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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN MATEO

13 PARSONS TRANSPORTATION GROUP, an
Illinois corporation,

14 Plaintiff,

15 vs.

16 PENINSULA CORRIDOR JOINT POWERS
17 BOARD, et al.,

18 Defendants.

19 AND RELATED ACTIONS AND CROSS-
20 ACTIONS.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/11/2022
By /s/ Vanessa Jimenez
Deputy Clerk

Lead Case No. 17CIV00786

(Consolidated with 17CIV00888, 17CIV05365
and 18CIV05912)

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

**ALSTOM SIGNALING OPERATION,
LLC'S OPENING TRIAL BRIEF**

Trial Date: March 15, 2022
Time: 9:00 a.m.
Department: 23
Judge: Honorable V. Raymond Swope

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1 **I. INTRODUCTION**

2 Alstom Signaling Operation, LLC's (Alstom) will prove at trial that it performed its
3 obligations under its Subcontract¹ with Parsons Transportation Group (Parsons) for the Caltrain
4 Positive Train Control (PTC)² Project. Specifically, it timely provided the onboard subsystem and
5 other portions of its scope of work except where it was prevented from doing so by JPB and Parsons
6 delays, impossibility, and the stop work order Parsons issued due to the improper termination of its
7 Prime Contract by the Peninsula Corridor Joint Powers Board (JPB). Parsons breached the
8 Subcontract by failing to pay Alstom **\$15,992,961** for its work. Once prejudgment interest is
9 properly added, Alstom will be entitled to recover **\$24,290,109**.

10 Parsons' defenses to Alstom's claims, and both Parsons' and JPB's claims against Alstom,
11 all fail for the same reason: They cannot prove JPB's termination of the Prime Contract was
12 factually or legally justified. As such, Alstom's claims must succeed, and all of Parsons' and JPB's
13 claims³ fail – for lack of Alstom liability or any recoverable damages.

14 To decide the validity of JPB's termination, and so this case, the Court need only
15 determine a few largely undisputed facts. As explained below, the evidence at trial will show:

- 16 1. The JPB-Parsons Prime Contract required delivery of an
17 interoperable PTC system, referred to as the Communications Based
18 Overlay Signal System (CBOSS), by October 31, 2015, referred to
19 as the "Initial Revenue In Service" (IRIS) Milestone.
- 20 2. By October 31, 2015, JPB could no longer enforce the IRIS
21 Milestone Date in the Prime Contract because JPB's critical path
22 delays excused Parsons' (and Alstom's) obligation to meet that
23 date and because it was impossible for Parsons (and Alstom) to
24 meet that date.
- 25 3. Even if JPB could have enforced the October 2015 IRIS Milestone
26 Date under the Prime Contract, Parsons could not have done so
27 under the Subcontract due to Parsons' own delays.
- 28 4. After JPB sent its Notice threatening termination, it allowed
Parsons (and Alstom) to continue performing for more than a year,
and JPB neither enforced the October 2015 IRIS Milestone, by
timely terminating the Prime Contract, nor established a new

26 ¹ Parsons originally subcontracted with Alstom's predecessor in interest, General Electric
27 Transportation Systems Global Signaling, LLC (GETS).

28 ² See Trial Ex. 18 for a useful glossary of terms defined in the Prime Contract.

³ Or at least those that survive Alstom's pending demurrers, set for hearing on March 14, 2022.

1 delivery date, by amending the Prime Contract.

- 2 5. JPB terminated the Prime Contract for cause based on Parsons' failure
3 to deliver an interoperable PTC system by the October 2015 IRIS
4 Milestone Date.

5 Under these circumstances, JPB clearly could not terminate the Prime Contract for cause for
6 failing to meet the October 2015 IRIS Milestone Date. In order to avoid the consequences of that
7 conclusion, Parsons and JPB will attempt to show that, despite the plain language of the
8 contracts and the termination notices, JPB terminated the Prime Contract not for missing the
9 October 2015 IRIS Milestone, but for failing to make progress toward new dates that Parsons
10 added to its progress schedules from July 2016 through January 2017 (shortly before
11 termination). JPB never amended the Prime Contract to add these new dates and never agreed to
12 them informally; rather, JPB considered them "unilateral" changes that Parsons made without
13 changing the parties' contract obligations.

14 Once JPB's termination falls, like dominoes, so do all of Parsons and JPB's claims and
15 defenses in this lawsuit. In short, Parsons claims that Alstom breached the Subcontract by, and
16 was negligent in, failing to deliver the On-Board Subsystem (principally software) by the IRIS
17 Milestone Date, failed to indemnify Parsons for JPB's claims against it for failing to deliver the
18 PTC System by that date, and negligently misrepresented its progress toward the IRIS
19 Milestone. For all of these claims, Parsons seeks the same alleged damages – the amounts it
20 claims it was owed by JPB under the Prime Contract but was not paid *due to the termination*
21 and its delay damages from the October 2015 IRIS Milestone Date through termination.

22 Without a valid termination, and with JPB delays (and impossibility) entitling Parsons
23 and Alstom to extensions of the IRIS Milestone Date to well beyond the termination date,
24 Parsons cannot recover any of its claimed damages from Alstom. This is especially true because
25 Parsons has an additional hurdle to clear here: its inability to recover from JPB is also due to its
26 agreement to release its claims in a "walk-away" settlement (mutual releases and dismissals, no
27 payments made). *See* Parsons' First Amended Cross-Complaint ¶¶ 20, 21, 36. This means Parsons
28 will also have to prove that, despite the clear infirmities of the termination, it was reasonable
for Parsons to walk away from its claims. This it cannot do, and its own "forgiven receivables"

1 claim is not covered by any indemnity obligations in the Subcontract anyway. Likewise, JPB's
2 damages all derive from either costs incurred from October 2015 through termination – which it
3 may not recover since the October 2015 IRIS Milestone Date was unenforceable – or its costs
4 to complete its PTC system with a substitute vendor – which are unrecoverable without a valid
5 termination for cause.

6 In summary, Parsons and Alstom's obligations to meet the October 2015 IRIS Milestone
7 Date were excused by delays for which JPB was responsible, no new contract date was ever set,
8 and the IRIS Milestone was impossible to meet. Thus, JPB's termination was improper and a
9 breach of the Prime Contract. This dooms Parsons' and JPB's claims, and, since virtually all of
10 Parsons' defenses to Alstom's claims fail upon Parsons' and JPB's failure to prove the
11 termination was proper, Alstom will be entitled to prevail on all claims.

