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November 3, 2016

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## FILED ELECTRONICALLY

Cynthia Brown  
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Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

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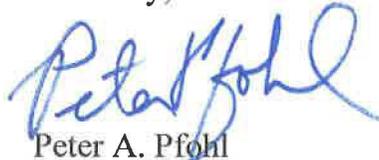
Re: Docket No. NOR 42149, Richard Best Transfer, Inc. v.  
Union Pacific Railroad Company

Dear Ms. Brown:

Attached for filing in the above-referenced proceeding, please find Richard Best Transfer, Inc.'s Complaint. We have forwarded a payment form to the Board's recordation office authorizing the payment of the \$350 filing fee. Please note that Exhibit A includes a color map.

Thank you for your attention to this matter.

Sincerely,



Peter A. Pfohl  
An Attorney for  
Richard Best Transfer, Inc.

Enclosures

FEE RECEIVED  
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November 3, 2016  
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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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<b>RICHARD BEST TRANSFER, INC.</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. NOR 42149</b>
	)	
<b>UNION PACIFIC RAILROAD COMPANY</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**COMPLAINT**

COMES NOW Complainant Richard Best Transfer, Inc. (“Richard Best” or “RBT”), and files this Complaint under 49 U.S.C. §§ 10701, 10702, 10704, 10741, and 11701. Richard Best seeks a determination from the Surface Transportation Board (“Board” or “STB”) that certain tariff revisions by Defendant Union Pacific Railroad Company (“UP” or “Union Pacific”) in UP Tariff 4053-C that took effect starting November 1, 2016, and any amended or successor tariffs, are unreasonable and unlawful and shall not be enforced or given effect as applied to rail transportation service by UP to RBT stations and other destinations served by its handling carrier, the San Joaquin Valley Railroad (“SJVR”). By separate motion, Richard Best seeks related injunctive relief in the form of a preliminary injunction enjoining UP from implementing the rate increases in UP Tariff 4053-C as necessary to preserve the status quo during the pendency of this

proceeding, and to prevent irreparable business harm that RBT will suffer absent such relief.

The tariff revisions that UP announced in UP 4053 – Feed Ingredients Adjustment (Announcement No. AG2016-50) (“Tariff UP 4053 Revisions”) impose a penalty of \$250 per car on deliveries to Richard Best for feed products that are used to serve the dairy cattle industry in Central California. UP’s penalty applies only to Richard Best and other possible feed ingredients receiver locations at stations along the San Joaquin Valley Railroad (“SJVR”), and not to competing receivers at other nearby stations that UP serves directly off of its mainline.

UP’s new rate penalties apply even though both groups of movements involve the same agricultural products, equipment, unit train and other service, origins, and routes through the same UP yards, and from there to competing nearby destinations with comparable, large-scale receiving track and facilities. Yet, UP imposes a massive penalty targeted at the Richard Best-served traffic on the SJVR, amounting to \$25,000 on a 100-car unit train. UP’s new rate penalties seriously threaten and endanger, by design, the continued viability of Richard Best, the millions of dollars it has invested in its facilities to serve its customers, and competition for the delivery of agricultural commodities for the Central Valley dairy cattle industry. The penalties also undermine the substantial additional infrastructure investments that Richard Best is currently making, and preparing to make, at its local facilities.

SJVR, by serving as UP’s delivering carrier to Richard Best, as well as other locations, saves UP substantial costs that UP must otherwise incur to provide direct

service to competing destinations along its main line. Richard Best is unaware of any reasonable cost explanation for the disparate tariff treatment, and UP has provided none.

Richard Best has been informed that UP's tariff revisions are designed to protect the investments that Richard Best's competitors have made in their unit train facilities. However, Richard Best has made large investments in its own facilities that should not be subjected to such punitive rate increases. The penalties are especially unreasonable as UP encouraged and induced RBT to invest substantial sums of money to become a qualified unit train facility eligible for non-discriminatory unit train rates, only to have UP ultimately reverse course, at the apparent behest of favored competitors.

UP has also gratuitously suggested that Richard Best relocate its operations so that it can be directly served along UP's main line. Such relocation would strand the millions of dollars that Richard Best has invested in its existing facilities. Moreover, there are no suitable locations along UP's congested nearby mainline where Richard Best could relocate.

Class I carriers such as UP have long-sought to treat their short line connecting carriers such as SJVR as partners and strongly encouraged them to help meet the needs of local shippers, grow their traffic, and reinvest in their systems to the benefit of all. UP's new tariff penalty initiative does the opposite, treats short lines as fierce competitors, and punishes them, and the customers located on their lines, for their success. RTB's traffic is necessary to keep these lines viable and profitable, yet UP's tariff initiative threatens important regional businesses, eliminates competition among receivers of UP-transported freight, harms the efficiency of the network for all its users,

and imperils massive public and private investments. If allowed to stand, UP's tariff initiative will have a chilling effect on commerce both locally, and beyond, as the Board can expect UP, and perhaps other Class I carriers, to do the same with other commodities, and at innumerable other short line locations nationally in an effort to push the most successful traffic off of connecting short lines and back onto its Class I mainline.

Under the circumstances, UP's tariff revisions have no legitimate justification. UP's penalties constitute an unreasonable practice, otherwise punitive and anticompetitive conduct, and unreasonable discrimination. The tariff revisions also violate the rate policy that UP has adopted under the Rail Industry Agreement entered into by the Association of American Railroads and American Short Line and Regional Railroad Association (the "RIA"), which calls for large railroads such as UP "to provide market-based competitive pricing for ... customers, regardless of whether located on a Class I [such as UP] or connecting Small Railroad [such as SJVR], that is non-discriminatory under similar circumstances and conditions." RIA, p. 5.

