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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,

Plaintiff,

vs.

No. SCUk-CVED-20-74939

JOHN MEYER; REDWOOD EMPIRE TITLE
COMPANY OF MENDOCINO COUNTY;
SHEPPARD INVESTMENTS; MARYELLEN
SHEPPARD; MENDOCINO COUNTY
TREASURER-TAX COLLECTOR; all
other persons unknown claiming
an interest in the property;
and DOES 1 through 100,
inclusive,

Defendants.

_____ /

COURT TRIAL - DAY 6

Held at Mendocino County Courthouse, Department E,
Ukiah, California, on Thursday, November 10, 2022,
before the Honorable JEANINE B. NADEL, Judge
Reported by Trisha R. Hathaway-Link, CSR No. 10866

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P R O C E E D I N G S

THE COURT: Let's swear him in again.

- - -

ROBERT PINOLI

Having been first duly sworn, testified as follows:

- - -

(Discussion held off the record.)

THE COURT: All right. Counsel, you may proceed.

MR. BLOCK: Thank you, Your Honor.

- - -

FURTHER REDIRECT EXAMINATION (continued)

Q (BY MR. BLOCK) So --

THE COURT: Oh, I'm sorry.

We're back on the record in Mendocino Railway versus Meyer -- you have the caption?

THE REPORTER: Yes. Thank you, Judge.

Q (BY MR. BLOCK) So, Mr. Pinoli, when we left off last week we were going through Exhibit 37.

Do you have Exhibit 37 up --

A Yes.

Q And just refresh us what Exhibit 37 is?

A It's a letter dated 6 February 2020 to Mitch Stogner, the Executive Director of the North Coast

1 Railroad Authority, and it's a letter to formally
2 request at that time North Coast Rail Authority, or
3 NCRA, restore rail services.

4 Q And that's a letter from you on behalf
5 Mendocino Railway to Mr. Stogner on behalf of North
6 Coast Rail Authority?

7 A That's correct.

8 Q And we were reviewing in -- in Exhibit 37
9 generally it states that there are shippers that have
10 interest in -- in freight rail service connected -- with
11 interchange connection to the NCRA, and you're
12 requesting that NCRA reopen so that those shippers can
13 be served?

14 A That's correct.

15 Q And that -- we went through some of those
16 shippers, they were identified as the companies that had
17 submitted support letters in 2018, '19, and '20 with
18 respect to Mendocino Railway's applications to the
19 federal government for grant funding; is that correct?

20 A That is correct.

21 Q And we -- I believe we went through FloBeds,
22 Lyme Redwood, North Coast Brewing, Willits Redwood
23 Company, Geo Aggregates; is that right?

24 A Yes, that is right.

25 Q Were there other shippers other than those that

1 had provided those support letters that had expressed
2 interest in rail service -- freight rail service,
3 transportation services?

4 A Yes. It's not uncommon for us to get requests
5 from others who may not realize that a piece of railroad
6 track that runs through their property or adjacent to
7 their property isn't necessarily ours. Rather, they
8 just want to see it -- see it being utilized.

9 Q And can you give us an example; are there any
10 shippers that you can recall?

11 A Yes, absolutely. Mendocino Redwood Company has
12 reached out and we've had several conversations with
13 respect to the line that runs north-south from Ukiah
14 towards Willits. They have a facility in Calpella and
15 they also have a facility in North Ukiah, and they have
16 expressed interest in seeing goods transported from
17 their Calpella site to their North Ukiah site, which
18 would give them the freedom of not having to adhere to
19 truck weight and length issues, because that could be
20 put on a railcar -- so shuttling between their two
21 facilities.

22 Q And what would be moved between those
23 facilities?

24 A Wood products, so either raw material or --
25 and/or finished material.

1 Q And Mendocino Redwood Company contacted
2 Mendocino Railway on numerous occasions --

3 A Yes.

4 Q -- to provide that service?

5 A Yes, that is correct.

6 Q And what did Mendocino Railway tell them?

7 A That -- that as much as we'd love to do it,
8 it's not our railroad, that they should reach out to the
9 North Coast Rail Authority. However, there may be an
10 opportunity for Mendocino Railway to enter into an
11 agreement with North Coast Rail Authority to provide
12 those services on another railroad's line between the
13 two named points.

14 Q And did you explore that -- that opportunity
15 with -- did you, Mendocino Railway, explore that
16 opportunity with the North Coast Rail Authority?

17 A I believe I had a conversation with Mitch
18 Stogner about that via telephone.

19 Q And what -- what came of it?

20 A Nothing has materialized.

21 Q Why hasn't anything materialized?

22 A Well, the North Coast Rail Authority went from
23 being recognized as a -- by state law through
24 legislation as a governing railroad board to a governing
25 trail board through an act of the state legislature.

1 Q What year was that?

2 A I don't recall the year, but it was SB69 that
3 made that transition.

4 Q Okay. And over what period of time did
5 Mendocino Railway receive requests from shippers
6 regarding interchange with the NCRA that -- that you
7 kind of reference here in your February 6, 2020, letter,
8 Exhibit 37?

9 A Well, it would go back to, you know, the
10 letters that we received in support of our BUILD grant
11 application in '18 and it would predate that. I don't
12 recall when the submission of the BUILD grant -- I -- I
13 believe BUILD grant -- they may have changed it now that
14 it's a different acronym, but I believe they were
15 submitted in June which means that the NOFO -- N-O-F-O,
16 the Notice of Funding Opportunity -- was released by DOT
17 in January-ish, so it could have been even prior to '18
18 that we would have been receiving requests and having
19 those conversations.

20 Q And those requests predated the support letters
21 that are in Exhibit 30; correct?

22 A Yes.

23 Q Did Mendocino Railway solicit those requests or
24 those were unsolicited requests?

25 A Mendocino Railway had conversations with the

1 various shippers that provided support letters and we
2 asked for letters of support, but the -- the initial
3 requests have -- had been coming in from the shippers --
4 the potential shippers because seeing -- you know,
5 you're in a small community and when -- knowing a lot of
6 folks in the business industry, you run into them at
7 lunch or you run into them out on the street and it's,
8 when can I ship something, you know, via rail, those
9 types of conversations.

10 Q What prompted you and Mendocino Railway to send
11 this February 6, 2020, letter, Exhibit 37?

12 A The -- the requests for service that we had
13 been getting, the -- the need to see rail coming back
14 into Mendocino County from the south, the need for a
15 connection, and to grow -- to grow the business in a
16 responsible -- in a responsible way.

