons' misrepresentations, JPB has
20 and continues to suffer damages in an amount which JPB currently believes to be not
21 less than \$98,000,000.00. JPB will insert the exact amount of damages herein by
22 amendment when ascertained or according to proof at trial.

23 **FOURTH CAUSE OF ACTION**

24 **Breach of Performance Bond**
25 **(Against Zurich, Including Doe Twenty-One through Doe Forty;**
26 **Federal, Including Doe Forty-One through Doe Sixty; and**
27 **Fidelity, Including Doe Sixty-One through Doe Eighty)**

28 54. JPB realleges and incorporates herein by reference paragraphs 1 through
12, and 14 through 40, above.

1 55. JPB is informed and believes, and on that basis alleges, that on or about
2 December 7, 2011, in accordance with the Contract, Parsons, as principal, and Zurich,
3 Federal and Fidelity, as sureties, executed Performance Bond number 09064742,
4 82060829 (the "Bond") in the original penal sum of \$138,135,673.00. As the Contract
5 was amended, the penal sum increased accordingly, such that the actual penal sum is
6 now \$159,761,261.00. A true and correct copy of the Bond is attached hereto as
7 Exhibit C and incorporated herein by reference.

8 56. By its terms, the Bond guarantees Parsons' faithful performance of all
9 covenants, conditions and agreements of the Contract, including without limitation all of
10 Parsons' warranty obligations under the Contract, and that Zurich, Federal and Fidelity
11 will pay JPB for all costs, damages and expenses associated with Parsons' failure to
12 faithfully perform all covenants, conditions and agreements of the Contract.

13 57. Parsons has failed to faithfully perform all covenants, conditions and
14 agreements of the Contract by, among other things, failing to deliver the complete
15 CBOSS PTC System in 2015; failing to deliver the On-Board Subsystem; failing to
16 exercise specialized knowledge, skill and expertise; failing to properly staff key positions,
17 and breaching the implied covenant of good faith and fair dealing, as alleged in more
18 detail above.

19 58. JPB has made repeated oral and written demands to Parsons to cure its
20 breaches of the Contract, but despite such requests and demands Parsons has failed
21 and refused to do so.

22 59. JPB is informed and believes, and on that basis alleges, that Zurich,
23 Federal and Fidelity breached their obligations under the Bond by, among other things,
24 failing to perform all obligations of Parsons under the Contract.

25 60. As a direct and proximate result of Zurich's, Federal's and Fidelity's breach
26 and failure to perform their obligations under the Bond, JPB has and continues to suffer
27 damages in an amount which JPB currently believes to be not less than \$98,000,000.00

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1 JPB will insert the exact amount of damages herein by amendment when ascertained or
2 according to proof at trial.

3 61. The Bond contains an attorneys' fees clause that provides that, in the event
4 suit is brought upon the Bond by JPB, Zurich, Federal and Fidelity shall pay JPB's
5 reasonable attorneys' fees and costs incurred in such suit. JPB has engaged the law firm
6 of Hanson Bridgett LLP to commence and prosecute this action. Therefore, JPB is
7 entitled to an award of its reasonable attorneys' fees and costs.

8 62. JPB has performed all conditions precedent to its right to recover from
9 Zurich, Federal and Fidelity on the Bond.

10 Wherefore, JPB prays for judgment as follows:

11 A. On its First Cause of Action for Breach of Contract:

- 12 1. Damages in the amount of \$98,000,000.00 or according to proof at
13 trial;
- 14 2. Interest at the legal rate of ten percent (10%) *per annum* through
15 date of entry of judgment herein;
- 16 3. Reasonable attorneys' fees;
- 17 4. Costs of suit; and
- 18 5. Such other and further relief as the Court may deem proper.

19 B. On its Second Cause of Action for Professional Negligence:

- 20 1. Damages in the amount of \$98,000,000.00 or according to proof at
21 trial;
- 22 2. Interest at the legal rate of ten percent (10%) *per annum* through
23 date of entry of judgment herein;
- 24 3. Costs of suit; and
- 25 4. Such other and further relief as the Court may deem proper.

26 C. On its Third Cause of Action for Negligent Misrepresentation:

- 27 1. Damages in the amount of \$98,000,000.00 or according to proof at
28 trial;

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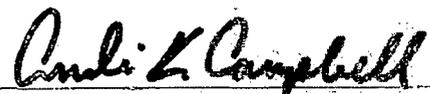
- 2. Interest at the legal rate of ten percent (10%) *per annum* through date of entry of judgment herein;
- 3. Costs of suit; and
- 4. Such other and further relief as the Court may deem proper.

D. On its Fourth Cause of Action for Breach of Performance Bond:

- 1. Damages in the amount of \$98,000,000.00 or according to proof at trial;
- 2. Interest at the legal rate of ten percent (10%) *per annum* through date of entry of judgment herein;
- 3. Reasonable attorneys' fees;
- 4. Costs of suit; and
- 5. Such other and further relief as the Court may deem proper.

DATED: February 27, 2017

HANSON BRIDGETT LLP

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