

No. 23-15857

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MENDOCINO RAILWAY,

Plaintiff-Appellant,

v.

JACK AINSWORTH, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 22-cv-04597-JST
Hon. Jon S. Tigar

**APPELLANT'S EXCERPTS OF RECORD
Volume 1 of 1**

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY,
Plaintiff,
v.
JACK AINSWORTH, et al.,
Defendants.

Case No. 22-cv-04597-JST

ORDER GRANTING MOTIONS TO DISMISS

Re: ECF Nos. 15 & 16

Before the Court are Defendants Jack Ainsworth’s and the City of Fort Bragg’s motions to dismiss. ECF Nos. 15 & 16. The Court will grant the motions.

I. BACKGROUND

This case is the second in an ongoing controversy between the City of Fort Bragg (“City”) and the California Coastal Commission (“Commission”), on the one hand, and Mendocino Railway, on the other, over whether state and local laws apply to Mendocino Railway. In the first case, *City of Fort Bragg v. Mendocino Railway*, No. 21CV00850 (Cal. Super. Ct.) (“state court action”), the City and the Commission sued Mendocino Railway in the Superior Court of Mendocino County, primarily seeking a declaration that Defendant Mendocino Railway is subject to such laws and regulations. *See* ECF No. 15-1 at 6-11, 69-76.¹ The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. *Id.* at 6-11. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 (“Coastal Act”), Cal.

¹ The Commission’s request that the Court take judicial notice of filings from the state court action, ECF No. 15-1 at 1-2, is granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with
2 the Act’s permitting requirements. *Id.* at 69-76.

3 In the state court action, the City filed its complaint on October 28, 2021. ECF No. 15-1 at
4 11. Mendocino Railway demurred to the complaint on January 14, 2022, arguing, *inter alia*, that
5 the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10101 *et seq.*,
6 preempts the City’s claims. ECF No. 15-1 at 28-29. The court overruled the demurrer on April
7 28, 2022. *Id.* at 32-43. The court rejected Mendocino Railway’s federal preemption argument as
8 “overbroad” because “not all state and local regulations that affect railroads are preempted” by the
9 ITCCA. *Id.* at 41. Rather “the applicability of preemption” in this context “is necessarily a ‘fact
10 bound’ question.” *Id.* at 43. The court further concluded that because Mendocino Railway “is
11 simply a luxury sightseeing excursion service with no connection to interstate commerce,” “its
12 ‘railroad activities,’ for the purposes of federal preemption, are extremely limited.” *Id.* at 42.
13 Mendocino Railway filed its answer to the City’s complaint on June 24, 2022, asserting federal
14 preemption as an affirmative defense. *Id.* at 54. On September 8, 2022, the Commission moved
15 to intervene and filed a proposed complaint-in-intervention. *Id.* at 59-84. The complaint notes
16 that Mendocino Railway “contends that state and federal law preempts” the permitting
17 requirements of the Coastal Act, *id.* at 74, and, as part of the Commission’s prayer for relief, asks
18 the court to declare that the Coastal Act and the City’s local laws “are not preempted by any state
19 or federal law,” *id.* at 75.

20 Mendocino Railway removed the state court action to this Court on October 20, 2022. *See*
21 Notice of Removal, *City of Fort Bragg, et al. v. Mendocino Railway*, No. 22-cv-06317-JST (N.D.
22 Cal. Oct. 20, 2022), ECF No. 1. The notice of removal invokes this Court’s federal question
23 jurisdiction on the ground that the resolution of the City’s and the Commission’s claims requires
24 “a judicial determination of *federal questions* arising under ICCTA.” *Id.* at 2 (emphasis in
25 original). The City and Commission moved to remand the action to state court, and this Court
26 granted the motions. *See* Order Granting Motions to Remand, *City of Fort Bragg, et al. v.*
27 *Mendocino Railway*, No. 22-cv-06317-JST (N.D. Cal. May 11, 2023), ECF No. 33.

28 Mendocino Railway filed the instant complaint in this case on August 9, 2022, against the

1 City and Jack Ainsworth in his official capacity as Executive Director of the Commission. ECF
 2 No. 1. Mendocino Railway seeks a declaration that the ICCTA preempts state and local law and
 3 an injunction prohibiting the City and the Commission from “interfer[ing] with Mendocino
 4 Railway’s operation.” ECF No. 1 at 10. Ainsworth and the City filed motions to dismiss
 5 Mendocino Railway’s complaint. ECF Nos. 15 & 16. The Court took the motions under
 6 submission without a hearing on December 12, 2022.

7 **II. JURISDICTION**

8 The Court has jurisdiction under 28 U.S.C. § 1331.

9 **III. LEGAL STANDARD**

10 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a
 11 complaint must contain “a short and plain statement of the claim showing that the pleader is
 12 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal “is appropriate only where the complaint
 13 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
 14 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “[A] complaint
 15 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
 16 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 17 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual
 18 content that allows the court to draw the reasonable inference that the defendant is liable for the
 19 misconduct alleged.” *Id.* While this standard is not “akin to a ‘probability requirement’ . . . it asks
 20 for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*,
 21 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s
 22 liability, it ‘stops short of the line between possibility and plausibility of entitlement to
 23 relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). In determining whether a plaintiff has met the
 24 plausibility requirement, a court must “accept all factual allegations in the complaint as true and
 25 construe the pleadings in the light most favorable” to the plaintiff. *Knievel v. ESPN*, 393 F.3d
 26 1068, 1072 (9th Cir. 2005).

27 **IV. DISCUSSION**

28 The parties dispute, *inter alia*, whether a *Colorado River* stay or dismissal is appropriate in

1 this case. Before staying or dismissing a case under *Colorado River*, the Court must find that
2 there are concurrent state and federal court proceedings involving the same matter. If the Court
3 makes such a finding, it then weighs a “complex [set]” factors to determine whether “exceptional
4 circumstances justify such a stay” or dismissal. *Intel Corp. v. Advanced Micro Devices*, 12 F.3d
5 908, 912 (9th Cir. 1993). These factors include:

- 6 (1) which court first assumed jurisdiction over any property at stake;
- 7 (2) the inconvenience of the federal forum; (3) the desire to avoid
8 piecemeal litigation; (4) the order in which the forums obtained
9 jurisdiction; (5) whether federal law or state law provides the rule of
10 decision on the merits; (6) whether the state court proceedings can
adequately protect the rights of the federal litigants; (7) the desire to
avoid forum shopping; and (8) whether the state court proceedings
will resolve all issues before the federal court.

11 *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017) (quoting *R.R. St. &*
12 *Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011)). In balancing these factors, the
13 Court must remain “mindful that ‘[a]ny doubt as to whether a factor exists should be resolved
14 against a stay.’” *R.R. St.*, 656 F.3d at 979 (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d
15 1364, 1369 (9th Cir. 1990)). However, “these factors are not a ‘mechanical checklist’; indeed,
16 some may not have any applicability to a case.” *Seneca Ins. Co.*, 862 F.3d at 842 (quoting *Moses*
17 *H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)). “Courts generally rely
18 on the state of affairs at the time of the *Colorado River* analysis.” *R.R. St.*, 656 F.3d at 982.

19 The Court finds the predicate existence of concurrent state and federal court proceedings,
20 as discussed above. The first factor is “irrelevant” because “the dispute does not involve a specific
21 piece of property.” *R.R. Street*, 656 F.3d at 979. The second factor is neutral because the state
22 proceedings are in the Mendocino County Superior Court in Fort Bragg, California, and the
23 federal proceeding is in the Northern District of California in Oakland, California, which are
24 approximately 150 miles apart. *Montanore Minerals Corp v. Bakie*, 867 F.3d 1160, 1167 (9th Cir.
25 2017) (treating a distance of 200 miles as neutral); *accord Travelers Indem. Co. v. Madonna*, 912
26 F.3d 1364, 1368 (9th Cir. 1990) (“Although 200 miles is a fair distance, it is not sufficiently great
27 that this factor points toward abstention. The district court did not err in finding this factor
28 ‘unhelpful.’”).

1 The third factor – the desire to avoid piecemeal litigation – is a “substantial factor in the
2 *Colorado River* analysis.” *Seneca Ins. Co.*, 862 F.3d at 835. “Piecemeal litigation occurs when
3 different tribunals consider the same issue, thereby duplicating efforts and possibly reaching
4 inconsistent results.” *Id.* (quoting *Am. Int’l Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*,
5 843 F.2d 1253, 1258 (9th Cir. 1988)). “[T]here must be exceptional circumstances present that
6 demonstrate that piecemeal litigation would be particularly problematic.” *Id.* Such exceptional
7 circumstances are present here, as the issue of federal preemption under the ICCTA is squarely
8 before the state court. As discussed above, in overruling Mendocino Railway’s demurrer, the state
9 court rejected Mendocino Railway’s federal preemption argument as overbroad and deferred
10 resolution of the issue to a later juncture. ECF No. 15-1 at 42-43. Federal preemption is the sole
11 issue raised in Mendocino Railway’s complaint in this action, and for the Court to adjudicate that
12 claim would necessarily duplicate the state court’s efforts and risk the possibility of this Court and
13 the state court reaching different results. Because “[p]ermitting this suit to continue would
14 undeniably result in piecemeal litigation,” the third factors “weighs significantly against
15 jurisdiction.” *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989); *R.R. St.*, 656 F.3d at 966.

16 The fourth factor requires the Court to assess “the order in which the forums gained
17 jurisdiction,” considering “the realities of the case at hand’ ‘in a pragmatic, flexible manner.’”
18 *Montanore Minerals Corp.*, 867 F.3d at 1168 (first quoting *Moses H. Cone*, 460 U.S. at 21; and
19 then quoting *Am. Int’l Underwriters*, 843 F.2d at 1257). The Court “consider[s] not only the
20 order, but also the relative progress of the state and federal proceedings.” *Id.* Mendocino Railway
21 filed its complaint in this case on August 9, 2022, which is nearly two years after the state court
22 action commenced on October 28, 2021. Additionally, the state court action is largely past the
23 pleading stage, as the Court overruled Mendocino Railway’s demurrer to the City’s complaint,
24 Mendocino Railway filed its answer to the complaint on June 24, 2022, and trial was scheduled to
25 begin on June 21, 2023. ECF No. 15-1 at 102. Because the state forum gained jurisdiction first,
26 and because the state court action has progressed further than the federal court action, the fourth
27 factor weighs in favor of dismissal.

28 The fifth factor requires the Court to “consider ‘whether federal law or state law provides

1 the rule of decision on the merits.” *Seneca Ins. Co.*, 862 F.3d at 844 (quoting *R.R. St.*, 656 F.3d
2 at 978). “The ‘presence of federal-law issues must always be a major consideration weighing
3 against surrender’ of jurisdiction, but ‘the presence of state-law issues may weigh in favor of that
4 surrender’ only ‘in some rare circumstances.’” *Id.* (quoting *Cone Mem’l Hosp.*, 460 U.S. at 26).
5 Federal law supplies the rule of decision on the merits of Mendocino Railway’s complaint. The
6 text of the ICCTA determines whether Mendocino Railway falls within the statute’s ambit so as to
7 trigger the statute’s preemptive effect, *see* 49 U.S.C. §§ 10102, 10501(b), and federal preemption
8 law determines the extent to which the ICCTA preempts the state and local laws that substantiate
9 the challenged actions of the City and the Commission, *see BNSF Ry. Co. v. Cal. Dep’t of Tax and*
10 *Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018) (“The ICCTA ‘preempts all state laws that may
11 reasonably be said to have the effect of managing or governing rail transportation, while
12 permitting the continued application of laws having a more remote or incidental effect on rail
13 transportation. What matters is the degree to which the challenged regulation burdens rail
14 transportation[.]’” (alteration in original) (quoting *Ass’n of Am. R.Rs. v. South Coast Air Quality*
15 *Mgmt. Dist.*, 622 F.3d 1094, 1097-98 (9th Cir. 2010)). Accordingly, this factor weighs against
16 dismissal.

17 The sixth factor “looks to whether the state court might be unable to enforce federal
18 rights.” *Seneca Ins. Co.*, 862 F.3d at 845. This factor weighs in favor of dismissal “[w]hen it is
19 clear that ‘the state court has authority to address the rights and remedies at issue.’” *Montanore*
20 *Minerals Corp.*, 867 F.3d at 1169 (quoting *R.R. St.*, 656 F.3d at 981). Here, “[t]here is no doubt
21 that California state courts have the authority” to determine the preemptive effect, if any, of the
22 ICCTA on the City’s and the Commission’s regulatory authority over Mendocino Railway. *Id.*
23 Not only do state courts have the authority to determine the preemptive effect of federal law, but
24 those determinations are often entitled to preclusive effect as well. *Cf. Readylink Healthcare, Inc.*
25 *v. State Compensation Ins. Fund*, 754 F.3d 754, 761-62 (9th Cir. 2014). And Mendocino Railway
26 does not “claim that the state court would . . . lack the power to enter any orders to protect its
27 rights.” *Montanore Minerals Corp.*, 867 F.3d at 1169. The sixth factor weighs in favor of
28 dismissal.

1 The seventh factor requires the Court to “consider whether either party sought more
2 favorable rules in its choice of forum of pursued suit in a new forum after facing setbacks in the
3 original proceeding.” *Seneca Ins. Co.*, 862 F.3d at 846. Following the state court’s overruling of
4 the demurrer in the state court action, Mendocino Railway filed a petition for writ review in the
5 California Court of Appeal, which the Court of Appeal denied. ECF No. 15-1 at 47-48. The
6 California Supreme Court denied Mendocino Railway’s petition for review of the Court of
7 Appeal’s denial on June 10, 2022. *Id.* at 100. Mendocino Railway then filed the instant complaint
8 on August 9, 2022, asserting a claim premised entirely on the argument rejected on demurrer by
9 the state court. Subsequently, in the state court action, Mendocino Railway moved to disqualify
10 the presiding judge, Judge Clayton L. Brennan, who had overruled Mendocino Railway’s
11 demurrer. ECF No. 15-1 at 101-102. After Judge Brennan denied the motion on September 14,
12 2022, *id.*, the Commission moved to intervene on October 6, 2022, *id.*, and Mendocino Railway
13 removed that action to federal court on October 20, 2022 – nearly two years after the action had
14 commenced. Mendocino Railway’s notice of removal cited the federal preemption issue in the
15 Commission’s complaint as the basis for federal question jurisdiction. But Mendocino Railway
16 was already aware of – and indeed had made – the very same argument in its demurrer to the
17 City’s complaint, and that argument now serves as the sole basis for the claims in this case. The
18 only “reasonably infer[ence]” from this litigation conduct, considered as a whole, is that
19 Mendocino Railway “has become dissatisfied with the state court and now seeks a new forum.”
20 *Montanore Minerals Corp.*, 867 F.3d at 1160; *Nakash*, 882 F.2d at 1411. Accordingly, this factor
21 weighs in favor of dismissal.

22 The eighth factor requires the Court to consider “whether the state court proceeding
23 sufficiently parallels the federal proceeding” in order “to ensure ‘comprehensive disposition of
24 litigation.’” *R.R. St.*, 656 F.3d 656 F.3d at 982 (quoting *Colo. River*, 424 U.S. at 817). “[E]xact
25 parallelism” is not required; rather, “it is sufficient if the proceedings are ‘substantially similar.’”
26 *Montanore Minerals Corp.*, 867 F.3d at 1170 (quoting *Nakash*, 882 F.2d at 1416). Courts are to
27 be “particularly reluctant to find that the actions are not parallel when the federal action is but a
28 ‘spin-off’ of more comprehensive state litigation.” *Nakash*, 882 F.2d at 1416. Mendocino

1 Railway has asserted ICCTA preemption as a defense in the state action, so there the state court
2 must resolve that issue in the course of adjudicating the City’s and the Commission’s claims
3 against Mendocino Railway. Because that issue is the sole issue in this case, it is difficult for the
4 Court to conceptualize this action as anything but a spinoff of the state court action. Accordingly,
5 the Court concludes that the state court proceeding sufficiently parallels the federal court
6 proceeding. The eighth factor thus weighs in favor of dismissal.

7 In sum, only the fifth factor weighs against dismissal, and the remaining factors weigh in
8 favor of dismissal. Therefore, “[o]n balance, the *Colorado River* factors strongly counsel in favor
9 of” dismissal. *Montanore Minerals Corp.*, 867 F.3d at 1170.

10 The Court recognizes that the Ninth Circuit “‘generally require[s] a stay rather than
11 dismissal’ under *Colorado River*.” *Montanore Minerals Corp.*, 867 F.3d at 1171. The general
12 rule ensures “that the federal forum will remain open if for some unexpected reason the state
13 forum . . . turn[s] out to be inadequate.” *Id.* at 886 (quoting *Attwood v. Mendocino Coast Dist.*
14 *Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989)). That purpose is not served here because the
15 adjudication of the state court action will necessarily resolve the sole issue in this case and the
16 state court proceedings can undoubtedly protect Mendocino Railway’s rights.² And although the
17 Ninth Circuit has not delineated the circumstances warranting dismissal rather than a stay, its
18 framing of the rule as general necessarily contemplates exceptions. Indeed, *Colorado River* itself
19 involved dismissal of a federal action. *See Colo. River*, 424 U.S. at 821; *accord Arizona v. San*
20 *Carlos Apache Tribe of Ariz.*, 463 U.S. 545 (1983); *cf. Exxon Mobil Corp. v. Saudi Basic Indus.*
21 *Corp.*, 544 U.S. 280, 282 (2006). Thus, to the extent that there are exceptions to the general rule,
22 the strength of the factors and the degree to which their balance tips sharply in Defendants’ favor
23 demonstrate “the clearest of justifications . . . warrant[ing] dismissal.”³ *Colo. River*, 424 U.S. at
24

25 ² Additionally, the state court’s decision on the issue would likely be entitled to preclusive effect.
Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund, 754 F.3d at 761-62.

26 ³ Although the fact that federal law supplies the rule of decision weighs against dismissal, that
27 weight is substantially lessened because “state courts have inherent authority, and are thus
28 presumptively competent, to adjudicate claims arising under the laws of the United States.” *Tafflin*
v. Levitt, 493 U.S. 455, 458 (1990); *accord Yellowbear v. Atty. Gen. of Wyoming*, 380 F. App’x
740, 741 (10th Cir. 2010) (Gorsuch, J.) (Under our federal system, . . . there is nothing inherently

1 819. Accordingly, the Court will dismiss the case.