17 Q And how -- how does this letter, the request
18 for the -- the service on the NCRA, the interchange
19 restoration -- or reactivation of the interchange with
20 the NCRA -- how did that play with the transloading of
21 plans of Mendocino Railway in this time period?

22 THE COURT: I'm not sure I even understand that
23 question.

24 Do you understand what he's getting at? Do you
25 understand the question?

1 THE WITNESS: I --

2 THE COURT: Okay.

3 THE WITNESS: Yes.

4 THE COURT: Go ahead.

5 THE WITNESS: So in -- my goal with getting
6 NCRA to reopen their rail line has far greater economic
7 value to Mendocino County and the remote area than it
8 does to Mendocino Railway, and it is something that I
9 have -- I have said in letters, I have said in newspaper
10 articles, I have -- I have gone on the record many times
11 saying that, look! Even if Mendocino Railway were not
12 to be the operator of this north-south railroad, do not
13 foreclose on the idea of having rail come into this
14 community because the moment you do that, you're
15 subscribing to goods and services moving in other ways
16 other than by rail.

17 And so this request is linear; right? NCRA
18 doesn't know all of Mendocino Railway's business plans,
19 they don't need to know all of Mendocino Railway's
20 business plans, that's not relevant. What is relevant
21 is, is that they are a railroad -- or were in 2020 and
22 had a duty under STB regulation to meet a demand for
23 service, and they hadn't been providing that service.

24 Q (BY MR. BLOCK) Okay. And is -- is the
25 interchange -- or -- or the request for interchange --

1 restoration of the interchange with the NCRA, is that in
2 lieu of or a substitute for the transload operation that
3 Mendocino Railway was planning?

4 A No. The two -- the two could exist, and that's
5 something that I've testified to earlier. The two could
6 exist; you can -- you can be receiving freight in from
7 the East Coast and have it come all the way to Fort
8 Bragg. You could -- there are a variety of goods and
9 services that could come into a remote community that
10 wouldn't need transload.

11 There are however -- they're -- they are
12 separate business models, if you will, and there are
13 however customers who would ship both long distance and
14 also in the transload fashion.

15 MR. BLOCK: Okay. All right. I believe
16 Exhibit 37 has been admitted in evidence, that's what my
17 notes show?

18 THE COURT: Well, we have a new exhibit log;
19 did you get one from the clerk?

20 THE CLERK: Yes, it has been.

21 THE COURT: It's been admitted, yes -- or
22 received, uh-huh.

23 MR. BLOCK: Great. Thank you.

24 Q (BY MR. BLOCK) Now, you've -- you've testified
25 in addition to the interchange connection with the NCRA

1 line, Mendocino Railway also operates on NCRA tracks
2 pursuant to a trackage agreement?

3 A That is correct.

4 MR. BLOCK: Okay. I'd like to show you Exhibit
5 38.

6 (Plaintiff's Exhibit 38 was identified.)

7 Q (BY MR. BLOCK) Are you familiar with Exhibit
8 38?

9 A I am.

10 Q What is Exhibit 38?

11 A Exhibit 38 is a Trackage Rights Agreement
12 between California Western Railroad and the Northwestern
13 Pacific Railroad, NCRA.

14 Q What's the date of the agreement?

15 A 11 March 1999.

16 Q Is this trackage rights agreement one of the
17 assets that Mendocino Railway acquired from the
18 bankruptcy court -- or through the bankruptcy
19 proceedings and STB authorization in 2004?

20 A It is.

21 Q And this is the agreement by which Mendocino
22 Railway operated at its Willits depot generally?

23 A Yes.

24 Q So we don't have the big picture, Exhibit 3,
25 that we had earlier, but maybe you could generally just

1 remind us or describe what physically is included under
2 this trackage rights agreement.

3 A So the -- the -- the actual point of -- of
4 crossover, if you will -- and "crossover" is a term that
5 I referred to back in August. That is where the
6 intersection of the CWR, the California Western
7 Railroad, tracks are with those tracks of the NWP or
8 NCRA. That takes place -- it was circled on Exhibit 3.

9 That takes place just east of the old Highway
10 101 -- it takes place just east of the old Highway 101
11 near the MOW facility.

12 Q Okay. Where the -- where the orange line and
13 the blue line intersect --

14 A That's correct.

15 Q -- on Exhibit 3?

16 Okay. And then take us through generally the
17 other portions.

18 A Sure. So that -- where that -- the orange and
19 the blue line intersect, that is at Bridge 3949 and the
20 crossover is just to the compass north of that. The
21 Trackage Rights Agreement runs from that point all the
22 way to the north yard, which would be north of the
23 locomotive pit -- it is circled as well on Exhibit 3 --
24 adjacent to what appear -- in the image appear to be log
25 stacks. And it also includes the wye track, W-Y-E

1 track, that's in blue, and then of course all of the
2 ancillary tracks that are in the Willits yard, with the
3 exception of the tracks that are owned by CWR.

4 Q So these are the sets of parallel tracks where
5 their -- the passenger loading and unloading is, where
6 the maintenance work would take place outside, where
7 those containers -- the pictures that are in Exhibit 3,
8 the inset pictures; correct?

9 A That's correct.

10 Q Who are the Mayfields and Rodrigues referenced
11 in Exhibit 38?

12 A So in 1999 they were shareholders and directors
13 of the then California Western Railroad, Inc.

14 Q Okay. I'd like you to take a look at paragraph
15 2.2 on page 2.

16 A Okay.

17 Q And what does -- can you tell us what paragraph
18 2.2 -- what rights NCRA is granting to CWR?

19 A Sure. And I'll read some, if not most, of
20 this.

21 It says (Reading):

22 "Subject to the terms and
23 conditions herein contained, NCRA
24 grants to CWR the non-exclusive right
25 to use of the joint trackage for

1 operation of its freight trains,
2 passenger trains, locomotives and cars
3 in its account over, (1), the NCRA
4 mainline, beginning at Point One, to
5 access Track 20; (2), Track 20 to the
6 extent that it lies on real property
7 owned by NCRA; (3), Tracks 11, 12, 21,
8 22, 23, 24, 25, and 4; the NCRA mainline
9 to access Tracks 11, 12, 21, 22, 23, 24,
10 and 25. The CWR use of Tracks 21, 22, 23,
11 24, and 25 shall be limited to the turning
12 of equipment. Tracks 11 and 12 shall be
13 solely used for interchange of cars with
14 the NCRA. The NCRA mainline north of
15 Point 2 shall be used solely for (1),
16 turning of equipment; (2), running around
17 equipment, and (3), the access to other
18 tracks for interchange of cars."