Richard Best seeks determinations from the Board that UP's tariff revisions constitute an unreasonable and unlawful practice in violation of 49 U.S.C. § 10702(2) and unreasonable discrimination in violation of 49 U.S.C. §§ 10701(b) and 10741, and an order from the Board directing UP to cease and desist from its unlawful practices and declaring that the tariff revisions shall not be enforced or given effect. Because of the massive nature of the penalties imposed, the inadequacy of monetary relief and associated irreparable harm, the effect on the public interest, and the likelihood of success on the merits, Richard Best is separately seeking a preliminary injunction.

In support thereof, Richard Best states as follows:

**The Parties**

1. Richard Best is a California corporation headquartered in Reedley, California. Richard Best receives, stores, and transloads agricultural commodities that it receives exclusively by railroad, primarily to serve the Central California dairy industry.

2. Union Pacific, a Delaware corporation, is a common carrier railroad engaged the transportation of freight in interstate commerce. UP is thus subject to the jurisdiction of the Board under the ICC Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* (the “ICCTA”). The ICCTA prohibits UP from engaging in unreasonable practices and unreasonable discrimination.

**Richard Best’s Facilities at RBT-Ivory and Related Railroad Service**

3. RBT operates a large rail receiving/transloading facility located at Dinuba or Ivory, California, known as RBT-Ivory. Richard Best receives large volumes of bulk agricultural feed products at RBT-Ivory in unit train service, including distiller's dried grains with solubles (“DDGS”) (STCC 20859 and 20823), canola meal (STCC 20939), and gluten feed (STCC 2042175). Richard Best’s customers use these products to help feed the over 80,000 producing dairy cattle in Central California’s dairy cattle industry that is located within a 20-mile radius of RBT-Ivory. The Central California dairy industry is important to both California and the nation as a whole, as California is the leading dairy production state in the country.

4. RBT contracts with various third-party shippers to receive, store, and transload agricultural commodities at RBT-Ivory. The major customer at RBT-Ivory is

Archer Daniels Midland Company (“ADM”). Other customers include Gaviolon, JD Heiskell, US Commodities, and Quality Grain.

5. RBT-Ivory receives approximately 4,600 rail cars of agricultural ingredients annually, mostly in unit train service. The RBT-Ivory facilities for handling unit trains are first class, meet or exceed all UP design requirements for receiving grain products in unit train service, and are at least comparable to other local feed ingredient receiving facilities served by UP, such as those of Western Milling that are located nearby at Goshen Junction, which is directly served by UP.

6. Richard Best upgraded its unit-train handling facilities at RBT-Ivory so that it could continue to receive comparable, non-discriminatory transportation rates on its deliveries. RBT originally invested over \$3 million to establish its unit-train unloading facilities at RBT-Ivory. Those unit train facilities were completed in 2011 so that arriving unit trains would not need to be cut by the SJVR for final delivery. UP had informed Richard Best that it would, in response to complaints from competitors, increase the rates at RBT-Ivory unless the upgrades were made. Then as now, Richard Best could not compete with Western Milling and other competitors if its stations faced higher, discriminatory rates from UP.

7. RBT has recently expanded its facilities at RBT-Ivory to build upon its success and better serve the needs of the local dairy cattle industry. In 2015-2016, RBT added an additional 3,000 feet of new rail track and switches at a cost of \$900,000. In 2016, RBT has purchased and is installing a highly efficient hard car unloader system and structures at a cost of \$600,000. RBT is also currently constructing a large receiving

pit at a cost of \$350,000. In addition, RBT has pending before Tulare County plans to construct a large 175' x 500' commodity barn, capable of holding ten unit trains of commodities, at a cost of \$2 million.

8. This \$6.85 million of completed and planned investment at RBT-Ivory within a five-year period enables UP to deliver, at no additional cost to itself, enormous volumes of products to its customers. Richard Best's investments have enabled RBT-Ivory to become more efficient and to compete effectively against larger competitors such as Western Milling.

9. RBT has facilities and operations at other nearby locations that are also served by the SJVR. In particular, RBT has train receiving/transloading facilities at Hollis, CA ("RBT-Hollis"), served by the SJVR, off of an interchange with UP at Famoso, CA. RBT is in the planning process and working with Gavilon, a major, nationwide feed ingredients supplier, to expand its receiving facilities at Hollis, CA, so as to handle larger feed ingredients deliveries. RBT-Ivory competes against Western Milling's Famoso, CA receiving facility located only a few miles away. Gavilon has had extensive discussions with UP regarding this new large-scale project.

10. Virtually all freight received by Richard Best at RBT-Ivory is transported via UP, which delivers the traffic at Fresno, California, for final delivery via the SJVR. The Open and Prepay Station List (OPSL 6000-Series) lists Dinuba, CA, where RBT-Ivory is located, as a UP station. The UP OPSL listing for Dinuba references note 3500, which states that "Traffic moving in connection with UP to or from stations referring to this note should be routed only via UP;" "Carriers shown in Column 1

[meaning SJVR for present purposes] should not be shown in the route;” and “UP FSAC numbers must be observed.” The SJVR thus serves as UP’s agent and not an independent connecting carrier for freight transported by UP moving to RBT-Ivory. SJVR is not eligible to establish its own independent rates or switch fees on through freight service with the UP.

11. The OPSL also lists Dinuba as a station for SJVR, but the SJVR listing is only for local traffic, of which there is very little, if any.

12. The OPSL also lists Dinuba as a BNSF station. However, BNSF does not serve RBT-Ivory itself, but must rely on the SJVR to serve as its delivery agent. BNSF’s ability to serve RBT-Ivory is extremely limited because UP has blocked BNSF from being able to deliver unit trains to SJVR at either of the two crossings at Fresno or Hanford, California. As a result, BNSF can deliver only single cars to the SJVR, and single car service is generally not competitive for serving the California dairy cattle industry. RBT-Ivory thus receives little freight shipped via BNSF, and is captive to UP for receiving unit train shipments on virtually all of its freight.