2 **CONCLUSION**

3 For the foregoing reasons, Defendants’ motions are granted, and this case is dismissed.

4 The Clerk shall enter judgment and close the file.

5 **IT IS SO ORDERED.**

6 Dated: May 12, 2023

7 
8 JON S. TIGAR
United States District Judge

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United States District Court
Northern District of California

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27 suspect about state courts deciding questions of federal law. . . . Indeed, the Supremacy Clause
28 contemplates that state courts *will* decide questions of federal law”). The balance would
differ if, for example, the eighth factor weighed against a stay or dismissal. *Cf. United States v.*
State Water Res. Control Bd., 988 F.3d 1194, 1203 (9th Cir. 2021) (explaining that “doubt” as to
“whether the state proceedings will resolve the federal action” is “a significant countervailing
consideration that’ can be ‘dispositive.’” (quoting *Intel Corp.*, 12 F.3d at 913)).

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MENDOCINO RAILWAY, a California corporation,
Plaintiff

v.

JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
Commission; CITY OF FORT BRAGG, a California
municipal corporation; and DOES 1 through 20,
inclusive,
Defendants.

Case No.: 4:22-cv-04597-JST

Assigned for all purposes to: Hon. John S. Tigar, Ctrm. 6

**PLAINTIFF’S REQUEST FOR
JUDICIAL NOTICE IN OPPOSITION
TO MOTIONS TO DISMISS**

Hearing Date: Dec. 22, 2022
Hearing Time: 2:00 p.m.
Dept.: Courtroom 6
Judge: Hon. Jon S. Tigar

Complaint Filed: August 9, 2022

1 Pursuant to Federal Rule of Evidence Rule 201, Plaintiff Mendocino Railway requests that the
2 Court take judicial notice of the Exhibit 1, which is the “Notice of Removal of Action to Federal Court,”
3 filed on October 20, 2022, in the Mendocino County Superior Court in *City of Fort Bragg v. Mendocino*
4 *Railway* (Case No. 21CV00850).

5 Said pleading attaches the Notice of Removal filed on October 20, 2022, in this Court (Eureka
6 Division), as well as the Superior Court’s order (of the same date) granting Defendant California Coastal
7 Commission intervention in the Superior Court matter that has been removed.

8 The Court may take judicial notice of court filings and other matters of public record. *Dignity*
9 *Health v. Dep’t of Indus. Rels.*, 445 F. Supp. 3d 491, 495 n.1 (N.D. Cal. 2020).

10 Exhibit 1 is relevant to establishing that there is no longer any relevant proceeding pending or
11 ongoing in the Superior Court, thereby precluding abstention.

12 For all these reasons, the Court should grant Plaintiff’s request and judicially notice Exhibit 1.

13 DATED: October 20, 2022

FISHERBROYLES LLP

s/ Paul Beard II

Attorneys for Plaintiff MENDOCINO RAILWAY

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EXHIBIT 1

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9 MENDOCINO RAILWAY

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MENDOCINO**

12 CITY OF FORT BRAGG, a California
13 municipal corporation

14 Plaintiff,

15 v.

16 MENDOCINO RAILWAY and DOES 1-10,
17 inclusive,

18 Defendants.

19 _____
20 CALIFORNIA COASTAL COMMISSION,

21 Intervenor.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**NOTICE OF REMOVAL OF ACTION TO
FEDERAL COURT**

FISHERBROYLES®
A LIMITED LIABILITY PARTNERSHIP

TO THE HONORABLE COURT, THE PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on October 20, 2022, Defendant MENDOCINO RAILWAY filed a Notice of Removal of this action in the United States District Court for the Northern District of California—Eureka Division.

Attached hereto as Exhibit A is a copy of said Notice.

DATED: October 20, 2022

/s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY

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A LIMITED LIABILITY PARTNERSHIP

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PROOF OF SERVICE

I, Paul Beard II, declare:

My business address is: FisherBroyles LLP, 4470 W. Sunset Blvd., Suite 93165, Los Angeles, CA 90027. I am over the age of 18 and not a party to this action.

On October 20, 2022, I served **NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT** on the following counsel:

Krista MacNevin Jee
Email: kmj@jones-mayer.com
Counsel for Plaintiff City of Fort Bragg
(in *City of Fort Bragg v. Mendocino Railway*)

Patrick Tuck
Email: Patrick.Tuck@doj.ca.gov
Counsel for Proposed Intervenor California Coastal Commission
(in *City of Fort Bragg v. Mendocino Railway*).

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the pleading with One Legal, I simultaneously opted for electronic service of the same on the above-named counsel.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 20, 2022 /s/ Paul Beard II

Paul Beard II

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EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA**

CALIFORNIA COASTAL COMMISSION; CITY
OF FORT BRAGG,

Plaintiffs

v.

MENDOCINO RAILWAY,

Defendant.

Case No.: 1:22-cv-06317

NOTICE OF REMOVAL

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
2 **DISTRICT OF CALIFORNIA:**

3 Defendant MENDOCINO RAILWAY files this Notice of Removal under 28 U.S.C. sections 1331,
4 1367, 1441 and 1446, and Federal Rule of Civil Procedure 81(c), based on federal question jurisdiction.

5 **Statement of Facts Justifying Removal**

6 1. Defendant Mendocino Railway hereby removes *City of Fort Bragg, et al. v. Mendocino*
7 *Railway*, which was pending in the Mendocino County Superior Court (Case No. 21CV00850).

8 2. The removed action was filed on October 28, 2021 by Plaintiff City of Fort Bragg. The
9 City pleads a single cause of action for declaratory relief on the question whether Defendant Mendocino
10 Railway is a “public utility” under California law. Based on that cause of action, the City seeks to compel
11 the railroad to submit to its plenary land-use authority. *See* Attachment 1 (City summons and complaint).

12 3. On September 8, 2022, Plaintiff California Coastal Commission moved to intervene as a
13 plaintiff in the removed action (when said action was pending in the Superior Court). Defendant
14 Mendocino Railway opposed the Coastal Commission’s intervention. However, by order dated October
15 20, 2022, the Superior Court granted the Coastal Commission’s motion, making the Commission a party
16 to the removed action effective October 20. *See* Attachment 2 (Order granting intervention).

17 4. In its complaint (Attachment 3), The Coastal Commission pleads two causes of action:

18 a. The first and primary cause of action is for a declaration that, *inter alia*, Mendocino
19 Railway is not a federally regulated railroad subject to the federal Surface
20 Transportation Board’s (“STB’s”) exclusive jurisdiction under the Interstate
21 Commerce Commission Termination Act (“ICCTA”). That cause of action
22 requires—at the Commission’s request—a judicial determination of ***federal***
23 ***questions*** arising under ICCTA, 49 U.S.C. §§ 1051, *et seq.*, and the Supremacy
24 Clause of the United States Constitution, Art. VI, ¶ 2. (Like the City, the
25 Commission also seeks a declaration that Mendocino Railway is not a “public
26 utility” under California law).

27 b. In its second cause of action, which turns entirely on the merits of the first, the
28 Coastal Commission alleges that Defendant Mendocino Railway’s much-needed

1 improvements to certain rail facilities located on railroad property were undertaken
2 without the Coastal Commission’s approval, and that the railroad should be made
3 to stop its rail work, undo its work or apply for land-use permits, and pay the
4 Commission money for having failed to do so. Again, this second cause of action
5 presupposes resolution, in the Commission’s favor, of the federal questions raised
6 in its first cause of action. The federal questions in the first cause of action
7 predominate.

8 5. This removed action is closely related to a federal action pending in this Court before Judge
9 John S. Tigar (Oakland Division). *Mendocino Railway v. Jack Ainsworth, et al.* (Case No. 4:22-CV-
10 04597-JST. In that action, Mendocino Railway is the plaintiff, and Jack Ainsworth (in his official
11 capacity as the Commission’s Executive Director) and the City of Fort Bragg are the defendants. Filed on
12 August 9, 2022, Mendocino Railway’s federal action seeks a declaration and injunction to the effect that,
13 as a federally regulated railroad subject to the exclusive jurisdiction of the STB under ICCTA and the
14 Supremacy Clause, the Commission’s and City’s efforts to subject the railroad to state and local land-use
15 permitting and oversight of its rail-related activities are federally preempted. Mendocino Railway will
16 promptly file an administrative motion regarding related cases, as per the Local Rules.

17 6. Copies of all relevant pleadings and orders served on Mendocino Railway in the removed
18 action are appended to this Notice of Removal as required by 28 U.S.C. section 1446(a)—including
19 Attachment 4, which is the state-court docket for the removed action.

20 7. As the Coastal Commission’s complaint in the appended record demonstrates, the removed
21 action clearly presents a federal question on the face of its complaint. Accordingly, the entire action is
22 removable to federal court under 28 U.S.C. section 1441(c).

23 8. Any nonfederal claims lie within the Court’s supplemental jurisdiction under 28 U.S.C.
24 section 1367 because they are so related to the federal claim that they form part of the same case or
25 controversey under Article III of the U.S. Constitution.

26 9. Removal is proper in this division because the Eureka Division of this Court embraces the
27 place where the removed action is pending (Mendocino County).

28 10. Removal is timely under 28 U.S.C. section 1446(b). The Notice of Removal was filed

1 within 30 days after receipt by Mendocino Railway of the Superior Court’s October 20, 2022, granting
2 leave to the Coastal Commission to join the removed action as a plaintiff. From that order, Mendocino
3 Railway first ascertained that the state case was removable.

4 11. Mendocino Railway is the sole defendant in the removed case. As the party filing this
5 Notice of Removal, Mendocino Railway consents to removal under 28 U.S.C. section 1446(b).

6
7 DATED: October 20, 2022

FISHERBROYLES LLP

8
9 s/ Paul Beard II

10 Attorneys for Defendant MENDOCINO RAILWAY

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 Jess*
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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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)

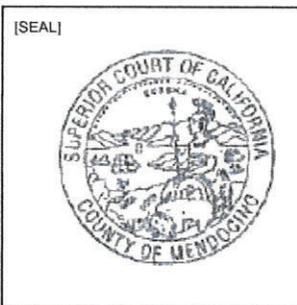
Krista MacNevin Jee (SBN 198650) JONES MAYER - 3777 N. Harbor Boulevard, Fullerton, CA 92835; 714-446-1400

DATE: 10/28/2021
(Fecha)

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

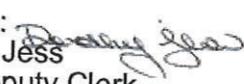
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(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): **Mendocino Railway**
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): form unknown
4. by personal delivery on (date): **11-23-21**

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 NUMBER: 21CV00850 JUDGE: CLAYTON BRENNAN DEPT.: TEN MILE BRANCH
CASE NAME: CITY OF FORT BRAGG v. MENDOCINO RAILWAY		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 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.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
 - Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
- Confession of Judgment *(non-domestic relations)*
- Sister State Judgment
- Administrative Agency Award *(not unpaid taxes)*
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
 - Declaratory Relief Only
 - Injunctive Relief Only *(non-harassment)*
 - Mechanics Lien
 - Other Commercial Complaint Case *(non-tort/non-complex)*
 - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

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

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

By: *Dorothy Jee*
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
10

11 CITY OF FORT BRAGG, a
California municipal corporation,

Case No. 21CV00850

12 Plaintiff,

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

13 vs.

14 MENDOCINO RAILWAY AND
DOES 1-10, inclusive

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

15 Defendants.
16

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.

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

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PARTIES

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

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

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

BACKGROUND FACTS

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

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

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 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.

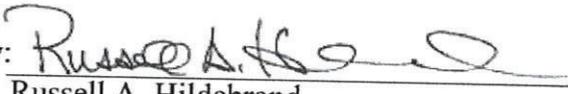
10 **PRAYER**

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.

23 Dated: October 28, 2021

JONES & MAYER

25 By: 

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

FILED

10/20/2022

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Jess, Dorothy

DEPUTY CLERK

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO, TEN MILE BRANCH**

**CITY OF FORT BRAGG, a California
Municipal corporation**

Plaintiff,

vs.

**MENDOCINO RAILWAY and DOES
1-10, inclusive,**

Defendants,

**CALIFORNIA COASTAL
COMMISSION,**

Intervenor.

Case No.: 21CV00850

**MINUTE ORDER GRANTING
CALIFORNIA COASTAL
COMMISSION'S MOTION FOR
LEAVE OF COURT TO INTERVENE**

On September 8, 2022, the California Coastal Commission (hereinafter, the Commission) filed a motion for leave of court to intervene in the above-captioned case. The motion came on for hearing in the Ten Mile Branch of the Mendocino County Superior Court at 2:00 p.m. on October 20, 2022, the Hon. Clayton L. Brennan presiding. The Commission appeared through counsel, Deputy Attorney General, Patrick Tuck.

Defendant Mendocino Railway appeared through counsel, attorney Paul J. Beard II. Plaintiff, the City of Fort Bragg appeared through counsel, Krista MacNevin Jee.

Defendant, City of Fort Bragg, has no objection to the intervention and supports the Commission's request to intervene.

The court, having considered all the pleadings and papers filed herein, and the oral arguments of counsel, hereby grants the motion to intervene and grants the California Coastal Commission's request for leave to file the proposed complaint in intervention attached to its motion filed September 8, 2022.

The action filed by the City of Fort Bragg seeks an injunction ordering that Defendant Mendocino Railway must comply with the City's ordinances, regulations, and authority. The City also seeks a judicial declaration that the Railway is not exempt from the City's laws and authority. The California Coastal Commission is the state agency responsible for administering the Coastal Act. Plaintiff, City of Fort Bragg, implements the permitting requirements of the Coastal Act via the City's Local Coastal Program ("LCP").

The Commission, like the City of Fort Bragg, seeks a judicial declaration that the development activities of Mendocino Railway in the coastal zone of the City of Fort Bragg are properly subject to the City's LCP permitting requirements, as well as any applicable provisions of the Coastal Act. Further, based on the Mendocino Railway's alleged ongoing unpermitted development activities in the coastal zone, the Commission seeks injunctive relief and civil penalties related to Mendocino Railway's purported violations of the Coastal Act.

Code of Civil Procedure section 387, subdivision (d)(1)(B) requires courts to allow a non-party to intervene where the party "claims an interest relating to the property or transaction that is the subject of the action," where the non-party "is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." CCP § 387(d)(1)(B). Further, mandatory intervention pursuant to CCP § 387(d)(1)(B) is to be "liberally construed in favor of intervention." (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th, 560, 572, quoting *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.)

The Court finds that the Commission readily meets the requirements for mandatory intervention. There is no question that the Commission has a strong interest in the subject of this litigation. Specifically, the relevant allegations are that Mendocino Railway has undertaken unpermitted development activities within the Coastal Zone in violation of the City's LCP and the Coastal Act. The Commission is the statewide entity responsible for ensuring compliance with the Coastal Act. The City's LCP is simply designed to implement the Coastal Act's coastal zone permitting requirements. The Commission still retains ultimate decision-making authority regarding any development subject to the Coastal Act. As the Commission notes in their reply brief,

“... [t]he California Supreme Court described, “[an] action taken under a locally issued permit is appealable to the [Commission. Thus, ‘[u]nder the Coastal Act’s legislative scheme,... the [local coastal program] and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. In fact, a fundamental purpose of the Coastal Act is to ensure that the state policies prevail over the concerns of local government.’” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 794, citing to Pub. Resources Code § 30603, and quoting *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075.

In addition, the Commission’s interest in the litigation is further demonstrated by its initiation of an enforcement action against Mendocino Railway as evidenced by the Notice of Violation attached as Exhibit A to the Declaration of Josh Levine.

Finally, the City of Fort Bragg, pursuant to Public Resources Code Section 30810 has requested that the Commission be the primary enforcer of the LCP with respect to Mendocino Railway as set forth in the declaration of Josh Levine. The fact that the City of Fort Bragg has sought the Commission’s assistance is hardly surprising, and further militates toward granting the request for intervention. The City of Fort Bragg simply hopes to rely on the Commission’s expertise as it relates to enforcement of all aspects of the Coastal Act.

The Coastal Act gives the Commission the primary responsibility for enforcing the Act’s provisions and provides that the Commission shall “assist local governments in exercising [their] planning and regulatory powers and responsibilities” under the Act. (Pub. Resources Code §§ 30330, 30336.) Thus, the Legislature also recognizes the Commission’s expertise and its key role in ensuring that the Coastal Act is properly implemented on both a state and local level.

Finally, as the Commission notes in its citation to *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1086, “if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” The Commission’s ultimate objective is to obtain a ruling that its authority to implement and enforce the Coastal Act, with regard to Mendocino Railway’s use and development of its property, is not preempted under state or federal law. The Commission, by way of the Second Cause of Action to its Complaint, further seeks to be awarded penalties and damages for the Railway’s alleged prior and ongoing violations of the Coastal act—remedies that fall outside the scope of the City’s lawsuit. Accordingly, the Commission’s interest in the litigation, while substantively aligned with the City of Fort Bragg’s interest, is not identical to it.

As noted in the pleadings, the Commission’s burden of showing inadequacy of representation is “minimal” and is satisfied if the Commission can demonstrate that

representation of its interest “may be” inadequate. (*Citizens for Balance Use v. Montana Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 898. Here, the City has requested the Commission to assume primary control over enforcement of the Coastal Act regarding the Railway’s development activities within the coastal zone. Implicit in this request is an admission that the City is unable to adequately represent the Commission’s interests. Further, because the interests of the City and the Commission are only aligned but not identical, the City will not be able to obtain a full resolution of the dispute between the Commission and the Railway.

Given the above considerations, this court finds that any presumption of adequate representation of the Commission by the City has been overcome.

The Court further finds that granting the Commission leave to intervene will not substantially enlarge the issues in the litigation. Mendocino Railway has already alleged defenses involving both state and federal pre-emption. Thus, regardless of whether the Commission is permitted to intervene or not, any factual disputes related to those issues will still need to be addressed by the court.

In sum, the central question in the City of Fort Bragg’s lawsuit and the Commission’s proposed complaint in intervention is the authority of the City and Commission to regulate the activities of Mendocino Railway within the coastal zone. If the Commission were forced to bring a separate action against Mendocino Railway, the same issues regarding the scope of permitted regulation and the applicability of any state or federal preemption defenses, will remain central in either case. Accordingly, the court finds that the interests of judicial economy and “prevent[ing] a multiplicity of suits arising out of the same facts, while protecting the interests of those affected by the judgment” favor permitting the Commission to intervene. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1203.)

For the reasons set forth above, the court grants the Commission’s motion for leave to intervene on the side of Plaintiff herein, City of Fort Bragg, and file its proposed complaint in intervention.

SO ORDERED.