19 Q Okay. So let's break this down.

20 CWR -- under this agreement CWR can operate its
21 freight trains; correct?

22 A That's correct.

23 Q And so at -- that's the freight train
24 operations -- or freight rail operations that CD -- CWR
25 conducted; correct?

1 A That's correct.

2 Q And then when -- or CWRR, Inc., was it at that
3 time?

4 A CWR, Inc.

5 Q CWR, Inc.

6 And subsequently when Mendocino Railway
7 acquired the CWR and the -- this agreement, it operated
8 freight trains pursuant to this trackage rights
9 agreement; correct?

10 A That is correct.

11 Q Now, when we say C -- CW -- I'm sorry, NC --
12 I'm sorry, Mendocino Railway operated freight trains
13 pursuant to this trackage rights agreement, it's not
14 actually -- initially it wasn't Mendocino Railway's
15 employees that were doing that, it was someone else?

16 A That is correct.

17 Q And that goes back to 2004?

18 A That's correct.

19 Q And who -- who was it that physically, the
20 employees, that -- that did that -- those freight
21 operations?

22 A Employees of Sierra Northern Railroad.

23 Q Okay. And over what period of time was Sierra
24 Northern Railroad performing the freight rail operations
25 for Mendocino Railway?

1 A From the acquisition in 2004 through December
2 31st, 2021.

3 Q Okay. And those freight rail operations are
4 the types of things that you testified to back in August
5 in your initial testimony; correct?

6 A Yes.

7 Q All right. Now, the reference here to
8 passenger trains, what -- what were those activities
9 conducted by CWR prior to Mendocino Railway's
10 acquisition?

11 A Well, they were no different in that they were
12 excursion based and commute based.

13 Q And when you talk about commute based, just
14 generally what are you referring to?

15 A Somebody who is not riding the train for
16 excursion or leisure purposes, per se, and somebody
17 who's using it as a vehicle to get from Willits -- in
18 this case Willits depot to a named point or station
19 along the route.

20 Q And can you give us some examples of that
21 activity?

22 A Sure. So -- well, there are many.

23 Q Just remind us. I think you've already
24 testified to --

25 THE COURT: He has already testified

1 extensively about this. I hate to keep moving into
2 stuff that he's already testified to.

3 MR. BLOCK: Fair enough.

4 Q (BY MR. BLOCK) Now, when Mendocino Railway
5 acquired the CWR in 2004, it wasn't Mendocino Railway
6 that was performing those excursion and non-excursion
7 passenger rail services; correct?

8 A That's correct.

9 Q Who was it?

10 A Sierra Entertainment.

11 Q Sierra Entertainment.

12 And over what period of time was Sierra
13 Entertainment performing those services for Mendocino
14 Railway?

15 A From acquisition through 2008.

16 Q Now, under this agreement, trackage rights
17 agreement, Mendocino -- or CWR also had the right to
18 interchange with NCRA?

19 A That's correct.

20 Q And prior to the embargo in 1998, the emergency
21 embargo, CWR interchanged freight trains with NCRA?

22 A That's correct.

23 Q Did it also interchange passenger trains?

24 A Prior to 1998?

25 Q Yes.

1 A Yes. There was -- there was passenger
2 operations that operated over the NCRA line from --
3 well, the Northwestern Pacific Railroad from its
4 inception and passenger trains did interchange
5 regularly.

6 In the late nineties there was service offered
7 from Sonoma County all the way up to Mendocino County
8 whereby passengers could travel from Sonoma County to
9 Fort Bragg and back.

10 Q If the NCRA interchange was operable today,
11 could Mendocino Railway interchange passenger rail cars
12 with the NCRA?

13 A Yes.

14 MR. BLOCK: I'd like to offer Exhibit 38 into
15 evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No, Your Honor.

18 THE COURT: Exhibit 38 will be received.

19 (Plaintiff's Exhibit 38 received in evidence.)

20 Q (BY MR. BLOCK) As -- as part of Mendocino
21 Railway's freight rail services between the -- the
22 period of 2004 to 2015 did Mendocino Railway move
23 packages for private carriers such as Federal Express?

24 A Yes.

25 Q Any other private carriers?

1 A Yes.

2 Q Which ones?

3 A UPS, DHL, OnTrac, Golden State -- whatever
4 other package parcel carriers there may be out there.

5 Q And did Mendocino Railway -- or I guess it was
6 Sierra Northern that would perform those activities;
7 correct?

8 A If the -- if they were small boxes or packages,
9 they would go out on a passenger train.

10 Q And did Mendocino Railway or Sierra Northern
11 Railway charge FedEx, UPS, et cetera to -- to provide
12 that service?

13 A We did.

14 Q And who were you bringing the packages to?

15 A To residents along the route.

16 Q And during the period 2004 to 2015 did
17 Mendocino Railway provide freight rail services to the
18 logging operations along the CWR?

19 A We did.

20 Q What was the nature of -- of those services
21 that were provided?

22 A Hauling of equipment. There was a large
23 weather event just east of Bridge 4 -- well, just west
24 of the five milepost and the logs were -- the trees were
25 strewn for about a half mile, and we brought equipment

1 out from a company ranch via rail to get in and -- and
2 tackle the project for the timber company.

3 Q And then bring the equipment out?

4 A That's correct.

5 Q And Mendocino Railway charged for those
6 services?

7 A Yes.

8 Q And you previously testified that Mendocino
9 Railway would provide freight rail services to utility
10 companies?

11 A That is correct.

12 Q About how many times -- how often would those
13 public utility activities -- or rail services for Public
14 Utilities take place?

15 A It varies, you know, year by year, but six to
16 eight requests is not uncommon. I -- as an example, I
17 believe this year we probably have a half dozen requests
18 and I know there's a couple of more coming down based on
19 inquiries.

20 Q And Mendocino Railway charges for those
21 services as well?

22 A We do.

23 Q Does Mendocino Railway currently provide that
24 package service -- the parcel service for FedEx or UPS,
25 et cetera?

1 A Yes. Anytime there's a package that would need
2 to go out to a residence along the route, we would
3 provide that service.

4 Q About how many times a year does that take
5 place or how often?

6 A It certainly isn't as frequent as it once was,
7 but I'm guessing based on what I see when I'm walking
8 through and walking around the property, it's a couple
9 of times a month.

10 Q How did the freight rail services provided by
11 Mendocino Railway change after the tunnel collapse in
12 2015?

13 A Well, the line was severed -- 1122 feet of the
14 line was severed and so getting anything through that
15 1122-foot section was -- is/was impossible. And so
16 there are -- we had to work around, meaning that if it
17 were easier to transport something previously out of
18 Fort Bragg, that now had to be transported from the
19 Willits side.