13. Attached as *Exhibit A* to this complaint is an annotated version of a SJVR map that depicts the SJVR, UP, and BNSF lines in the area as well as various stations served by those carriers. The annotations show the locations of the RBT-Ivory, RBT-Hollis, and Western Milling facilities in the area. The map shows how traffic destined to RBT-Ivory moves from Fresno on the SJVR a relatively short distance of 26.6 miles to RBT Ivory (PC Miler-Rail). In contrast, traffic destined to Richard Best’s

competitor, Western Milling, at Goshen Junction moves from Fresno by UP over its main line for a longer distance of 33.9 miles (PC Miler-Rail).

**UP's 4053 Tariff Rate Groups Before November 1, 2016**

14. UP has long priced its dairy feed ingredients transportation service by public pricing tariff, structured to apply from defined groups within general geographic regions. UP Tariff 4053 is the pricing authority that UP has long used to apply to all Central California feed ingredients shippers and receivers. Under UP Tariff 4053, all locations within an "Origin and Destination Group" receive the same rate from any specified origin for a given service. In particular, unit train shippers within the same geographic group would receive the same unit train rates from a given origin.

15. RBT-Ivory, as an established and certified UP unit-train facility, had always received the same tariff rates as nearby Western Milling-Goshen Jct. under UP Tariff 4053 since at least 2011. UP had included both locations under the same broader geographic groups, depending on the specific commodity/STCC code. UP's practice under Tariff 4053 has been to group receivers by geographic region, and until now has included Richard Best as part of the "Central Cal Train Group," consisting of all of the stations of like receivers located anywhere throughout the Central or San Joaquin Valley, or under the broad "CA Group," consisting of feed ingredients receivers throughout California.

16. Until November 1, 2016, UP included RBT-Ivory in the same Origin and Destination Group with the receiving facilities of RBT's local competitors that UP serves directly. The result was that RBT-Ivory received the same rates as Western

Milling's facility located at Goshen Junction and others competitors, to the benefit of UP, SJVR, RBT and its competitors, their customers, and the public.

17. For example, Item 4011-BH of UP 4053-C, issued September 28, 2016, and effective November 1, 2016, governed "DDG – 1 to 1 Unit Train Rates" for STCC 20823 and 20859. The item specified a "Central Cal Train Group" that included Famoso, Goshen Jct. (Western Milling), Ivory (RBT), and Pixley, California, meaning that all the origins shared the same rates.

18. Item 4021-U, issued September 9, 2016, and effective October 1, 2016, governed "DG – 2 to 1 Sweep Rates" for the same STCC, and maintained the same grouping.

19. Item 4431-Z of UP 4053-C, as issued September 9, 2016, and effective July 21, 2016, governed shipments for "Corn Gluten Meal – Unit Train Rates," including STCC 2042175, and used a "Central Cal Train Group," that included Famoso, Goshen Junction, and Ivory.

#### **The Tariff UP 4053 Revisions**

20. On September 22, 2016, UP issued Announcement Number AG2016-50, and UP announced that it would be adjusting the Tariff UP 4053 by \$250/car for DDGS (STCC 20859 and 20823), Canola Meal (STCC 20939), and Gluten Feed (STCC 2042175), to five destinations: Ivory, CA, Dinuba, CA, Conner, CA, Bakersfield, CA, and Hanford, CA. Ivory and Dinuba cover RBT-Ivory:



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## **UP 4053 - Feed Ingredients Adjustment**

**Announcement Number:** AG2016-50

**Categories:** Livestock and Feed, Meals and Oils

**Posted Date:** September 22, 2016

Dear Union Pacific Customers,

Effective **November 1, 2016**, Union Pacific will be adjusting tariff **UP 4053** by **\$250/car** to the destinations listed below. Commodities impacted will be DDGS (STCC 20859 and 20823), Canola Meal (STCC 20939), and Gluten Feed (2042175).

Ivory, CA
Dinuba, CA
Conner, CA
Bakersfield, CA
Hanford, CA

If you have any questions please contact your Union Pacific representative.

21. On information and belief, RBT's competitor, Western Milling, requested UP to initiate the rate penalties and/or disparities favoring the traffic received at Western Milling stations, over the traffic received at RBT stations, as brought about by the Tariff UP 4053 Revisions.

22. On information and belief, UP initiated the Tariff UP 4053 Revisions in response to Western Milling's request(s) to UP to initiate the rate penalties and/or disparities favoring the traffic received at Western Milling stations, over the traffic received at RBT's stations.

23. UP has since implemented a number of revisions to UP 4053 to place Ivory, Dinuba, and additional SJVR-served destinations in a different rate group

than UP's favored destinations and subjected the SJVR-served destinations to the \$250 per car penalty.

24. For example, item 4011-BJ, issued October 18, 2016, and effective November 7, 2016, for "DDG – 1 to 1 Unit Train Rates," lists Dinuba and Ivory in a new "CA, Ivory/Dinuba Group," and assigned the group rates that are \$250 per car higher than those for the Central Cal Train Group that continues to include Famoso, Goshen Junction, and Pixley.

25. Similarly, Item 4021-V issued October 11, 2016, and effective November 1, 2016, governing "DDG – 2 to 1 Sweep Rates," removed Ivory from the Central Cal Train Group, but retained Goshen Junction and Famoso, even though Famoso is located 87.4 miles from the Fresno Yard (PC Miler-Rail), over 50 miles further from Fresno than Ivory/Dinuba.

26. Item 4431-AA, issued October 11, 2016, and effective November 1, 2016, governing "Corn Gluten Meal – Unit Train Rates," made similar changes and imposed the \$250/car penalty on RBT-Ivory.

27. Tariff UP 4053 also applies an additional charge of \$125/car on non-unit train traffic received at RBT-Hollis that does not apply to similar competing facilities at nearby destinations that are directly served by UP.

28. UP has also informed Richard Best that the same penalty will apply to any other unit train revenue stream besides feed ingredients that Richard Best may try to develop at RBT-Ivory, RBT-Hollis, or any other SJVR-served location. The penalty has the purpose and effect of either forcing Richard Best out of business or requiring

Richard Best to relocate its facilities, although such relocation is neither feasible nor economically practicable. The penalty has the further effect of discouraging Richard Best and others from making useful and mutually beneficial investments to improve facilities for handling rail freight traffic for the benefit of the Central Valley dairy industry.