12 **II. THE KEY PLAYERS**

13 Before going into more detail on the key facts, a brief introduction to the parties and
14 relevant third-parties may be helpful.

15 **A. Peninsula Corridor Joint Powers Board (JPB)**

16 JPB owns Caltrain. It is a small commuter railroad, regulated by the Federal Railroad
17 Administration (FRA) and subject to the Federal PTC mandate.⁴ It had little to no influence on
18 or insight into the evolving PTC standards that affected the Project. Caltrain operates on its own
19 tracks and those of Union Pacific Railroad (UPRR). Other railroads (e.g., UPRR, Amtrak) also
20 operate on Caltrain tracks. JPB contracted with Parsons for the interoperable CBOSS PTC
21 system. During the relevant time-period, JPB needed to reach agreement with UPRR not only
22 regarding how their PTC systems would interoperate but also, more significantly, on
23 electrification and high speed rail. JPB had little or no experience or expertise in large

24 _____
25 ⁴ This Project was motivated by the Federal PTC Mandate in which Congress directed the FRA
26 to require all freight and commuter railroads to complete PTC systems, and, for railroads that
27 acted as hosts or tenants, that those systems be fully interoperable. The subject railroads were
28 initially required under the mandate to achieve revenue service for these systems by
December 31, 2015. In October 2015, Congress recognized its original 2015 deadline to install PTC
systems nationwide was unrealistic, and so extended the deadline to December 31, 2018. Even
then, no railroads, including Caltrain and UPRR, could not achieve revenue service with
interoperability by the deadline and so were granted further extensions.

1 integrated systems, software development or construction projects like this one, and, as a result,
2 relied almost entirely on outside consultants for this Project. The head of JPB’s consultant-run
3 Project Management Office until a few months before termination, Karen Antion, was subject
4 to frequent criticism by Parsons and others. *See, e.g.*, Trial Ex. 955 at ¶ 9.

5 **B. Union Pacific Railroad (UPRR)**

6 UPRR is a large, “Class-1” freight railroad, and, as such, it had a major influence on and
7 insight into developing PTC standards. Like JPB, UPRR is regulated by the FRA and subject to
8 the Federal PTC mandate. It operates on both JPB- and UPRR-owned tracks. Other railroads
9 (including Caltrain) also operate on UPRR tracks. During all relevant times, it was
10 implementing a Wabtec-proprietary Interoperable Electronic Train Management System (I-ETMS)
11 PTC system using the “freight” version of the Wabtec Back Office Server (BOS). UPRR never
12 agreed to allow JPB to operate or even test CBOSS on its tracks. As a result, on December 5,
13 2016, JPB entered into an agreement with UPRR under which JPB agreed to implement the
14 Wabtec I-ETMS on-board software (OBS) on trains operating on UPRR track.⁵ Trial Ex. 3212.

15 **C. Parsons Transportation Group**

16 Parsons is a large global engineering firm. It had just started on a PTC project (its first)
17 when it submitted its proposal to JPB. Based on discussions with Parsons’ references for that
18 project, JPB raised concerns in the selection process about Parsons’ experience and ability to
19 manage significant integration projects like this one. During performance, JPB and Parsons’
20 own personnel were highly critical of Parsons’ management of the Project. *See, e.g.*, Trial
21 Exs. 2835, 3044.

22 **D. Alstom Signaling Operation, LLC**

23 Alstom is a global leader in train signaling. When JPB was procuring this Project,
24 Alstom had developed an FRA-approved PTC onboard software system (ITCS) that was
25 successfully implemented in Michigan; it was not interoperable but met the existing FRA
26 requirements for railroads that did not operate as hosts or tenants of other railroads (and so did

27 _____
28 ⁵ JPB did so, without divulging the agreement to Parsons, a few weeks before it sent its second
cure notice and a few months before it terminated the Prime Contract. Trial Ex. 861, 2596.

1 not have to inter-operate). After JPB terminated the Prime Contract, it hired Alstom to keep
2 working on its OBS under a new contract. JPB only chose not to continue that contract to
3 completion based on commercial issues.⁶

4 **E. Wabtec Corporation**

5 Wabtec served in no less than five relevant roles on the Project. First, it was an Alstom
6 sub-subcontractor for a part of the Office Subsystem (the Database and Directives Server,
7 “DDS”).⁷ Second, Wabtec was a Parsons subcontractor for the BOS software. Third, Wabtec
8 was the BOS software supplier for many freight railroads, including UPRR; in this role, Wabtec
9 made a decision in 2015 that had a major impact on the Project when it chose to upgrade that
10 BOS software without backward compatibility.⁸ Fourth, Wabtec owned Xorail, Inc., Parsons’
11 subcontractor for the Caltrain subdivision (subdiv) file, which had years of delays due to
12 mistakes and omissions that were not resolved as of termination. Finally, JPB hired Wabtec as
13 the replacement contractor to complete its PTC system after it terminated Parsons. In all of
14 these roles, Wabtec had strong disincentives against Parsons’ successful implementation of an
15 I-ITCS-based PTC that could compete with its I-ETMS product for other commuter rails’ PTC
16 systems.

17 **III. THE KEY FACTS**

18 **A. The JPB-Parsons Prime Contract Required Delivery Of An Interoperable PTC** 19 **System By The IRIS Milestone Date Of October 31, 2015**

20 Parsons agreed in the Prime Contract to deliver the interoperable CBOSS to JPB by the
21 IRIS Milestone⁹ Date of October 31, 2015:

22 _____
23 ⁶ Alstom demanded and JPB would not agree to pay Alstom the amounts Parsons wrongly
24 refused to pay and would not agree to indemnify and defend Alstom against potential Parsons
claims (which had not yet been asserted). *See, e.g.*, Trial Ex. 2562.

25 ⁷ Since Wabtec and Alstom are competitors, they had to communicate through Parsons and
another Parsons subcontractor. *See, e.g.*, Trial Ex. 2574.

26 ⁸ This meant that no PTC system using the prior version of that software (like the system it was
27 supplying to Parsons for JPB) could interoperate with freights’ PTC systems (like UPRR’s
system). *See, e.g.*, Trial Ex. 3215.

