

FILED

11/25/2024

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

Jess, Dorothy

DEPUTY CLERK

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9 CITY OF FORT BRAGG

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MENDOCINO

13 CITY OF FORT BRAGG,
14 Plaintiff,

15 v.

16 MENDOCINO RAILWAY AND
17 DOES 1-10, inclusive
18 Defendants.

Case No. 21CV00850

**JOINT EX PARTE APPLICATION FOR 90
DAY STAY OF ACTION TO ENGAGE IN
SETTLEMENT DISCUSSIONS AND FOR
CONTINUANCE OF TRIAL DATE, AND
CORRESPONDING TRIAL DEADLINES**

JUDGE: Hon. Clayton Brennan
DEPT.: Ten Mile

19 CALIFORNIA COASTAL
20 COMMISSION,

21 Intervenor,

22 v.

23 MENDOCINO RAILWAY,
24 Defendant.

DATE: November 26, 2024
TIME: 1:15 p.m.
DEPT: TM

25 TO THE COURT, EACH PARTY AND THEIR COUNSEL OF RECORD:

26 PLEASE TAKE NOTICE that on **November 26, 2024, at 1:15 p.m.**, in Department TM
27 of the above-entitled court, Ten Mile Branch located at 700 South Franklin Street Fort Bragg, CA
28 95437, before the Honorable Clayton Brennan, Plaintiff City of Fort Bragg ("City") and
Defendant Mendocino Railway ("MR") will jointly appear ex parte for an order to stay the action

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

1 for 90 days while the parties engage in continued settlement discussions, and for a continuance of
2 the trial date and all corresponding trial deadlines.

3 Good cause for the stay and continuance exists to ensure that the parties can explore
4 potentially dispositive, detailed settlement discussions. See Declaration of Krista MacNevin Jee,
5 attached hereto ("Jee Decl."), ¶¶ 3, 8-12. This request is made jointly by Plaintiff City and
6 Defendant MR, who have engaged in numerous informal settlement meetings since the last trial
7 continuance, and who have also engaged in formal mediation during that time. Jee Decl., ¶¶ 6, 8.

8 City and MR understand that Intervenor Complainant the California Coastal Commission
9 will oppose the request herein, but that also understand that the Coastal Commission is willing to
10 participate in settlement discussions between all parties for potential settlement of the whole of
11 the action. Jee Decl., ¶ 4.

12 Accordingly, the City respectfully requests the Court (1) stay the action for 90 days so that
13 the parties can be relieved of litigation obligations during the time that they intend in good faith to
14 fully focus on detailed settlement discussions that are expected to require significant time and
15 resources, and (2) continue the trial date to a date 90 days after April 8, 2025, or such other later
16 date that is available for the Court to set a new trial in this matter, including the re-setting of all
17 trial related deadlines.

18 Pursuant to California Rule of Court 3.1202, the name, address, e-mail address and
19 telephone number of counsel for all parties are:

20 For Defendant Mendocino Railway:

21 Paul Beard II
22 PIERSON FERDINAND LLP
23 453 S. Spring St., Suite 400-1458
24 Los Angeles, CA 90013
(818) 216-3988
paul.beard@pierferd.com

25 For Intervenor Complainant California Coastal Commission:

26 Patrick Tuck
27 California Department of Justice
28 Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 879-1006
patrick.tuck@doj.ca.gov

1 Jee Decl., ¶ 2.

2 The parties did previously jointly stipulate to a trial continuance from October 23, 2024 to
3 April 8, 2025. However, the City and MR have not previously sought the relief requested in this
4 application. Jee Decl., ¶¶ 5, 11 b, 12.

5 Timely notice of the hearing on this Ex Parte application was provided to all parties in
6 compliance with California Rule of Court 3.1203(a). Jee Decl., ¶ 3-4.

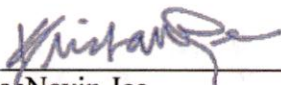
7 This Ex Parte Application is made pursuant to California Rule of Court 3.1332 and is based
8 on this Application, the attached Memorandum of Points and Authorities, the Declaration of Krista
9 MacNevin Jee, the records on file with the Court in this matter, and any oral argument or other
10 evidence which may be submitted at the hearing on this matter.