### **Impact of the Tariff UP 4053 Revisions**

29. UP's \$250/car penalties target RBT-Ivory and other destinations with facilities served by the SJVR, and favors those destinations that UP serves directly. The penalties create a strong, impenetrable rate advantage, in the form of a price squeeze, that benefits receivers at those destinations that UP services directly, such as the Western Milling facilities located at Goshen Junction. The penalty creates a disadvantage for Richard Best and its customers, and creates a strong incentive for those customers to shift their business to facilities that are not served by the SJVR in order to avoid the penalty.

30. For a unit train with 100 cars, the penalty adopted by UP amounts to \$25,000 per train. UP has acknowledged that the penalties are designed to discriminate against Richard Best, in favor of customers on UP's own mainlines.

31. This is not the first time that UP has unfairly targeted RBT in such a manner, but this one is much more wide-spread, and pernicious. RBT previously owned a transloading facility south of Bakersville, CA, at the rail station Conner ("RBT-Conner") on the SJVR and competing directly with nearby Western Milling, Famoso. In the summer of 2010, the UP created by tariff the separate "Conner Group," and

implemented \$125 per car penalties on shipments to RBT-Conner versus the rates charged to Western Milling, Famoso.

32. In response to RBT's complaints about the Conner Group tariff changes, two UP feed ingredients managers met personally with RBT officers in early August, 2010, and they admitted that Western Milling had requested UP to implement the Conner rate penalty and that UP responded favorably to their request in order to protect its mainline investments. In fact, RBT was further informed by UP's managers at the meeting that Western Milling was upset that the UP-Conner rate penalty was only \$125 per car, and not high enough to put RBT completely out of business. RBT sold RBT-Conner shortly thereafter to Quality Grain. Unlike at Conner, which has some competitive protection because is also served by BNSF, RBT-Ivory does not have alternative access to BNSF unit train service to help protect itself because UP has blocked BNSF unit train access to RBT-Ivory.

**UP's Penalty is Punitive, not Compensatory,  
and Does Not Promote Economic Efficiency**

33. UP has indicated that its tariff penalty initiative is designed to protect the investments that other receivers have made in their train facilities, but those facilities are not superior to those of Richard Best in any material respect. Richard Best upgraded its facilities at RBT-Ivory in 2011 at a cost of \$3 million, after UP stated that such upgrades were necessary for Richard Best to receive the same rates as its competitors, even though any costs associated with cutting RBT-Ivory trains would be borne by SJVR and not UP.

34. RBT has further expanded its facilities at RBT-Ivory since 2011, implementing additional track, unloading, and infrastructure investments (and planned investments) totaling \$3.85 million, to increase its capabilities and create efficiencies to better serve the needs of its customers and the Central California dairy industry, and that benefit UP's and SJVR's operations.

35. Because RBT-Ivory's facilities are not inferior, UP's new tariff penalties do not promote economic efficiency. Instead, they punish RBT-Ivory for being successful and benefit competitors, but not customers or competition.

36. On information and belief, the new UP tariff penalties are designed by UP to demarket feed ingredients traffic on the SJVR in favor of RBT's nearby competitors on the UP main line.

37. The new UP tariff penalties threaten Richard Best's continued commercial viability.

38. UP has suggested that Richard Best should consider relocating its facilities on UP's mainline. There is not, and UP has not identified, any suitable nearby location that is available on UP's congested mainline. Even if it were otherwise feasible, relocation would result in massive stranded investment at RBT-Ivory. Relocation is thus completely impracticable and economically infeasible.

39. Without the benefit of discovery, Richard Best is not in a position to know the exact compensation arrangements between UP and the SJVR.

40. Nonetheless, the fact that SJVR functions and is designated as UP's agent for delivery, and not as an independent carrier on the movement, indicates that UP

has unilateral discretion over the rates for traffic that UP interchanges for delivery by the SJVR, that the SJVR's compensation consists of a handling fee or division that UP and SJVR negotiated in advance, and that the SJVR lacks any ability to modify that fee or division on its own.

41. Richard Best has received no indication that the \$250/car penalty imposed by UP is intended to offset any increase in SJVR's handling fee or division. On information and belief, SJVR has not attempted to extract increases in its handling fee or division by \$25,000 for a 100-car unit train or anything even remotely equivalent.

42. The penalty imposed by UP might, perhaps, make some sense if UP were paying SJVR \$250 more per to transport a car from Fresno to RBT-Ivory than it costs SJVR to transport a car to Goshen Junction. However, such a cost disparity is inherently implausible. Short-lines such as the SJVR are typically more efficient than Class I carriers such as UP. There is no apparent cost justification for imposing a penalty of the magnitude established by UP, and UP has provided no SJVR-based cost justification for its Tariff UP 4053 Revisions.

43. The compensation that UP provides SJVR for moving a unit train from Fresno to RBT-Ivory is unlikely to amount \$25,000 more than the cost UP incurs to move a unit train to Western Milling at Goshen Junction or a comparable location. UP likely lowers its costs and realizes savings by having SJVR to move trains to RBT-Ivory and other locations that UP serves directly.

44. To move a train from its Fresno Yard to Goshen Junction or other destinations south of Fresno, UP must pay for a crew and cover the associated locomotive

costs to move the train from Fresno to Goshen Junction, where UP then leaves the train, less the locomotive consist, for unloading. The crew then returns with the locomotive consist to Fresno. When the empty train is ready to be retrieved, UP must send another crew and locomotive consist from Fresno to Goshen Junction to connect to the train and then bring the empty unit train back to Fresno, where it can then be moved to an origin. In addition to the crew and locomotive costs, which include fuel, capital costs, and maintenance costs, UP must also maintain its main line between Fresno and Goshen Junction. The two trips to Goshen Junction, one to drop-off and the second to retrieve the unit train, also contribute to congestion along UP's mainline.