28 ⁹ The parties also referred to this milestone as “In-Service Acceptance” and later “Revenue Service
Demonstration” (RSD), after the FRA started using that term.

1 **The PTC system for Caltrain is required to be interoperable with the PTC**
2 **systems implemented by the Caltrain tenant railroads [UPRR], Capitol**
3 **Corridor, Altamont Commuter Express (ACE), and Amtrak) providing**
 seamless operation of trains moving between Caltrain and UPRR controlled
 territory.

4 Trial Ex. 16, JPB's Request for Proposals, Pt 1, § 1.

5 **The Contractor shall achieve In-Service Acceptance no later than October**
6 **31st, 2015.**

7 Trial. Ex. 55 Execution Spec 01001, § 1.02, A).

8 Parsons' last Project Manager for this project summed it up well:

9 **The original Contract contemplated that Parsons would incorporate all**
10 **specification requirements into a single deliverable, which included**
11 **interoperability with the tenant railroads and Caltrain operating on the**
 UPRR territory, all by an original October 31, 2015 completion date.

12 Trial Ex. 2615, 1/17/17 Parsons letter, p. 3.

13 This requirement applied to the entire CBOSS PTC system under the Prime Contract,
14 including both work that Parsons self-performed and work it subcontracted to Alstom and other
15 subcontractors. The IRIS Milestone required delivery of substantial work that was not
16 subcontracted to Alstom and was not its responsibility. Trial Ex. 2, Subcontract, Att. A.
17 Notable portions of the work that was Parsons' responsibility (and not Alstom's) included the
18 following:

- 19 1. Communication Subsystem, including the Data Communication
 Subsystem (DCS), fiber network, spectrum leases and radios;
- 20 2. Caltrain subdiv file;
- 21 3. Office Subsystem, including the Back Office Server (BOS);
- 22 4. Integration and field integration testing (FIT), RSD Application, and
 PTC Safety Plan (PTCSP).

23 The Prime Contract required all of these items to be complete in order to achieve the IRIS
24 Milestone. Trial. Ex. 55 at § 1.02.

25 The IRIS Milestone also required delivery of components of the CBOSS PTC system
26 that Parsons subcontracted to Alstom, most notably the OBS, i.e., a fully interoperable ITCS (I-
27 ITCS). The Prime Contract and Subcontract required delivery of these components by the same
28 October 2015 IRIS Milestone date. Trial Ex. 2, Subcontract, Att. B, Item 9.

1 For the PTC System to achieve the October 2015 IRIS Milestone date, it would have to
2 be interoperable with the PTC systems of host/tenant UPRR and other tenant railroads, all of
3 which were under development at the same time as the CBOSS PTC for Caltrain. Trial
4 Ex. 2615, Prime Contract, § 21001, 1.03D, E; § 21001, 1.04A; § 3; Trial Ex. 2, Subcontract, Att.
5 A, Item 2.

6 **B. By October 31, 2015, JPB Could No Longer Enforce The IRIS Milestone Date In**
7 **The Prime Contract**

8 By October 31, 2015, the IRIS Milestone Date in the Prime Contract was no longer
9 enforceable: 1) JPB was responsible for critical path delay that excused Parsons' (and
10 Alstom's) obligation to meet that date, such that JPB was contractually obligated to extend that
11 milestone date, and 2) it was impossible for Parsons (and Alstom) to meet the IRIS Milestone
12 date because UPRR was unable to provide information needed to complete their work, and none
13 of the host or tenant railroads were ready for the testing needed to achieve IRIS.¹⁰

14 JPB delays excused Parsons and Alstom from meeting the October 2015 IRIS Milestone
15 Date. By the end of January 2017, Parsons had submitted at least 63 Requests For Changes
16 (RFCs), many stating it was entitled to contract schedule extensions due to changes that were
17 JPB's responsibility and impacted the schedule. *See e.g.*, Trial Ex.'s 114, 117, 134, 169. From
18 October 2015 to termination, it submitted RFCs claiming entitlement to extensions totaling
19 **more than 16 months**. Trial Ex. 956, S. LaRocco Decl. ¶ 2. One month before termination,
20 Parsons estimated that JPB-caused delays entitled it to about **3 years** in extensions.¹¹ Trial
21 Ex. 2615, 1/17/17 Parsons letter, p. 1.

22 The most significant critical path delay to both Parsons and Alstom was JPB's failure to
23

24 ¹⁰ As explained in Section III.A, *infra*, it was also impossible for Parsons and Alstom to achieve
25 IRIS *at any time* because the Prime Contract provided that the CBOSS PTC System would use
26 the JPB's existing Wabtec BOS and required, for IRIS, that the System be designed and
27 implemented as a *vital*, safety-critical system and, after contract execution, the FRA deemed JPB's
28 Wabtec BOS *non-vital*, such that any PTC system using that BOS could not possibly be "vital." Trial
Ex. 55, Prime Contract, Ex. B, Pt 2, § 21005, 1.01.E; Trial Ex. 3238, FRA Type Approval, § 1.2.1
(Office Segment).

¹¹ These delays are consistent with those found nationwide and which resulted in the extensions to
the Federal mandate.

1 obtain and provide UPRR's interoperability information that Alstom needed to design, develop
2 and implement the OBS for IRIS. Parsons and Alstom agreed, and Parsons notified JPB that it
3 needed to provide UPRR's PTC operating rules, subdiv files, and other information. Trial Ex. 2511,
4 RFIs. JPB's failure to provide this delayed Alstom's work¹² and made achievement of the
5 October 2015 IRIS Milestone Date impossible. Again, Parsons' Project Manager puts it well:

6 **Parsons cannot overstate the adverse impact suffered as a result of the JPB's**
7 **failure to timely deliver information, including information relevant to the**
8 **UPRR and other tenant railroads systems, which Parsons could only obtain**
9 **through the JPB. ... Due to the nature of a single deliverable, these failures made**
10 **Parsons' completion of all work by October 31, 2015 impossible, as key input**
11 **from the JPB necessary for completion was not received until after this date.**

12 Trial Ex. 2598, 2/10/17 S. LaRocco Letter, p. 1. To complete IRIS, the Caltrain PTC also would
13 also have had to completed testing on UPRR's tracks with UPRR's PTC, but UPRR's PTC was not
14 completed by October 2015 (or termination). Finally, the Caltrain PTC would also have had to have
15 completed testing of tenant railroads' PTCs on Caltrain's tracks; none of the tenants' PTC systems
16 were completed by 10/31/15 (or termination). *See, e.g.*, Trial Ex. 955, Choudri Decl., ¶ 23.