20 Q Okay. And so there's some interruption in that
21 service, but it hasn't ceased; is that fair to say?

22 A That is correct.

23 Q With respect to non-excursion passenger
24 service, your prior testimony was about -- you
25 referenced transport of residents and their guests;

1 correct?

2 A That is correct.

3 Q Over the period of time 2014 -- 2004 to 2015,
4 what was the frequency of those non-excursion passenger
5 transport -- transport services?

6 A In the -- in the wintertime it was certainly
7 reduced, but from late spring through fall it was
8 multiple times a week, and in the peak season it could
9 be as frequent as daily.

10 THE COURT: As what?

11 THE WITNESS: As daily.

12 Q (BY MR. BLOCK) And when you did that -- when
13 Mendocino Railway provided those services, it was
14 shipping guests with their luggage; correct?

15 A That is correct.

16 Q And supplies?

17 A Yes. Whatever -- whatever needed to be
18 transported.

19 Q And if they needed supplies to fix something at
20 the sites, you guys would move those materials as well?

21 A Yes. Sinks, toilets, hot water heaters; you
22 name it, we've just about transported it.

23 Q And building materials?

24 A As well.

25 Q And over the period of 2004 to 2015, your prior

1 testimony was that Mendocino Railway provided
2 non-excursion passenger services in conjunction with the
3 Mendocino Transportation Authority -- or Agency; is that
4 right?

5 A That is correct.

6 Q What was the frequency of that activity?

7 A So that was -- well, I don't recall the
8 frequency of that activity. I do know that it was
9 something that was billed out -- as I recall, billed out
10 monthly. It was a ticket pass that was -- could be
11 purchased both through CWR and through MTA, and once the
12 ticket was used, recordation of it was kept in -- there
13 was some -- there was a billback provision.

14 Q And you said CWR, you meant CWR or Mendocino
15 Railway?

16 A That's right, on the CWR line.

17 Q Okay. Now, the Court asked if there was an
18 agreement related to that MTA service; do you recall
19 that?

20 A I do.

21 Q And your testimony that -- was that there was?

22 A There was an agreement.

23 Q Did you -- did Mendocino Railway look for that
24 agreement?

25 A We did.

1 Q What did you do to look for it?

2 A We went through our archives and -- yes.

3 Q And did you find it?

4 A We did not.

5 Q Okay. Did you find any documents in -- in the
6 search related to that activity?

7 A We did not.

8 Q Did -- or during the period 2004 to 2015, did
9 Mendocino Railway provide any non-excursion passenger
10 service -- rail services that you have not already
11 testified to?

12 A I believe I've testified to assisting of public
13 service agencies; fire, medical, law enforcement. So
14 between 2004 and '15 I don't believe I've left anything
15 out.

16 Q What about work crews?

17 A Well, we have -- we have transported -- we've
18 transported CalFire inmate crews to do work for a
19 neighboring property owner, Mendocino Land Trust. They
20 own approximately 450 acres and are completely -- well,
21 they are mostly landlocked. They have deed restrictions
22 on the logging roads and they're seasonal at best, and
23 so we have transported CalFire crews -- inmate crews to
24 do work on their property.

25 Q Over what period of time?

1 A Well, that work -- the work that they -- they
2 do for Mendocino Land Trust is known as -- it's
3 something that CalFire and others do with their forest
4 management practices, and that's known as the shaded
5 fuel breaks, and that takes place in the wintertime when
6 the CalFire inmate crews aren't busy putting out fires
7 that may be burning -- generally speaking, mid-ish
8 December, sometimes starts in January and continues
9 through about mid-February.

10 They have a requirement under state law that
11 they have to go silent for a period because of chainsaws
12 and nesting birds, but in that window of -- of a couple
13 of months, three months perhaps, it is and can be up to
14 four days a week of transporting them to their work
15 site.

16 Q And are those transport -- how are those
17 transportation services provided?

18 A By train.

19 Q And are those separate trains from -- from the
20 excursion trains?

21 A Gener -- yes. Generally speaking, in January
22 and February excursion trains don't exist on the
23 schedule for Mendocino Railway out of Willits and so
24 those are specific to the received request.

25 Q Does -- I had asked about 2004 to 2015, maybe I

1 have the dates wrong.

2 That activity, the transport of the -- the work
3 crews, is that an activity that took place prior to 2015
4 or subsequent?

5 A It would have been after.

6 Q After. And does Mendocino Railway charge
7 Mendocino Land Trust to transport those crews?

8 A We do not. We donate it.

9 Q I'm sorry, I didn't hear?

10 A We donate.

11 Q You donate the services?

12 A That's right.

13 Q After Mendocino Railway purchased the CWR
14 assets in 2004, could it refuse a request for freight
15 rail services?

16 A No.

17 Q Why not?

18 A That would be contrary to the rules that we are
19 governed by under STB Law.

20 Q And could Mendocino Railway refuse a request
21 for non-excursion passenger rail service?

22 A No.

23 Q For the same reason?

24 A For the same reason and also for the reason
25 that the Public Utilities Commission of the State of

1 California would frown upon it as well.

2 Q I'd like you to take a look at Exhibit AA,
3 which is the 2006 Railroad Board decision.

4 A Okay.

5 Q And at the top of page 2 it states, quote,
6 "Mendocino's ability to perform common carrier service
7 is thus limited to the movement of goods between points
8 on its own line, a service it does not perform," end
9 quote.

10 Do you see that?

11 A I do.

12 Q And when Mr. Johnson cross-examined you, you
13 testified that that was a truthful statement -- or
14 accurate statement; correct?

15 A At the time of the issuance of this, yes.

16 Q And -- but Mendocino Railway did -- you've just
17 testified today and previously in August that Mendocino
18 Railway did move freight along the CWR subsequent to its
19 purchase in 2004; right?

20 A Yes.

21 Q So how do you reconcile those two concepts?

22 A Well, Mendocino Railway, as I testified I
23 believe last week, in January 1st of 2022 took over the
24 common carrier obligation, if you will, from Sierra
25 Northern on the freight side and as such has made

1 application to the United States Railroad Retirement
2 Board to have all of its employees subject to the
3 Tier -- what we call Tier II tax.

4 Q And when Sierra Northern Railway performed the
5 freight rail services for Mendocino Railway between 2004
6 and December 31st, 2021, was Sierra Northern Railway
7 subject to the Railroad Retirement Board employer
8 requirements?