45. In contrast, when the SJVR moves a train from Fresno to RBT-Ivory, UP merely provides an interchange, where it disconnects and then later reconnects its locomotive consist, much as UP does at Goshen Junction, except that the switching occurs at its Fresno Yard. The SJVR is then responsible for providing its own locomotives and crews to move the train from Fresno to RBT-Ivory and other destinations and back to Fresno. The SJVR absorbs the costs of the crews, the locomotives (including fuel, ownership, and maintenance), maintenance of the line, and any associated congestion.

46. Under the circumstances, UP's penalty does not serve to cover or offset additional costs resulting from its use of the SJVR to make deliveries to RBT-Ivory as opposed to UP's own deliveries to Goshen Junction. Accordingly, the charge is punitive in nature and does not contribute to, but instead undermines economic efficiency.

47. RBT counsel sent a letter to UP on October 25, 2016 (“RBT Demand Letter”) demanding that UP revisit and immediately withdraw the Tariff UP 4053 Revisions. That letter, *inter alia*, expressed the lack of economic efficiency rationale for UP’s tariff revisions addressed in paragraphs 41 through 46 of this Complaint. A copy of the RBT Demand Letter is set forth at *Exhibit B* to this complaint. While UP counsel have had preliminary discussions with UP counsel over the Tariff UP 4053 Revisions, UP has not yet responded to any of RBT’s expressed factual allegations, or provided a written response to the RBT demand letter.

**UP’s Actions Also Violate the AAR-ASLRA Railroad Industry Agreement**

48. UP’s penalty violates the principles established in the Railroad Industry Agreement (the “RIA”) entered into between the Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”).

49. The RIA expressly and explicitly adopts principles of economic efficiency and nondiscrimination in dealings between large railroads such as UP and small railroads such as the SJVR for the benefit of the railroad industry including both large railroads and small railroads, industry customers, shippers, receivers of freight, and the public generally by promoting competition and preventing anti-competitive conduct.

50. The RIA specifies that “[a] Large Railroad seller/lessor should not be able to block a Short Line’s reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package.” RIA, p. 3. UP is violating these terms and principles of the RIA because its actions impair SJVR’s

ability to handle traffic destined to RBT by imposing a penalty that will shift such traffic to destinations that are directly served by UP such as Goshen Junction. Those facilities may face capacity constraints and/or, with the reduction in competition, charge higher rates and fees than RBT for transloading services, to the economic detriment of the California dairy industry, commerce, consumers, and the regional economy.

51. The RIA also specifies that “[t]he Large and Small Railroads commit to provide market-based competitive pricing for their customers, regardless of whether located on a Class I or connecting Small Railroad, that is non-discriminatory under similar circumstances and conditions.” RIA, p. 5. The RIA further provides that “joint line price levels ... will reflect consideration of capital and/or operating savings for the Large Railroads resulting from services provided by the Small Railroads in the route.” *Id.* UP is violating these terms and principles of the RIA because its penalty discriminates against the SJVR and SJVR-served destinations such as RBT-Ivory for transportation under similar circumstances and conditions that does not reflect the savings for UP that result from the services the SJVR provides in the route.

52. The RIA further specifies that “[t]he Large Railroad shall study its costs,” and that “[t]his study shall include all costs relevant to this segment of the Large Railroad (including any savings attributable to the then present Small Railroad Operations as well as including any applicable handling charges paid by the Large Railroad to the Small railroad as part of the costs incurred by the Large Railroad).” RIA, Exhibit E. UP is violating these terms and principles of the RIA because its penalty does

not reflect the savings the SJVR's provides to UP in delivering freight to RBT-Ivory compared to the costs that UP incurs in delivering freight itself to Goshen Junction.

53. In the RBT Demand Letter to UP, RBT asked UP to temporarily suspend implementation of its Tariff UP 4053 Revisions prior to their effective date while the parties engaged in high-level, meaningful discussions, together with the SJVR and major affected shippers over the terms of the Tariff. UP has thus far refused to suspend its tariff penalties or agree to engage in any meaningful discussions over its Tariff UP 4053 Revisions.

**COUNT I**  
**(Unreasonable Practice – Unreasonable Classification of Destinations)**

54. Richard Best incorporates by reference the allegations in paragraph 1 through 53 of this Complaint, as if they were set forth fully herein.

55. Under 49 U.S.C. § 10702, “[a] rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable – (1) ... classifications for transportation and service it may provide under this part; and (2) rules and practices on matters related to that transportation or service.”

56. UP's actions through its Tariff UP 4053 Revisions in placing RBT-Ivory and other SJVR-served destinations in a separate destination classification from UP-served destinations such as Goshen Junction for purposes of imposing a \$250/car penalty constitute an unreasonable practice and classification.

57. UP's classification is not based on any reasonable cost or commercial considerations, and UP has not identified any reasonable cost or other commercial considerations to support its unreasonable practice and classification.

58. RBT-Ivory's facilities are at least equivalent to competing facilities at other destinations that UP did not classify adversely. RBT-Ivory competes to serve the same feed customers as those other facilities. UP's costs of serving RBT-Ivory are no greater than its costs of serving other facilities that UP serves directly, and the costs of serving RBT-Ivory are in all likelihood less.

59. UP's imposition of its \$250/car penalty at RBT-Ivory and the other SJVR-served destinations, and a similar penalty at RBT-Hollis, does not serve any legitimate purpose. The penalty places RBT-Ivory at a severe competitive advantage and jeopardizes RBT-Ivory's continued commercial existence. Elimination of RBT-Ivory and other SJVR's served facilities as competitors is not in the best interests of UP as a common carrier, other shippers of dairy feed, dairy feed customers that are the ultimate customers of RBT-Ivory, Western Milling, SJVR, and the public generally.

60. UP's tariff penalty, amounting to \$25,000 for a 100-car unit train, is harmful to the public interest generally.

61. The penalty is harmful to RBT because it jeopardizes the continued viability of RBT-Ivory and all the investment that Richard Best has made in the facility. The penalty is harmful to longstanding RBT employees and the related RBT-Ivory workforce, as it jeopardizes 60 jobs that Richard Best sustains at RBT-Ivory.