17 **C. Parsons Could Not Enforce The October 2015 IRIS Milestone Date Under The**
18 **Subcontract Due To Parsons' Own Delays**

19 Even if JPB could have enforced the October 2015 IRIS Milestone Date under the Prime
20 Contract, Parsons could not have done so under the Subcontract due to Parsons' own delays, for
21 which Alstom had no responsibility. Parsons missed the IRIS Milestone for its portion of the
22 PTC system work, i.e., work it self-performed or subcontracted to others (rather than Alstom).
23 Specifically, CBOSS subsystems and components that were Parsons' responsibility, were
24 required to be complete to achieve IRIS, and were not as of October 2015 (or even termination)
25 included the Communication Subsystem (DCS, fiber), Caltrain subdiv, Office Subsystem
26 (including the BOS), field integration testing (FIT), RSD Application, and PTCSP. *See, e.g.*, Trial

27 _____
28 ¹² Since Alstom never received the interoperability information it needed and both JPB and Parsons
promised, it had to develop its own elaborate "best guess" of UPRR's information. Alstom did so in
order to keep the Project moving forward (rather than stopping work and waiting for the information
that never came), and continued developing the OBS, all on the hope that its guesses would turn out
to be right, or at least close. Creating these best guess requirements and then developing its
subsystem delayed Alstom's work significantly. *See, e.g.*, Trial Exs. 2501.

1 Ex. 491, p. 2; Trial Ex. 8, 1/17 Monthly Progress Report (MPR), Appx 7.6 (Risk Register).

2 **D. JPB Terminated The Prime Contract For Cause Based On Parsons' Failure To**
3 **Deliver An Interoperable PTC System By The October 2015 IRIS Milestone**
4 **Date**

5 JPB terminated the Prime Contract for cause based on Parsons' failure to deliver an
6 interoperable PTC system by the October 2015 IRIS Milestone date. JPB's February 26, 2016
7 "Notice of Breach and Demand to Cure", on which the eventual termination was based, identified
8 only two specific breaches:

9 **Parsons has breached the Contract in at least the following respects:**

- 10 • **Parsons has failed to supply a CBOSS PTC system that meets the**
11 **Contract milestone of Initial In Service Acceptance by Oct 31, 2015.**
- 12 • **Parsons has failed to meet numerous interim milestones, deadlines, or**
13 **schedules.**

14 Trial Ex. 2615.

15 If that Notice was in any way ambiguous, JPB's December 23, 2016 "Notice of Termination"
16 certainly was not, referencing its February 2016 Notice, stating:

17 **This Notice of Default was based on Parsons' failure to place the CBOSS**
18 **system into JPB revenue service by the contractually-required October 31,**
19 **2015 deadline.**

20 Trial Ex. 861.

21 After JPB sent its February 2016 Notice threatening termination, it allowed Parsons (and
22 Alstom) to continue performing and incurring cost for more than a year. From February 2016 to
23 February 2017, JPB neither enforced the October 2015 IRIS Milestone (by terminating the
24 Prime Contract) nor established a new delivery date (by amending the Prime Contract and
25 setting a new, enforceable IRIS Milestone date). *Neither the October 2015 IRIS Milestone date,*
26 *nor the requirement that the delivered PTC system be fully interoperable to achieve it, was ever*
27 *changed in either the Prime Contract or the Subcontract.* Trial Ex. 3216, Harrington Decl. ¶ 13,
28 Ex. I. Parsons and Alstom agreed many times throughout the project that they were contractually
entitled to extension by JPB of the IRIS Milestone Date due to delays for which JPB was
responsible. *See, e.g.,* Trial Ex. 995, Choudri Decl., ¶ 30. JPB never agreed to such any such

1 extensions – not a single change order extending the IRIS Milestone Date even a single day was
2 agreed to by JPB. *Id.* ¶ 31. From the day the Prime Contract was signed to the day it was terminated,
3 it required a complete, fully interoperable PTC system by October 31, 2015. Trial Ex. 491 (4/6/16
4 Harrington letter, p. 2).

5 **IV. JPB IMPROPERLY TERMINATED THE PRIME CONTRACT FOR CAUSE**

6 **A. As The Terminating Party, JPB Has The Burden Of Proving It Was Entitled To** 7 **Terminate**

8 A termination for cause, also known as a termination for default, is “a drastic sanction ...
9 which should be imposed (or sustained) only for good grounds and on solid evidence.” *United*
10 *Partition Sys., Inc. v. U.S.* (2009) 90 Fed. Cl. 74, 87.¹³ Since it results in a forfeiture, the terminating
11 party has a heavy burden to justify it. Cal. Civ. Code § 1442 (“A condition involving a forfeiture
12 must be strictly interpreted against the party for whose benefit it is created.”); *Ells v. Order of United*
13 *Com. Travelers of Am.* (1942) 20 Cal.2d 290, 301 (“It is well settled in this state as well as in other
14 jurisdictions that forfeitures are not favored by either courts of law or equity”); *Lisbon Contractors,*
15 *Inc. v. U.S.* (Fed. Cir. 1987) 828 F.2d 759, 765 (“we conclude that the government should bear the
16 burden of proof with respect to the issue of whether termination for default was justified, regardless
17 of the forum and regardless of whose ‘claim’ is being asserted. Thus, the burden of proof here was
18 on the government on the default issue”).

19 What that party must prove depends on the stated reason for the termination. Here, the
20 termination was based on Parsons’ alleged failure to meet the October 2015 IRIS Milestone Date. To
21 justify termination on those grounds, JPB will have to prove that there was a nexus between its
22 decision to terminate the contract for default and Parsons’ performance and that Parsons actually was
23 in default of the contract. *See McDonnell Douglas Corp. v. U.S.* (Fed. Cir. 1999) 182 F.3d 1319,
24 1329. To the extent that Parsons or JPB seek to justify the termination based on Alstom’s failure to
25 make progress toward the extended dates in Parsons’ schedules, it will have to show that these were

26 _____
27 ¹³ In the absence of California case law on-point, the Court should look to the well-developed federal
28 case law on default terminations of public contracts. *Pacific Architects Collaborative v. State of*
California (1979) 100 Cal.App.3d 110, 125 (“We are strongly persuaded by decisions relating to
federal procurement bidding.”).