DATED: 10/21/2022



CLAYTON L. BRENNAN
Judge of the Superior Court

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Attorney General of California
2 DAVID G. ALDERSON
Supervising Deputy Attorney General
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Attorneys for Intervenor
8 California Coastal Commission

**NO FEE REQUIRED PURSUANT
TO GOVERNMENT CODE
SECTION 6103**

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

13 **CITY OF FORT BRAGG,**
14
Plaintiff,
15
v.
16
17 **MENDOCINO RAILWAY,**
18
Defendant,
19
20 **CALIFORNIA COASTAL COMMISSION,**
21
Intervenor.
22

Case No. 21CV00850
**[PROPOSED] COMPLAINT IN
INTERVENTION**
Date:
Time:
Dept:
Judge: The Honorable Clayton L
Brennan
Trial Date:
Action Filed: October 18, 2021

23
24 **COMPLAINT IN INTERVENTION**

25 By leave of court, the California Coastal Commission (“Commission”) files this
26 complaint and intervenes in this action. In its complaint filed on October 28, 2021, Plaintiff City
27 of Fort Bragg (“City”) seeks an injunction ordering that Defendant Mendocino Railway
28 (“Railway”) must comply with the City’s ordinances, regulations, jurisdiction, and authority.

1 The City also seeks a judicial declaration that the Railway is not a public utility exempt from
2 those local laws and regulations. As set forth below, the Commission joins with the City in the
3 relief it seeks against the Railway that is specific to the Commission’s interest in protecting the
4 coast and in upholding laws enacted to protect coastal resources.

5 The Commission alleges as follows:

6 1. As shown by the facts alleged below, the Commission has a right to intervene in
7 this matter pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B) because: (1)
8 the Commission has a direct interest in this action; (2) adjudication of the parties’ claims in the
9 Commission’s absence will impair its ability to protect that interest; and (3) the Commission’s
10 interest is not adequately represented by the existing parties. Alternatively, the Commission
11 should be permitted to intervene pursuant to subdivision (d)(2) of section 387 because of its
12 direct and immediate interest in the action, and that its reasons for intervening outweigh any
13 opposition by the existing parties. Moreover, the Commission’s intervention request is timely,
14 will not delay the matters before the Court, nor enlarge the issues before the Court. Specifically,
15 the Commission’s direct and immediate interest is in obtaining clarity and relief regarding the
16 Railway’s contentions that its activities in the coastal zone are exempt from the Commission’s
17 and City’s authority, regulations, and enforcement under the Coastal Act and the City’s Local
18 Coastal Program.

19 2. The California Coastal Commission is a state agency created by Public Resources
20 Code section 30300 of the California Coastal Act of 1976. (“Coastal Act”) (Pub. Resources Code,
21 § 30000-30900.) The Commission has the authority and responsibility pursuant to Public
22 Resources Code section 30330 to take any action necessary to carry out the provisions of the
23 Coastal Act, including the filing of lawsuits. (See Pub. Resources Code, § 30334.)

24 3. The Commission is charged with administering the Coastal Act and its policies,
25 including a permitting system for any proposed development in the “coastal zone.” (Pub.
26 Resources Code, § 30600.) The Commission is the original permitting authority, but local
27 governments with territory within the coastal zone are required to develop Local Coastal
28 Programs (LCPs) to implement the Coastal Act. Once the Commission certifies the local

1 government's LCP, the local government reviews development applications and issues permits
2 for development in the coastal zone. (See Pub. Resources Code, §§ 30600, subd. (d), 30500, and
3 30519.) The Commission nonetheless remains authorized to take action to enforce any
4 requirements of a certified LCP and the applicable provisions of the Coastal Act, particularly
5 when the local government requests that the Commission do so. (See Pub. Resources Code, §
6 30810, subd. (a)(1).) The Commission further retains appellate authority over many coastal
7 development permit (CDP) decisions rendered by the City. (See City's LCP, § 17.92.040.)

8 4. The Commission has certified the City of Fort Bragg's LCP. Pursuant to the
9 Coastal Act and the City's LCP, "development" is broadly defined and includes the Railway's
10 recent replacement of a roundhouse (which remains ongoing) and storage shed within the coastal
11 zone of the City, as well as the Railway's recent lot line adjustment. (See section 30106 of the
12 Coastal Act and sections 17.71.045(B)(1) and 17.100.020(A) of the City's LCP; see also *La Fe,*
13 *Inc. v. Los Angeles County* (1999) 73 Cal.App.4th 231, 240 [“development,’ as defined in
14 section 30106, includes lot line adjustments”].) These development activities, as well as other
15 activities undertaken by the Railway, and far more substantial activities the Railway is
16 threatening to undertake, all require a CDP from the City pursuant to the City's LCP and the
17 Coastal Act. (See Pub. Resources Code, §§ 30106, 30810.) The Railway disputes this
18 requirement and has not obtained CDPs for the replacement of the roundhouse or its other
19 development activities in the coastal zone of the City, and the Railway has indicated that it plans
20 to undertake much more extensive development on the coastal zone property that it recently
21 acquired, without stating that it will always seek a CDP or other authorization before doing so.
22 The Railway claims that the permitting requirements in the Coastal Act and the City's LCP for
23 these activities are preempted by state and federal law.

24 5. In July 2022, the City asked the Commission to assume primary responsibility for
25 enforcing the Railway's violations of the Coastal Act and LCP with respect to the Railway's
26 replacement of the roundhouse and other actions in the coastal zone. The Commission
27 subsequently sent the Railway a Notice of Violation letter, dated August 10, 2022, describing and
28 notifying the Railway of its violations. As discussed in the Notice of Violation letter, the

1 Commission disagrees with the Railway's alleged preemption from the CDP requirements of the
2 Coastal Act and the City's LCP.

3 6. Because the Railway's unpermitted land use activities threaten the "quality of the
4 coastal zone environment and its natural and artificial resources," its assertion that no coastal
5 development permits are required for any of its activities in the coastal zone is in direct conflict
6 with the Coastal Act, the City's LCP, and the mission and authority of the Commission. (Pub.
7 Resources Code, § 30001.5; see also City of Fort Bragg LCP, § 17.71.045(B)(1) [requiring a
8 coastal development permit for "any development in the coastal zone"].)

9 7. Pursuant to Public Resources Code section 30805, "[a]ny person may maintain an
10 action for the recovery of civil penalties provided for in Section 30820 or 30821.6." "Person" is
11 defined in Public Resources Code section 30111 and includes "any utility, and any federal, state,
12 local government, or special district or an agency thereof." As an agency of the state, the
13 Commission may properly maintain an action for the recovery of civil penalties under the Coastal
14 Act. As provided in Public Resources Code section 30820, subdivision (a)(1), "[c]ivil liability
15 may be imposed by the superior court . . . on any person who performs or undertakes
16 development that is in violation of [the Coastal Act] . . . in an amount that shall not exceed thirty
17 thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)." Subdivision
18 (b) of that same section 30820 provides that "[a]ny person who performs or undertakes
19 development that is in violation of [the Coastal Act] . . ., when the person intentionally and
20 knowingly performs or undertakes the development in violation of [the Coastal Act] . . ., may, in
21 addition to any other penalties, be civilly liable in accordance with this subdivision." Such civil
22 liability "may be imposed by the superior court in accordance with this article for a violation as
23 specified in this subdivision in an amount which shall not be less than one thousand dollars
24 (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the
25 violation persists." (*Id.*) Finally, Public Resources Code section 30822 specifically allows the
26 Commission to maintain an additional action for an award of exemplary damages "[w]hen a
27 person has intentionally and knowingly violated any provision of [the Coastal Act]," the amount
28 of which is to be determined by the court. (Pub. Resources Code, § 30822.)

1 Resources Code section 30820, subdivision (b) in an amount which is not less than one thousand
2 dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000) per day for each day in which
3 the violation persisted and persists.

4 21. The Commission is informed and believes, and on that basis alleges, that the
5 Railway intentionally and knowingly violated the permit requirements of the Coastal Act.
6 Consequently, the Railway is liable to the Commission for exemplary damages pursuant to Public
7 Resources Code section 30822, which are necessary to deter further violations by the Railway.

8 22. Unless and until the Railway is enjoined and restrained by order of this Court, the
9 Railway will continue to undertake unpermitted development in the coastal zone. This
10 unrestrained development will continue to threaten the delicate coastal ecosystem and the
11 residents of the coastal zone.

12 23. The Commission has no adequate remedy at law for the injuries being suffered and
13 may be suffered as a result of the Railway's conduct.

14 24. The Commission is entitled to an injunction restraining and preventing the
15 Railway from proceeding with any actions in the coastal zone of the City that constitute
16 development under the Coastal Act and the City's LCP without a coastal development permit.

17 **PRAYER FOR RELIEF**

18 Wherefore, the Commission prays for judgment as follows:

19 On the First Cause of Action:

20 1. For a declaration that the Coastal Act and the City's LCP apply to the Railway's
21 actions in the coastal zone of the City that constitute development under the Coastal Act and the
22 City's LCP;

23 2. For a declaration that the application of the Coastal Act and the City's LCP to the
24 Railway's actions in the coastal zone of the City that constitute development under the Coastal
25 Act and the City's LCP are not preempted by any state or federal law, including, but not limited
26 to, Public Utilities Code sections 701 and 1759, subdivision (a); sections 10102 and 10501,
27 subdivision (b) of Title 49 of the United States Code; and clause 2 of Article VI of the United
28 States Constitution.

1 On the Second Cause of Action:

2 3. For civil penalties pursuant to Public Resources Code sections 30805 and 30820 in
3 an amount to be determined by the court for the Defendant’s past and ongoing violations of the
4 Coastal Act;

5 4. For temporary, preliminary, and/or permanent injunctive relief requiring the
6 Railway to: (a) cease all actions taken by the Railway without a coastal development permit in the
7 coastal zone of the City that constitute development under the Coastal Act and the City’s LCP;
8 (b) submit an application to the City and obtain a permit or other authorization under the City’s
9 LCP before commencing or resuming any such development; and (c) comply with any other
10 applicable requirements in the Coastal Act and the LCP, including but not limited to mitigation of
11 the unauthorized development;

12 5. For exemplary damages pursuant to Public Resources Code section 30822, in an
13 amount to be determined by the court as necessary to deter further violations of the permit
14 requirements of the Coastal Act;

15 On All Causes of Action:

16 6. For all its costs of investigating and prosecuting this case, including expert fees,
17 reasonable attorney’s fees, and costs as provided in Code of Civil Procedure section 1021.8; and

18 7. For the Court to award such other and further relief as it may deem necessary and
19 proper.

20
21 Dated: September 8, 2022

Respectfully submitted,

22 ROB BONTA
23 Attorney General of California
24 DAVID G. ALDERSON
25 Supervising Deputy Attorney General



26 PATRICK TUCK
27 Deputy Attorney General
28 Attorneys for Intervenor
 California Coastal Commission

Case Information

21CV00850 | City of Fort Bragg vs Mendocino Railway

Case Number

21CV00850

File Date

10/28/2021

Court

Civil

Case Type

42: Unlimited Other Complaint
(Not Spec)

Judicial Officer

Brennan, Clayton

Case Status

Opened

Party

Plaintiff

City of Fort Bragg

Active Attorneys ▼

Lead Attorney

HILDERBRAND, RUSSELL A

Retained

Defendant

Mendocino Railway

Active Attorneys ▼

Lead Attorney

BEARD, PAUL J. II

Retained

Events and Hearings

10/28/2021 First Paper Filed ▼

Complaint Verified for Declaratory and Injunctive Relief

Comment

Complaint for Declaratory and Injunctive Relief

10/28/2021 Summons Issued / Filed ▼

Summons

Comment

Summons Issued/Filed

10/28/2021 Civil Cover Sheet Filed ▼

Civil Case Cover Sheet

Comment

Civil Cover Sheet Filed

10/28/2021 Notice ▼

MCV-101 Notice of Case Management Conference

Comment

Notice of Case Management Conference

12/08/2021 Proof of Service ▼

Proof of Service on Mike Heart

Comment

Proof of Service of Summons and Complaint on Mike Heart

12/08/2021 Proof of Service ▼

Proof of Service on Robert Pinole

Comment

Proof of Service of Summons and Complaint on Robert Pinole

01/07/2022 Declaration ▼

Declaration 30 day extension

Comment

Declaration of Demurring Party ISO Automatic Extension

01/14/2022 Motion - \$60 Fee ▼

Notice of Demurrer and Demurrer

Comment

Notice of Demurrer and Demurrer

01/14/2022 Memorandum of Points & Authorities ▼

Points and Authority Demurrer

Comment

Memo of Ps and As re Demurrer

01/14/2022 Request ▼

Request for Judicial Notice.pdf

Comment

Request for Judicial Notice

01/14/2022 Declaration ▼

Declaration of Paul Beard

Comment

Declaration of Paul Beard

01/14/2022 Declaration ▼

Declaration of Mike Hart

Comment

Declaration of Mike Hart

01/14/2022 Motion - \$60 Fee ▼

Motion to Strike Filed by Defendants

Comment

Motion to Strike

01/19/2022 Notice ▼

Notice of New Hearing Date

Comment

Of New Hearing date for Defendants Demurrer and Motion to Strike Filed by Atty Paul Beard II for Defendants Mendocino Railway

01/20/2022 Minute Order ▼

Minute Order re: Vacating/ Resetting Hearing

PSN-100 Proof of Service

Comment

Re: Vacating / Setting of Hearing

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Motion to Strike Complaint

Comment

City of Fort Bragg's Opposition to Motion to Strike Complaint for Declaratory and Injunctive Relief

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Demurrer

Comment

City's Opposition to Demurrer to Verified Complaint for Declaratory and Injunctive Relief

02/09/2022 Objection - No Fee ▼

Plaintiffs Objection to Request for Judicial Notice

Comment

City's Objection to Request for Judicial Notice ; Evidentiary Objections

02/09/2022 Notice ▼

Notice of Lodging Authority Cites

Comment

Notice of Lodging of Federal Agency Opinions Cited In Support Of Opposition to Demurrer

02/16/2022 Brief Filed ▼

Reply Brief In Support of Defendant Demurrer

Comment

Reply Brief in Support of Demurrer

02/16/2022 Brief Filed ▼

Reply Brief in Support of Def's Mtn to Strike

Comment

Reply Brief in Support of Motion to Strike

02/16/2022 Brief Filed ▼

Reply In Support of Def's Req for Judicial Ntc

Comment

Reply Brief in Support of Request for Judicial Notice

02/22/2022 Notice ▼

NOT - Lodging Authority Cites 2 - Final.pdf

Comment

Notice of Lodging of Federal Agency Opinions Cited In Support Of Opposition to Demurrer

02/22/2022 Brief Filed ▼

Amicus Curiae Application & Brief

Comment

Amicus Curiae Application & Brief

02/22/2022 Request ▼

Request for Judicial Notice

Comment

Request for Judicial Notice

02/22/2022 Proof of Service ▼

Proof of Service

Comment

Proof of Service

02/22/2022 Notice ▼

Notice of Remote Appearance

Comment

Notice of Remote Appearance

02/24/2022 *Demurrer / Motion to Strike ▼

Original Type

*Demurrer / Motion to Strike

MINUTES 02/24/2022

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Comment

both Demurrer and a Motion to Strike

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

02/24/2022 *Case Taken Under Submission

03/23/2022 Case Management / Status Conference Statement ▼

Case Management Statement

Comment

Case Management / Status Conference Statement

03/24/2022 Case Management / Status Conference Statement ▼

Amended Case Management Statement

Comment

AMENDED Case Management / Status Conference Statement

04/06/2022 Notice ▼

4.6.22 Notice Remote Appearance

Comment

Notice of Remote Appearance

04/07/2022 *Case Management Conference ▼

Original Type

*Case Management Conference

04/07/2022 MINUTES

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

04/07/2022 Remote Appearance Made

04/11/2022 Minute Order ▼

Minute Order Re: Setting Further Case Management Conference

PSN-100 Proof of Service

Comment

Re: Further Case Management Conference

04/13/2022 Request ▼

Defendants Supplemental Request for Judicial Notice

Comment

Supplemental RJN in Support of Demurrer/Motion to Strike

04/28/2022 Ruling ▼

Ruling on Demurrer to the Complaint

PSN-100 Proof of Service

Comment
On Demurrer to the Complaint

04/28/2022 Ruling ▼

Ruling On Motion to Strike
PSN-100 Proof of Service
Comment
On Motion to Strike

04/28/2022 *Case Returned from Under Submission

05/04/2022 Case Management / Status Conference Statement ▼

Case Management Statement for Defendants
Comment
Case Management / Status Conference Statement

05/04/2022 Proof of Service ▼

Proof of Service of Case Management Statement
Comment
Proof of Service Of: Case Managment Conference statement To; Atty. Krista MacNevin Jee for Plaintiff
By: Electronic Transmission On: 05/04/2022

05/04/2022 Appeal Document ▼

Appeal Document WRIT DECISION
Comment
WRIT DECISION

05/09/2022 Minute Order ▼

Minute Order Re: Vacating Case Management Conference
PSN-100 Proof of Service
Comment
Minute Order Re: Vacating Case Management Conference

05/09/2022 Appeal Document ▼

Appeal Document LETTER STAYING PROCEEDINGS PENDING DECISION ON WRIT OF MANDATE.
Comment
LETTER STAYING PROCEEDINGS PENDING DECISION ON WRIT OF MANDATE.