62. The penalty harms commerce, as it undermines competition among RBT, Western Milling, and other receivers of feed and related products in the Central Valley.

63. The penalty harms the SJVR by eliminating its largest customer and thus jeopardizing SJVR's significant investments and its future line investment capabilities.

64. The penalty harms UP, in the form of a loss of business and the elimination of a highly efficient, unit train feed ingredients transloading facility capable of meeting UP's customers' requirements at a low cost. The penalty also harms UP in the form of the elimination of viable remaining Central California competitive feed ingredients transload locations that could be developed to meet the demand of the local dairy industry.

65. The penalty harms feed ingredients suppliers, the California dairy cattle industry, and local farmers in the form of: UP's forced removal of a long-standing, important, large-scale regional competitor; the wholesale elimination of the viable remaining competitive feed transload locations; the elimination of important dairy feed storage and transloading capacity; increased local trucking distances and costs; and increased market prices for feed ingredients.

66. The penalty harms taxpayers by putting millions of dollars of public investments made in the SJVR lines in jeopardy and discouraging future public partnerships with the short lines.

67. The penalty harms dairy product consumers by reducing product input competition and increasing the costs of dairy products.

68. The penalty harms the economic base of the region and rail line capacity at a time when area shippers and receivers of railroad freight need these important investments and the railroads to reasonably serve them to meet their basic business needs, invest, and grow.

69. UP's tariff penalty initiative amounts to predatory pricing and/or a price squeeze by creating conditions under which RBT-Ivory, RBT-Hollis and other SJVR-served destinations cannot compete effectively with UP-served destinations.

70. UP's related tariff penalty actions involve unlawful collusion and conspiracy with RBT's competitors in restraint of trade, unwarranted exclusionary conduct, and attempted unlawful monopolization.

71. UP's related tariff penalty actions involve intentional and unjustified tortious interference in RBT's business relationships and/or contracts with third parties.

72. UP's related tariff penalty initiative violates agreed-upon rate policy under the Railroad Industry Agreement, including "to provide market-based competitive pricing for . . . customers, regardless of whether located on a Class I or connecting Small Railroad, that is non-discriminatory under similar circumstances and conditions" (RIA, § IV.4.c.).

73. UP's related tariff penalty initiative violates agreed-upon access policy under the Railroad Industry Agreement, including that "[a] Large Railroad seller/lessor should not be able to block a Short Line's reasonable attempts to gain New

Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package” (RIA, § III).

74. UP’s actions are anti-competitive, contrary to the public interest, and also contrary to the national rail transportation policy at 49 U.S.C. § 10101, “(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;” “(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers...;” “(9) to encourage honest and efficient management of railroads;” and “(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination.” UP’s actions are also contrary to the provisions of the RIA that promote competition between and among large and small railroads to the benefit of the large and small railroads themselves, their customers, and the public generally.

**COUNT II**  
**(Unreasonable Discrimination)**

75. RBT incorporates by reference the allegations in paragraph 1 through 74 of this Complaint, as if they were set forth fully herein.

76. Under 49 U.S.C. § 10701(b), “[a] rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part.”

77. Under 49 U.S.C. § 10741(a)(1), “[a] rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.” Under 49 U.S.C. § 10741(a)(2), “a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform under this part than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances.”

78. UP has discriminated against SJVR in violation of 49 U.S.C. §§ 10701(b) and 10741(a)(1) by imposing its \$250/car penalty on SJVR’s served destinations, including RBT-Ivory, and a similar penalty at RBT-Hollis, that does not apply to UP-served destinations.

79. There is no legitimate cost or other justification for UP to impose its penalty on SJVR-served destinations that does not apply to UP’s own destinations. The facilities at destinations served directly by UP are not superior. The penalty does not relate to any additional costs that UP incurs for service to the SJVR-served destinations that does not apply to UP’s own destinations. UP’s unreasonable discrimination is to the detriment of RBT-Ivory, its customers, and the public generally. UP’s actions are also contrary to the provisions of the RIA that promote competition between and among large and small railroads to the benefit of the large and small railroads themselves, their customers, and the public generally.

80. The transportation that UP provides under UP 4053 to its interchange with the SJVR at Fresno Yard and to UP-served destinations south of the Fresno Yard involves the same origins, same freight, same service, same equipment, and same route. The transportation is thus otherwise identical as it a “like and contemporaneous service” (unit trains) “in the transportation of a like kind of traffic” (feed stock for dairy cattle in California’s Central Valley) “under substantially similar circumstances” (the same feed stock moving at the same time in unit trains along the same route to comparable destinations serving the same ultimate customers).

81. The discrimination is that UP is charging a penalty of \$250/car for traffic moving to RBT-Ivory and similar penalties to other SJVR-served destinations that UP does not charge for traffic moving to those competing destinations that UP serves directly. The discrimination is unreasonable because the penalties are not cost-based, and UP has provided no cost or other explanation for the penalties.

82. UP’s tariff penalty amounts to predatory pricing and/or a price squeeze by creating conditions under which RBT-Ivory and other SJVR-served destinations cannot compete effectively with UP-served destinations

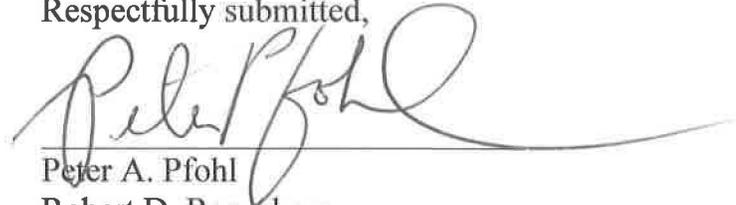
83. UP’s actions are anti-competitive, contrary to the public interest and also contrary to the national rail transportation policy at 49 U.S.C. § 10101, “(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;” “(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers...;” “(9) to encourage honest and efficient management of railroads;” and “(12)

to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination.” UP’s actions are also contrary to the provisions of the RIA that promote competition between and among large and small railroads to the benefit of the large and small railroads themselves, their customers, and the public generally.