1 set as clear, contract dates and that JPB actually determined based on objective evidence that Parsons
2 could not meet those dates. *Lisbon Contractors*, 828 F.2d at 766; *McDonnell Douglas Corp. v. U.S.*
3 (Fed. Cir. 2003) 323 F.3d 1006, 1014; *Alutiiq Mfg. Contractors, LLC v. U.S.* (2019) 143 Fed. Cl.
4 689, 696 (a termination for cause is not justified simply because a contractor is behind schedule;
5 rather it must be based on “tangible, direct evidence reflecting the impairment of timely
6 completion” based not on “subjective beliefs” but “an objective inquiry”).

7 **B. JPB Cannot Meet This Burden.**

8 **1. JPB could not enforce, or terminate based on, non-contractual dates.**

9 The termination will not be justified for failure to make progress to the extended dates
10 because those dates were not contract requirements. Rather, Parsons *proposed* these dates; JPB
11 rejected them and, as a result, never amended the Prime Contract. Trial Ex. 861. Further, even if
12 JPB otherwise could have properly terminated based on these extra contractual demands,
13 Alstom and Parsons committed and were in position to meet the demanded cure dates:

14 **[A]t the time of termination, Parsons and its key subcontractor, Alstom, were**
15 **on schedule to meet each of the specified, milestone dates, including the**
pivotal first deliverable on April 1, 2017.

16 Trial Ex. 956, S. LaRocco Decl. ¶ 11. Thus, JPB cannot show that it reasonably (much less
17 correctly) determined that Parsons could not meet any extended non-contractual dates.
18 Lastly, even if JPB did and properly could have relied upon non-contractual schedule dates as a
19 basis for termination, its decision to terminate was based on Parsons’, not Alstom’s, failures
20 with regard to those dates. JPB attributed the delays to Parsons’ mismanagement. *See, e.g.,*
21 Trial Ex. 861, p. 2. And the project record supports that Parsons mismanaged the project. *See,*
22 *e.g.,* Trial Exs. 3241; 3242; 2764; 2835. Shortly after terminating Parsons, JPB asked Alstom to
23 complete the project and negotiated and entered into a time-and-materials contract (and never
24 informed Alstom that its work under that contract failed to meet any of JPB’s requirements); JPB
25 still wanted Alstom on the project, just not Parsons.¹⁴ Trial Ex. 1666.

26 _____
27 ¹⁴ Likewise, Parsons never terminated the Alstom subcontract for cause. Rather, it issued a stop
28 work order that it never lifted. At some point, after a reasonable time elapsed, this became a
breach of the contract by Parsons. But, to this day, Parsons has never issued a notice of
termination, or any other document, to Alstom stating it was terminating Alstom for cause.

1 **2. JPB and Parsons caused critical path delays.**

2 The termination will not be justified for failure to meet either the October 2015 IRIS
3 Milestone Date or any later non-contractual dates because JPB and Parsons caused critical path delay
4 that caused Alstom to miss those dates.

5 **a. JPB Delays**

6 A critical path analysis from the project start shows that JPB (and so, as to Alstom, Parsons)
7 was responsible for the delays to the IRIS Milestone to termination and beyond. Parsons' last project
8 progress schedule (dated January 31, 2017) projected the IRIS Milestone would be met in September
9 2018. Trial Ex. 3240. The critical path sequence of activities that determined this completion date
10 was driven by two activities: 1) obtaining information required, but not provided, by JPB from
11 UPRR to complete the interoperable CBOSS and 2) the upgrade of the BOS to version 12, which
12 was directed by JPB in January 2017 and was required for compatibility with UPRR's and tenants'
13 PTC systems.

14 Even if Parsons/JPB could rebut Alstom's critical path analysis, the facts show other
15 substantial delays for which Alstom was not responsible. There were significant delays that
16 Parsons and Alstom agreed were JPB's responsibility. Trial Ex. 995, Choudri Decl. ¶¶ 6-7, 11-
17 24, 27-32). Ian Choudri, Parsons' Project Manager during the most significant delays, provided
18 many examples are in his sworn declaration: Association of American Railroads (AAR) standards
19 required for the work were issued late [*id.* ¶ 7]; in 2013-2014, JPB delayed design reviews [*id.*
20 ¶ 10]; in 2014-2015, JPB directed Parsons to implement FRA changes issued after design
21 reviews [*id.* ¶ 30]; in 2015-2016, JPB directed Parsons/Alstom to perform field validation before
22 receiving FRA approval for the test plan and, when FRA rejected that testing because it was done
23 before plan approval, directed Parsons/Alstom to re-do that validation [*id.* ¶ 24]; and, in 2016-2017,
24 JPB directed two upgrades of the BOS [*id.* ¶¶ 27-29].

25 **b. Parsons' Delays**

26 In addition to the JPB delays rendering the Prime Contract termination improper,
27 Parsons delayed Alstom's work as well. These delays included *years* of subdiv delay, as well as
28 field testing and integration delays. They impacted Alstom's performance and excused some or

1 all of its delay in meeting the IRIS date and any subsequent non-contractual dates. *See, e.g.*,
2 Trial Ex. 3236, 7/22/14 McDonough email.

3 Further, Alstom delays were not “critical,” i.e., they did not impact when the IRIS
4 Milestone would be achieved, because a much broader group of Parsons delays (whether they
5 directly impacted Alstom or not) were concurrent with any Alstom delays, meaning Alstom
6 delays did not cause Parsons to miss the milestone deadline. Specifically, at termination, Parsons
7 had significant issues and work remaining at termination, due to its own failures (not Alstom’s), for
8 at least the following portions of its (not Alstom’s) scope of work: 1) Communications Subsystem,
9 including DCS, Messaging and Fiber “backbone”; 2) Office Subsystem and BOS, 3) Caltrain
10 subdiv, 4) field testing, 5) RSD Application, and 6) PTC Safety Plan (PTCSP). Trial Ex. 8, 1/17
11 MPR, Appx 7.6 (Risk Register).