9 A It was.

10 Q And did Sierra Northern Railway pay railroad
11 retirement pension to its employees?

12 A It did.

13 Q In Exhibit AA it also states that Sierra
14 Entertainment may be characterized -- quote, "The rail
15 service provided by Sierra Entertainment may be
16 characterized as a tourist or excursion railroad
17 operated solely for recreational and amusement
18 purposes," end quote.

19 Do you see that in the middle of page 2?

20 A I do.

21 Q And you testified on cross-examination that
22 that was accurate?

23 A It was.

24 Q Now, you've also testified today and back in
25 August that Sierra Entertainment between 2004 and 2008

1 provided non-excursion passenger rail services -- this
2 is to the residents, to the camps, and things like that.
3 How do you reconcile those two concepts?

4 A Well, if you have a train that's leaving -- a
5 scheduled excursion train that's leaving at 9:00 a.m.,
6 let's say, is there any sense in running a separate
7 excursion -- a separate train for two or four
8 non-excursion passengers? It makes sense to put them on
9 the same train.

10 Q And is it your understanding that by -- when
11 Sierra Entertainment provided those non-excursion
12 passengers rail transport, it was performing a common
13 carrier service?

14 A I'm sorry, would you repeat the question,
15 please?

16 Q I'll try. Thanks.

17 Is it your understanding that when Sierra
18 Entertainment transported non-excursion passengers on
19 that tourist train, it was performing common -- a common
20 carrier service?

21 A It was performing a service that it had been
22 doing for well over a hundred years.

23 Q So the answer's yes?

24 A Yes, sure.

25 Q And then subsequent to 2008 it was Mendocino

1 Railway that was performing that passenger freight rail
2 service for non-excursion passengers?

3 A Correct.

4 Q Let's look at Exhibit BB?

5 THE COURT: "DD"?

6 MR. BLOCK: "BB."

7 THE COURT: "BB."

8 MR. BLOCK: "B" as in boy.

9 THE COURT: Got it.

10 Q (BY MR. BLOCK) This is the letter from Crystal
11 Zorbaugh of Baker & Miller to the Railroad Retirement
12 Board, April 27, 2022.

13 A Yes.

14 Q You testified on cross-examination in response
15 to Mr. Johnson's question that you had seen this letter;
16 correct?

17 A That is correct.

18 Q But when Mr. Johnson provided you with Exhibit
19 BB, you had not seen Exhibit A attached thereto;
20 correct?

21 A That is correct.

22 Q Did you see the letter -- the first two pages
23 of Exhibit BB prior to the letter being sent out to the
24 Railroad Retirement Board?

25 A I -- no. I saw it when -- after it was sent.

1 Q Okay. I'd like you to turn to the second page
2 of the letter -- the second page of Exhibit BB and the
3 first paragraph there. Do you see that?

4 A Where it starts with "Related to B.C.D.?"

5 Q Correct.

6 A Okay.

7 Q And see the last sentence there?

8 A Starting with "Between 2010"?

9 Q Yes.

10 A Yes.

11 Q Did -- it says, quote, "Between 2010 and
12 continuing through 2019, Mendocino Railway fulfilled its
13 common carrier obligations through an operating
14 arrangement with its affiliate," end quote.

15 A I see that.

16 Q And what was -- what is the affiliate that
17 Ms. Zorbaugh is referring to?

18 A Sierra Northern Railway.

19 Q Okay. And when it refers to common carrier
20 obligations here, what's your understanding of what
21 Ms. Zorbaugh is referring to?

22 A Freight operations.

23 Q Okay. And did Sierra Northern Railway perform
24 freight rail services on behalf of Mendocino Railway
25 prior to 2010?

1 A It did.

2 Q Do you know why Ms. Zorbaugh started with 2010
3 here?

4 A I do not.

5 Q So would it be more accurate for this letter to
6 have said from 2004 and continuing through 2019?

7 A It would be more accurate to say through 2021.

8 Q Through December 1st, 2021?

9 A December 31st.

10 Q 31st. Have you advised Ms. -- Ms. Zorbaugh
11 that this sentence here is -- could be corrected to be
12 more accurate?

13 A I have.

14 THE COURT: So in other words, it's still 2010
15 through December of 2021 or 2004 through --

16 THE WITNESS: It would be through 2004, Your
17 Honor.

18 THE COURT: So 2004 through December 31st of
19 2021?

20 THE WITNESS: That is correct.

21 Q (BY MR. BLOCK) I'd like you to take a look at
22 section 8 of Exhibit A here on page 4 of Exhibit BB. Do
23 you see that?

24 MR. JOHNSON: I'm sorry, could you restate --
25 what'd you say there?

1 MR. BLOCK: Paragraph 8 on page 4.

2 MR. JOHNSON: Oh, thank you. Yeah.

3 THE WITNESS: Okay.

4 Q (BY MR. BLOCK) Is the first sentence here
5 accurate?

6 A No. Again, I -- I believe that that's a
7 typographical error and that that should reflect the
8 dates that we spoke of on page 2 of the letter.

9 Q So 2004 to December 31st, 2021?

10 A That is correct.

11 Q Have you reviewed Exhibit B to see if there are
12 any other inaccuracies or corrections?

13 A I have.

14 Q Are there any others that you identified?

15 A Well, Mendocino -- CWR is a Class III carrier.

16 Q Where is that?

17 A That is referenced in -- in the letter, page 2,
18 first sentence after the comma, it says "A Class, Roman
19 numeral, I, II, III, IV" -- and Mendocino Railway is a
20 Class III common carrier. And on page 7 -- or, excuse
21 me, I'm sorry, page 4, number 7 after the comma, it
22 makes the same reference as well.

23 Q Anything else that you've identified so far?

24 A But for the dates, no, everything else is -- is
25 consistent. It -- 10(e) talks about the January 1st,

1 2022, date and so that is consistent with what took
2 place, but inconsistent with the dates previously
3 referenced.

4 And above that, (5), second -- under the second
5 paragraph, so item number 5 on page 3, it talks about
6 the first table [phonetic] subject to compensation would
7 have been January 6th, and that is a correct date. So
8 that conforms to the January 1st date.

9 Q And at this time there aren't other corrections
10 or clarifications that you've identified?

11 A I don't believe so.

12 Q I'd like you to take a look at Exhibit EE.

13 A Okay.

14 Q And on page 5 -- on cross-examination
15 Mr. Johnson asked you about this second to the last
16 sentence on this page starting with "Consistent
17 therewith."

