

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED  
10/28/2021 3:14 PM  
Superior Court of California  
County of Mendocino

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

MENDOCINO RAILWAY AND DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CITY OF FORT BRAGG, a California municipal corporation

By: *Dorothy Jee*  
D. Jess  
Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MENDOCINO - TEN MILE BRANCH  
700 South Franklin Street, Fort Bragg, CA 95437

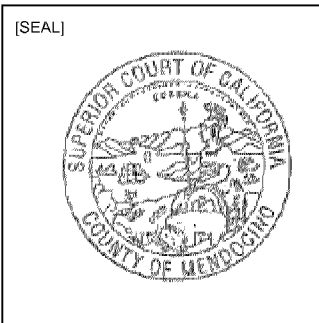
CASE NUMBER: (Número del Caso):  
21CV00850

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Russel A. Hildebrand (SBN 191892)  
Krista MacNevin Jee (SBN 198650) JONES MAYER - 3777 N. Harbor Boulevard, Fullerton, CA 92835; 714-446-1400

DATE: 10/28/2021  
(Fecha)

Clerk, by *Kim Turner*, Deputy  
(Secretario) *Dorothy Jee* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). D. Jess



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 JONES & MAYER  
Russell A. Hildebrand (SBN 191892)  
2 [rah@jones-mayer.com](mailto:rah@jones-mayer.com)  
Krista MacNevin Jee, Esq. (SBN 198650)  
3 [kmj@jones-mayer.com](mailto:kmj@jones-mayer.com)  
3777 North Harbor Boulevard  
4 Fullerton, CA 92835  
Telephone: (714) 446-1400  
5 Facsimile: (714) 446-1448

By:   
D. Jess  
Deputy Clerk

6 Attorneys for Plaintiff  
CITY OF FORT BRAGG  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MENDOCINO

11 CITY OF FORT BRAGG, a  
California municipal corporation,

12 Plaintiff,

13 vs.

14 MENDOCINO RAILWAY AND  
15 DOES 1-10, inclusive

16 Defendants.

Case No. 21CV00850

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(GOV. CODE, § 11350; CODE CIV. PROC., §  
1060)

**JUDGE:** CLAYTON BRENNAN

**DEPT.:** TEN MILE

17  
18  
19 Plaintiff CITY OF FORT BRAGG, CA (“City” or “Plaintiff”) files this action  
20 seeking judicial declaration regarding the validity of the Mendocino Railway’s status as a  
21 public utility pursuant to Code of Civil Procedure section 1060 and/or injunctive relief,  
22 alleging as follows:

23 1. The operations of the Mendocino Railway have been reduced over time and  
24 now consist of only the operation of out and back excursion trips starting in either Fort  
25 Bragg, California or Willits, California and therefore the Mendocino Railway is no longer  
26 entitled to status as a public utility, is in fact an excursion only railroad, and therefore is  
27 subject to the jurisdiction of the City of Fort Bragg and all ordinances, codes and  
28 regulations set forth in the City of Fort Bragg Municipal Code.

1 **PARTIES**

2 2. At all relevant times herein, Plaintiff City of Fort Bragg was and is a  
3 municipal corporation organized and existing under and by virtue of the laws of the State  
4 of California.

5 3. Defendant Mendocino Railway is currently listed as a class III railroad by  
6 the California Public Utilities Commission (“CPUC”), and as such is subject to CPUC  
7 jurisdiction and has all legal rights of a public utility. At all relevant times herein, it has  
8 and does own and operate the “Skunk Train,” as described herein, within the City of Fort  
9 Bragg, as well as owning and thus having maintenance and other responsibilities for real  
10 property relating thereto and also situated within the City of Fort Bragg.

11 4. Plaintiff is currently unaware of the true names and capacities of Does 1  
12 through 10, inclusive, and therefore sues those parties by such fictitious names. Does 1  
13 through 10, inclusive, are responsible in some manner for the conduct described in this  
14 complaint, or other persons or entities presently unknown to the Plaintiff who claim some  
15 legal or equitable interest in regulations that are the subject of this action. Plaintiff will  
16 amend this complaint to show the true names and capacities of Does 1 through 10 when  
17 such names and capacities become known.

18 **BACKGROUND FACTS**

19 5. The Mendocino Railway, aka the “Skunk Train,” does in fact have a long  
20 and storied history of operations between Fort Bragg and Willits. Since the 1980s,  
21 Defendant’s rail operations consisted primarily of an excursion train between Fort Bragg  
22 and Willits.