12 As examples, the DCS, which JPB had identified as “source of instability for the CBOSS
13 system,” was still not completed and approved at the IRIS date or termination. Parsons’ last schedule
14 update projected that installation and validation would not be completed until May 2017. Trial
15 Exs. 3240; 2695; 2559. The Caltrain subdiv was not completed at termination either. Parsons did not
16 provide the initial subdiv until July 16, 2014, and the file continued to have errors and be revised and
17 updated through nearly 40 versions as of termination. Trial Ex. 3240. Regarding field testing,
18 Parsons failed to timely complete and obtain approval of field test plans, a prerequisite to field
19 testing for the entire CBOSS system (which was in Parsons’ scope, with Alstom supporting for the
20 OBS). Trial Ex. 8, 7/15-3/16 MPRs, § 3.6.3.

21 For each, Parsons had unresolved problems and had not completed testing or integration (and
22 in several instances had not even completed its design or plan, much less submitted them and gotten
23 approval), all of which were Prime Contract requirements for the IRIS milestone.

24 **3. It was impossible for Alstom to meet the October 2015 IRIS Milestone**
25 **Date or any later non-contractual dates**

26 Nor will the termination stand because Alstom will show impossibility. The lack of UPRR
27 information, and both UPRR’s and other tenants’ inability to implement their own PTC systems
28 before 2018, made IRIS impossible to achieve by either the October 2015 contract date or the

1 February 2017 termination. Trial Ex. 2598, p. 1.

2 It was also impossible for Parsons and Alstom to achieve IRIS *at any time* because the
3 Prime Contract provided that the CBOSS PTC System would use the JPB's existing Wabtec
4 BOS and required, for IRIS, that "The System shall be designed and implemented as a *vital/safety*
5 critical system." Trial Ex. 55, Prime Contract, § 21005, Pt 1, § 1.01E (emphasis added). After
6 contract execution, the FRA deemed JPB's Wabtec BOS *non-vital*, such that any PTC system using
7 that BOS could not possibly be "vital." Yet, as with so many other changes outside of Parsons' and
8 Alstom's control, JPB never amended the Prime Contract to eliminate this impossible requirement
9 (and, after termination, procured a non-vital PTC from Wabtec). Trial Ex. 1682.

10 **4. Even if JPB ever had the right to terminate for cause (it did not), it**
11 **waived that right.**

12 Finally, even if JPB could show that the October 2015 Milestone Date was otherwise
13 enforceable, the termination would fail because JPB is estopped from enforcing it. *DeVito v. U.S.*,
14 (Ct. Cl. 1969) 413 F.2d 1147, 1154 (if the government fails to terminate the contract within a
15 reasonable time after the default, and the contractor relies on the failure to terminate and continue
16 performance, default is waived); *see also Whitney Inv. Co. v. Westview Development Co.* (1969) 273
17 Cal.App.2d 594, 603 ("When the injured party with knowledge of the breach continues to accept
18 performance from the guilty party, such conduct may constitute a waiver of the breach."). Here,
19 prior to terminating the Prime Contract, JPB allowed Parsons and Alstom to continue working,
20 developing the PTC system, and incurring costs to do so, for **almost 16 months** after the IRIS
21 Milestone Date had passed and **more than one year** after issuing its default notice.

22 **V. ALL OF PARSONS' DEFENSES TO ALSTOM'S CLAIMS DEPEND UPON**
23 **PARSONS' AND JPB'S PROVING THAT JPB'S TERMINATION OF THE PRIME**
24 **CONTRACT WAS PROPER**

25 Parsons is indebted to Alstom because it failed to pay the amounts due under the Subcontract
26 totaling **\$24,290,109**.¹⁵ This consists of invoiced, completed work (\$1,856,275); unpaid work-in-
27 progress on uncompleted milestones¹⁶ (\$8,809,537); unpaid work on unapproved change orders

27 ¹⁵ This and its components may be subject to adjustment depending on the evidence at trial.

28 ¹⁶ The Subcontract (like the Prime Contract) provided for invoicing as milestones were completed.

1 (called “Non-Approved Variation Orders” or “NAVOs”)¹⁷ (\$5,327,149); and prejudgment interest
2 (\$8,297,148). These claims are straightforward.

3 Parsons’ defenses to these claims almost entirely depend on offsets based on its termination-
4 based claims and damages. Once JPB and Parsons fail to prove the JPB termination was proper,
5 Parsons’ defenses to Alstom’s claims fail.

6 **VI. IN ADDITION TO JPB’S AND PARSONS’ INABILITY TO SHOW THE**
7 **TERMINATION WAS PROPER, THEIR CLAIMS FAIL FOR OTHER REASONS**
8 **AS WELL**

9 **A. Parsons’ Contractual Indemnity Claim Does Not Meet The Subcontract**
10 **Provision Requirements**

11 Parsons’ express contractual indemnity claim also fails because it cannot prove its claim fits
12 in the narrow, limited Subcontract clause. In the non-insurance context indemnity contracts are
13 construed against the indemnitee (here, Parsons). *Crawford v. Weather Shield Mfg., Inc.* (2008) 44
14 Cal.4th 541, 552. Here, the clause provides as follows:

15 If Subcontractor fails to maintain the Schedule, including any revisions of the
16 schedule, except to the extent the failure is caused by delays beyond
17 Subcontractor's reasonable control, **Subcontractor shall indemnify Contractor**
18 **for costs and direct damages (including liquidated damages Contractor may**
19 **be obligated to pay to the Client)** that result from any failure to maintain the
20 schedule for the Subcontractor's work, **provided, however, that such damages**
21 **must first be imposed upon Contractor by its Client**, and only to the extent that
22 any such costs and damages arise from Subcontractor's failure to maintain its
23 schedule. For purposes of this provision, “direct damages” shall include any costs
24 that arise to Contractor due to the need to maintain its project office beyond the
25 time contemplated by the schedule, as amended from time to time; provided
26 however that Contractor shall make reasonable efforts to mitigate any such direct
27 damages.

28 Trial Ex. 2, § GC-2. This contractual indemnity does not encompass the claims Parsons is asserting
against Alstom, which are entirely for the monies due it from JPB that it forgave in the walk-away

24 There were several milestones on which Alstom had done significant work and so earned significant
25 entitlement to payment, but Alstom had not yet invoiced for that work because the milestones were
26 not 100% complete. This portion of Alstom’s claim is based on applying its actual percent complete
27 to the agreed prices for these milestones.

28 ¹⁷ Alstom will show it was entitled to approval of each NAVO, as extra work directed by Parsons,
such that Parsons’ failure to approve them was a breach of contract. Some of these NAVOs were
completed and so Alstom was owed the full proposed prices. Others was in progress, and, for those,
Alstom was entitled to payment based on its percent complete, applied to the proposed prices to
which Parsons was required by the Subcontract to agree but did not do so.