18 A Okay.

19 Q And it says, quote, "Consistent therewith,
20 Mendocino Railway represented to the Railroad Retirement
21 Board that it had no freight traffic and was purely --
22 was a purely tourist excursion operation and therefore
23 was entitled to an exemption from rail labor retirement
24 taxation. The Railroad Retirement Board granted
25 Mendocino Railway an exemption on the basis of its

1 representations," end quote.

2 Do you see that?

3 A I do.

4 Q Is the statement of the Great Redwood Trail
5 Agency in Exhibit EE that I just read accurate?

6 A Based on the fact that they used the 2006
7 decision, it is accurate because Mendocino Railway was
8 not an employer under the Act at the time.

9 Q And so how do you reconcile this statement here
10 on page 5 of Exhibit EE with your testimony previously
11 that Sierra Northern Railway -- or Mendocino Railway
12 provided freight rail services through its affiliates
13 Sierra Northern Railway?

14 A Well, Sierra Northern Railway provided those
15 freight services from 2004 through December 31, 2021,
16 and consistent with Mendocino Railway's request to the
17 United States Railroad Retirement Board in 2022 for
18 service to begin -- service meaning Tier II taxes to be
19 imposed -- was January 1st. This is a September
20 document, so...

21 Q Okay. And did Mendocino Railway represent to
22 the Railroad Retirement Board that it was a purely
23 tourist excursion operation?

24 A In 2006, no. It -- Sierra Entertainment was
25 the excursion operation. Mendocino Railway was a

1 holding company, if you will, to hold the real assets --
2 real property assets.

3 Q And in addition to those tourist rail
4 operations at that time, Sierra Entertainment also
5 transported non-excursion passengers as you've
6 testified?

7 A That's correct.

8 Q I'd like you to take a look at Exhibit DD.

9 A Okay.

10 Q And this is a May 31st, 2022, letter from
11 Mr. Mullens of Baker & Miller to the Surface
12 Transportation Board.

13 A Yes, that is correct.

14 Q And this related to the offer of financial
15 assistance regarding GRTA's petition for abandonment of
16 the NCRA north of Willits?

17 A That is correct.

18 Q And on cross-examination Mr. Johnson pointed
19 you to the proof of insurance attachment; do you
20 remember that?

21 A I do.

22 Q And he pointed to the classification on the
23 last page of Exhibit DD where it notes tourist/excursion
24 railroad?

25 A Yes.

1 Q And -- and that it doesn't reference any
2 freight operations?

3 A That is correct.

4 Q So what was the effective time period for this
5 insurance that's referenced here?

6 A The -- 2021 through part of 2022.

7 Q Okay. And in 2021 as of the effective date,
8 August 31st, 2021, who performed or -- who performed the
9 freight rail services on behalf of Mendocino Railway?

10 A Sierra Northern Railway.

11 Q And did Sierra Northern Railway at that time
12 have insurance for those freight services?

13 A It did.

14 Q And in January of 2022 Mendocino Railway took
15 over those insurance -- or those freight rail services;
16 correct?

17 A That is correct.

18 Q And for the 2022-2023 time period subsequent to
19 the insurance referenced in Exhibit DD, did Mendocino
20 Railway obtain insurance to cover both its passenger and
21 freight services?

22 A It did.

23 Q Do you know whether Mendocino Railway's freight
24 rail services between January of 2022 and August of 2022
25 were covered by insurance?

1 A I don't recall. I do recall in the application
2 renewal that there was a -- again, I recalled there was
3 a reference to January 1 and the carrier's ability to
4 backdate. Of course, they charge a premium for it, but
5 there is a backdate availability.

6 Q All right. Back to EE. On page 4 --

7 MR. JOHNSON: Excuse me, what -- what is this?
8 Which one are you on?

9 MR. BLOCK: This is Exhibit EE.

10 MR. JOHNSON: Thank you.

11 MR. BLOCK: This is GRTA's petition -- or
12 filing with the STB.

13 MR. JOHNSON: Okay.

14 Q (BY MR. BLOCK) At the -- toward the bottom of
15 page 4 there's a comment here, the sentence reads:
16 "Mendocino Railway's most recent estimate, 2022, for
17 rehabilitation of Fort Bragg to Willits is 31. --
18 \$31,300,000," end quote.

19 Do you see that?

20 A I do.

21 Q And on cross-examination you testified that
22 this statement that I just read was false?

23 A Well, as it relates to the cost to restore
24 service just through the tunnel.

25 Q Okay. So can you explain how this statement

1 that I just read is misleading or inaccurate?

2 A So this was a number that the folks at GRTA
3 obtained, just a raw number, from Mendocino Railway's
4 RRIF application, R-R-I-F application, and that is a
5 loan, a very low interest loan, from the Department of
6 Transportation to railroads only over a 35-year period
7 of time for rehabilitation.

8 That number is inclusive of a variety of
9 things, including acquisition of equipment, track work,
10 so ties and rail, tunnel work, rehabilitation and
11 restoration of service through Tunnel No. 1, as well as
12 a walkway known, under the CPUC code, as toe paths,
13 walkway improvements, so that when somebody steps off of
14 a train -- freight, passenger, or otherwise, a piece of
15 rail equipment -- that there is improved side
16 clearances, meaning that they're not stepping off of a
17 very steep embankment or if there were needs for
18 improvement of walkways on bridges, that those are met
19 as well. It's all encompassing.

20 Q And are all of the items covered in that \$31.3
21 million required in order to restore service on the CWR
22 through Tunnel No. 1?

23 A No.

24 Q Other than reopening of Tunnel No. 1, are any
25 of the other items covered with that \$31.3 million loan

1 necessary in order to restore through-service between
2 Fort Bragg and Willits?

3 A No. The line but for the 1122 feet is
4 maintained and traveled over and so none of the
5 additional work or requested funds would be required to
6 see a train pass through the entire line from Fort Bragg
7 to Willits but for Tunnel No. 1.

8 Q And that -- that's consistent with your
9 testimony back in August that the entire line meets
10 Class I standards and significant portions of the line
11 meet Class II standards?

12 A That's correct.

13 MR. BLOCK: I'd like to show you what's been
14 marked as Exhibit 39.

15 (Plaintiff's Exhibit 39 was identified.)

16 Q (BY MR. BLOCK) What is Exhibit 39?

17 A It's an e-mail dated 31 October 2022, it's from
18 Sarah Richardson, who is the camp director for the Boys
19 & Girls Club of San Francisco's Camp Mendocino facility,
20 and it's a list of dates for their summer '23 camp and
21 approximately how many passengers they would need to
22 have transported between Willits and Camp Mendocino.