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Dated: November 22, 2024

JONES MAYER

By: _____



Krista MacNevin Jee
Attorneys for Plaintiff
CITY OF FORT BRAGG

Dated: November 22, 2024

PIERSON FERDINAND LLP

By: _____

/s
Paul J. Beard II
Attorneys for Defendant
MENDOCINO RAILWAY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff City of Fort Bragg (“City”) and Defendant Mendocino Railway (“MR”) jointly
3 submit this ex parte application to the Court for an order staying the matter for 90 days and to
4 continue the trial for 90 days, or to such date thereafter that the Court is available to conduct trial
5 on this matter. This Application is based upon the following facts and good cause.

6 **I. INTRODUCTION AND FACTUAL BACKGROUND.**

7 City filed its Verified Complaint for Declaratory and Injunctive Relief (“City’s
8 Complaint”) against MR on October 28, 2021. After demurring and moving to strike City’s
9 Complaint, and after exhausting appellate action relating thereto, MR filed its Verified Answer to
10 City’s Complaint on June 24, 2022. Subsequently, on October 20, 2022, this Court granted the
11 California Coastal Commission’s motion to intervene in this matter, and on October 27, 2022, the
12 Commission filed its Complaint in Intervention (“Commission’s Complaint in Intervention”)
13 against MR. Jee Decl., ¶ 5.

14 On October 20, 2022 MR removed this action to the United State District Court for the
15 Northern District. However, the federal district court remanded this matter back to this court on
16 May 11, 2023. Following remand MR filed its Verified Answer to the Commission’s Complaint
17 in Intervention on July 25, 2023, and subsequently filed a First Amended Answer thereto on
18 August 2, 2023. *Id.*

19 MR sought a stay of this matter from this Court due to a separate action MR filed in
20 federal court against the Commission and City, which MR filed on August 9, 2022 and which is
21 still pending before the Ninth Circuit Court of Appeal. This Court denied that prior motion for
22 stay on November 2, 2023; however, that motion was on other grounds than the relief sought
23 herein. *Id.*

24 On December 21, 2023, this Court set the matter for trial on October 23, 2024. By joint
25 stipulation of all parties, filed on or about June 10, 2024, the parties previously obtained a
26 continuance of that trial date to the current date of April 8, 2025. At the time of that stipulation,
27 the deadline for dispositive cross-motions for summary judgment was coming up and the parties
28 had been engaged in written discovery in good faith for approximately six months, but there was

1 further discovery needed, including depositions, that needed to be conducted prior to dispositive
2 motions. The parties obtained a continuance of the trial date so that the parties could complete
3 discovery and prepare any dispositive motions. *Id.*

4 After the prior continuance, the parties continued to engage in written discovery. The
5 parties agreed to certain search terms for records of the Commission and the City. Jee Decl., ¶ 7.
6 Both the Commission and the City had significant volumes of written responsive records to
7 review and prepare for production to MR. For instance, the Commission had approximately
8 29,000 emails and other potentially responsive documents based on the agreed broad search. The
9 City had even more potentially responsive emails and documents, more than 37,000. *Id.* The
10 City and the Commission agreed to provide responsive records to MR's discovery requests on a
11 rolling basis. The parties have also all been negotiating a protective order as to the production of
12 certain MR records that MR deems confidential due to proprietary or other sensitive information.
13 *Id.*

14 Since the trial continuance, the City and MR have also been periodically involved in
15 informal discussions regarding potential settlement terms. Jee Decl., ¶ 8. The City and MR have
16 had several informal meetings. In addition, the City and MR have engaged in a full day of formal
17 mediation with a mediator. *Id.*

18 This action has not settled, but the City and MR have made some progress toward
19 potential settlement terms. However, one of those terms may involve the development and
20 potential rezoning of a large parcel of property within the City that is owned by MR or its sister
21 company Sierra Northern Railway (SNR) and is within the Coastal Zone. Jee Decl., ¶ 9. Also,
22 part of the property owned by MR or its SNR is currently subject to a cleanup order from the
23 Department of Toxic Substances Control. In fact, MR and its SNR filed a federal action against
24 the City on or about August 12, 2024, which was served on the City of September 9, 2024,
25 relating to the cleanup order and the City's alleged liability relating thereto, and other matters
26 relating to conditions of the property. *Id.* In addition, initial settlement discussions have not
27 included the Coastal Commission, but the City and MR intend to also engage the Commission in
28 further discussions, for potential resolution of this action among all parties. Jee Decl., ¶ 10.