1 settlement. Further, this indemnity is not even triggered if the “failure is caused by delays beyond
2 Subcontractor's reasonable control,” which is the case here. *See also id.*, § SC-3.¹⁸

3 **B. Parsons’ And JPB’s Negligent Misrepresentation Claims Are False.**

4 Parsons’ efforts to evade the limitations of liability it agreed to in the Subcontract by
5 alleging negligent misrepresentation will also fail, as will JPB’s late efforts to shoe-horn in
6 similar claims to avoid the consequences of its lack of privity and third-party beneficiary status.

7 No negligent misrepresentations occurred here. When delays started early on, Alstom
8 showed the October 2015 IRIS Milestone Date would not be met in its schedule updates to
9 Parsons, but Parsons did not report that in its schedule updates to JPB. *Compare* Trial Ex. 8
10 (4/13-5/14 Parsons MPRs) with Trial Exs. 3165-3210 (4/13-5/14 Alstom’s MPRs).

11 As delays continued to mount and JPB wrongly refused to extend the IRIS milestone (as
12 requested in Parsons RFCs), JPB refused to accept schedule updates showing extended dates. It
13 compelled Parsons to show the October 2015 IRIS Milestone Date when Parsons had repeatedly
14 stated and shown that date could not be met. As a result, Parsons directed Alstom also to show
15 the October 2015 IRIS Date when Alstom likewise had repeatedly stated and shown that date
16 could not be met.

17 JPB denied Parsons’ RFCs and schedule extension requests, and, as a result, Parsons
18 denied Alstom’s NAVOs and schedule extension requests. These denials were accumulating,
19 but, since Parsons did not allow Alstom to show these unapproved changes in its schedule
20 updates, Alstom tracked them and their schedule impacts internally, first in risk registers and
21 then also in its Primavera (P6) schedule for the project. At all times, Alstom provided to
22 Parsons all of the schedule information Parsons asked for. *See, e.g.*, Trial Ex. 1846.

23 Parsons’ and JPB’s misrepresentation claims amount to “fraud in plain sight.”
24 Throughout the project, Alstom gave Parsons notice of delays that were impacting its work.
25 *See, e.g.*, Trial Exs. 2977, 2502. At all relevant times, Parsons had a Software Specialist

26 _____
27 ¹⁸ “Subcontractor shall not be liable nor in breach or default of the Agreement to the extent
28 performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond
its reasonable control, including but not limited to ... any act (or omission) by any governmental
authority ... or vendor non-performance.”

1 “constantly overseeing [Alstom’s] for the software development on site.” *See e.g.*, Trial Ex. 8, 3/15-
2 1/17 MPRs, § 5.2.1. With the benefit of these disclosures and oversight, Parsons reported in most of
3 its reports to JPB from March 2015 through termination that there were no identified issues or
4 mitigation plans in relation to Alstom’s software.

5 JPB’s negligent misrepresentation claims are time-barred as well. They supposedly stem
6 from statements made in documents from 2015, which were all produced by March 2018 and only
7 added as claims in February 2022. The statute of limitations on negligent misrepresentations is two
8 years from the date plaintiff knew or should have known a representation was false.¹⁹ A party
9 wishing to avoid the statute through a “delayed discovery” claim has the burden of proof.²⁰

10 **C. Parsons And JPB’s Remaining Claims Fail As Well**

11 A number of Parsons’ and JPB’s claims are the subjects of Alstom’s pending demurrers,
12 which are set for hearing after this brief is due, and a motion in limine that is on hold while Alstom
13 waits for Parsons to (finally) refile its motion to substitute. To the extent the Court finds factual
14 questions are a basis for denial, evidence will still support the denial of those claims. For example,
15 JPB’s breach of contract claim will fail because it was not an intended third party beneficiary to
16 the Subcontract. Likewise, even if Parsons’ and JPB’s professional negligence claims make it to
17 trial, they will fail for lack of proof of any duty Alstom owed to JPB at all and to Parsons
18 beyond its contract duties and any proof that such a duty was breached when the only failures
19 even alleged are delays.

20 **D. Problems With Parsons’ Alleged Damages**

21 Parsons’ latest damages calculation (excluding JPB’s claim) is \$41,604,229. This consists of
22 the following elements: \$31,250,044 for the Prime Contract balance at termination plus \$13,293,276
23 for pending change orders plus \$13,050,631 for delay damages²¹ minus a \$15,989,722 credit for the

24 _____
25 ¹⁹ *Butcher v. Truck Ins. Exchange* (2000) 77 Cal.App.4th 1442, 1467-68; *see also E-Fab, Inc. v.*
26 *Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1323 (claim for intentional or negligent
misrepresentation accrues when a plaintiff is on notice that the defendant has made the
misrepresentation); *Ventura County Nat. Bank v. Macker* (1996) 49 Cal.App.4th 1528, 1531.

27 ²⁰ *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808; *Gentry v. eBay, Inc.* (2002) 99
28 Cal.App.4th 816, 825.

²¹ These damages assume Alstom was responsible for all of the delay from the October 31, 2015

1 amount Parsons owed but has not paid Alstom.²² In addition to the reasons Parsons will not be able
2 to prove entitlement, there are significant flaws with these damages theories.

3 Before addressing how the Subcontract excludes and limits these claimed damages, two
4 comments are in order. First, Parsons and JPB have the burden of proving the “reasonableness” of
5 the settlement, both as to liability and the amount, without the benefit of any presumptions. *See, e.g.,*
6 *Peter Culley and Associates v. Superior Court* (1992) 10 Cal.App.4th 1484, 1498. Second,
7 “indemnity” is for sums paid out to third parties or for defense, not for damages a party itself incurs.
8 *See, e.g., Gribaldo, Jacobs, Jones & Assoc. v. Agrippina Versicherungen A.* (1970) 3 Cal.3d 434,
9 446-47 (“an indemnitor is not liable for a claim made against the indemnitee until the indemnitee
10 suffers actual loss by being compelled to pay the claim”); *Peter Culley, supra* 10 Cal.App.4th at 1493
11 (“As a general rule, an indemnity contract does not cover losses for which the indemnitee is not
12 liable to a third person or for which the indemnitee improperly pays”); Cal. Civ. Code § 2778 (2)
13 (“Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other
14 equivalent terms, the person indemnified is not entitled to recover without payment thereof”).