05/19/2022 *Case Management Conference ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Cancel Reason
Vacated

06/10/2022 Appeal Document ▼

Appeal Document ORDER DENYING PETITION FILED 06/09/22

Comment
ORDER DENYING PETITION FILED 06/09/22

06/13/2022 Minute Order ▼

Minute Order
PSN-100 Proof of Service

06/23/2022 *Case Management Conference ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Cancel Reason
Vacated - Set in Error

06/24/2022 Answer / Response / Denial - Unlimited ▼

Verified Answer Filed by Mendocino Railway

Comment
Answer / Response / Denial - Unlimited

06/27/2022 Opposition - No Fee ▼

Opp to Notice of Related Case
Comment
Opposition of City of Fort Bragg To Notice of Related Case

06/29/2022 Minute Order ▼

Minute Order Re: Setting of Case Mangement Conference
Proof of Service of Minute Order Re: Setting of Case Mangement Conferenc

Comment
re: Setting of Case Management Conference

08/18/2022 Case Management / Status Conference Statement ▼

Amended Case Management Statement filed by Defendant Mendocino Railway

Comment
Amended Case Management / Status Conference Statement

08/18/2022 Proof of Service ▼

Proof of Service of CMC statement 8-18-22

Comment
Proof of Service Of: Defendant's Case Mangement Conference Statement To: Atty. Krista MacNevin
Jee for Plaintiff By: Mail On: 08/18/2022

08/25/2022 Case Management / Status Conference Statement ▼

Case Mangement Statement filed by Plaintiff City of Ft. Bragg

Comment
Case Management / Status Conference Statement

09/01/2022 *Case Management Conference ▼

Original Type
*Case Management Conference

09/01/2022 MINUTES

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Result
Held

Parties Present ▲
Plaintiff: City of Fort Bragg

Defendant: Mendocino Railway

09/01/2022 Remote Appearance Made

09/06/2022 Minute Order ▼

MCV-163 Minute Order Setting Trial-Proceedings Cout Trial

PSN-100 Proof of Service

Comment
Setting Trial and Other Proceedings

09/08/2022 Motion - \$60 Fee ▼

Notice of Motion

Comment
NOTICE OF MOTION AND MOTION FOR LEAVE OF COURT TO INTERVENE

09/13/2022 Objection - No Fee ▼

Comment

TO JUDGE PRESIDING OVER TRIAL AND ALL OTHER PROCEEDINGS CONCERNING THIS ACTION FILED BY ATTY BEARD FOR DEF MENDOCINO RAILWAY

09/14/2022 Answer / Response / Denial - Unlimited ▼

Answer of Judge Clayton L. Brennan to Mendocino Railway's Statement of Disqualification

PSN-100 Proof of Service

Comment

Answer of Judge Clayton L. Brennan to Mendocino Railway's Statement of Disqualification

09/16/2022 Opposition - No Fee ▼

Oppositon of California Coastal Commission to Mendocino Railway's Notice of Related Cases

Comment

Opposition to Notice of Related Case

09/22/2022 Brief Filed ▼

Defendant Mendocino Railway's Reply in Support of Its Notice of Related Cases

Comment

Brief Filed

09/22/2022 Opposition - No Fee ▼

Opposition Defendant Mendocino Railway's Oppostioin to CCC Motion to Intervene

Comment

Defendant Mendocino Railways Oppostion to the California Coastal Commission's Motion to Intervene Filed by Atty Paul J. Beard for Mendocino Railway

09/26/2022 Non-opposition ▼

City's Non-Opp Motion to Intervene

Comment

City's Non-opposition to California Coastal Commission's Motion to Intervene

09/27/2022 Objection - No Fee ▼

Plaintiff's Opposition to Request for Judicial Disqualification

Comment

Objection to Request for Judicial Disqualification

09/27/2022 Minute Order ▼

Minute Order

PSN-100 Proof of Service

09/29/2022 Order ▼

Order ON MOTION TO DISQUALIFY JUDGE BRENNAN

Comment

ON MOTION TO DISQUALIFY JUDGE BRENNAN

09/30/2022 Minute Order ▼

Minute Order Setting of Hearing Date

PSN-100 Proof of Service

Comment

Minute Order Re: Setting of Hearing

10/06/2022 *Motion ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Cancel Reason
Vacated

Comment

California Coast Commissions Notice of Motion and Motion for Leave of Court to Intervene

10/12/2022 Notice ▼

Notice of Remote Appearance

Comment

Notice of Remote Appearance

10/13/2022 Reply Filed ▼

California Coastal Commission Reply In Support of its Motion to Intervene

Comment

California Coastal Commission's Reply in Support of its Motion to Intervene Filed by Deputy Attorney
General Patrick Tuck

10/20/2022 *Motion ▼

Original Type
*Motion

10/20/2022 MINUTES

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Result
Held

Comment
Intervene

Parties Present ▲

Plaintiff

Attorney: HILDERBRAND, RUSSELL A

Defendant

Attorney: BEARD, PAUL J. II

10/20/2022 Minute Order ▼

Proof of Service of Minute Order granting Motion

Minute Order Granting Coastal Commission's Motion for Leave of the Court to Intervene

Comment

Granting California Coastal Commission's Motion for Leave of the Court to Intervene

10/20/2022 Remote Appearance Made

05/10/2023 *Settlement Conference ▼

Judicial Officer
Nadel, Jeanine

Hearing Time
1:30 PM

Comment
Ghidelli Official

06/15/2023 *Pretrial Conference ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

06/21/2023 *Trial: Court ▼

Judicial Officer
Brennan, Clayton

Hearing Time
9:00 AM

Comment
3 day Est

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

City of Fort Bragg, California Coastal Commission

(b) County of Residence of First Listed Plaintiff Mendocino County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

City of Fort Bragg: Krista M. Jee, 3888 N. Harbor Blvd., Fullerton, CA. 714-446-1400
Cal. Coastal Comm.: Patrick Tuck, 151 Clay St., 20th Fl., Oakland, CA. 510-879-1006

DEFENDANTS

Mendocino Railway

County of Residence of First Listed Defendant Yolo County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Paul Beard II, FisherBroyles LLP, 4470 W. Sunset Blvd., Ste. 93165 Los Angeles, CA 90027

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 49 U.S.C. 10501, et seq. (Interstate Commerce Commission Termination Act--ICCTA)

Brief description of cause:

Declaratory and injunctive relief re: Defendant's status as a federal railroad under ICCTA entitled to federal preemption.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Judge John S. Tigar

DOCKET NUMBER 4:22-CV-04597-JST

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE X EUREKA-MCKINLEYVILLE

DATE 10/20/2022

SIGNATURE OF ATTORNEY OF RECORD

s/ Paul Beard II

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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ROB BONTA
Attorney General of California
DAVID G. ALDERSON
Supervising Deputy Attorney General
PATRICK TUCK
Deputy Attorney General
State Bar No. 305718
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1006
Fax: (510) 622-2270
E-mail: Patrick.Tuck@doj.ca.gov
*Attorneys for Defendant Jack Ainsworth, in his
official capacity as Executive Director of the
California Coastal Commission*

**Exempt from Filing Fee Pursuant to
Government Code Section §6103**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY,

Plaintiff,

v.

**JACK AINSWORTH, in his official
capacity as Executive Director of the
California Coastal Commission; CITY OF
FORT BRAGG, a California municipal
corporation; ,**

Defendants.

22-cv-04597

REQUEST FOR JUDICIAL NOTICE

Date: December 22, 2022
Time: 2 p.m.
Dept: Courtroom 6
Judge: Honorable Jon S. Tigar
Trial Date: Not Set
Action Filed: August 9, 2022

Defendant Jack Ainsworth, in his official capacity as Executive Director of the California Coastal Commission, respectfully requests that the Court take judicial notice of the documents filed in the related state court proceedings and its docket identified below, pursuant to Federal Rule of Evidence Rule 201:

- 1 1. Exhibit A – A true and correct copy of the City of Fort Bragg’s Verified Complaint,
2 *City of Fort Bragg v. Mendocino Railway*, Mendocino County Superior Court, Case No.
3 21CV00850, filed October 28, 2021.
- 4 2. Exhibit B – A true and correct copy of Mendocino Railway’s Memorandum of Points
5 and Authorities in support of Demurrer, *City of Fort Bragg v. Mendocino Railway*,
6 Mendocino County Superior Court, Case No. 21CV00850, filed January 14, 2022.
- 7 3. Exhibit C – A true and correct copy of Judge Clayton L. Brennan’s Ruling on Demurrer
8 to the Complaint, *City of Fort Bragg v. Mendocino Railway*, Mendocino County
9 Superior Court, Case No. 21CV00850, filed April 28, 2022.
- 10 4. Exhibit D – A true and correct copy of the First District California Court of Appeal’s
11 denial of writ review, *Mendocino Railway v. Superior Court for the County of*
12 *Mendocino, City of Fort Bragg*, Court of Appeal of the State of California, First
13 Appellate District, Division Five, Case No. A165104, filed June 9, 2022.
- 14 5. Exhibit E – A true and correct copy of Verified Answer of Defendant Mendocino
15 Railway, *City of Fort Bragg v. Mendocino Railway*, Mendocino County Superior Court,
16 Case No. 21CV00850, filed June 24, 2022.
- 17 6. Exhibit F – A true and correct copy of the California Coastal Commission’s Notice of
18 Motion and Motion for Leave of Court to Intervene, Proposed Complaint in
19 Intervention, *City of Fort Bragg v. Mendocino Railway*, Mendocino County Superior
20 Court, Case No. 21CV00850, filed September 8, 2022.
- 21 7. Exhibit G – A true and correct copy of the City of Fort Bragg’s Opposition of City of
22 Fort Bragg to Notice of Related Case, *City of Fort Bragg v. Mendocino Railway*,
23 Mendocino County Superior Court, Case No. 21CV00850, filed June 27, 2022.
- 24 8. Court Docket of *City of Fort Bragg v. Mendocino Railway*, Mendocino County Superior
25 Court, Case No. 21CV00850, retrieved September 21, 2022.

26 The Court may take “judicial notice of court filings and other matters of public record.”
27 *Dignity Health v. Dep’t of Indus. Rels., Div. of Lab. Standards Enf’t*, 445 F. Supp. 3d 491, 495 n.
28 1 (N.D. Cal. 2020) (quoting *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6
 (9th Cir. 2006)). Further, the Court “may take notice of proceedings in other courts, both within
 and without the federal judicial system, if those proceedings have a direct relation to matters at
 issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th
 Cir. 1992) (quoting *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172
 (10th Cir. 1979)).

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Therefore, judicial notice is appropriate and Defendant Jack Ainsworth respectfully requests that this Court grant his request for judicial notice.

Dated: September 22, 2022

Respectfully submitted,
ROB BONTA
Attorney General of California
DAVID G. ALDERSON
Supervising Deputy Attorney General

/s/ Patrick Tuck
PATRICK TUCK
Deputy Attorney General
*Attorneys for Defendant Jack Ainsworth, in
his official capacity as Executive Director of
the California Coastal Commission*

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91542655.docx

EXHIBIT A

**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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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

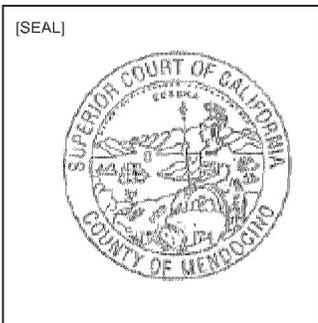
CASE NUMBER: (Número del Caso):
21CV00850

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):

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

1 JONES & MAYER
Russell A. Hildebrand (SBN 191892)
2 rah@jones-mayer.com
Krista MacNevin Jee, Esq. (SBN 198650)
3 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

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

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.

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

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PARTIES

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

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

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

BACKGROUND FACTS

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

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

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.

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

Case 2:21-cv-00099-JST Document 1-1 Filed 10/28/21 Page 1 of 182

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-maver.com; kmi@iones-maver.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: *[Signature]*
 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

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 21CV00850

JUDGE: CLAYTON BRENNAN
 DEPT.: TEN MILE BRANCH

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

1. Check **one** box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input checked="" type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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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. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. 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]
(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.

EXHIBIT C

FILED

04/28/2022

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Jess, Dorothy
DEPUTY CLERK

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO, TEN MILE BRANCH**

CITY OF FORT BRAGG, a California
Municipal corporation

Plaintiff,

vs.

MENDOCINO RAILWAY and DOES
1-10, inclusive,

Defendants.

Case No.: 21CV00850

**RULING ON DEMURRER
TO THE COMPLAINT**

I. Standard of Review on Demurrer:

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. CCP §589(a); *Andal v. City of Stockton* (2006) 137 Cal.App.th 86, 90; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer is directed to the face of the pleading to which objection is made (*Sanchez v. Truck Ins. Exch.* (1994) 21 Cal.App.4th 1778, 1787; and to matters subject to judicial notice (CCP §430.30(a); *Ricard v. Grobstein, Goldman, Stevenson, Siegel, LeVine & Mangel* (1992) 6 Cal.App.4th 157, 160.

The only issue a judge may resolve on a demurrer to a complaint is whether the complaint, standing alone, states a cause of action. *Gervase v. Superior Court* (1995) 31 Cal.App.4th 1218, 1224. On a demurrer, a judge should rule only on matters disclosed in the challenged pleading. *Ion Equip. Corp. v Nelson* (1980) 110 Cal.App.3d 868, 881.

A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. *Cundiff v GTE Cal, Inc.* (1992) 101 Cal.App.4th 1395, 1404-1405. A demurrer is not the proper procedure for determining the truth of disputed facts, such as the correct interpretation of the parties' agreement or its enforceability (*Fremont Indem. Co. v Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 114-115. A judge may not make factual findings on a demurrer, including "implicit" findings. *Mink v Maccabee* (2004) 121 Cal.App.4th 835, 839.

For purposes of ruling on a demurrer, a judge must treat the demurrer as an admission of all material facts that are properly pleaded in the challenged pleading or that reasonably arise by implication, however improbably those facts may be. *Gervase v Superior Court* (1995) 31 Cal.App.4th 1218, 1224; *Yue v City of Auburn* (1992) 3 Cal.App.4th 751,756. A demurrer does not admit contentions, deductions, or conclusions of fact or law alleged in the challenged pleading. *Harris v Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1149; *Hayter Trucking v Shell W. E&P* (1993) 18 Cal.App.4th 1, 12. For example, a demurrer does not admit the truth of argumentative allegations about the legal construction, operation, or effect of statutory provisions, or the truth of allegations that challenged actions are arbitrary and capricious or an abuse of discretion. *Building Indus. Ass'n v Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641, 1645.

II. The Complaint:

The plaintiff's (City of Fort Bragg) complaint alleges a single cause of action for declaratory relief. Although the complaint denominates the cause of action as being for "Declaratory and/or Injunctive Relief," the court is construing the pleading as stating a cause of action for Declaratory Relief which seeks injunctive relief as a remedy if appropriate. Injunctive relief is a remedy—not a cause of action.

The City seeks a judicial determination that Defendant (Mendocino Railway), despite being a railroad subject to regulation by the California Public Utilities Commission ("CPUC"), is nevertheless "subject to the City's ordinances, regulations, codes, local jurisdiction, local control and local police power and other City authority." Fort Bragg contends that a judicial determination of these issues and of the respective duties of the parties is now necessary and appropriate because the Defendant continues to resist compliance with City directives to repair and make safe the dangerous building on its property, and to comply with the City Land Use and Development Codes, and/or other valid exercise of City governing authority.

III. The Demurrer:

Defendant, Mendocino Railway (hereinafter "MR"), raises two basic theories in support of its demurrer; namely, lack of subject matter jurisdiction, and preemption.

With regard to subject matter jurisdiction, MR contends that there is a decades long history of the CPUC recognizing and regulating its operations as a public utility. Moreover, MR argues that in the past, the City has vigorously defended MR's status as a "public utility" and thus should not be allowed to disavow those admissions now. More precisely, however, the gravamen of MR's contentions is that this court lacks subject matter jurisdiction based on Public Utilities Code Section 1759 which states:

No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court. Pub. Util Code § 1759

In short, MR contends that "the CPUC has exclusive jurisdiction over the regulation and control of utilities and that jurisdiction, once assumed, cannot be hampered or second-guessed by a superior court action addressing the same issue." (citing, *Anchor Lighting v. Southern California Edison* (2006) 142 Cal.App.4th 541, 548). Thus, the City is barred from obtaining a declaration from this court which might nullify Mendocino Railway's status as a CPUC-regulated public utility.

With regard to preemption, Mendocino Railway contends there is no dispute that it is a federally recognized railroad. As such, it is regulated by the federal Surface Transportation Board under the Interstate Commerce Commission Termination Act ("ICCTA") which gives plenary and exclusive power to the STB to regulate federally recognized railroads. Mendocino Railway contends that the STB's exclusive jurisdiction over a federally recognized railroad means that state and local regulatory and permitting requirements are broadly preempted. Mendocino Railway argues that the injunctive relief sought would necessarily confer to the City plenary regulatory authority over railroad operations and facilities and thus is in direct conflict with STB's exclusive grant of jurisdiction pursuant to 49 U.S.C. § 10501(b).

As explained more fully below, the court rules that for the purpose of determining the merits of this demurrer, Mendocino Railway's contentions, embrace an overly broad interpretation of both the subject matter jurisdiction limitation of Public Utilities Code Section 1759 and how the operation of federal preemption that might arise pursuant to 49 U.S.C. § 10501(b) on the facts of this case.

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A. Requests for Judicial Notice:

Mendocino Railway requests that the court take judicial notice of five documents, Exhibits A-E, attached to the declaration of Paul Beard II.

Although courts may notice various acts, law, and orders, judicial notice does not require acceptance of the truth of factual matters that might be deduced from the thing judicially noticed. e.g., from official acts and public records. *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062 Often what is being noticed is the existence of the act, not that what is asserted in the act is true. *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.

There is a mistaken notion that taking judicial notice of court records means taking judicial notice of the existence of facts asserted in every document of a court file, including pleadings and affidavits. The concept of judicial notice requires that the matter which is the proper subject of judicial notice be a fact that is not reasonably subject to dispute. Facts in the judicial record that are subject to dispute, such as allegations in affidavits, declarations, and probation reports, are not the proper subjects of judicial notice even though they are in a court record. In other words, while we take judicial notice of the existence of the document in court files, we do not take judicial notice of the truth of the facts asserted in such documents. *People v. Tolbert* (1986) 176 Cal.App.3d 685, 690.

Furthermore, the hearsay rule applies to statements in judicially noticed declarations from other actions and precludes consideration of those statements for their truth absent a hearsay exception. *Magnolia Square Homeowners Ass'n v. Safeco Ins.* (1990) 221 Cal.App.3d 1049, 1056. A court cannot take judicial notice of the truth of hearsay statements simply because they are part of the record.

1. Exhibit A: Page from CPUC website listing railroads it regulates:

While the court might take judicial notice that the website exists, the court will not take judicial notice of the webpage for the purpose of establishing, as a fact beyond dispute, that Mendocino Railway is a common carrier, engaged in railroad operations in interstate commerce, and regulated in that capacity by the CPUC. Such a factual or legal conclusion is directly contradicted by the CPUC decision in the Matter of the Application of California Western Railroad, Inc. for Authority to Modify Scheduled Commuter Passenger Service and Seek Relief from Regulated Excursion Passenger Scheduling and Fares 1998 Ca. PUC LEXIS 384. Accordingly, the factual content of the website is not a proper subject for judicial notice, and the document is not otherwise relevant to the issues to be decided. Accordingly, request for the court to take judicial notice of Exhibit A is denied.

2. Exhibit B: CPUC Decision 98-01-050:

The court will take judicial notice of this decision pursuant to Evidence Code Section 451(a)

3. Exhibit C: January 17, 2019 Letter from Fort Bragg City Attorney to California Coastal Commission:

The contents of the proffered letter are hearsay statements of opinion with respect to a matter of law. The content of the letter is not a proper subject for judicial notice. A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. Accordingly, request for the court to take judicial notice of Exhibit C is denied

4. Exhibit D: August 1, 2019 Letter with Coastal Consistency Certification:

While the existence of the letter and certification may be judicially noticed, judicial notice is not proper as to their contents. Mendocino Railway requests the court take judicial notice of the documents because they are "relevant to, inter alia, the City's position on the history of Mendocino Railway's freight and passenger service as well as on whether the railroad is ready, willing, and able to resume full service upon the tunnel's reopening. For purposes of a demurrer, the court must assume the facts in the complaint as true. A demurrer does not test the sufficiency of the evidence or other matters outside the pleading to which it is directed. *Four Star Elect. v F&H Constr.* (1992) 7 Cal.App.4th 1375, 1379. It challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. Accordingly, Mendocino Railway's stated purpose for the court to take judicial notice is irrelevant for determining the merits of its demurrer and thus the document is irrelevant to the motion at bar. Accordingly, request for the court to take judicial notice of Exhibit D is denied.