1 Although the Commission is anticipated to oppose the stay and continuance requested herein, the
2 Commission has expressed its willingness to engage in settlement discussions with all parties.

3 As to discussions regarding settlement between the parties, these are expected to involve
4 and require detailed analysis and consideration of facts relating to the above. In fact, the City has
5 already engaged the services of several consultants to assist in the settlement issues noted above,
6 including specifically a planning consultant who is expected to guide the parties through a
7 negotiation process that will include future development and re-zoning of the property owned by
8 MR or SNR. Jee Decl., ¶ 9.

9 **II. ARGUMENT.**

10 As to trial court continuances, courts have expressed and recommended liberality in
11 granting them, where they are not prejudicial to the interests of the parties to the action. *See, e.g.,*
12 *Sentry Ins. Co.*, 207 Cal.App.3d 526, 530 (1989); *Polibrid Coatings, Inc. v. Super. Ct.*, 112
13 Cal.App.4th 920 (2003). As such, a trial continuance should be granted under the circumstances,
14 because: (1) the City, MR and the Commission have all agreed to continue settlement
15 negotiations, and the City and MR have committed to a detailed process for potential resolution
16 of planning, zoning and other issues (Jee Decl., ¶ 8, 11 d & e); (2) the Commission would not be
17 prejudiced by such stay and continuance, and has expressed its willingness to participate in the
18 settlement negotiations (Jee Decl., ¶ 11 e); and (3) the presence of other additional good cause
19 factors set forth below make a continuance proper and just (Jee Decl., ¶¶ 8-10, 11 f, 12).

20 In particular, California Rules of Court, Rule 3.1332 (b) states, in pertinent part, that “[a]
21 party seeking a continuance of the date set for trial, whether contested or uncontested or
22 stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex
23 parte application” Cal. R. Ct., Rule 3.1332(b). There is insufficient time presently to bring a
24 noticed motion as to the issues in this application, in that discovery is currently in process, must
25 be completed, and dispositive motions filed shortly, and so this matter is brought forth by ex parte
26 application. In fact, the Commission has just communicated with the parties this week regarding
27 the setting of depositions. Jee Decl., ¶ 10. A stay would allow the parties to conduct further
28 discovery and to timely file dispositive motions, which are currently required to be filed no later

1 than December 16, 2024, without prejudice to any party. *Id.*

2 A trial court “may grant a continuance only on an affirmative showing of good cause
3 requiring the continuance.” Cal. R. Ct., Rule 3.1332(c). Circumstances that may indicate good
4 cause include: (1) a party’s excused inability to obtain testimony, documents, or other material
5 evidence despite diligent efforts, and (2) a significant, unanticipated change in the status of the
6 case as a result of which the case is not ready for trial. Cal. R. Ct., Rule 3.1332(c)(6), (7).

7 The Court has discretion to grant a continuance of trial upon an affirmative showing of
8 good cause. *Phan v. Nguyen*, 54 Cal.App.4th 11, 17 (1997). In addition, liberality should be
9 exercised in granting continuances when they are not prejudicial to the interests of other parties to
10 the action. *Taylor v. Gordon*, 102 Cal.App.2d 233, 240 (1951). *See also Capital Nat’l. Bank of*
11 *Sacramento v. Smith*, 62 Cal. App. 2d 328, 399 (1944). Moreover, “it is often reversible error [to
12 deny] a continuance which has the practical effect of denying [a party] a fair trial.” *Palomar*
13 *Mortgage Company v. Lister*, 212 Cal.App.2d 236, 239 (1963).