23 Q Would this be considered a request for service?

24 A Yes.

25 Q And it's a request for non-excursion passenger

1 service?

2 A That is correct.

3 Q Is this the type of passenger service that
4 Mendocino Railway has provided continuously between 2004
5 and 2022?

6 A This is consistent with what the railroad has
7 done between those dates and prior to those dates.

8 Q And do you anticipate Mendocino Railway
9 transporting these campers pursuant to this request for
10 service contained within Exhibit 39?

11 A If the camp wishes to see these passengers
12 moved, then that's something that we would assist them
13 with.

14 Q Have you had any further discussions with
15 Ms. Richardson since October 31st, 2022, regarding this
16 request for service?

17 MR. JOHNSON: Your Honor, I object. I mean,
18 this is not really relevant to what we're talking about.
19 I mean, it's some future service that needs to be
20 provided in 2023. It has nothing to do with what was
21 happening with the railroad or -- in 2020 when this
22 action was filed.

23 THE COURT: Right. I thought the motion to
24 reopen the trial was really limited to the issue related
25 to the retirement board, and now we're -- we seem to be

1 getting into issues that may have been -- or should have
2 been brought up prior to the motion to reopen.

3 So I'm a little concerned that we're going
4 beyond what the -- what I thought the motion to reopen
5 was limited to.

6 MR. BLOCK: I understand, Your Honor. I think
7 we did go beyond it in the cross-examination last week,
8 but moreover, this is in October. We finished the
9 original testimony in August. Mr. Pinoli testified that
10 they would continue providing this service. This is
11 just evidence of -- in support of his earlier testimony.

12 It's consistent, I think it's additional
13 helpful information for the Court, and it's certainly
14 relevant as far as the common carrier services provided
15 and continuing to be provided by Mendocino Railway in
16 this matter.

17 THE COURT: Okay. All right. I'll allow it.

18 MR. BLOCK: I'd like to offer Exhibit 39 into
19 evidence.

20 MR. JOHNSON: That's fine, Your Honor. No
21 objection.

22 THE COURT: Okay. Exhibit 39 will be received.

23 (Plaintiff's Exhibit 39 received in evidence.)

24 THE COURT: Then, Mr. Johnson, I'll allow you
25 to cross-examine on this if you'd like.

1 MR. JOHNSON: All right. You know, while we're
2 taking a break, Your Honor, I'd like to -- I think it's
3 an opportunity for me to reference that the last time we
4 were here you requested that -- or -- and Mr. Block
5 requested that documents Exhibit DD and EE be submitted
6 with all the exhibits that were originally attached to
7 them, and that was filed with the Court.

8 THE COURT: Okay.

9 MR. JOHNSON: You know, it's over 300 pages of
10 documents. And perhaps the record should reflect -- or
11 I'd request that it reflect that the -- you know, "DD"
12 and "EE" now be accepted into evidence with the
13 attachments.

14 MR. BLOCK: Of course, no objection.

15 THE COURT: So -- so "DD" -- it looks like we
16 already received it actually. Clerk put it -- "DD," and
17 what other -- what was the other --

18 MR. JOHNSON: "EE."

19 THE COURT: -- "BB"?

20 MR. JOHNSON: "E" as in --

21 THE COURT: "EE."

22 MR. JOHNSON: -- Ed.

23 THE COURT: Okay. I'll receive "EE" then.

24 MR. JOHNSON: And I -- and they're with --
25 they're filed under as an exhibit -- or exhibits.

1 THE COURT: Okay. Thank you.

2 MR. JOHNSON: Welcome.

3 (Defendants' Exhibits DD & EE received
4 in evidence with attachments.)

5 MR. BLOCK: And the last exhibit, Mr. Pinoli,
6 I'd like to show you Exhibit 40.

7 (Plaintiff's Exhibit 40 was identified.)

8 Q (BY MR. BLOCK) And what is Exhibit 40?

9 A Exhibit 40 is another contemporary example of
10 Mendocino Railway receiving a request for service. This
11 is received to us by Diesel -- Dieselmotive Company,
12 Inc. They have had equipment stored on the NCRA line in
13 Willits, California, and had been given notice to move.

14 They're -- and they needed -- one, they needed
15 a switch moved subject to Mendocino Railway's tariff out
16 of the NCRA tracks and then they needed a place to store
17 it and were able to store it on CWR tracks at Willits.

18 Q And that is a freight rail service that you are
19 performing for Dieselmotive pursuant to Exhibit 40?

20 A We received the request on Sunday, the 6th of
21 November, so this past Sunday. The agreement was signed
22 and we -- we have moved the equipment already.

23 MR. BLOCK: I have no further questions, Your
24 Honor.

25 THE COURT: All right. Do you want to take a

1 break before you --

2 MR. JOHNSON: Sure, Your Honor.

3 THE COURT: -- do your cross?

4 All right. Let's return at 10:35.

5 (Recess taken.)

6 THE COURT: Okay. Mr. Johnson.

7 MR. JOHNSON: All right.

8 MR. BLOCK: I just realized -- I wasn't sure if
9 I offered Exhibit 40 into evidence at the end?

10 THE CLERK: No.

11 THE COURT: No.

12 MR. BLOCK: Okay. I'd like to offer Exhibit 40
13 into evidence.

14 MR. JOHNSON: Your Honor, that was the document
15 that was made five days ago or something, but --

16 THE COURT: Yeah. Yes. I'm concerned, again,
17 this is after trial evidence and you weren't the one
18 that made the motion, Counsel.

19 I mean, I -- it is additional information, it
20 may or may not be helpful at this point given the time
21 frame. I'd be inclined to receive it --

22 MR. JOHNSON: That's fine.

23 THE COURT: -- and give it whatever weight I
24 deem necessary.

25 MR. BLOCK: Thank you, Your Honor.

1 THE COURT: Forty will be received.

2 (Plaintiff's Exhibit 40 received in evidence.)

3 THE COURT: All right. Mr. Johnson.

4 - - -

5 FURTHER RECROSS-EXAMINATION

6 Q (BY MR. JOHNSON) Okay. Mr. Pinoli, will you
7 look at Exhibit AA which is the retirement board
8 decision.

9 A Okay.

10 Q All right. If you go to the top of the second
11 page, page 2 --

12 A Okay.

13 Q -- it states: "Mendocino's ability to perform
14 common carrier services is thus limited to the movement
15 of goods between points on its own line, the service it
16 does not perform."