84. This Complaint covers any changes to, or modifications of Tariff the UP 4053 Revisions that UP may establish during the course of this proceeding, along with any successor tariffs.

**WHEREFORE**, Richard Best requests that Defendant UP be required to answer the charges herein; that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board’s implementing regulations, the Board find that penalty adopted and implemented by UP on Richard Best at RBT-Ivory and at other SJVR-served destinations constitutes an unreasonable and unlawful classification and practice in violation of 49 U.S.C. § 10702 and unreasonable discrimination in violation of 49 U.S.C. §§ 10701(b) and 10741, and is otherwise against the public interest and in violation of public policy; that the Board enter an order directing UP to cease and desist from its unlawful practices and that UP’s penalty not be enforced or given effect in the provision of rail transportation to RBT-Ivory and other SJVR-served destination by UP; and that the Board grant to Richard Best such other and further relief as the Board may deem reasonable and necessary on the record presented.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Pfohl", written over a horizontal line.

Peter A. Pfohl

Robert D. Rosenberg

Katherine F. Waring

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DATED: November 3, 2016

*Attorneys for Richard Best Transfer Inc.*

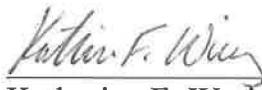
## CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1111.3, I hereby certify, that I have this 3rd day of November, 2016, caused to be served copies of this Complaint by overnight express courier on the Chief Legal Officer of the Union Pacific Railroad Company as follows:

Rhonda S. Ferguson  
Executive Vice President and Chief Legal Officer  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

With a courtesy copy by email to:

Louise A. Rinn, Esq.  
Regulatory Counsel  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

  
\_\_\_\_\_  
Katherine F. Waring  
An Attorney for Complainant

# **EXHIBIT A**

# San Joaquin Valley Railroad (SJVR)



SJVR Site Map, available at [https://www.gwrr.com/railroads/north\\_america/san\\_joaquin\\_valley\\_railroad#m\\_tab-one-panel](https://www.gwrr.com/railroads/north_america/san_joaquin_valley_railroad#m_tab-one-panel) (modified to illustrate Richard Best Transfer, Inc. and Western Milling locations).

# **EXHIBIT B**

# SLOVER & LOFTUS LLP

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WRITER'S E-MAIL:

October 25, 2016

OF COUNSEL  
DONALD G. AVERY  
CHRISTOPHER A. MILLS

**VIA EMAIL AND FIRST CLASS MAIL**

Mr. Daniel McLaughlin  
Assistant Vice President  
Grain & Grain Products  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

Mr. Brad Thrasher  
Vice President and General Manager  
Agricultural Products  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

Re: Richard Best Transfer, Inc. – UP 4053 Feed Ingredients Adjustment

Dear Messrs. McLaughlin and Thrasher:

On behalf of our client, Richard Best Transfer, Inc. (“RBT”), we write to demand that Union Pacific Railroad Company (“UP”) revisit and immediately withdraw the tariff initiatives that it recently announced in UP 4053 – Feed Ingredients Adjustment (Announcement No. AG2016-50) (“Tariff UP 4053 Revisions”). Those initiatives would impose significant new rate penalties on traffic received by RBT beginning November 1, 2016.

UP appears to have adopted its tariff initiatives with the purpose, intent, and effect of placing RBT, its connecting short-line carrier, the San Joaquin Valley Railroad (“SJVR”), and RBT’s customers at a substantial competitive disadvantage, while at the same time obstructing Central California’s dairy industry from accessing important regional feed ingredients receiving facilities. UP’s actions are thus anti-competitive, unreasonable, and discriminatory, and run afoul of the ICC Termination Act of 1995, federal and state competition laws, and UP’s own agreements. Accordingly, we ask that UP withdraw or suspend its tariff initiatives immediately.

RBT is a regional success story by virtue of its massive investment in its first-class facilities. RBT originally invested over \$3 million to establish its unit-train unloading facilities that were completed in 2011. RBT currently receives approximately 4,600 rail cars of agricultural ingredients annually at its Ivory/Dinuba location (“RBT-Ivory”), usually in unit train service. These commodities are used to help feed the over 80,000 producing dairy cattle in Central California’s dairy cattle industry located within a 20-mile radius of RBT-Ivory. RBT’s unit train unloading facility meets or surpasses all UP design requirements for

EXHIBIT B

unit grain train service, and is at least comparable to other local feed ingredient receiving facilities served by UP.

RBT has recently expanded its investment to build upon its success and better serve the needs of the local dairy cattle industry, one of Central California's largest, and most important industries. RBT added an additional 3,000 feet of new rail track and switches at a cost of \$900,000 in 2015-16, constructed a highly efficient hard car unloader system and structures at a cost of \$600,000 in 2016, and is currently constructing a large receiving pit at a cost of \$350,000. RBT also has pending before Tulare County plans to construct a large 175' x 500' commodity barn, capable of holding ten unit trains of commodities, at a cost of \$2 million. This \$6.85 million of completed and planned investment by RBT enables UP to deliver, at no additional cost to itself, enormous volumes of products to its customers.

The Tariff UP 4053 Revisions that UP has adopted impose substantial and unprecedented \$250/car rate penalties on dairy feed commodities received not only at RBT-Ivory, but also at any other locations on the SJVR, including at Hollis, CA, where RBT plans to undertake significant new investments to further grow its business volumes via UP. The apparent purpose of UP's new tariff penalty initiative is to favor facilities and customers at other nearby locations to the competitive detriment of RBT, its customers, the SJVR, and the Central California dairy industry.