14 Additionally, judicial economy is served by allowing time for the filing of dispositive
15 motions because the granting of the motion can potentially avoid the need for a trial or limit
16 issues to be tried. *See Aguilar v. Atlantic Richfield Co.*, (2001) 25 Cal.4th 829, 843. “The purpose
17 of the law of summary judgment is to provide courts with a mechanism to cut through the parties’
18 pleadings in order to determine whether, despite their allegations, trial in fact is necessary to
19 resolve their dispute.” *Id.* at 843. Here, judicial economy would be well served by the parties’
20 ability to focus and conserve their time and resources toward the anticipated settlement process,
21 which is expected to be a detailed planning and negotiation process, as well as still allowing for
22 the Court’s hearing of potential dispositive motions at a later time prior to a continued trial date.
23 This follows the good faith initial settlement discussing between the City and MR over the last
24 few months, which has included numerous informal meetings and correspondence, as well as a
25 full-day formal mediation between the City and MR. Jee Decl., ¶ 8. The City and MR are
26 requesting a stay of the matter only for 90 days, so that they, and the Commission, can engage in
27 the planned detailed negotiations and the parties can further assess whether substantial progress
28 can be made as part of that process toward any potential final resolution of this matter. Jee Decl.,

1 ¶¶ 8-9.

2 Due to the timing of this application and the holidays, the trial would also need to be
3 continued, so that the parties would have sufficient time after the stay and prior to trial to
4 complete discovery and file dispositive motions, if no settlement can be reached. The stay would
5 allow the parties to forgo continuing to put further resources toward discovery, and to instead
6 focus on the anticipated settlement process. The detailed settlement process that is anticipated
7 between the parties may allow the case to be disposed of, or the issues narrowed. Given the
8 complicated nature of the issues between the parties and the significant planning process that is
9 expected as to some issues that may allow for resolution between the parties, there is good cause
10 for the requested stay and continuance. Jee Decl., ¶¶ 8-9.

11 There is no real prejudice or harm from the relief requested. Although the Commission is
12 expected to oppose this request and may prefer that the dates currently set with the Court in this
13 matter remain, they have also expressed willingness to engage in the settlement process that is
14 planned between the City and MR. Jee Decl., ¶ 6, 8-9. The parties and the Court may greatly
15 benefit from a detailed exploration and continued efforts focused among all parties on settlement
16 negotiations, which may ultimately result in judicial and other resources being conserved, and the
17 parties' resources being better spent at this juncture toward a resolution of issues in this action
18 and potentially the new action filed by MR against the City.

19 Under California Rule of Court, Rule 3.1332(d), a court considers the following factors as
20 relevant to the determination of a motion or application for a trial continuance:

- 21 (1) The proximity of the trial date;
- 22 (2) Whether there was any previous continuance, extension of time, or delay of
23 trial due to any party;
- 24 (3) The length of the continuance requested;
- 25 (4) The availability of alternative means to address the problem that gave rise to
26 the motion or application for a continuance;
- 27 (5) The prejudice that parties or witnesses will suffer as a result of the
28 continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status
and whether the need for a continuance outweighs the need to avoid delay;

1 (7) The court's calendar and the impact of granting a continuance on other
2 pending trials;

3 (8) Whether trial counsel is engaged in another trial;

4 (9) Whether all parties have stipulated to a continuance;

5 (10) Whether the interests of justice are best served by a continuance, by the trial
6 of the matter or by imposing conditions on the continuance; and

7 (11) Any other fact or circumstance relevant to the fair determination of the
8 motion or application.

9 Cal. R. Ct. 3.1332(d).

10 The balance of these factors weigh heavily in favor of a trial continuance under the
11 circumstances. Here, good cause, within the meaning of California Rules of Court, Rule 3.1332,
12 exists. A party's ability to file a dispositive motion is a matter of statutory right. *Sentry Ins. Co. v.*
13 *Superior Court, supra*. Also, the parties have engaged in good faith in fact discovery, but that
14 process has been delayed due to the significant volume of responsive information. Jee Decl., ¶¶ 7-
15 8, 10. Further discovery is needed prior to dispositive motions, and dispositive motions will be
16 due in the coming weeks. The City and MR would like to further continue settlement discussions
17 and exploring potential resolution of the action – in which the Commission is willing to
18 participate, but that process will require significant time and resources, which can be better and
19 more efficiently allocated with a stay of the action. Jee Decl., ¶¶ 9-11. They have already
20 engaged in several informal meetings, as well as a full day of mediation. Jee Decl., ¶ 8.