23 6. In 1998, the Public Utilities Commission issued an opinion that the  
24 predecessor owner of the Skunk Train, California Western Railroad (“CWRR”), was not  
25 operating a service qualifying as “transportation” under the Public Utilities Code because  
26 in providing this “excursion service, CWRR is not functioning as a public utility.”  
27 (CPUC Decision 98-01-050, Filed January 21, 1998.)  
28

1           7.       Although the rail lines of the Mendocino Railway and/or the trains it was  
2 operating thereafter apparently did or may have had the capacity to carry freight and  
3 passengers from point-to-point, no rail lines presently have any such capacity. Moreover,  
4 the excursion train, even when it was running previously between Fort Bragg and Willits  
5 was exclusively a sightseeing excursion, was not transportation, was not essential, and did  
6 not otherwise constitute a public utility function or purpose.

7           8.       On April 11, 2013, Defendant's operations were disrupted following the  
8 partial collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,200 feet of track  
9 under rocks and soil, the third major collapse in the over 100-year-old tunnel's history.  
10 The collapse of the tunnel eliminated the ability of rail operations temporarily to continue  
11 between Fort Bragg and Willits. On June 19, Save the Redwoods League announced an  
12 offer to pay the amount required to meet the fundraising goal for repair work, in exchange  
13 for a conservation easement along the track's 40-mile (64 km) right-of-way. The  
14 acceptance of the offer allowed the railroad to resume full service of the whole sightseeing  
15 line in August 2013.

16           9.       Tunnel No. 1 was once again closed in 2016 after sustaining damage from  
17 the 2015–16 El Niño, but Defendant had equipment at the Willits depot to allow the  
18 running of half-routes to the Northspur Junction and back (which had not been the case  
19 during the 2013 crisis), as well as trains running loops from Fort Bragg to the Glen Blair  
20 Junction and back.

21           10.      Plaintiff is informed and believes the estimates for the repair to reopen the  
22 tunnel are in the area of \$5 Million, and that Defendant has stated the tunnel repair will  
23 happen in 2022, but there are currently no construction contracts in place for that repair.

24           11.      Current operations of the Defendant consist of a 3.5 mile excursion out and  
25 back trip from Fort Bragg to Glen Blair Junction, and a 16 mile out and back trip  
26 originating in Willits to Northspur Junction – both of which are closed loop sightseeing  
27 excursions.  
28



1           15.     An actual controversy has arisen and now exists between Plaintiff and  
2 Defendant. Defendant has failed to comply with City's code enforcement efforts to have  
3 Defendant repair a dangerous building on their property. Defendant also claims its status  
4 as a public utility preempts local jurisdiction and provides immunity from the City's Land  
5 Use and Development Codes. City disagrees and maintains that, as an excursion-only  
6 railroad, Defendant is not a public utility, is not a common carrier, and/or does not provide  
7 transportation, and therefore Defendant is subject to the City's ordinances, regulations,  
8 codes, local jurisdiction, local control and local police power and other City authority.  
9 City is entitled to a declaration of its rights and authority to exercise local  
10 control/regulation over the property and Defendant and Plaintiff City has the present right,  
11 obligation and need to exercise such control, power and authority for the public interest,  
12 benefit and safety.

13           16.     A judicial determination of these issues and of the respective duties of  
14 Plaintiff and Defendant is necessary and appropriate at this time under the circumstances  
15 because the Defendant continues to resist compliance with City directives to repair and  
16 make safe the dangerous building on its property, and to comply with the City Land Use  
17 and Development Codes, and/or other valid exercise of City governing authority.

18           17.     No other adequate remedy exists by which the rights and duties at issue  
19 herein between the parties can be determined.

20           18.     The City and the public will suffer irreparable injury if the nature of  
21 Defendant's conduct, as alleged herein, is not determined by the Court and/or enjoined.

22           19.     Plaintiff City also, or in the alternative, seeks injunctive relief against  
23 Defendant and thus brings this action pursuant to California Civil Code Section 526 in  
24 order to enjoin or require Defendant to refrain from engaging in the conduct alleged here,  
25 cease violations of law, and/or to require Defendant to bring its property and operations  
26 into compliance with the law, as applicable.

27           20.     Unless and until restrained and enjoined by this Court's issuance of  
28 injunctive relief as requested herein, Defendant will continue to maintain nuisance

1 conditions and violations of law as alleged, to the substantial harm and risk to the health,  
2 safety and welfare of the public, and directly contrary to the lawful and valid authority of  
3 Plaintiff City to regulate such nuisance and dangerous conditions, and to compel  
4 compliance with applicable law.

5 21. Unless and until the activities alleged herein are restrained and enjoined by  
6 this Court, as requested herein, they will continue to cause great and irreparable injury to  
7 Plaintiff City's lawful exercise of jurisdiction and authority over Defendant's operations,  
8 activities, and its real property, and the conditions thereof, as well as allowing the  
9 continuation of injury and risk to the public.


10 **PRAYER**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 1. For a declaration that the Mendocino Railway is not subject to regulation as  
13 a public utility because it does not qualify as a common carrier providing  
14 "transportation.";
- 15 2. For a stay, temporary restraining order, preliminary injunction, and  
16 permanent injunction commanding the Mendocino Railway to comply with  
17 all City ordinances, regulations, and lawfully adopted codes, jurisdiction and  
18 authority, as applicable;
- 19 3. For costs of the suit; and
- 20 4. For such other and further relief as the Court deems just and proper.