5. Exhibit E: CPUC Decision No. 98-05-054:

The court will take judicial notice of this decision pursuant to Evidence Code Section 451(a).

6. Mendocino Railways's Supplemental Request for Judicial Notice filed April 13, 2022:

Mendocino Railway filed a Supplemental Request for Judicial Notice on April 13, 2022. This matter, however, was deemed submitted for decision on February 24, 2022 after the court had reviewed all of the parties' pleading and papers and heard oral argument. The supplemental request for judicial notice, coming 48 days after the matter was deemed submitted is untimely. The supplemental request for judicial notice is denied.

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IV. Discussion:

A. Public Utilities Code Section 1759:

By way of the instant demurrer, MR contends that the City is asking this court to “nullify Mendocino Railway’s status as a CPUC-regulated public utility and thus empower the City to seize unfettered control over a state regulated, public-utility.” MR characterizes the City’s action as an “extraordinary” and “unlawful” attempt to “second guess” and “interfere with the agency’s continuing jurisdiction....” In support of its allegations, MR argues that the Public Utilities Code “vests the commission with broad authority to supervise and regulate every public utility in the State and grants the commission numerous specific powers for [that] purpose.” (citing, *San Diego Gas*, 13 Cal.4th at 915). MR notes that “to protect the CPUC’s broad mandate and limit judicial interference with the CPUC’s work, the Legislature enacted section 1759(a) of the Public Utilities Code which deprives the superior court of jurisdiction to entertain an action that could undermine the CPUC’s authority.” (citing *Anchor Lighting v. Southern California Edison Co.* (2006) 142 Cal.App.4th 541, 548.

While it is true that section 1749(a) grants the CPUC exclusive governing authority over public utilities, application of the jurisdictional limitations of 1749(a) is more nuanced and fact-driven than Mendocino Railway admits. For example, it is well established that a suit is not barred in superior court when it actually furthers the policies of the CPUC. (see, *North Gas Co. v. Pacific Gas & Electric Company* 2016 U.S. Dist. LEXIS 131684 (N.D. Cal. 2016). In fact, there are several legal issues that need to be evaluated in determining the applicability of Section 1749. These issues include a “careful assessment of the scope of the CPUC’s regulatory authority and [an]evaluation of whether the suit would thwart or advance... CPUC regulation.” (See, *PegaStaff v. Pacific Gas & Electric Company* (2015) 239 Cal.App.4th 1303, 1318.)

As noted in *Vila v. Tahoe Southside Water Utility*, (1965) 233 Cal.App.2d 469, 477, California courts have frequently proclaimed concurrent jurisdiction in the superior court over controversies between utilities and others not inimical to the purposes of the Public Utility Act. For example, as the Vila court explained,

“In *Truck Owners, etc. Inc. v. Superior Court*, *supra*, 194 Cal. 146, the court, after stating that the Legislature under the Constitution had full power to divest the superior court of all jurisdiction, and had exercised that power in denying jurisdiction to “enjoin, restrain or interfere with the commission in the performance of its official duties,” and had also vested in the Supreme Court sole power “to compel the commission to act,” held that the superior court, nevertheless, had power to hear and determine a cause involving a complaint against a transportation company seeking to enjoin its transportation of freight as a public carrier with a certificate of public convenience. The court noted that the suit did not involve an interference with any act of the commission since the latter had not acted; that if it ever did act any conflicting injunction would be superseded. A contention that

recognition of concurrent jurisdiction in the court and the commission would cause confusion was rejected.”

A three prong test to determine whether an action is barred by section 1759 was set forth by the California Supreme Court in *San Diego Gas & Electric Co. v. Superior Court* 13 Cal.4th 893 (*Covalt*). The test is as follows:

- (1) Whether the commission had the authority to adopt a regulatory policy;
- (2) Whether the commission had exercised that authority; and
- (3) Whether the superior court action would hinder or interfere with the commission’s exercise of regulatory authority.

Superior court jurisdiction is precluded only if all three prongs of the *Covalt* test are met.

As described in *Pegastaff, supra*, 239 Cal.App.4th at 1315,:

“The issue in *Covalt* was whether section 1759 barred a superior court action for nuisance and property damage allegedly caused by electric and magnetic fields from power lines owned and operated by a public utility. (citation) The court, considering the third prong of the test, concluded that a superior court verdict for plaintiffs would be inconsistent with the PUC’s conclusion “that the available evidence does not support a reasonable belief that 60 Hz electric and magnetic fields present a substantial risk of physical harm, and that unless and until the evidence supports such a belief regulated utilities need take no action to reduce field levels from existing powerlines.”

Since *Covalt* was decided, courts have had repeated occasion to apply the test it established. In *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, residents brought actions against, among others, water providers regulated by the PUC for injuries caused by harmful chemicals in the water they supplied. Asserting tort and other causes of action, the plaintiffs sought damages and injunctive relief against those defendants. The water companies argued that section 1759 deprived the superior court of jurisdiction over the plaintiff’s claims. The Supreme Court found that the first two prongs of the *Covalt* test were met: The CPUC had regulatory authority over water quality and safety and had exercised that authority. Applying *Covalt*’s third prong, it held that adjudication of some—but not all—of the plaintiff’s claims against the regulated water companies would hinder or interfere with the CPUC’s exercise of regulatory authority. The plaintiff’s injunctive relief claims would interfere with the PUC’s exercise of its authority because the PUC had determined that the water companies were in compliance with state water quality standards and impliedly declined to take remedial action against those companies. “A court injunction, predicated on a contrary finding of utility noncompliance, would clearly

conflict with the PUC's decision and interfere with its regulatory functions in determining the need to establish prospective remedial programs." Plaintiff's damages claims were also barred by section 1759 to the extent they sought to recover for harm caused by water that met state standards but allegedly was unhealthy nonetheless."

As the Pegastaff court concludes,

"Hartwell demonstrates that application of the third prong of Covalt does not turn solely or primarily on whether there is overlap between conduct regulated by the PUC and the conduct targeted by the suit. The fact that the PUC has the power and has exercised the power to regulate the subject at issue in the case established the first and second prongs of Covalt, but will not alone establish the third. Instead, the third prong requires a careful assessment of the scope of the PUC's regulatory authority and evaluation of whether the suit would thwart or advance enforcement of the PUC regulation. Also relevant to the analysis is the nature of the relief sought—prospective relief, such as an injunction, may sometime interfere with the PUC's regulatory authority in ways that damages claims based on past harms would not. Ultimately, if the nature of the relief sought or the parties against whom the suit is brought fall outside the PUC's constitutional and statutory powers, the claim will not be barred by section 1759. (Emphasis added).

In the case at bar, it is clear that the superior court jurisdiction of the parties' dispute will not impair, hinder or interfere with the CPUC's exercise of regulatory authority. The reason is simple. As plaintiff contends, MR is not presently functioning as a public utility and is not subject to CPUC regulation in that capacity.

"The Legislature enacted the Public Utilities Act (§ 201 et seq.) which 'vests the commission with broad authority to "supervise and regulate every public utility in the State."' (*San Diego Gas & Electric v. Superior Court* (1996) 13 Cal.4th 893 (*Covalt*) This broad authority authorizes the commission to "do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient" in the exercise of its jurisdiction over public utilities." The commissions' authority has been liberally construed, and includes not only administrative but also legislative and judicial powers..." *Pegastaff, supra* at p. 620 .When the CPUC's determinations within its jurisdiction have become final they are conclusive in all collateral actions and proceedings." *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 629.

As emphasized by the City of Fort Bragg in their opposition, the CPUC has already made judicial findings regarding MR's predecessor, California Western Railroad (CWR), regarding its status as a public utility. Simply put, the CPUC found that the

railroad is not functioning as a public utility. Its services are limited to sightseeing excursions and do not constitute “transportation under Public Utilities Code section 1007.

The CPUC writes,

“The primary purpose of CWRR’s excursion service is to provide the passengers an opportunity to enjoy the scenic beauty of the Noyo River Valley and to enjoy sight, sound and smell of a train. It clearly entails sightseeing.... [The Commission [has] also opined that public utilities are ordinarily understood as providing essential services... [But, CWRR’s excursion service is not essential to the public in the way that utilities services generally are. In providing its excursion service, CWRR is not functioning as a public utility. Based on the above, we conclude that CWRR’s excursion service should not be regulated by the CPUC.” (1998 Cal. PUC LEXIS 189 (1998)

Obviously, if the CPUC has already found that the railroad should not be subject to its regulation, it is difficult to imagine how the superior court, by hearing the current dispute, would impair or hinder any exercise of the CPUC’s regulatory authority.

City of St. Helena v. Public Utilities Commission (2004) 119 Cal.App.4th 793 lends further support to the conclusion that MR is not subject to regulation as a public utility in a manner that would deprive this court of subject matter jurisdiction. In that case, the City of St. Helena sought annulment of various decisions of the PUC conferring public utility status on the Napa Valley Wine Train. At issue in that case was whether the City was pre-empted, by reason of the Wine Train’s public utility status, from exercising its local jurisdiction regarding the placement of a Wine Train station in downtown St. Helena. The case is strikingly similar to the case at bar in that, here, the MR has allegedly asserted any local regulatory authority of the City of Fort Bragg is also pre-empted.

The *City of St. Helena* court writes,

The Wine Train is not subject to regulation as a public utility because it does not qualify as a common carrier providing “transportation.” Additionally, even if an up-valley station were permitted, it could be argued that any transportation provided would be incidental to the sightseeing service provided by the Wine Train. The PUC has previously held that sightseeing is not a public utility function. (*Western Travel, supra*, 7 Cal.P.U.C>2d 132 1981 WL 165289.) In *Western Travel*, the PUC found sightseeing is “essentially a luxury service, as contrasted with regular route, point-to-point transportation between cities, commuter service, or home-to-work service.” (*Id.* at p. 135 1981 WL 165289.) Relying in part on *Western Travel*, the PUC previously found the Wine Train was not a public utility. (See, *NVWT IV, supra*, 2001 WL 873020, 2001 Cal. PUC LEXIS 407.) We leave for another day the question of whether a sightseeing service is subject to regulation

under section 216. Rather, we note the PUC's decisions in NVWT IV and Western Travel to illustrate the PUC's internal inconsistency.

This inconsistency is also evident in the California Western Railroad decision, in which the PUC concluded the Skunk Train, providing an excursion service between Fort Bragg and Willits, did not constitute "transportation" subject to regulation as a public utility. (78 Cal. P.U.C.2d at p. 295, 1998 WL 217965.) It is difficult to differentiate this service from that provided by the Skunk Train. The Skunk Train's excursion service involves transporting passengers from Fort Bragg to Willits, and then returning them to the point of origin for purpose of sightseeing. (Ibid.) The PUC does little to distinguish the Wine Train from the Skunk Train. Rather, it simply states the Wine Train would not provide a continuous loop service due to its proposed up-valley stops. As previously discussed, the proposed stops may give rise to public utility status in the future, but presently do not mandate such a determination. Finally, to the extent the PUC has made express findings of fact that that Wine train is a public utility, such findings are not supported by substantial evidence. Presently, the Wine Train provides a round-trip excursion that is indistinguishable from the Skunk Train.

It is quite clear from this decision that the correct finding of the CPUC regarding excursion service railroads, is that such railroads are not operating as public utilities and should not be regulated by the CPUC as such. Furthermore, as the City of St. Helena court noted, "The fact that the Wine Train could provide transportation in the future does not entitle it to public utility status now." The same holds true for MR. Accordingly, there is no basis for applying the jurisdictional bar of Section 1759 to the instant proceedings.

B. The Application of Federal Preemption Requires a Case-by-Case Factual Assessment Which Cannot Properly be Determined on Demurrer:

Mendocino Railway contends that the injunction sought in this case would grant the City unlimited power over a federally recognized railroad in that the injunction would require Mendocino Railway to submit to "all" local laws and regulations, as well as to the total "jurisdiction and authority of the City." MR claims that "with such vast power, the City could force Mendocino Railway to halt or delay rail-related activities pending compliance with local permitting and other preclearance requirements. Mendocino Railway asserts that the Surface Transportation Board, under the authority of the Interstate Commerce Commission Termination Act, has plenary regulatory power and exclusive jurisdiction over federally recognized railroads. Accordingly, any jurisdiction of this Superior Court is preempted.

This court finds that Mendocino Railway's preemption argument is overbroad. It fails to recognize that not all state and local regulations that affect railroads are preempted. It further fails to account for the fact that Mendocino Railway's is not involved in any interstate rail operations. As discussed above, from a regulatory standpoint, Mendocino

Railway is simply a luxury sightseeing excursion service with no connection to interstate commerce. As a result, its "railroad activities", for the purposes of federal preemption, are extremely limited.

Not all state and local regulations that affect railroads are preempted. State and local regulation is permissible where it does not interfere with interstate rail operations. Local authorities, such as cities and/or counties, retain certain police powers to protect public health and safety. *Borough of Riverdale Petition for Decl. Order the New York Susquehanna and Wester Railway Corp.*, STB Finance Docket 33466, 1999 STB LEXIS 531, 4 S.T.B. 380 (1999). As the S.T.B. noted, "manufacturing activities and facilities not integrally related to the provision of interstate rail service are not subject to our jurisdiction or subject to federal preemption." (Ibid, at 23)

In the *Borough* decision the Surface Transportation Board issued a declaratory order regarding the "nature and effect of the preemption in 49 U.S.C. 10501(b) as it related to the appropriate role of state and local regulation (including the application of local land use or zoning laws or regulations and other state and local regulation such as building codes, electrical codes, and environmental laws and regulations.)" The *Borough* decision is particularly instructive because it specifically addresses how preemption might apply in analyzing local zoning ordinances, local land use restrictions, environmental and other public safety issues, building codes and non-transportation facilities. The question at the very core of the preemption analysis is whether local control would interfere with a railroad's ability to conduct its operations or otherwise unreasonably burden interstate commerce. If local control does not interfere with interstate rail operations, then preemption does not apply.

Borough makes clear that,

"local land use restriction, like zoning requirements, can be used to frustrate transportation-related activities and interfere with interstate commerce. To the extent that they are used in this way (e.g., that restrictions are place on where a railroad facility can be located), courts have found that the local regulations are preempted by the ICCTA. Austell; City of Auburn. Of course, whether a particular land use restriction interferes with interstate commerce is a fact-bound question." (Emphasis added)

Mendocino Railway has already been the subject of a CPUC judicial determination that it is not engaged in interstate transportation related activities but rather simply provides a sightseeing excursion loop service. Accordingly, it is difficult to see how any of its non-railroad services could possibly trigger preemption.

Put another way, Mendocino Railway's it is far more likely that Mendocino Railways facilities and activities will be analyzed as "non-transportation facilities.

As noted in *Borough*,

“It should be noted that manufacturing activities and facilities not integrally related to the provision of interstate rail service are not subject to our jurisdiction or subject to federal preemption. According to the Borough, NYSW [the railroad] has established a corn processing plant. If this facility is not integrally related to providing transportation services, but rather serves only a manufacturing or production purpose, then, like any non-railroad property, it would be subject to applicable state and local regulation. Our jurisdiction over railroad facilities, like that of the former ICC, is limited to those facilities that are part of a railroad’s ability to provide transportation services, and even then the Board does not necessarily have direct involvement in the construction and maintenance of these facilities”

Accordingly, the applicability of preemption is necessarily a “fact-bound” question, not suitable to resolution by demurrer.

V. Order:

For the reasons set forth above Mendocino Railways Demurrer is overruled. Pursuant to Cal. Rules of Ct. 3.1320(g) defendants shall have ten (10) days from service of this order to file their answer.

SO ORDERED.

DATED: 4/28/2022



Clayton L. Brennan
JUDGE OF THE SUPERIOR COURT

**Superior Court of California, County of Mendocino
PROOF OF SERVICE**

Case: 21CV00850 CITY OF FORT BRAGG VS MENDOCINO RAILWAY

Document Served: RULING ON DEMURRER TO THE COMPLAINT

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over the age of eighteen years and not a party to the within action. My business address is:

- Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
- Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
JONES & MAYER Atty. Russell A. Hildebrand 3777 North Harbor Boulevard Fullerton, CA. 92835 rah@jones-mayer.com	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JONE & MAYER Atty. Krista MacNevin Jee 3777 North Harbor Boulevard Fullerton, CA. 92835 kmj@jones-mayer.com	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FISHERBROYLES LLP Atty. Paul J. Beard II 4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA. 90027 paul.beard@fisherbroyles.com	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
COUNTY COUNSEL COUNTY OF MENDOCINO Atty. Chrsitian M. Curtis 501 Low Gap Road, Room 1030 Ukiah, CA. 95482 curtisc@mendocinocounty.org cocosupport@mendocinocounty.org	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed at:

- Ukiah, California
- Fort Bragg, California

4/28/2022 10:22:37 AM

Date: 4/28/2022

KIM TURNER, Clerk of the Court

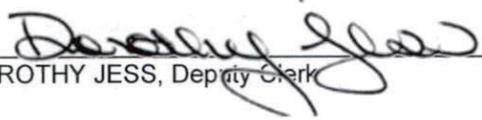
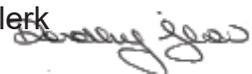

By: DOROTHY JESS, Deputy Clerk

EXHIBIT E

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By:
Dorothy Jess
Deputy Clerk 

5 Attorneys for Defendant
6 MENDOCINO RAILWAY

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MENDOCINO**

9 CITY OF FORT BRAGG, a California
10 municipal corporation

11 Plaintiff,

12 v.

13 MENDOCINO RAILWAY and DOES 1-10,
14 inclusive,

15 Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**VERIFIED ANSWER OF DEFENDANT
MENDOCINO RAILWAY**

Complaint Filed: October 28, 2021

16 Defendant MENDOCINO RAILWAY hereby answers the Complaint as follows:

17 Responding to the introductory paragraph at page 1, lines 19-22, Defendant admits that Plaintiff
18 has “file[d] this action seeking judicial declaration regarding the validity of the Mendocino Railway’s
19 status as a public utility,” under the purported authority of Code of Civil Procedure section 1060, “and/or
20 injunctive relief.” Except as specifically admitted, Defendant denies the allegations of the introductory
21 paragraph.
22

23 1. Responding to paragraph 1, Defendant denies each and every other allegation contained
24 therein.

25 2. Responding to paragraph 2, Defendant answers that the allegations are conclusions of law
26 to which no response is required. To the extent a response is required, Defendant denies the allegations.