21 Specifically, there is good cause for trial continuance, for the following reasons:

22 (1) Proximity of trial date: The current trial date is April 8, 2025,
23 approximately five months from now, and a relatively short continuance of approximately
24 90 days, is not unreasonable under the circumstances and for the purposes sought by MR
25 and the City. Cal. R. Ct. 3.1332(d)(1); Jee Decl. ¶ 11 a;

26 (2) Previous continuances: The trial previously continued the trial from
27 October 2024 to April 2025, based on the joint stipulation of all parties, for the purpose of
28 continuing fact discovery, which is still ongoing. Cal. R. Ct. 3.1332(d)(2); Jee Decl. ¶ 11
b;

(3) Length of continuance requested: The length of the continuance requested

1 is not unreasonable, as it is approximately 90 days. Cal. R. Ct. 3.1332(d)(3); Jee Decl.
2 ¶ 11 c;

3 (4) The availability of alternative means to address the problem: Due to discovery
4 obligations and impending deadlines for dispositive motions, this ex parte application is
5 necessary in order that the parties can be relieved of such obligations and move forward
6 with the planned detailed settlement process. In addition, the City and MR have already
7 engaged in good faith informal settlement meetings over the last few months, and
8 participated in a full-day of formal mediation with a mediator. Cal. R. Ct. 3.1332(d)(3);
9 Jee Decl. ¶¶ 8, 11 d;

10 (5) Prejudice to parties or witnesses: No parties will suffer prejudice from the
11 stay or continuance; all parties will be able to participate in the anticipated settlement
12 process, and all rights to discovery and dispositive motions of all parties will be preserved.
13 Cal. R. Ct. 3.1332(d)(5); Jee Decl. ¶ 11 e;

14 (10) The interests of justice: The interests of justice are served by a brief stay of
15 approximately 90 days and a similar trial continuance to a date at least 90 days after April
16 8, 2025. There is also the potential for some or all issues in this matter, among all parties,
17 to be resolved, which would conserve both judicial and party resources, particularly since
18 the City and MR have already participated in several informal settlement meetings and
19 discussions and a full day of formal mediation. Cal. R. Ct. 3.1332(d)(10); Jee Decl., ¶¶ 8,
20 11 f.

21 Thus, the above factors weigh in favor of granting this application and order so that there
22 will be a 90-day stay of the action, and a corresponding continuance of the trial in this matter so
23 that all parties' rights to discovery and dispositive motions will be preserved.

24 Further, relief by way of ex parte application has been properly shown. An ex parte
25 application must provide proof of adequate notice to all parties pursuant to California Rules of
26 Court, Rules 3.1200 et seq., Such application must be based on a Memorandum of Points and
27 Authorities, Proposed Order and the factual basis for the need to have the matter heard on an ex
28

1 parte basis. As set forth in the attached Declaration of Krista MacNevin Jee, proper notification
2 has been provided. Jee Decl., ¶ 12.

3 Also, as stated in the attached Declaration of Krista MacNevin Jee, it is demonstrated that
4 the parties will not suffer prejudice from the requested stay and continuance; in fact, the parties'
5 rights to discovery and dispositive motions will be preserved, and the parties' and the Court's
6 resources will be properly conserved so that the parties can all engage in a detailed negotiation
7 process for potential settlement or reduction of issues prior to trial. In addition, due to impending
8 discovery and dispositive motion deadlines, a noticed motion cannot be scheduled; thus, there is
9 sufficient basis for the relief sought herein by way of ex parte application. Jee Decl., ¶¶ 10, 11 d,
10 12. Further, the City and MR have already participated in good faith in informal settlement
11 meetings and discussions, and a full day of formal mediation with a mediator. Jee Decl., ¶ 8.
12 Under all of the circumstances, the relief requested herein from the Court is proper and justified.

13 One prior trial continuance was requested by all parties and granted in this action, but that
14 continuance was for different reasons than applied for herein, and that continuance was also of a
15 relatively brief nature. Jee Decl. at ¶¶ 5, 10, 11 b.

