IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

A168497 & A168959

MENDOCINO RAILWAY
Plaintiff–Appellant,

v.

JOHN MEYER
Defendant-Respondent.

On Appeal from the Superior Court of California,
County of Mendocino
(Case No. SCUKCVED202074939, Hon. Jeanine Nadel)

APPELLANT'S OPENING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The undersigned, counsel for Appellant Mendocino Railway, certifies that Sierra Railroad Company ("SRC") owns 100% of the stock of Mendocino Railway. SRC is a stock-holding company with numerous shareholders, two of whom own more than 10% of the SRC stock: Mike Hart and the Magaw Living Trust.

DATED: September 26, 2024

Respectfully submitted,

By: /s/ PAUL J. BEARD II
Attorneys for Appellant
MENDOCINO RAILWAY

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I. INTRODUCTION

This appeal concerns the efforts of a common-carrier railroad, Appellant Mendocino Railway, to expand its freight-transportation capabilities on its 139-year-old, rail line—the California Western Railroad ("CWR")—that runs 40 miles between Fort Bragg and Willits, California. After a diligent search, the railroad identified property owned by Respondent John Meyer and located on the Willits end of the CWR as the ideal location for construction of a much-needed freight transload facility and related rail improvements. So, after unsuccessful negotiations, Mendocino filed an eminent-domain action to acquire the land. As a federally licensed, common-carrier railroad, Mendocino is a public utility with authority to exercise eminent domain for railroad purposes.

Following a six-day bench trial in Mendocino County Superior Court, the trial court found that there really wasn't a public need for Mr. Meyer's property, and that Mendocino hadn't sufficiently established that its project would cause the least private harm. But the court went much further, purporting to strip the railroad of its well-established status as a common-carrier public utility. The court reached all of its findings based on a fundamental misunderstanding of common-carrier law, a misinterpretation of certain state- and federal-agency decisions, and an astonishing refusal to credit the unrebutted testimony of the trial's sole witness: Mendocino's President, Robert Pinoli. This,

after the trial court had declared—four days into the trial—that Mr. Pinoli was "credible, articulate, and very knowledgeable." RT 693:13-15. The trial court's errors are decidedly prejudicial; had the court averted them, it would have been compelled to acknowledge Mendocino's status as a common-carrier public utility and the railroad's satisfaction of all the "eminent domain" criteria necessary to acquire Mr. Meyer's property.

The trial court's decision threatens, not just a much-needed rail infrastructure project with extraordinary public benefits, but the very existence of a historic railroad that "remains a vital link between Willits and the coastal communities" of California. CT 186. This Court should reverse with instructions to rule in Mendocino's favor and award costs on appeal to Mendocino. The Court also should reverse the trial court's award of attorneys' fees to Mr. Meyer, which was solely based on his status as the prevailing party.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The 139-Year-Old California Western Railroad Is Part of the Interstate Rail System Within the Exclusive Jurisdiction of the Federal Surface Transportation Board

The CWR runs 40 miles from the railroad's main station in Fort Bragg to its eastern depot in Willits ("Willits Depot"). RT 64:19-22, 65:3-6, 66:6-13. The CWR has been in existence since 1885, when the line was built as a means of hauling felled redwood trees from the surrounding forest to a lumbermill on the coast of

Fort Bragg. RT 66:15-21. Soon after its construction, the railroad expanded to include passenger service between Fort Bragg and Willits, and points in between. RT 66:22—67:4; CT 1332 (2003 court decision from CWR bankruptcy, noting that the line "has also provided significant passenger service since 1912").

Although its 40-mile line is wholly intrastate, the CWR is part of the "interstate rail network," bringing the railroad within the exclusive jurisdiction of the Surface Transportation Board ("STB"). 49 U.S.C. § 10501(a)(2)(A), 10501(b); *Friends of Eel River v. North Coast R.R. Auth.* (2017) 3 Cal.5th 677, 707 (same). On the Willits end, the CWR connects to the Northwestern Pacific Railroad ("NWP") line and the National Railroad Passenger Corporation (Amtrak), which is the national passenger railroad company of the United States. CT 1155, 1717; RT 41:8-17, 284:2-4, 702:19—703:8. Both the NWP line and Amtrak connect to the Union Pacific Railroad Mainline, thereby linking Mendocino Railway to the rest of the interstate rail network. CT 1014:25—1015:1, 1332-33, 1717; RT 41:16-19, 351:26-28; see also *Meyer v. Capital Crossing Bank (In re Cal. W. R.R.)* (2003) 303 B.R. 201, 203 ("At Willits, California Western owns a depot which is located on the Northwestern Pacific (NWPY) track, on which California Western has trackage rights. California Western connects to the NWPY track, which connects to the Union Pacific Railroad mainline. . . . Amtrak allows California Western to have access to the Union Pacific Mainline.").