17 Do you see that?

18 A I do.

19 Q And I believe you testified the last time we
20 were here that that's a true statement; is that true?

21 A At the time that this opinion was issued in
22 2006, yes.

23 Q It was a true statement?

24 A Uh-huh.

25 Q And you still believe that to be a true

1 statement today as of the writing of this decision?

2 A Well, with respect to Exhibit 40, no, because
3 we just took something at NCRA and moved it to CWR.

4 Q Well, let me clarify my question. My question
5 was, a week or so ago when we were here last, you
6 testified that as of the writing of this decision, that
7 was a true statement; correct?

8 A Yes, sir.

9 Q And has your opinion on that changed at all?

10 A It has given the current movement that we did.

11 Q So do you believe that that -- that this
12 statement made in this decision is in -- is not true?

13 A Well, for -- when the statement was issued --
14 and this decision was in 2006, and so I believe it to be
15 correct as it related to the year 2006.

16 Q And you still believe that today?

17 A Yes, sir.

18 Q All right. I'm not talking about anything
19 involving what's going on today in 2022.

20 Okay. And then would it be correct to say, you
21 know, that -- Exhibit A references common carrier
22 services and states Mendocino doesn't have the ability
23 to perform common carrier services and does not perform
24 common carrier services. Would it be correct to say
25 that common carrier services is defined as the

1 transportation of passengers or property by railroad?

2 A Yes.

3 Q Okay. And if you look at Exhibit BB, this is
4 the letter dated April 27th, 2022, to Shirley C. Moore,
5 Coverage Specialist, Railroad Retirement Board in
6 Chicago, Illinois, from Crystal Zorbaugh, attorney for
7 Mendocino Railway.

8 A Yes, sir.

9 Q Do you have that document?

10 A I do.

11 Q Crystal Zorbaugh is the attorney for Mendocino
12 Railway; correct?

13 A That is correct.

14 Q Okay. If you look at the second page of this
15 document -- well, actually if you look at the first page
16 of this document, just to clarify, this document, it
17 states in the first sentence (Reading):

18 "Mendocino Railway is writing to
19 request that the Railroad Retirement
20 Board revisit a prior coverage decision
21 based upon a change in circumstances,
22 specifically on September 28, 2006,
23 the RRB issued B.C.D. 06-42.1, a
24 determination of the RRB, concerning the
25 status of Sierra Entertainment and

1 Mendocino Railways as employers under
2 the Railroad Retirement Act and the
3 Railroad Unemployment Insurance Act."

4 And my question to you is, is that reference to
5 the decision, 06-42.1 -- is that the decision that we
6 were just looking at in Exhibit AA to your knowledge?

7 A I believe so.

8 Q Okay. So would it be correct to say this
9 letter is requesting that the retirement board
10 re-evaluate Mendocino Railway's employer status as it
11 relates to the decision in reference -- as referenced in
12 Exhibit AA?

13 A Yes.

14 Q And if you go to page 2 of this document,
15 Document BB, on the second page, the second paragraph,
16 the second sentence, it says (Reading):

17 "Due to these opportunities and
18 other changes, effective January 1,
19 2022, Mendocino Railway took over
20 direct operating responsibility from
21 Sierra Northern Railway for freight
22 services over its rail line. Based
23 upon these changes and circumstances
24 and in light of the RRB's B.C.D.
25 06-42.1 decision, Mendocino Railway

1 believes that it has become a 'carrier'" --
2 and carrier's in quotation marks -- "under
3 the Act, effective January 1, 2022?"

4 Do you see that?

5 A Yes.

6 Q Is that a true statement?

7 A Yes.

8 Q All right. And when it's referencing carrier
9 in that statement in quotation marks, is that
10 effectively relating to -- or effectively mean common
11 carrier?

12 A Correct.

13 Q So the term "carrier" and "common carrier" are
14 kind of interchangeable; is that correct?

15 A I believe that's what Ms. Zorbaugh's referring
16 to.

17 Q All right. So based upon your statement,
18 effectively Mendocino Railway does not believe it became
19 a common carrier until January 1, 2022; is that correct?

20 A When it took over the operations from Sierra
21 Northern Railway?

22 Q That's correct.

23 A Yes.

24 Q Yes?

25 A Yeah.

1 Q So the discussion that you've had today with
2 Mr. Block and the Court regarding Mendocino Railway
3 transporting passengers or freight prior to January
4 2022, that discussion seems to be inconsistent with the
5 statements that are made in this Exhibit BB relating to
6 your carrier service; correct?

7 A Yes. And we pointed out those inconsistencies.

8 Q All right. And it's true -- it's correct to
9 say that in this trial there's been no evidence of
10 receipts reviewed in court for freight allegedly
11 transferred -- transported on the line by Mendocino
12 Railway or any other company; correct?

13 A There was no request made during the discovery
14 and information request process.

15 Q Well, my question to you is, during this trial
16 we've not reviewed any receipts related to any freight
17 allegedly transported on the line by Mendocino Railway
18 or any other company; correct?

19 A That's correct.

20 Q All right. And during this trial we've
21 reviewed no receipts related to any commuter passenger
22 or commuter transportation that occurred on the line by
23 Mendocino Railway or any other company; correct?

24 A That's correct.

25 MR. JOHNSON: I have no further questions, Your

1 Honor.

2 THE COURT: All right. Anything further?

3 MR. BLOCK: No further questions, Your Honor.

4 THE COURT: So we're all done here,
5 Mr. Johnson, then?

6 MR. JOHNSON: Yes, I believe we're done.

7 THE COURT: Okay. Anything else, Counsel?

8 MR. BLOCK: No, Your Honor.

9 THE COURT: All right. So then let's go off
10 the record and discuss how we're going to handle
11 closing.

12 (Discussion held off the record.)

13 THE COURT: All right. Let's go back on the
14 record.

15 So we've had an off-the-record discussion
16 regarding the closing briefs and we've decided that the
17 parties will submit simultaneous closing briefs on
18 January 23rd of 2023 and then they will also submit
19 simultaneous reply briefs on February 8th of 2023, and
20 then the matter will be deemed under submission as of
21 February 8 of 2023.

22 Okay?

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Thank you very much.

25 MR. BLOCK: Thank you, Your Honor.

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THE WITNESS: Thank you, Your Honor.

(Proceedings concluded at 10:50 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the above transcript of proceedings was taken down, as stated in the caption, and that the foregoing 55 pages represent a complete, true and correct transcript of the proceedings had thereon.

DATED: November 22, 2022.

Trisha R. Hathaway-Link
TRISHA R. HATHAWAY-LINK, CSR 10866
COURT REPORTER