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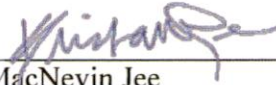
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3 **III. CONCLUSION.**

4 Based on the foregoing, the City and MR respectfully jointly request that this Court grant
5 this ex parte application, and stay this matter for 90 days, and continue the current trial date for a
6 sufficient amount of time, at least 90 days after the currently scheduled trial date on April 8,
7 2025, in order to enable all parties to participate in a detailed settlement process, which is
8 expected to build upon the settlement discussions and meetings the City and MR have already
9 had, as well as the formal all-day mediation in which they have already participated. Since, the
10 City and MR have already engaged in good faith mediation, more focused and in-depth
11 negotiations are required, including with the Commission, and will be more likely to obtain a
12 benefit for the parties and the conservation of judicial and party resources.

13
14 Dated: November 22, 2024

JONES MAYER

15
16 By: 
17 _____
18 Krista MacNevin Jee
19 Attorneys for Plaintiff
20 CITY OF FORT BRAGG

21 Dated: November 22, 2024

PIERSON FERDINAND LLP

22
23 By: _____/s
24 Paul J. Beard II
25 Attorneys for Defendant
26 MENDOCINO RAILWAY
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DECLARATION OF KRISTA MACNEVIN JEE

I, Krista MacNevin Jee, Esq. declare as follows:

1. I am an attorney at law authorized to practice law before all of the courts of California and a partner with the law firm of Jones Mayer, which is the City Attorney for the City of Fort Bragg (“City”) and is counsel of record for the City in the above-captioned matter.

2. Pursuant to Rule 3.1202(a), the other parties to this action are as follows:

For Defendant Mendocino Railway:

Paul Beard II
PIERSON FERDINAND LLP
453 S. Spring St., Suite 400-1458
Los Angeles, CA 90013
(818) 216-3988
paul.beard@pierferd.com

For Intervenor Complainant California Coastal Commission:

Patrick Tuck
California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 879-1006
patrick.tuck@doj.ca.gov

3. Defendant’s counsel, Paul Beard, and I agreed on November 19, 2024, that we would jointly file an ex parte application for a stay and continuance of the trial date in the above-captioned matter, due to the parties’ intent to engage in further, detailed settlement discussions. The City has previously approved such a stay and continuance on October 28, 2024; however, the parties had also requested that the Coastal Commission agree to the stay and continuance, and I was not informed of its decision on that issue until November 13, 2024. I spoke to counsel for the Commission on November 13, 2024, and he indicated to me that the Commission did not agree with the stay and continuance, but that it would be willing to participate in settlement negotiations with the City and MR. On November 18, 2024, I received an email confirmation from Mr. Tuck that the Commission would be opposing this ex parte application.

4. On November 22, 2024, at approximately 4:45 p.m., I gave email notice of the actual ex parte application hearing information to the parties, as follows:

- 1 • The City and MR would jointly seek to have the Court stay the above-captioned matter for
2 90 days, and to continue the trial to a date at least 90 days after the currently scheduled
3 trial on April 8, 2025;
- 4 • The Ex Parte hearing is set for November 26, 2024, at 1:15 p.m. in Department TM of the
5 Mendocino County Superior Court, Ten Mile Branch located at 700 South Franklin Street
6 Fort Bragg, CA 95437, before the Honorable Clayton Brennan;
- 7 • Ex Partes are ruled on by the Court in chambers, but counsel will be notified by noon the
8 day of the ex parte if the Court desires to conduct a hearing on the ex parte; parties may
9 appear via zoom;
- 10 • The Ex Parte application and supporting documents were included with my notice.

11 As I was informed previously, the Commission intends to oppose the ex parte.

12 5. Following is a summary of the procedural history of this matter:

13 City filed its Verified Complaint for Declaratory and Injunctive Relief (“City’s
14 Complaint”) against MR on October 28, 2021. After demurring and moving to strike City’s
15 Complaint, and after exhausting appellate action relating thereto, MR filed its Verified Answer to
16 City’s Complaint on June 24, 2022. Subsequently, on October 20, 2022, this Court granted the
17 California Coastal Commission’s motion to intervene in this matter, and on October 27, 2022, the
18 Commission filed its Complaint in Intervention (“Commission’s Complaint in Intervention”)
19 against MR.