27 3. Responding to paragraph 3, Defendant admits that it is currently listed as a class III railroad
28 by the California Public Utilities Commission (“CPUC”), and as such is subject to CPUC jurisdiction and

1 has all the legal rights of a public utility. Defendant further admits that, among other operations and
2 services it provides to the public, it owns and operates the Skunk Train, which operates in part in the City
3 of Fort Bragg. Defendant further admits that some of its real property is located in the City of Fort Bragg.
4 Except as specifically admitted, Defendant denies each and every other allegation contained in paragraph
5 3.

6 4. Responding to paragraph 4, Defendant lacks sufficient information and belief to respond
7 to the allegations and on that basis denies them.

8 5. Responding to paragraph 5, Defendant admits that it has a long and storied history of
9 operations between Fort Bragg and Willits. Except as specifically admitted, Defendant denies each and
10 every other allegation contained in paragraph 5.

11 6. Responding to paragraph 6, Defendant admits that, in 1998, the Public Utilities
12 Commission issued at least two decisions of which Defendant is aware, concerning applications made by
13 the Skunk Train’s then-owner and operator, California Western Railroad. Except as specially admitted,
14 Defendant denies each and every other purported fact allegation contained in paragraph 6. The remaining
15 allegations are conclusions of law to which no response is required. To the extent a response is required,
16 Defendant denies the allegations.

17 7. Responding to paragraph 7, Defendant admits that Mendocino Railway did have, and
18 continues to have, the capacity to carry freight and passengers. Except as specifically admitted, Defendant
19 denies each and every other purported fact allegation contained in paragraph 7. The remaining allegations
20 are conclusions of law to which no response is required. To the extent a response is required, Defendant
21 denies the allegations.

22 8. Responding to paragraph 8, Defendant answers as follows: As to the first sentence,
23 Defendant admits that, on or about April 11, 2013, its operations were disrupted following the partial
24 collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,122 feet of track under rocks and soil.
25 Defendant lacks sufficient information and belief to respond to the remaining allegation in the first
26 sentence and, on that basis, denies it. As to the second sentence, Defendant admits that the collapse of
27 Tunnel No. 1 temporarily eliminated the ability of its rail operations between Fort Bragg and Willits to
28 continue. As to the third sentence, Defendant admits that, on or about June 18, 2013, Save The Redwoods

1 League announced that it had reached an agreement with Defendant to pay \$300,000 for an option to
2 purchase a conservation easement for the protection of redwoods along Defendant’s “Redwoods Route,”
3 and that Defendant applied said \$300,000 to the total cost for repair of Tunnel No. 1. Except as specifically
4 admitted, Defendant denies all other allegations contained in the third sentence. As to the fourth sentence,
5 Defendant admits that the \$300,000 payment from Save the Redwoods League assisted Defendant in
6 resuming all services on the entire line in August 2013. Except as specifically admitted, Defendant denies
7 all other allegations contained in paragraph 8.

8 9. Responding to paragraph 9, Defendant denies the allegations contained therein.

9 10. Responding to paragraph 10, Defendant admits that it is estimated to cost around \$5 million
10 to repair and reopen Tunnel No. 1. Except as specifically admitted, Defendant denies each and every other
11 allegation contained in paragraph 10.

12 11. Responding to paragraph 11, Defendant admits that among other services provided to the
13 public in various geographic areas, including freight, passenger, and other excursion services, it operates
14 a 3.5 mile excursion from Fort Bragg to Glenn Blair Junction, and a 16-mile excursion from Willits to
15 Crowley. Except as specifically admitted, Defendant denies each and every other allegation contained in
16 paragraph 11.

17 12. Responding to paragraph 12, Defendant answers as follows: As to the first sentence,
18 Defendant lacks sufficient information and belief to respond to the allegations and on that basis denies
19 them. As to the second sentence, Defendant denies the allegations contained therein. As to the third
20 sentence, Defendant admits that it refused Plaintiff’s attempts to trespass onto its rail property for permit-
21 related inspections of its rail facilities, on the grounds of state and federal preemption law, given
22 Defendant’s status as a public-utility railroad exclusively regulated as such by the CPUC and the STB.
23 Except as specifically admitted, Defendant denies each and every other allegation contained in the third
24 sentence. As to the fourth sentence, Defendant admits that when Plaintiff unlawfully posted a “Stop Work
25 Order” for failure to obtain a building permit for work on Defendant’s storage shed on rail property,
26 Defendant removed the unlawful order and proceeded with the work. Except as specifically admitted,
27 Defendant denies each and every allegation contained in the fourth sentence. As to the fifth sentence,
28 Defendant admits that in August 2021, Plaintiff emailed Defendant a “Limited Term Application,” on the

1 purported grounds that “[t]he Police Dept. notified [Plaintiff] that [Defendant] will be having evening
2 events that potentially can cause noise issues.” Except as specifically admitted, Defendant denies each
3 and every other allegation contained in the fifth sentence. As to the sixth sentence, Defendant admits that
4 Defendant responded to said email by stating, in relevant part: “these events to the extent they exist are
5 outside the city’s jurisdictional boundaries and are thus not subject to a permit.” Except as specifically
6 admitted, Defendant denies each and every other allegation contained in the sixth sentence.

7 13. Responding to paragraph 13, Defendant answers that the allegations constitute conclusions
8 of law to which no response is required. To the extent a response is required, Defendant denies the
9 allegations.

10 14. Responding to paragraph 14, Defendant restates and incorporates herein by reference each
11 and every answer contained in the paragraphs above.

12 15. Responding to paragraph 15, Defendant answers as follows: the first and second sentences
13 consist of allegations that are conclusions of law, to which no response is required. To the extent a response
14 is required, Defendant denies the allegations. As to the third sentence, Defendant admits that it is
15 Defendant’s position that its status as (a) a CPUC-regulated public-utility railroad and (b) a railroad within
16 the jurisdiction of the federal Surface Transportation Board (“STB”) broadly preempt environmental pre-
17 clearance review and land-use permitting of Defendant’s rail activities by Plaintiff, under both state and
18 federal preemption. As to the fourth sentence, Defendant admits that Plaintiff disagrees with Defendant’s
19 position. Except as specifically admitted, Defendant denies each and every other allegation contained in
20 the fourth sentence. As to the fifth sentence, Defendant denies each and every allegation contained therein.

21 16. Responding to paragraph 16, Defendant denies each and every allegation contained therein.

22 17. Responding to paragraph 17, Defendant denies each and every allegation contained therein.

23 18. Responding to paragraph 18, Defendant denies each and every allegation contained therein.

24 19. Responding to paragraph 19, Defendant admits that Plaintiff seeks injunctive relief against
25 Defendant under the purported authority of California Civil Code section 526. Defendant further admits
26 that Plaintiff seeks to require Defendant to submit fully to Plaintiff’s jurisdiction and authority without
27 regard to its status as a CPUC-regulated public utility and STB-regulated federal railroad. Except as
28 specifically admitted, Defendant denies each and every other allegation contained in paragraph 19.

20. Responding to paragraph 20, Defendant denies each and every allegation contained therein.

21. Responding to paragraph 21, Defendant denies each and every allegation contained therein.

Responding to all paragraphs under Plaintiff’s “Prayer,” Defendant admits that Plaintiff unlawfully seeks a declaration that Defendant is no longer a public utility because it purportedly does not qualify as a common carrier providing “transportation.” Further, Defendant admits that Plaintiff unlawfully seeks injunctive relief “commanding the Mendocino Railway to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority.” Further, Defendant admits that Plaintiff unlawfully seeks costs of the suit, and “such other and further relief” as the Court deems just and proper. Except as specifically admitted, Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint states insufficient facts to state a cause of action because Defendant is and remains a common-carrier, public-utility railroad.

SECOND AFFIRMATIVE DEFENSE

The Superior Court lacks subject matter jurisdiction to adjudicate Plaintiff’s cause of action under section 1759(a) of the Public Utilities Code.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The declaratory and injunctive relief sought by Plaintiff are barred by state and federal preemption, as embodied in statutory and constitutional law, because Defendant is a CPUC-regulated public utility and a railroad within the jurisdiction of the STB. *See, e.g.*, 49 U.S.C. §§ 10102, 10501(b); Pub. Util Code § 1759(a); U.S. Const. art. VI, ¶ 2.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred by the equitable doctrines of estoppel, unclean hands, and/or waiver.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred for failure to name and join indispensable and necessary parties, including without limitation the California Public Utilities Commission.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff’s cause of action is barred by the doctrine of laches, including without limitation because the City has unreasonably delayed in challenging Defendant’s current status as a CPUC-regulated public utility.

EIGHTH AFFIRMATIVE DEFENSE

Defendant does not presently have sufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

WHEREFORE, Defendant prays as follows that:

- 1. Plaintiff take nothing by this action and the Complaint be dismissed with prejudice;
- 2. Defendant be awarded costs and reasonable attorneys’ fees; and
- 3. The Court award such other and further relief as it deems just and proper.

DATED: June 24, 2022

/s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY

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VERIFICATION

I, Robert Pinoli, am President of Defendant Mendocino Railway. I have read the foregoing answer and know the contents thereof. The same is true of my own personal knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true. If called upon to testify, I would and could testify thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed in Mendocino County, California, on this 24th day of June, 2022.

ROBERT PINOLI

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PROOF OF SERVICE

I, Paul Beard II, declare:

My business address is: FisherBroyles LLP, 4470 W. Sunset Blvd., Suite 93165, Los Angeles, CA 90027. I am over the age of 18 and not a party to this action.

On June 24, 2022, I served **DEFENDANT’S VERIFIED ANSWER** on the following counsel for Respondent:

KRISTA MACNEVIN JEE

JONES MAYER

kmj@jones-mayer.com

Counsel for Plaintiff

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the above entitled document with One Legal, I simultaneously opted for electronic service of the same on Ms. Jee at the email above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: June 24, 2022

/s/ Paul Beard II

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COURT DOCKET

Case Information

21CV00850 | City of Fort Bragg vs Mendocino Railway

Case Number
21CV00850
File Date
10/28/2021

Court
Civil
Case Type
42: Unlimited Other Complaint (Not Spec)

Judicial Officer
Brennan, Clayton
Case Status
Opened

Party

Plaintiff
City of Fort Bragg

Active Attorneys▼
Lead Attorney
HILDERBRAND, RUSSELL A
Retained

Defendant
Mendocino Railway

Active Attorneys▼
Lead Attorney
BEARD, PAUL J. II
Retained

Events and Hearings

10/28/2021 First Paper Filed ▼

Complaint Verified for Declaratory and Injunctive Relief

Comment
Complaint for Declaratory and Injunctive Relief

10/28/2021 Summons Issued / Filed ▼

Summons

Comment
Summons Issued/Filed

10/28/2021 Civil Cover Sheet Filed ▼

Civil Case Cover Sheet

Comment
Civil Cover Sheet Filed

10/28/2021 Notice ▾

MCV-101 Notice of Case Management Conference

Comment
Notice of Case Management Conference

12/08/2021 Proof of Service ▾

Proof of Service on Mike Heart

Comment
Proof of Service of Summons and Complaint on Mike Heart

12/08/2021 Proof of Service ▾

Proof of Service on Robert Pinole

Comment
Proof of Service of Summons and Complaint on Robert Pinole

01/07/2022 Declaration ▾

Declaration 30 day extension

Comment
Declaration of Demurring Party ISO Automatic Extension

01/14/2022 Motion - \$60 Fee ▾

Notice of Demurrer and Demurrer

Comment
Notice of Demurrer and Demurrer

01/14/2022 Memorandum of Points & Authorities ▾

Points and Authority Demurrer

Comment
Memo of Ps and As re Demurrer

01/14/2022 Request ▾

Request for Judicial Notice.pdf

Comment
Request for Judicial Notice

01/14/2022 Declaration ▾

Declaration of Paul Beard

Comment
Declaration of Paul Beard

01/14/2022 Declaration ▾

Declaration of Mike Hart

Comment
Declaration of Mike Hart

01/14/2022 Motion - \$60 Fee ▾

Motion to Strike Filed by Defendants

Comment
Motion to Strike

01/19/2022 Notice ▼

Notice of New Hearing Date

Comment

Of New Hearing date for Defendants Demurrer and Motion to Strike Filed by Atty Paul Beard II for Defendants Mendocino Railway

01/20/2022 Minute Order ▼

Minute Order re: Vacating/ Resetting Hearing

PSN-100 Proof of Service

Comment

Re: Vacating / Setting of Hearing

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Motion to Strike Complaint

Comment

City of Fort Bragg's Opposition to Motion to Strike Complaint for Declaratory and Injunctive Relief

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Demurrer

Comment

City's Opposition to Demurrer to Verified Complaint for Declaratory and Injunctive Relief

02/09/2022 Objection - No Fee ▼

Plaintiffs Objection to Request for Judicial Notice

Comment

City's Objection to Request for Judicial Notice ; Evidentiary Objections

02/09/2022 Notice ▼

Notice of Lodging Authority Cites

Comment

Notice of Lodging of Federal Agency Opinions Cited In Support Of Opposition to Demurrer

02/16/2022 Brief Filed ▼

Reply Brief In Support of Defendant Demurrer

Comment

Reply Brief in Support of Demurrer

02/16/2022 Brief Filed ▼

Reply Brief in Support of Def's Mtn to Strike

Comment

Reply Brief in Support of Motion to Strike

02/16/2022 Brief Filed ▼

Reply In Support of Def's Req for Judicial Ntc

Comment

Reply Brief in Support of Request for Judicial Notice

02/22/2022 Notice ▼

NOT - Lodging Authority Cites 2 - Final.pdf

Comment

Notice of Lodging of Federal Agency Opinions Cited In Support Of Opposition to Demurrer

02/22/2022 Brief Filed ▼

Amicus Curiae Application & Brief

Comment

Amicus Curiae Application & Brief

02/22/2022 Request ▼

Request for Judicial Notice

Comment

Request for Judicial Notice

02/22/2022 Proof of Service ▼

Proof of Service

Comment

Proof of Service

02/22/2022 Notice ▼

Notice of Remote Appearance

Comment

Notice of Remote Appearance

02/24/2022 *Demurrer / Motion to Strike ▼

Original Type

*Demurrer / Motion to Strike

MINUTES 02/24/2022

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Comment

both Demurrer and a Motion to Strike

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

02/24/2022 *Case Taken Under Submission

03/23/2022 Case Management / Status Conference Statement ▼

Case Management Statement

Comment

Case Management / Status Conference Statement

03/24/2022 Case Management / Status Conference Statement ▼

Amended Case Management Statement

Comment

AMENDED Case Management / Status Conference Statement

04/06/2022 Notice ▼

4.6.22 Notice Remote Appearance

Comment

Notice of Remote Appearance

04/07/2022 *Case Management Conference ▾

Original Type

*Case Management Conference

04/07/2022 MINUTES

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

04/07/2022 Remote Appearance Made

04/11/2022 Minute Order ▾

Minute Order Re: Setting Further Case Management Conference

PSN-100 Proof of Service

Comment

Re: Further Case Management Conference

04/13/2022 Request ▾

Defendants Supplemental Request for Judicial Notice

Comment

Supplemental RJN in Support of Demurrer/Motion to Strike

04/28/2022 Ruling ▾

Ruling on Demurrer to the Complaint

PSN-100 Proof of Service

Comment

On Demurrer to the Complaint

04/28/2022 Ruling ▾

Ruling On Motion to Strike

PSN-100 Proof of Service

Comment

On Motion to Strike

04/28/2022 *Case Returned from Under Submission

05/04/2022 Case Management / Status Conference Statement ▾

Case Management Statement for Defendants

Comment

Case Management / Status Conference Statement

05/04/2022 Proof of Service ▾

Proof of Service of Case Management Statement

Comment

Proof of Service Of: Case Management Conference statement To; Atty. Krista MacNevin Jee for Plaintiff By: Electronic Transmission On: 05/04/2022

05/04/2022 Appeal Document ▼ Appeal Document WRIT DECISION Comment WRIT DECISION
05/09/2022 Minute Order ▼ Minute Order Re: Vacating Case Management Conference PSN-100 Proof of Service Comment Minute Order Re: Vacating Case Management Conference
05/09/2022 Appeal Document ▼ Appeal Document LETTER STAYING PROCEEDINGS PENDING DECISION ON WRIT OF MANDATE. Comment LETTER STAYING PROCEEDINGS PENDING DECISION ON WRIT OF MANDATE.
05/19/2022 *Case Management Conference ▼ Judicial Officer Brennan, Clayton Hearing Time 2:00 PM Cancel Reason Vacated
06/10/2022 Appeal Document ▼ Appeal Document ORDER DENYING PETITION FILED 06/09/22 Comment ORDER DENYING PETITION FILED 06/09/22
06/13/2022 Minute Order ▼ Minute Order PSN-100 Proof of Service
06/23/2022 *Case Management Conference ▼ Judicial Officer Brennan, Clayton Hearing Time 2:00 PM Cancel Reason Vacated - Set in Error
06/24/2022 Answer / Response / Denial - Unlimited ▼ Verified Answer Filed by Mendocino Railway Comment Answer / Response / Denial - Unlimited
06/27/2022 Opposition - No Fee ▼ Opp to Notice of Related Case Comment Opposition of City of Fort Bragg To Notice of Related Case

<p>06/29/2022 Minute Order ▼</p> <p>Minute Order Re: Setting of Case Mangement Conference</p> <p>Proof of Service of Minute Order Re: Setting of Case Mangement Conferenc</p> <p>Comment re: Setting of Case Management Conference</p>
<p>08/18/2022 Case Management / Status Conference Statement ▼</p> <p>Amended Case Management Statement filed by Defendant Mendocino Railway</p> <p>Comment Amended Case Management / Status Conference Statement</p>
<p>08/18/2022 Proof of Service ▼</p> <p>Proof of Service of CMC statement 8-18-22</p> <p>Comment Proof of Service Of: Defendant's Case Mangement Conference Statement To: Atty. Krista MacNevin Jee for Plaintiff By: Mail On: 08/18/2022</p>
<p>08/25/2022 Case Management / Status Conference Statement ▼</p> <p>Case Mangement Statement filed by Plaintiff City of Ft. Bragg</p> <p>Comment Case Management / Status Conference Statement</p>
<p>09/01/2022 *Case Management Conference ▼</p> <p>Original Type *Case Management Conference</p> <p>09/01/2022 MINUTES</p> <p>Judicial Officer Brennan, Clayton</p> <p>Hearing Time 2:00 PM</p> <p>Result Held</p> <p>Parties Present ▲ Plaintiff: City of Fort Bragg Defendant: Mendocino Railway</p>
<p>09/01/2022 Remote Appearance Made</p>
<p>09/06/2022 Minute Order ▼</p> <p>MCV-163 Minute Order Setting Trial-Proceedings Cout Trial</p> <p>PSN-100 Proof of Service</p> <p>Comment Setting Trial and Other Proceedings</p>
<p>09/08/2022 Motion - \$60 Fee ▼</p> <p>Notice of Motion</p> <p>Comment NOTICE OF MOTION AND MOTION FOR LEAVE OF COURT TO INTERVENE</p>
<p>09/13/2022 Objection - No Fee ▼</p> <p>Objection TO JUDGE PRESIDING OVER TRIAL AND ALL OTHER PROCEEDINGS CONCERNING THIS ACTION</p>

Comment
TO JUDGE PRESIDING OVER TRIAL AND ALL OTHER PROCEEDINGS CONCERNING THIS ACTION FILED BY ATTY BEARD FOR DEF MENDOCINO RAILWAY

09/14/2022 Answer / Response / Denial - Unlimited ▼

Answer of Judge Clayton L. Brennan to Mendocino Railway's Statement of Disqualification

PSN-100 Proof of Service

Comment
Answer of Judge Clayton L. Brennan to Mendocino Railway's Statement of Disqualification

09/16/2022 Opposition - No Fee ▼

Oppositon of California Coastal Commission to Mendocino Railway's Notice of Related Cases

Comment
Opposition to Notice of Related Case

10/06/2022 *Motion ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

Comment
California Coast Commissions Notice of Motion and Motion for Leave of Court to Intervene

05/10/2023 *Settlement Conference ▼

Judicial Officer
Nadel, Jeanine

Hearing Time
1:30 PM

Comment
Ghidelli Official

06/15/2023 *Pretrial Conference ▼

Judicial Officer
Brennan, Clayton

Hearing Time
2:00 PM

06/21/2023 *Trial: Court ▼

Judicial Officer
Brennan, Clayton

Hearing Time
9:00 AM

Comment
3 day Est

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8 Attorneys for Plaintiffs
9 MENDOCINO RAILWAY

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION**

MENDOCINO RAILWAY, a California
corporation,

Plaintiff

v.

JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
Commission; CITY OF FORT BRAGG, a
California municipal corporation; and DOES 1
through 20, inclusive,

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

INTRODUCTION

1
2 1. This case is about state and local authorities’ illegal efforts to impose land-use permitting
3 and preclearance requirements on a federal railroad’s land-use activities, in blatant violation of federal
4 preemption principles.

5 2. Plaintiff Mendocino Railway is a Class III, common-carrier railroad with facilities,
6 equipment and operations located partly in California’s coastal zone, including in the City of Fort Bragg.
7 Mendocino Railway has been and continues to be under the exclusive jurisdiction of the federal State
8 Transportation Board (“STB”), as mandated by the Interstate Commerce Commission Termination Act
9 (“ICCTA”), 49 U.S.C. § 10501(b). Consequently, Mendocino Railway’s rail-related work and operations
10 are not subject to state and local land-use permitting and preclearance regulation.

11 3. The California Coastal Commission (“Commission”)—a state agency that preclears land-
12 use projects in the coastal zone pursuant to state law—has demanded that Mendocino Railway apply for
13 a state land-use permit before performing any rail-related work on its railroad property located within the
14 coastal zone. As a federally regulated railroad with preemption rights, Mendocino Railway has refused to
15 submit to the Commission’s demands as to its rail-related activities. But the constant threat of enforcement
16 action by the Commission, including stop-work orders and prohibitively expensive penalties and fines,
17 for rail activities undertaken without that agency’s pre-approval has rendered Mendocino Railway unable
18 to proceed with its railroad projects as planned.

19 4. The City of Fort Bragg (“City”) has joined with the Commission in demanding that
20 Mendocino Railway submit to its plenary land-use authority over, and preclearance review of, rail-related
21 activities occurring within the City’s boundaries. The City has gone so far as to file a state-court action to
22 compel Mendocino Railway to apply for permits for any and all work on its railroad property and facilities
23 within City boundaries. As a federally regulated railroad with preemption rights, Mendocino Railway has
24 refused to submit to the City’s permit jurisdiction, as well.

25 5. This action seeks to resolve this ongoing controversy between Mendocino Railway on the
26 one hand, and state and local authorities on the other. To avoid the unlawful enforcement of federally-
27 preempted regulation, the concomitant disruption of its railroad operations and projects, and the
28 uncertainty generated by this dispute, Mendocino Railway seeks a declaration that the actions of the

1 Commission and the City to regulate Mendocino Railway’s operations, practices and facilities are
2 preempted under 49 U.S.C. §10501(b) and that Mendocino Railways activities are subject to the STB’s
3 exclusive jurisdiction. Therefore, Mendocino Railway has the right under the ICCTA to undertake any
4 and all rail-related activities within the coastal zone, including within the City’s boundaries, without
5 preclearance or approval from the Commission or the City.

6 **JURISDICTION AND VENUE**

7 6. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises under the laws of
8 the United States, and this Court has the power to grant the declaratory judgment requested herein under
9 Fed. R. Civ. P. 57 and 28 U.S.C. § 2201.

10 7. Under 28 U.S.C § 1391(b), venue is proper in the Northern District, where Defendants are
11 located and a substantial part of the events or omissions giving rise to Plaintiff’s claim occurred here.

12 **DIVISIONAL ASSIGNMENT**

13 8. Assignment of this case to the Eureka division is appropriate under L.R. 3-2, because all
14 actions, events or omissions giving rise to Plaintiff’s claim occurred in Mendocino County.

15 **PARTIES**

16 9. Mendocino Railway is a railroad corporation organized under the laws of the State of
17 California. It owns real property, rail facilities and rail equipment in various regions of the State, including
18 but not limited to the coastal zone and the City of Fort Bragg in Mendocino County. It is a Class III
19 railroad subject to the STB’s jurisdiction.

20 10. Defendant Jack Ainsworth is the Executive Director of the California Coastal Commission,
21 is charged with the day-to-day enforcement of the California Coastal Act, and is sued in his official
22 capacity. Under the Coastal Act, development on land in the coastal zone generally requires a land-use
23 permit (known as a “Coastal Development Permit” or “CDP”). The Executive Director has the authority
24 to, among other things, directly issue disruptive cease-and-desist orders to stop work he believes has been
25 performed without a CDP. Pub. Res. Code § 30809. He also has the authority to pursue other enforcement
26 orders against landowners, including severe penalties, through recommendations made to the Commission
27 at a public hearing. *See, e.g.*, Pub. Res. Code §§ 30811 (authorizing issuing of restoration orders requiring
28 landowner to restore property to condition before allegedly unlawful development occurred), 30821.3

1 (authorizing penalties of up to \$11,500 *per day* per violation for any Coastal Act violation, including
2 development without a CDP). Through his staff, the Executive Director has made clear its view that
3 Mendocino Railway’s rail-related projects in the coastal zone require a CDP, and that *past* rail-related
4 work in the coastal zone required a CDP, rendering Mendocino Railway a violator that is exposed to
5 enforcement action and penalties.

6 11. Defendant City of Fort Bragg is a municipal corporation organized and existing under and
7 by virtue of the laws of the State of California. Except where preempted, the City has a general police
8 power to regulate land use within its jurisdiction. Under the Coastal Act, it has been delegated the authority
9 under state law to preclear and permit development within the City. The City wrongly contends that
10 Mendocino Railway requires its pre-approval, including via a CDP, for land-use activities occurring on
11 property within its jurisdiction.

12 GENERAL ALLEGATIONS

13 A. Legal Background

14 12. The STB has “exclusive” jurisdiction over (1) “transportation by rail carriers” and (2) “the
15 construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching,
16 or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.”
17 49 U.S.C. § 10501(b). The ICCTA defines “transportation” broadly to include “(A) a locomotive, car,
18 vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any
19 kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an
20 agreement concerning use; and (B) services related to that movement, including receipt, delivery,
21 elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of
22 passengers and property.” *Id.* § 10102(9); *see also Or. Coast Scenic R.R., LLC v. Or. Dep’t of State Lands*,
23 841 F.3d 1069, 1072 (9th Cir. 2016).

24 13. The STB’s exclusive jurisdiction over a railroad means that state and local permitting and
25 preclearance regulation of a railroad’s activities are broadly preempted. U.S. Const. art. VI, cl. 2 (Supreme
26 Clause); 49 U.S.C. § 10501(b) (ICCTA “preempt[s] the remedies provided under Federal or State law”);
27 *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (The ICCTA’s preemptive scope
28 is “broad.”); *Friends of Eel River v. North Coast R.R.*, 399 P.2d 37, 60 (Cal. 2017) (holding that “state

1 environmental permitting or preclearance regulation that would have the effect of halting a private railroad
2 project pending environmental compliance would be categorically preempted”); *North San Diego County*
3 *Transit Dev. Bd.—Petition for Declaratory Order*, 2002 WL 1924265 (STB 2002) (holding that the
4 Coastal Act was preempted by ICCTA as applied to rail projects); *Padgett v. STB*, 804 F.3d 103, 105 (1st
5 Cir. 2015) (ICCTA preempts state law governing “regulation of rail transportation”). “Under the ICCTA,
6 the [STB] has jurisdiction over “transportation by rail carrier,” and “[w]here the [STB] has such
7 jurisdiction, it is exclusive. Whether or not the [STB] is exercising its regulatory authority over the
8 transportation, state and local laws governing such permitting are generally preempted.” *Del Grosso v.*
9 *STB*, 804 F.3d 110, 113-14 (1st Cir. 2015).

10 14. The ICCTA “shields railroad operations that are subject to the [STB’s] jurisdiction from
11 the application of many state and local laws, including local zoning and permitting laws and laws that
12 have the effect of managing or governing rail transportation.” *City of Alexandria, VA – Pet. for Decl.*
13 *Order*, STB Fin. Docket No. 35157, 2009 STB LEXIS 3, n.2 (Feb. 17, 2009). Courts and the STB have
14 long recognized that the ICCTA categorically preempts “any form of state or local permitting or
15 preclearance that, by its nature could be used to deny a railroad the ability to conduct some part of its
16 operations or proceed with activities that the [STB] has authorized.” *CSX Transp., Inc., STB Fin. Docket*
17 *No. 34662*, 2005 WL 1024490, at *2 (STB May 3, 2005). These categories of state and local regulation
18 constitute “per se unreasonable interference with interstate commerce.” *Id.* at *3.

19 15. Courts have applied this principle to find that rail carriers need not comply with state or
20 local permitting required as a condition of construction and operation. *See, e.g., Padgett*, 804 F.3d at 106-
21 07 (state and local zoning and permitting regulation preempted); *Norfolk S. Ry. Co. v. City of Alexandria*,
22 608 F.3d 150, 160 (4th Cir. 2010) (though city’s ordinance and permit requirements enhance public safety,
23 they unreasonably burden rail transportation); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 642-
24 43 (2nd Cir. 2005) (state pre-construction permit process is preempted as it unduly interferes with
25 interstate commerce and unduly delays construction of railroad facilities); *City of Auburn*, 154 F.3d at
26 1029-31 (local environmental regulation of railroad preempted by ICCTA).

27 16. Similarly, the ICCTA preempts local noise ordinances and even nuisance suits by nearby
28 residents to the extent they would prevent, manage, or regulate rail operations. *See, e.g., Pace v. CSX*

1 *Transportation, Inc.*, 613 F.3d 1066 (11th Cir. 2010) (ICCTA preempts private nuisance suit claiming
2 operation of side track caused noise and smoke making land virtually unusable); *Delaware v. STB*, 859
3 F.3d 16, 21 (D.C. Cir. 2017) (state law prohibiting locomotives from idling to reduce noise is categorically
4 preempted as directly regulating rail transportation); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444
5 (5th Cir. 2001) (ICCTA unambiguously preempted state negligence claim); *Kiser v. CSX Real Prop.*, 2008
6 U.S. Dist. LEXIS 90676 (M.D. Fla. Nov. 7, 2008) (ICCTA preempts nuisance claims against intermodal
7 rail operation); *Norfolk S. Ry. Co. v. City of Maple Heights*, 2003 U.S. Dist. LEXIS 28282, * 9 - *15 (N.D.
8 Ohio, May 14, 2003) (ICCTA preempts application of local noise ordinance to intermodal rail facility);
9 *Cannon v. CSX Transp., Inc.*, 2005 Ohio App. LEXIS 77, *P 21 - *P 25 (Ohio App. 2005) (homeowner
10 nuisance suit for noise and vibration preempted). The ICCTA was enacted with the purpose of expanding
11 federal jurisdiction and preemption of railroad regulation. *Or. Coast*, 841 F.3d at 1072.

12 **B. History and Operations of Mendocino Railway**

13 17. The railroad at issue, which Mendocino Railway has owned and operated since 2004, has
14 a long and storied history in California. The railroad was built in 1885 to haul felled redwood trees from
15 the surrounding forest to a lumber mill on the coast of what is now known as the City of Fort Bragg. In
16 addition to hauling lumber and finished products to and from the mill, the railroad delivered mail on behalf
17 of the U.S. Postal Service, provided transportation services to loggers and tourist passengers, and provided
18 passenger transportation between Fort Bragg and the railroad's eastern terminus in Willits, California, to
19 and from which passengers arrived and departed via coach.

20 18. The mill closed in 2002, ending the need for the railroad to haul timber and finished
21 products to and from the mill, though the opportunity still existed to ship other commodities. Though the
22 railroad at that point became primarily a passenger train, including for excursions colloquially referred to
23 as the "Skunk Train," the railroad was and continues to be a federally licensed railroad subject to the
24 STB's jurisdiction. As a common carrier railroad, it publishes tariffs for shipping freight for local on-line
25 customers.

26 19. By 2003, the then-owner of the railroad, California Western Railroad ("CWR"), fell on
27 hard times and declared bankruptcy. Following fierce bidding from a number of interested parties who
28 recognized the railroad's continued value to the community, Mendocino Railway in 2004 purchased

1 CWR's railroad assets out of bankruptcy, with the intent of fully restoring its passenger and freight
2 operations. Because the sale involved a federally regulated, Class III railroad, the sale was overseen by
3 the STB, which authorized Mendocino Railway's acquisition of the CWR pursuant to 49 C.F.R. § 1150.31.
4 69 Fed. Reg. 18999 (April 9, 2004) (Notice of Acquisition Exemption).

5 20. The Mendocino Railway line runs 40 miles, from its main station in Fort Bragg to its
6 eastern depot in Willits ("Willits Depot"). Mendocino Railway's Fort Bragg station is fully developed as
7 a rail facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry
8 shed for storage of railroad equipment. Since acquiring the line in 2004 and up through the present,
9 Mendocino Railway has operated tourist and non-tourist passenger services and freight services.

10 21. Approximately 77 acres of the land adjacent to the main rail station in Fort Bragg were
11 previously used for more than a century to conduct and support freight and passenger operations. After 15
12 years of discussions, in 2019, Mendocino Railway acquired those 77 acres from Georgia-Pacific LLC
13 ("GP") in order to further Mendocino Railway's efforts to fully restore freight and passenger services.
14 Subsequently, the railroad acquired another approximately 220 acres from GP at the mill site, another 70
15 acres of pudding Creek, and 14 acres from another entity (Harvest Market). The total acres of the former
16 mill site acquired totals approximately 300.

17 22. Mendocino Railway connects to the State-owned Northwestern Pacific Railroad ("NWP")
18 line, which connects Mendocino Railway to the rest of the national rail system. While the segment
19 connected to Mendocino Railway has been temporarily embargoed pending track repairs, that NWP
20 segment has not been abandoned and remains a part of the national rail system.

21 23. In furtherance of its freight operations, Mendocino Railway has pursued and continues to
22 pursue a variety of much-needed rail-related activities on its property and facilities located in the coastal
23 zone. These activities have included, without limitation: improvements to side tracks; repair and
24 maintenance work on its rail station and engine house; clean-up work in and around a dry shed and
25 elsewhere on railroad property; improvements to the dry shed in order to provide space for the storage of
26 rail cars and other railroad equipment, such as tires for steam locomotives, railcar axles, and other parts
27 and components for steam and diesel locomotives; a lot-line adjustment related to the railroad's
28 acquisition of historically rail-related property from GP; and development of the recently acquired acreage

1 for rail-related uses. The railroad has not obtained a CDP from either the Commission or the City—and
2 does not intend to do so—because any such preclearance review is and would be categorically preempted.

3 24. Mendocino Railway has always been and remains a Class III, common-carrier railroad
4 subject to the STB’s jurisdiction. While the NWP section connecting to the Mendocino Railway line is
5 currently out of service, the NWP’s line has never been abandoned and service is expected to be restored.

6 **C. The City and Coastal Commission Denial of Mendocino Railway’s Status as a Federal Railroad**

7 25. Until recently, the City has acknowledged Mendocino Railway’s status as a common-
8 carrier railroad within the exclusive jurisdiction of the STB. But after Mendocino Railway’s latest
9 purchase of some 300 acres from GP—property that City a had initially considered purchasing but then
10 seemingly lost interest in—the City changed its tune. Starting in 2021, the City sought to excuse its
11 decision not to purchase the property by waging a relentless campaign to make it appear as if Mendocino
12 Railway had stolen the opportunity from the City, while also attacking Mendocino Railway’s status as a
13 federally (and state) regulated railroad, so the City could dictate how Mendocino Railway could use the
14 property. In so doing, the City hoped to avoid public criticism for its decisions and effectively gaining
15 development control over the acquired property without having had to purchase it.

16 26. On October 28, 2021, the City filed a lawsuit against Mendocino Railway in Mendocino
17 County Superior Court. Among other things, the lawsuit seeks an injunction “commanding the Mendocino
18 Railway to comply with *all* City ordinances, regulations, and lawfully adopted codes, jurisdiction and
19 authority,” including the authority to pre-clear and approve work on railroad facilities through the City’s
20 land-use permitting processes

21 27. Similarly, for the last several years, the Commission has made clear its view that
22 Mendocino Railway is not part of the interstate rail network subject to STB jurisdiction, and is therefore
23 not entitled to federal preemption of the Commission’s oversight. The Commission contends that, in order
24 to be lawful, all prior and future rail-related work on Mendocino Railway’s property and facilities must
25 be approved by the Commission under its general authority to review and permit land-use activities in the
26 coastal zone.

27 ///

28 ///

FIRST CLAIM
For Declaratory Judgment
(By Plaintiff Against All Defendants)

1
2
3 28. Plaintiff incorporates herein by reference each and every allegation contained in the
4 preceding paragraphs of this Complaint as though fully set forth herein.