15 In any event, the Subcontract dramatically limits the damages that are even *theoretically*
16 *possible*, putting the merits aside, and bars Parsons’ “forgiven monies due from JPB” claims. First,
17 the subcontract general condition 13(b) provides:

18 **Waiver of Certain Damages. Neither Party shall be liable to the other for**
19 **loss of profit or revenues, cost of capital, downtime costs, increased operating**
20 **costs, damages arising from loss of use of Products or Services or of any**
21 **associated equipment, interruption of business, or for any special,**
22 **consequential, incidental, indirect, punitive, speculative, treble or exemplary**
23 **damages.**

24 Here, Parsons paid no money to JPB, and this exclusion of lost profits, revenues, increased operating
25 costs, downtime costs, consequential, special, incidental, indirect, etc. costs precludes Parsons’ own

26 IRIS Milestone through termination (480 days), when Parsons will not be able to prove Alstom was
27 responsible for any of that delay. They also are based on an excessive daily rate that has increased at
28 least twice since December 2021 (when its PMQ on damages was first deposited), resulting in a more
than \$1.5 million increase from the amount Parsons stated under oath three months ago. *Compare*
Trial Ex. 2561.

²² Alstom has since adjusted its calculation of this number to \$15,992,961.

1 claimed “forgiven monies due from JPB” damages.

2 Second, and as quoted above, Subcontract § GC-2 provides for indemnity only as to “costs
3 and direct damages (**including liquidated damages Contractor may be obligated to pay to the**
4 **Client**) that result from any failure to maintain the schedule for the Subcontractor’s work, **provided,**
5 **however, that such damages must first be imposed upon Contractor by its Client...**” No such
6 liquidated or damages were imposed upon Parsons by JPB, let alone paid by Parsons.

7 Third, note also Subcontract section 13(e), which provides as follows:

8 **Liquidated Damages. Subcontractor agrees to reimburse Contractor for any**
9 **liquidated damages, but only to the extent that such damages are first**
10 **assessed by Client against Contractor** and only to the extent attributable to and
11 caused by Subcontractor’s failure to perform the Work required by this
12 Subcontract in accordance with the agreed-upon schedule. **Any such liquidated**
13 **damages for which Subcontractor is liable shall be the exclusive remedy, and**
14 **Subcontractor’s sole liability, in connection with any delay** of Initial Revenue-
15 In Service Acceptance, any delay of Final System Acceptance, and any
16 interruptions or delays to Client's rail operations.

17 This exclusive remedy does not embrace Parsons’ own claimed forgiven monies due from JPB, and
18 no liquidated damages were actually paid to JPB. At best, note that JPB’s claim was for \$2.28
19 million in liquidated damages. And, under the Prime Contract, the maximum liquidated damages are
20 capped.²³

21 E. “JPB”’s Alleged Damages

22 JPB alleged the same damages against both Parsons and Alstom. It never allocated those
23 damages between them; even now, its damages expert has not done so. JPB released all of those
24 claims as to Parsons in exchange for Parsons’ release of its claims against JPB, with no payment
25 made by JPB to Parsons (or vice versa).²⁴

26 JPB maintains three alternative damages calculations for its claims against Alstom: 1) for its
27 breach of contract claim, it claims either a) \$34,800,343 if the contractual liquidated damages
28 provisions apply or b) \$47,586,678 if they don’t (i.e., it can seek its claimed actual delay damages),

29 ²³ Subcontract § GC-13(c) further provides that any liability is capped at the Subcontract price.

30 ²⁴ Parsons, through its promised substitution motion, seeks to recover these damages through a
31 purported assignment of claims from JPB to Parsons. If Parsons were to succeed in its claims and
32 recover both its and JPB’s alleged damages, the latter would be entirely a windfall to Parsons.


1 and 2) for its negligent misrepresentation claim, \$47,503,676. In addition to the entitlement issues
2 discussed above, these calculations are flawed in several ways, including most notably their failure
3 to account for Parsons' share of responsibility to the delays and the termination and amounts JPB
4 saved by terminating (e.g., by avoiding the costs of improperly unapproved change orders and other
5 changes that caused Parsons and Alstom to incur costs but had not matured into proposed change
6 orders by termination) and use of excessive burden rates to exaggerate both JPB's pre-termination
7 delay and post-termination completion costs.

8 **VII. CONCLUSION**

9 JPB delayed the Project, wrongly refused to extend the IRIS Milestone date and then
10 wrongly terminated the Prime Contract. Parsons mismanaged the Project and delayed Alstom,
11 breached by failing to pay Alstom for its work, and then unreasonably gave away its claims
12 against JPB for nothing. Alstom is entitled to judgment on all claims.

13 Dated: March 14, 2022

ROGERS JOSEPH O'DONNELL

14 By: 

15 AARON P. SILBERMAN
16 THOMAS H. CARLSON
17 RICHARD M. HARRIS
18 WHITNEY R. MINER
19 Attorneys for Cross-Defendant and Cross-
20 Complainant ALSTOM SIGNALING
21 OPERATION, LLC
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **[C.C.P. §§ 1010.6, 1011, 1013, 1013a, 2015.5, C.R.C. §§ 1.21, 2.260, 2.306]**

3 I, Dawn Lorenzen, state:

4 My business address is 311 California Street, 10th Floor, San Francisco, CA 94104. The
5 electronic notification address from which I served the documents listed below is:
6 dlorenzen@rjo.com. I am employed in the City and County of San Francisco; however, the
7 electronic service was effectuated from Contra Costa County. I am over the age of eighteen years
8 and not a party to this action. On March 11, 2022, I served the following documents described as:

7 **ALSTOM SIGNALING OPERATION, LLC’S OPENING TRIAL BRIEF**

8 on the following person(s) in this action:

9 **Attorneys for Parsons Transportation Group
10 and Peninsula Corridor Joint Powers Board**

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17 X **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
18 to accept service by electronic transmission on March 11, 2022, I caused the
19 documents to be sent to the person(s) at the electronic notification address(es) listed
20 above. Within a reasonable time, the transmission was reported as complete and
21 without error.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct and that this declaration was executed this date at Oakland,
23 California.

23 Dated: March 11, 2022

Dawn Lorenzen

Dawn Lorenzen