21  
22  
23 Dated: October 28, 2021


JONES & MAYER

24  
25 By:   
26 Russell A. Hildebrand  
27 Krista MacNevin Jee  
28 Attorneys for Plaintiff  
CITY OF FORT BRAGG

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Russell A. Hildebrand, SBN 191892; Krista MacNevin Jee, SBN 198650  
 JONES MAYER - 3777 N. Harbor Boulevard, Fullerton, CA 92835  
 TELEPHONE NO.: 714-446-1400 FAX NO. (Optional): 714-446-1448  
 E-MAIL ADDRESS: rah@iones-mayer.com: kmi@iones-mayer.com  
 ATTORNEY FOR (Name): CITY OF FORT BRAGG

FOR COURT USE ONLY

ELECTRONICALLY FILED  
 10/28/2021 3:14 PM  
 Superior Court of California  
 County of Mendocino

By:   
 D. Jess  
 Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO**  
 STREET ADDRESS: 700 South Franklin Street  
 MAILING ADDRESS: Same  
 CITY AND ZIP CODE: Fort Bragg, 95437  
 BRANCH NAME: Ten Mile Branch

CASE NAME:  
 CITY OF FORT BRAGG v. MENDOCINO RAILWAY

*Items 1-6 below must be completed (see instructions on page 2).*

<p><b>CIVIL CASE COVER SHEET</b></p> <p><input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)      <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)</p>	<p><b>Complex Case Designation</b></p> <p><input type="checkbox"/> Counter      <input type="checkbox"/> Joinder</p> <p>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</p>	<p>CASE NUMBER: <b>21CV00850</b></p> <p>JUDGE: CLAYTON BRENNAN              DEPT.: TEN MILE BRANCH</p>
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1. Check **one** box below for the case type that best describes this case:
- |   |   |  |
|---|---|--|
| <p><b>Auto Tort</b></p> <p><input type="checkbox"/> Auto (22)<br/> <input type="checkbox"/> Uninsured motorist (46)</p> <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <p><input type="checkbox"/> Asbestos (04)<br/> <input type="checkbox"/> Product liability (24)<br/> <input type="checkbox"/> Medical malpractice (45)<br/> <input type="checkbox"/> Other PI/PD/WD (23)</p> <p><b>Non-PI/PD/WD (Other) Tort</b></p> <p><input type="checkbox"/> Business tort/unfair business practice (07)<br/> <input type="checkbox"/> Civil rights (08)<br/> <input type="checkbox"/> Defamation (13)<br/> <input type="checkbox"/> Fraud (16)<br/> <input type="checkbox"/> Intellectual property (19)<br/> <input type="checkbox"/> Professional negligence (25)<br/> <input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p><b>Employment</b></p> <p><input type="checkbox"/> Wrongful termination (36)<br/> <input type="checkbox"/> Other employment (15)</p> | <p><b>Contract</b></p> <p><input type="checkbox"/> Breach of contract/warranty (06)<br/> <input type="checkbox"/> Rule 3.740 collections (09)<br/> <input type="checkbox"/> Other collections (09)<br/> <input type="checkbox"/> Insurance coverage (18)<br/> <input type="checkbox"/> Other contract (37)</p> <p><b>Real Property</b></p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br/> <input type="checkbox"/> Wrongful eviction (33)<br/> <input type="checkbox"/> Other real property (26)</p> <p><b>Unlawful Detainer</b></p> <p><input type="checkbox"/> Commercial (31)<br/> <input type="checkbox"/> Residential (32)<br/> <input type="checkbox"/> Drugs (38)</p> <p><b>Judicial Review</b></p> <p><input type="checkbox"/> Asset forfeiture (05)<br/> <input type="checkbox"/> Petition re: arbitration award (11)<br/> <input type="checkbox"/> Writ of mandate (02)<br/> <input type="checkbox"/> Other judicial review (39)</p> | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)<br/> <input type="checkbox"/> Construction defect (10)<br/> <input type="checkbox"/> Mass tort (40)<br/> <input type="checkbox"/> Securities litigation (28)<br/> <input type="checkbox"/> Environmental/Toxic tort (30)<br/> <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p><b>Enforcement of Judgment</b></p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p><b>Miscellaneous Civil Complaint</b></p> <p><input type="checkbox"/> RICO (27)<br/> <input checked="" type="checkbox"/> Other complaint (not specified above) (42)</p> <p><b>Miscellaneous Civil Petition</b></p> <p><input type="checkbox"/> Partnership and corporate governance (21)<br/> <input type="checkbox"/> Other petition (not specified above) (43)</p> |
|---|---|--|
2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify):
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 28, 2021  
 Russell A. Hildebrand \_\_\_\_\_  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2