5 29. A justiciable controversy exists as to whether Mendocino Railway’s freight rail-related
6 activities on its property and facilities, including without limitation, its efforts to improve side tracks;
7 repair and maintenance work on its rail station and engine house; construction of an extension of the
8 southern side of its engine house which is intended to cover existing passenger coaches and freight cars,
9 require a CDP permit or are otherwise within the STB’s exclusive jurisdiction, such that the ICCTA
10 preempts the efforts of the City and the Commission to require Mendocino Railway to obtain state and
11 local land-use permits and other preclearance.

12 30. Mendocino Railway is a federally regulated common carrier that is a part of the interstate
13 rail network under the STB’s exclusive jurisdiction, and that the ICCTA therefore preempts state and local
14 land-use permitting authority over its rail-related operations, property, and facilities.

15 31. Defendants assert that Mendocino Railway is not subject to the STB’s exclusive
16 jurisdiction, and is subject to their plenary land-use permitting and preclearance authority for all rail-
17 related activities undertaken within the coastal zone, including the City’s boundaries. Therefore, there is
18 a dispute over Mendocino Railway’s rights and privileges under the ICCTA, giving rise to a case or
19 controversy over which this Court has jurisdiction.

20 32. Mendocino Railway seeks a declaration that the actions of the Commission and the City to
21 regulate Mendocino Railway’s operations, practices and facilities are preempted under 49 U.S.C.
22 §10501(b) and that Mendocino Railways activities are subject to the STB’s exclusive jurisdiction.

23 33. Mendocino Railway does not intend to apply for a CDP from either the Commission or the
24 City for rail-related work on its property and facilities in the coastal zone, on the grounds that such
25 preclearance is categorically preempted. Defendants have made clear they believe that, absent their
26 authorization, Mendocino Railway’s rail-related work is unlawful, creating a cloud of uncertainty over the
27 railroad’s operations and the real and imminent risk of enforcement action against it. Defendants have a
28 well-established history of pursuing alleged violators of the CDP requirement through such enforcement

1 actions as cease-and-desist orders, restoration orders, and penalty order.

2 34. Mendocino Railway has no adequate remedy at law and will suffer irreparable harm if this
3 controversy persists unresolved, and its rights and obligations are not established by declaratory judgment.
4 Without declaratory relief, Mendocino Railway will remain under the constant and imminent threat of
5 federally-preempted regulation, the complete disruption of its rail operations and rail-related development,
6 and the sheer uncertainty created by this controversy.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Mendocino Railway requests relief as follows:

9 1. A declaratory judgment that the actions of the Commission and the City to regulate
10 Mendocino Railway’s operations, practices and facilities are preempted under 49 U.S.C. §10501(b) and
11 that Mendocino Railway’s activities are subject to the STB’s exclusive jurisdiction. Therefore Mendocino
12 Railway has the right under the ICCTA to undertake any and all rail-related activities within the coastal
13 zone, including within the City’s boundaries without preclearance or approval from the Commission or
14 the City.

15 2. An injunction prohibiting Defendants from taking any action that would materially
16 interfere with Mendocino Railway’s operation of its railroad as a federally regulated common carrier,
17 including by imposing and enforcing any land-use permitting or other preclearance requirement as the
18 pre-condition of any rail-related development on Mendocino Railway’s property or facilities;

19 3. Costs of suit; and

20 4. Such additional relief as may be provided by law or the Court may deem just and proper.

21 DATED: August 9, 2022

FISHERBROYLES LLP

22
23 s/ Paul Beard II

24 _____
25 Attorneys for Plaintiff MENDOCINO RAILWAY
26
27
28

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:22-cv-04597-JST**

Mendocino Railway v. Ainsworth et al
Assigned to: Judge Jon S. Tigar
Relate Case Case: [4:22-cv-06317-JST](#)
Cause: 28:1331 Fed. Question: Interstate Commerce Act

Date Filed: 08/09/2022
Date Terminated: 05/12/2023
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Mendocino Railway
a California corporation

represented by **Paul J. Beard , II**
FisherBroyles LLP
4470 W. Sunset Boulevard, Suite 93165
Los Angeles, CA 90027
(818) 216-3988
Fax: (213) 402-5034
Email: paul.beard@fisherbroyles.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Jack Ainsworth
*in his official capacity as Executive Director of the
California Coastal Commission*

represented by **Patrick A. Tuck**
Office of the Attoreny General
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 879-1006
Email: patrick.tuck@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

City of Fort Bragg
a California municipal corporation

represented by **Krista MacNevin Jee**
Jones & Mayer
3777 North Harbor Boulevard
Fullerton, CA 92835
(714) 446-1400
Fax: (714) 446-1448
Email: kmj@jones-mayer.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/09/2022	1	COMPLAINT FOR DECLARATORY JUDGMENT against All Defendants, (Filing Fee: \$402.00, receipt number ACANDC-17427172). Filed by Mendocino Railway. (Attachments: #(1) Civil Cover Sheet)(Beard, Paul) (Filed on 8/9/2022) Modified on 8/10/2022 (tn, COURT STAFF). (Entered: 08/09/2022)
08/09/2022	2	Proposed Summons. (Beard, Paul) (Filed on 8/9/2022) (Entered: 08/09/2022)
08/09/2022	3	Case assigned to Magistrate Judge Robert M. Illman. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 8/23/2022. (mbc, COURT STAFF) (Filed on 8/9/2022) (Entered: 08/09/2022)

08/10/2022	4	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 11/1/2022. Initial Case Management Conference set for 11/8/2022 02:00 PM in McKinleyville, Federal Court Building. (tn, COURT STAFF) (Filed on 8/10/2022) (Entered: 08/10/2022)
08/10/2022	5	Summons Issued as to Defendants Jack Ainsworth, City of Fort Bragg. (tn, COURT STAFF) (Filed on 8/10/2022) (Entered: 08/10/2022)
08/19/2022	6	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Mendocino Railway.. (Beard, Paul) (Filed on 8/19/2022) (Entered: 08/19/2022)
08/25/2022	7	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Jack Ainsworth.. (Tuck, Patrick) (Filed on 8/25/2022) (Entered: 08/25/2022)
08/26/2022	8	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (glm, COURT STAFF) (Filed on 8/26/2022) (Entered: 08/26/2022)</p>
08/26/2022	9	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Jon S. Tigar for all further proceedings. Magistrate Judge Robert M. Illman no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 08/26/2022. (Attachments: # 1 Notice of Eligibility for Video Recording)(mbc, COURT STAFF) (Filed on 8/26/2022) (Entered: 08/26/2022)
08/29/2022	10	<p>CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 11/22/2022. Initial Case Management Conference set for 11/29/2022 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than November 28, 2022 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Case Management Statement due by 11/22/2022. Initial Case Management Conference set for 11/29/2022 02:00 PM in Oakland, - Videoconference Only. (mll, COURT STAFF) (Filed on 8/29/2022) (Entered: 08/29/2022)</p>
08/30/2022	11	CERTIFICATE OF SERVICE by Mendocino Railway re 5 Summons Issued to Defendant California Coastal Commission (Beard, Paul) (Filed on 8/30/2022) (Entered: 08/30/2022)
08/30/2022	12	CERTIFICATE OF SERVICE by Mendocino Railway re 5 Summons Issued to Defendant City of Fort Bragg (Beard, Paul) (Filed on 8/30/2022) (Entered: 08/30/2022)
09/01/2022	13	STIPULATION <i>RE EXTENSION OF TIME TO RESPOND TO COMPLAINT</i> filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 9/1/2022) (Entered: 09/01/2022)
09/19/2022	14	MOTION for Extension of Time to Respond to Complaint filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 9/19/2022) Modified on 9/20/2022 (gba, COURT STAFF). (Entered: 09/19/2022)
09/22/2022	15	MOTION to Dismiss and Memorandum of Points and Authorities filed by Jack Ainsworth. Motion Hearing set for 12/22/2022 02:00 PM in Oakland, Courtroom 6, 2nd Floor before Judge Jon S. Tigar. Responses due by 10/6/2022. Replies due by 10/13/2022. (Attachments: # 1 Request for Judicial Notice with Exhibits A-G and Court Docket, # 2 Proposed Order) (Tuck, Patrick) (Filed on 9/22/2022) Modified on 9/22/2022 (gba, COURT STAFF). (Entered: 09/22/2022)
09/22/2022	16	MOTION to Dismiss Complaint; Memorandum of Points and Authorities in Support filed by City of Fort Bragg. Motion Hearing set for 12/22/2022 02:00 PM in Oakland, Courtroom 6, 2nd Floor before Judge Jon S. Tigar.

		Responses due by 10/6/2022. Replies due by 10/13/2022. (Attachments: # <u>1</u> Declaration of Krista MacNevin Jee) (Jee, Krista) (Filed on 9/22/2022) Modified on 9/22/2022 (gba, COURT STAFF). (Entered: 09/22/2022)
09/22/2022	<u>17</u>	Request for Judicial Notice re <u>16</u> MOTION to Dismiss <i>Complaint</i> filed by City of Fort Bragg. (Related document(s) <u>16</u>) (Jee, Krista) (Filed on 9/22/2022) (Entered: 09/22/2022)
09/26/2022	<u>18</u>	Notice of Withdrawal of Motion <i>To Extend Time For Defendant Jack Ainsworth To Respond To Complaint</i> (Tuck, Patrick) (Filed on 9/26/2022) (Entered: 09/26/2022)
10/03/2022	<u>19</u>	STIPULATION WITH PROPOSED ORDER re <u>15</u> MOTION to Dismiss, <u>16</u> MOTION to Dismiss <i>Complaint for Enlargement of Time for Briefing</i> filed by Mendocino Railway. (Beard, Paul) (Filed on 10/3/2022) (Entered: 10/03/2022)
10/06/2022	<u>20</u>	Order by Judge Jon S. Tigar granting <u>19</u> Stipulation for Enlargement of Time for Briefing. Responses due by 10/20/2022. Replies due by 11/3/2022.(mll, COURT STAFF) (Filed on 10/6/2022) (Entered: 10/06/2022)
10/20/2022	<u>21</u>	OPPOSITION/RESPONSE (re <u>16</u> MOTION to Dismiss <i>Complaint</i>) filed by Mendocino Railway. (Beard, Paul) (Filed on 10/20/2022) (Entered: 10/20/2022)
10/20/2022	<u>22</u>	OPPOSITION/RESPONSE (re <u>15</u> MOTION to Dismiss) filed by Mendocino Railway. (Beard, Paul) (Filed on 10/20/2022) Modified on 10/21/2022 (kmg, COURT STAFF). (Entered: 10/21/2022)
10/21/2022	<u>23</u>	Request for Judicial Notice re <u>21</u> Opposition/Response to Motion, <u>22</u> Opposition/Response to Motion filed by Mendocino Railway. (Related document(s) <u>21</u> , <u>22</u>) (Beard, Paul) (Filed on 10/21/2022) (Entered: 10/21/2022)
10/21/2022	<u>24</u>	OPPOSITION/RESPONSE (re <u>15</u> MOTION to Dismiss) (<i>Corrected</i>) filed by Mendocino Railway. (Beard, Paul) (Filed on 10/21/2022) Modified on 10/24/2022 (kmg, COURT STAFF). (Entered: 10/21/2022)
10/31/2022	<u>25</u>	ADMINISTRATIVE MOTION Relating of Cases filed by Mendocino Railway. Responses due by 11/14/2022. (Attachments: # <u>1</u> Declaration Paul Beard)(Beard, Paul) (Filed on 10/31/2022) (Entered: 10/31/2022)
10/31/2022	<u>26</u>	Request for Judicial Notice re <u>25</u> ADMINISTRATIVE MOTION Relating of Cases filed by Mendocino Railway. (Attachments: # <u>1</u> Exhibit A (City Complaint), # <u>2</u> Exhibit B (Coastal Commission Complaint), # <u>3</u> Exhibit C (Notice of Removal), # <u>4</u> Exhibit D (Court Docket in Removed Action))(Related document(s) <u>25</u>) (Beard, Paul) (Filed on 10/31/2022) (Entered: 10/31/2022)
11/03/2022	<u>27</u>	REPLY (re <u>15</u> MOTION to Dismiss) <i>Defendant Jack Ainsworths Reply To Plaintiffs Opposition To Defendants Motion to Dismiss</i> filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 11/3/2022) (Entered: 11/03/2022)
11/03/2022	<u>28</u>	REPLY (re <u>15</u> MOTION to Dismiss) <i>Defendant Jack Ainsworth's Corrected Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss</i> filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 11/3/2022) (Entered: 11/03/2022)
11/04/2022	<u>29</u>	REPLY (re <u>16</u> MOTION to Dismiss <i>Complaint</i>) filed by City of Fort Bragg. (Jee, Krista) (Filed on 11/4/2022) Modified on 11/4/2022 (kmg, COURT STAFF). (Entered: 11/04/2022)
11/04/2022	<u>30</u>	Request for Judicial Notice re <u>29</u> Reply to Opposition/Response filed by City of Fort Bragg. (Related document(s) <u>29</u>) (Jee, Krista) (Filed on 11/4/2022) (Entered: 11/04/2022)
11/14/2022	<u>31</u>	OPPOSITION/RESPONSE (re <u>25</u> ADMINISTRATIVE MOTION Relating of Cases) <i>Defendant Jack Ainsworths Response To Plaintiffs Administrative Motion For Consideration Whether Cases Should Be Related</i> filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 11/14/2022) (Entered: 11/14/2022)
11/14/2022	<u>32</u>	OPPOSITION/RESPONSE (re <u>25</u> ADMINISTRATIVE MOTION Relating of Cases) filed by City of Fort Bragg. (Jee, Krista) (Filed on 11/14/2022) (Entered: 11/14/2022)
11/15/2022	<u>33</u>	ORDER RELATING CASE. Motions terminated: (25 in 4:22-cv-04597-JST) ADMINISTRATIVE MOTION Relating of Cases filed by Mendocino Railway. Signed by Judge Jon S. Tigar on November 15, 2022. (mll, COURT STAFF) (Filed on 11/15/2022) (Entered: 11/15/2022)
11/17/2022	<u>34</u>	JOINT STIPULATION REGARDING RULE 26(f) MEETING AND CASE MANAGEMENT CONFERENCE AND PROPOSED ORDER filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 11/17/2022) Modified on 11/21/2022 (kmg, COURT STAFF). (Entered: 11/17/2022)
11/18/2022	<u>35</u>	Order by Judge Jon S. Tigar granting <u>34</u> Joint Stipulation Regarding Rule 26(f) Meeting and Case Management Conference.(mll, COURT STAFF) (Filed on 11/18/2022) (Entered: 11/18/2022)
11/18/2022	36	CLERK'S NOTICE SETTING ZOOM HEARING. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>), Case Management Statement due by 2/28/2023. Initial Case Management Conference set for 3/7/2023 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent

		<p>to the CRD at JSTCRD@cand.uscourts.gov no later than March 6, 2023 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Case Management Statement due by 2/28/2023. Initial Case Management Conference set for 3/7/2023 02:00 PM in Oakland, - Videoconference Only. (mll, COURT STAFF) (Filed on 11/18/ 2022) (Entered: 11/18/2022)</p>
12/12/2022	37	<p>CLERK'S NOTICE VACATING MOTION HEARING. Before the Court is are the Motions to Dismiss. ECF Nos. 15 , 16 . Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds the matter suitable for disposition without oral argument. The hearing on this matter, currently scheduled for, December 22, 2022 is hereby VACATED.</p> <p>If, however, any party advises the Court in writing by no later than two days from the date of this notice that most or all of the argument for its side will be conducted by a lawyer who either (1) has been licensed to practice law for five or fewer years and has not previously presented argument before this Court or (2) has not previously argued a substantive motion in any federal court, then the Court will reschedule the hearing at a time that is convenient to all parties to provide that opportunity. Counsel shall confer with each other, and the party requesting the rescheduling of the hearing shall identify the upcoming available dates on the Courts calendar at which all counsel are available for the hearing. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (mll, COURT STAFF) (Filed on 12/12/2022) (Entered: 12/12/2022)</p>
02/28/2023	38	<p>JOINT STIPULATION WITH PROPOSED ORDER Regarding Rule 26(F) Meeting and Case Management Conference filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 2/28/2023) Modified on 2/28/2023 (gba, COURT STAFF). (Entered: 02/28/2023)</p>
03/01/2023	39	<p>Order by Judge Jon S. Tigar granting 38 Stipulation Regarding Rule 26(F) Meeting and Case Management Conference.(mll, COURT STAFF) (Filed on 3/1/2023) (Entered: 03/01/2023)</p>
03/01/2023	40	<p>CLERK'S NOTICE SETTING ZOOM HEARING. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>, Case Management Statement due by 4/25/2023. Initial Case Management Conference set for 5/2/2023 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than May 1, 2023 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Case Management Statement due by 4/25/2023. Initial Case Management Conference set for 5/2/2023 02:00 PM in Oakland, - Videoconference Only. (mll, COURT STAFF) (Filed on 3/1/2023) (Entered: 03/01/2023)</p>
04/24/2023	41	<p>THIRD JOINT STIPULATION REGARDING RULE 26(f) MEETING AND CASE MANAGEMENT CONFERENCE Meeting and Case Management Conference filed by Jack Ainsworth. (Tuck, Patrick) (Filed on 4/24/2023) (Entered: 04/24/2023)</p>
04/25/2023	42	<p>Order by Judge Jon S. Tigar granting 41 Stipulation Third Joint Stipulation Regarding Rule 26(f) Meeting and Case Management Conference.(mll, COURT STAFF) (Filed on 4/25/2023) (Entered: 04/25/2023)</p>
04/25/2023	43	<p>CLERKS NOTICE SETTING ZOOM HEARING. Case Management Statement due by 7/11/2023. Initial Case Management Conference set for 7/18/2023 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing</p>

		for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than July 17, 2023 by 2:00 p.m. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . Case Management Statement due by 7/11/2023. Initial Case Management Conference set for 7/18/2023 02:00 PM in Oakland, - Videoconference Only. (Related documents(s) 42) <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (mll, COURT STAFF) (Filed on 4/25/2023) (Entered: 04/25/2023)
05/12/2023	44	ORDER by Judge Jon S. Tigar granting 15 Motion to Dismiss; granting 16 Motion to Dismiss. (mll, COURT STAFF) (Filed on 5/12/2023) (Entered: 05/12/2023)
05/12/2023	45	CLERK'S JUDGMENT. (mll, COURT STAFF) (Filed on 5/12/2023) (Entered: 05/12/2023)
06/08/2023	46	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Mendocino Railway. Appeal of Order on Motion to Dismiss, 44 (Appeal fee of \$505 receipt number ACANDC-18340821 paid.) (Beard, Paul) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/09/2023	47	USCA Case Number 23-15857 and attached time schedule (lsk, COURT STAFF) (Filed on 6/9/2023) (Entered: 06/09/2023)

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