UP's punitive charges are directly contrary to UP's long-standing practices, programs, and policies to promote customer investments, share unit-train facility efficiency gains with its customers, and equalize agricultural product rates between geographically-grouped locations. The Tariff UP 4053 Revisions violate UP's stated policies by removing RBT-Ivory from its Central California Train Group, and placing it and other SJVR stations such as Hollis within newly-created groups to which UP's penalties are to be applied. On a 100-car train, the Tariff UP 4053 Revisions amount to a \$25,000 penalty against RBT stations, placing them at a major disadvantage compared to their competitors. RBT has done everything right to improve the efficiency of its operations for the benefit of UP and meet the needs of local industry at significant private cost. The unfortunate response to RBT's success by UP is to punish it, by placing in front of RBT (and SJVR) a new form of "paper barrier" to restrict RBT's access to the UP and inhibit the ability of RBT's customers to competitively serve the Central California dairy industry.

Even with RBT undertaking substantial new investments in its facilities, UP made its tariff revisions unilaterally, without any prior communication or consultation with RBT, thereby placing RBT's business and its substantial investments and plans in significant, immediate jeopardy. UP has to date refused to consider reversing or suspending its initiative. UP's only suggestion to RBT is that it simply cease its operations and improvements on the SJVR and relocate its facilities on UP's main line, despite UP's full knowledge that doing so would strand millions in RBT's investments and that there are no suitable locations along UP's congested nearby-mainline for any such relocation. UP has also admitted to RBT

that its Tariff UP 4053 Revisions are designed to protect other receivers' investments in their unit train facilities; even though, as discussed, RBT's unit train facility investments are fully comparable to any other competitor.

No economic efficiency rationale supports for UP's tariff revisions; and those revisions serve no legitimate competitive or other business purpose. Utilizing the SJVR to effect ultimate delivery of freight transported by UP enables UP to realize substantial savings compared to having UP make the deliveries itself. UP's new tariff penalties do not apply to RBT's nearest competitor, located at Goshen Jct., located a further distance from the Fresno Yard than RBT-Ivory. However, delivery to RBT-Ivory, via SJVR, rather than having UP effectuate alternative delivery to RBT's nearest competitor (Goshen Jct.) saves UP locomotive, crew, fuel, and congestion costs, as the SJVR can perform the work using its own locomotives and crew at much lower costs. UP must travel a further distance to Goshen Jct. and otherwise utilize a crew and locomotive consist to deliver the train to the destination, remove the locomotives at the destination, have the crew and locomotives return to the Fresno Yard, and then send a second crew and locomotive consist to connect to and retrieve the empty train and bring it back to the Fresno Yard, to await pickup by the crew arriving from next crew district. The requirement for separate trips to drop off and retrieve the unit train creates congestion along this busy main line, generally. Such actions increase UP's costs and diminish UP's total traffic volumes, even as they undermine the major investments that UP receivers, customers, and the SJVR have undertaken to improve rail service and be able to receive traffic via the SJVR at no cost to UP.

Thus, the fact that RBT is located on SJVR's lines provides no possible justification or excuse for UP's tariff revisions, as an efficient, lower-cost short line railroad clearly provides UP with a value added service, which service the Class 1 railroads often tout as an important component of their economic success. The imposition of any penalty, let alone one in the range of \$25,000, under such circumstances does not promote economic efficiency or any other legitimate end, and simply serves to drive away important existing business and chill any new investments and upgrades being considered by UP's customers and its short line partners.

The harm that UP's tariff actions will cause gives rise to a number of potential claims and actions against UP, including but not limited to:

- violation of UP's statutory obligations to establish reasonable practices (49 U.S.C. § 10702(2));
- violation of UP's statutory obligation to avoid unreasonable discrimination (49 U.S.C. §§ 10701(b), 10741);
- violation of UP's agreed-upon rate policy under the Railroad Industry Agreement "to provide market-based competitive pricing for . . . customers, regardless of whether located on a Class I or connecting Small Railroad, that is non-discriminatory under similar circumstances and conditions" (RIA, § IV.4.c.);

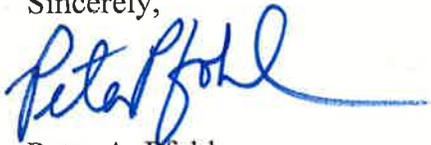
- violation of UP's agreed-upon access policy under the Railroad Industry Agreement that "[a] Large Railroad seller/lessor should not be able to block a Short Line's reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package" (RIA, § III);
- violation of UP's agreed-upon access policy under the Railroad Industry Agreement that any "paper barrier" restrictions on interchanges by short lines in the form of excessive per car charges or other penalties are unreasonable and should not be permitted (RIA, § III)
- unlawful collusion and conspiracy with RBT's competitors in restraint of trade, engagement in unwarranted exclusionary conduct, and attempted unlawful monopolization (Sherman Act, §§ 1-2);
- unlawful, unfair or fraudulent conduct under California state law; and
- intentional and unjustified tortious interference in RBT's business relationships and/or contracts with third parties.

The successful assertion of any one of these claims could result in injunctive relief and substantial damages against UP, including possible punitive or treble damages.

RBT's would strongly prefer to work with UP to achieve an appropriate resolution to this matter that avoids unnecessary litigation. However, UP should appreciate that RBT cannot allow UP's punitive charges to take effect on November 1, 2016, without challenge. In this respect, RBT has asked us to draft formal legal complaints against UP, that can be filed on short notice. While RBT obviously would prefer not to resort to such measures, the business harm that would result from the implementation of the Tariff UP 4053 Revisions leaves RBT with few options.

As an interim step, we urgently suggest that UP temporarily suspend implementation of its Tariff UP 4053 Revisions prior to their effective date while the parties engage in high-level, meaningful discussions, together with the SJVR and major affected shippers. On behalf of RBT, we appreciate your full and immediate consideration of this matter, and we look forward to your prompt response.

Sincerely,



Peter A. Pfohl

cc: Louise A. Rinn, Esq. (UP) (via email)  
James Irvin (SJVR) (via email)  
Richard S. Campbell (ADM) (via email)  
Richard E. Best (RBT) (via email)