20 On October 20, 2022 MR removed this action to the United State District Court for the
21 Northern District. However, the federal district court remanded this matter back to this court on
22 May 11, 2023. Following remand MR filed its Verified Answer to the Commission’s Complaint
23 in Intervention on July 25, 2023, and subsequently filed a First Amended Answer thereto on
24 August 2, 2023.

25 MR sought a stay of this matter from this Court due to a separate action MR filed in
26 federal court against the Commission and City, which MR filed on August 9, 2022 and which is
27 still pending before the Ninth Circuit Court of Appeal. This Court denied that prior motion for
28 stay on November 2, 2023; however, that motion was on other grounds than the relief sought

1 herein. On December 21, 2023, this Court set the matter for trial on October 23, 2024.

2 By joint stipulation of all parties, filed on or about June 10, 2024, the parties previously
3 sought to continue that trial date to the current date of April 8, 2025. At the time of that
4 stipulation, the deadline for dispositive cross-motions for summary judgment was coming up and
5 the parties had been engaged in written discovery in good faith for approximately six months, but
6 further discovery was needed.

7 6. Plaintiff City's and Intervenor Commission's actions relate generally to local
8 zoning and other local governmental authority over Defendant Mendocino Railway. One primary
9 concern of the parties is the zoning and development of a large parcel of property which is/was
10 owned by MR or its sister company, Sierra Northern Railway. This property is located in the
11 Coastal Zone, and is thus also of concern to the Commission. The City and MR desire to engage
12 in detailed settlement discussions relating to the development and zoning of the property, and
13 which will also allow settlement discussion of related matters which can resolve this matter, or
14 potentially narrow the issues for trial. The City and MR have already engaged in numerous
15 settlement discussion previously, as detailed below.

16 7. After the prior continuance, the parties continued to engage in written discovery.
17 The parties agreed to certain search terms for records of the Commission and the City. Both the
18 Commission and the City had significant volumes of written responsive records to review and
19 prepare for production to MR. For instance, the Commission had approximately 29,000 emails
20 and other potentially responsive documents and the City had more than 37,000. The City and the
21 Commission agreed to provide responsive records to MR's discovery requests on a rolling basis.
22 Mr. Tuck, Mr. Beard and I have also all been negotiating a protective order for MR's production
23 of certain that it desires to keep confidential for proprietary or other reasons. MR's asserted
24 confidential records will not be produced to the City or the Commission until the protective order
25 has been finalized and submitted to the Court for approval.

26 8. Following the prior trial continuance, the City and MR have periodically had
27 several informal meeting and discussions regarding potential settlement terms, without legal
28 counsel, in an attempt to potentially resolve this matter. The City and MR also participated in

1 formal mediation with a mediator in that time. Although initial settlement discussions between
2 MR and the City did not include the Coastal Commission, the further anticipated, detailed
3 settlement negotiations proposed to take place during the stay and trial continuance would include
4 the Commission, for potential resolution of this action among all parties. Although the
5 Commission is anticipated to oppose the requested stay and continuance, Mr. Tuck has
6 communicated to me the Commission's willingness to engage in such settlement discussions with
7 all parties.

8 9. One of the potential terms of settlement may involve the development and
9 potential rezoning of the property, referenced above, part of which is also currently subject to a
10 cleanup order from the Department of Toxic Substances Control. MR and its sister company
11 Sierra Northern Railway actually filed a federal action against the City on or about August 12,
12 2024, which was served on the City of September 9, 2024, relating to the cleanup order and the
13 City's alleged liability relating thereto, and other matters relating to conditions of the property.
14 Due to the nature of the issues, further settlement discussions between the parties are expected to
15 be involved and detailed. In fact, the City has engaged the services of a couple consultants to
16 assist with potential settlement terms to be negotiated. In particular, it has engaged the services
17 of a planning consultant to assist with and to oversee the detailed planning process and
18 discussions that are anticipated, relating to potential re-zoning and development of the above-
19 referenced property.

20 10. Currently, a noticed motion cannot be set sooner than December 12, 2024, which
21 is the Court's first available hearing date. However, the parties' dispositive motions are currently
22 required to be filed no later than December 16, 2024. The available hearing date would allow
23 insufficient time for the parties to complete discovery and file dispositive motions after have this
24 matter heard as to the relief requested. In addition, Mr. Tuck sent an email to me and Mr. Beard
25 on November 18, 2024 regarding the parties needing to move forward with scheduling
26 depositions of MR's representatives within the next several weeks and/or the coming months.
27 Further, MR is expected to provide additional documents to the parties after a protective order is
28 finalized and submitted to the Court, and the City and the Commission are subject to continued

1 production of documents to MR on a rolling basis as to written discovery propounded by MR.
2 Thus, the parties will continue to be subject to and prejudiced by discovery obligations and trial
3 deadlines unless this matter is temporarily stayed for 90 days and the trial, and associated
4 deadlines, continued, while all parties can explore necessarily detailed and cumbersome
5 settlement negotiations. A stay and continuance would allow the parties to fully engage in
6 meaningful, good faith, settlement discussions, with the City's consultant, which may resolve or
7 narrow issues in this matter, and potentially serve to conserve both Court and party resources. No
8 parties will be prejudiced in any way by the stay and continuance, as all parties will be equally
9 relieved of discovery obligations and trial deadlines, and will be able to focus their time and
10 resources to the settlement process, in which even the Commission has agreed to participate.

11 11. The factors to be balanced by the Court in evaluating a request for a trial
12 continuance, in particular, weigh in favor of granting such request, as follows:

13 a. Proximity of trial date: The current trial date is April 8, 2025,
14 approximately five months from now, and a relatively short continuance of approximately
15 90 days, is not unreasonable under the circumstances and for the purposes sought by MR
16 and the City, for purposes of significant, detailed settlement discussions with all parties
17 and which may resolve or narrow issues in this matter. Cal. R. Ct. 3.1332(d)(1);

18 b. Previous continuances: The trial previously continued the trial from
19 October 2024 to April 2025, based on the joint stipulation of all parties, for the purpose of
20 continuing, voluminous fact discovery, which is still ongoing; no continuance on the basis
21 of the request has been previously made, however. Cal. R. Ct. 3.1332(d)(2);

22 c. Length of continuance requested: The length of the continuance requested
23 is not unreasonable, as it is approximately 90 days. Cal. R. Ct. 3.1332(d)(3);

24 d. The availability of alternative means to address the problem: Due to
25 ongoing discovery obligations, including the continued production by the City and the
26 Commission of documents on a rolling basis and MR's anticipated further production of
27 documents after entry of a protective order, as well as impending deadlines for dispositive
28 motions, this ex parte application is necessary in order that the parties can be relieved of

1 such obligations and move forward with the planned detailed settlement process, to which
2 they will need to dedicate significant time and resources. Cal. R. Ct. 3.1332(d)(3);

3 e. Prejudice to parties or witnesses: No parties will suffer prejudice from the
4 stay or continuance; all parties will be able to participate in the anticipated settlement
5 process, and all rights to discovery and dispositive motions of all parties will be preserved.
6 Cal. R. Ct. 3.1332(d)(5);

7 f. The interests of justice: The interests of justice are served by a brief stay of
8 approximately 90 days and a similar trial continuance to a date at least 90 days after April
9 8, 2025. There is also the potential for some or all issues in this matter, among all parties,
10 to be resolved, which would conserve both judicial and party resources. Cal. R. Ct.
11 3.1332(d)(10).

12 12. This application is made on the grounds that exigent circumstances exist justifying
13 the requested relief. Trial in this matter is currently set to commence on April 8, 2025, and
14 dispositive motions must be filed no later than December 16, 2024. A noticed motion currently
15 cannot be heard until December 12, 2024 at the earliest, which would allow insufficient time to
16 complete document production, additional by deposition and the filing of dispositive motions
17 after relief can be requested. Thus, this ex parte application is necessary in order to have the
18 issues herein determined expeditiously before upcoming deadlines, and so that the parties can
19 efficiently direct their resources toward the detailed settlement process in which they presently
20 intend to engage. The relief requested in this ex parte application has not been sought by the
21 parties previously, although a prior trial continuance was sought by all parties jointly by
22 stipulation for other reasons.

23 I hereby declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed this 22nd day of November, 2024.

25
26 

27 Krista MacNevin Jee