The NWP line has been temporarily "embargoed," meaning that no freight and passenger traffic currently runs over the line. RT 909:3-10. While an "embargo can be imposed by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations," "[u]nder its common carrier obligation, the embargoing railroad must restore service within a reasonable period of time." *Decatur County Comm'rs v. Surface Transp. Bd.* (2002) 308 F.3d 710, 715 (7th Cir.). But most important, even while embargoed, the line remains within the exclusive jurisdiction of the STB unless and until such time that the STB issues a formal certificate for the line's abandonment or discontinuance on the finding that "the present or future public convenience and necessity require or permit" it. 49 U.S.C. § 10903(d); *see also Hayfield N.R. Co. v. Chi. & N.W. Transp. Co.* (1984) 467 U.S. 622, 628, 633 (holding that "authorization of an abandonment" is what "brings [the STB's] regulatory mission to an end" and "terminates [its] jurisdiction"); *Bar Ale, Inc. v California Northern R.R. Co. and Southern Pacific Transp. Co.*, STB Finance Docket No. 32821 (July 20, 2001) (holding that an embargo cannot be used by railroad to unilaterally abandon or discontinue service on line at its own election). As one federal court of appeals put it, "[a] line or railroad may not be taken out of the national rail system, and a railroad may not be relieved of its common carrier obligation, unless the carrier first obtains abandonment authority from the STB." *Borough of Columbia v. Surface Transp. Bd.* (2003)

342 F.3d 222, 225; *see also Meyer*, 303 B.R. at 203 ("There is no basis for the argument that a railroad ceases to be involved in interstate commerce because it is temporarily isolated from the rest of the national rail network or tourism has replaced freight as its primary source of income.").

The NWP line has "not [been] taken out of the national rail system," and the carrier has "not [been] relieved of its common carrier obligation," precisely because the carrier has not "obtain[ed] abandonment authority from the STB." *Borough of Columbia* 342 F.3d at 225. The NWP line therefore "remains subject to the STB's jurisdiction" and a part of the interstate rail network, such that CWR, too, is a part of said network. CT 1923.

B. Mendocino Acquires the CWR Out of Bankruptcy and Becomes a Common Carrier Railroad

In 2002, the CWR's then owner—California Western Railroad, Inc. ("CWRR")—filed for Chapter 11 bankruptcy under Subchapter IV (Railroad Reorganization). CT 1332. Several entities sought to purchase the CWR out of bankruptcy, including Mendocino's parent company, Sierra Railroad Company ("SRC"). CT 1333. Because the CWR was an STB-regulated railroad, the bankruptcy court was required to weigh the public interest in deciding which entity should be permitted to acquire the CWRR's railroad assets. *Id.* The court ultimately chose Sierra. While Sierra did not offer the highest bid, the court was impressed with Sierra's "railroad resume," its experience with (among other things) "heavy

freight operations," and its recognition that the railroad "is still a valuable instrument of commerce." CT 1335-36.

Because the CWR line was (and is) within the STB's exclusive jurisdiction, the court ordered Sierra to "promptly seek, at its expense, Surface Transportation Board approval to acquire the railroad assets of" CWR. CT 1328-29; *see also* 49 U.S.C. 10901 ("A person may . . . acquire a railroad line . . . only if the Board issues a certificate authorizing such activity . . . ."). "[T]he sale of active rail[road] lines" within the STB's jurisdiction "is subject to the STB's prior approval." *Bhd. of Maint. of Way Employees Div. v. Burlington Northern Santa Fe Ry. Co.* (2010) 596 F.3d 1217, 1220 (citing 49 U.S.C. § 10901). "In particular, the acquisition of an active rail[road] line and the corresponding transfer of common carrier obligations ordinarily requires prior STB approval, even if the acquiring entity is not presently a common carrier." *Burlington*, 596 F.3d at 1220. STB approval generally requires submission of a formal application containing information about the purchaser and the proposed use of the line, including operational, financial and environmental data. 49 C.F.R. § 1150.1 *et seq*. But certain classes of transactions are exempt from the full certification requirements and benefit from a streamlined approval process that requires the purchasing entity to simply file a verified "notice of exemption" with the STB, which the STB then publishes in the Federal Register; in the absence of an objection,

the exemption—and STB approval of the acquisition—becomes effective. 49 CFR §§ 1150.32, 1150.33.

Once the approval becomes effective, the purchaser assumes the common-carrier obligation attached to the line—*i.e., the entity becomes an STB-regulated common carrier*. *Burlington*, 596 F.3d at 1220 (stating that "the acquisition of an active rail line" entails "the corresponding transfer of common carrier obligations" that "requires prior STB approval, even if the acquiring entity is not presently a common carrier"); *see also Bhd. of R.R. Signalmen v. Surface Transp. Bd.* (2011) 638 F.3d 807, 812 ("[T]he STB has defined 'railroad line' to include not only physical railroad property but also the interstate freight transportation authority attached to the physical property."). "A rail carrier providing transportation or service subject to the jurisdiction of the Board . . . *shall* provide the transportation or service on reasonable request" even over other "[c]ommitments" that the carrier may have. 49 U.S.C. § 11101(a).

Sierra created a subsidiary, Mendocino Railway, as "a California corporation formed for the purpose of acquiring and operating the CWR."[1] 69 Fed. Reg. 18999 (Apr. 9, 2004) (copy at CT 1341); *see also* CT 1315-19 (Mendocino Railway's corporate documents filed with the Secretary of State). Consistent with the bankruptcy court's order, Mendocino sought and obtained STB approval to purchase the CWR. CT 1321, 1340; 69 Fed. Reg. 18999

[1] The CWR is also known by way of its historic nickname: "Skunk Train." TR2, 112:16-21.

(copy at CT 1341). Mendocino Railway intended initially to operate CWR with the help of Mendocino Railway's affiliated entities: Sierra Northern Railway ("SNR"), a common-carrier railroad; Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company); and Sierra Entertainment (a tourism, entertainment, and passenger operations company). 69 Fed. Reg. 18999 (copy at CT 1341). Once Mendocino acquired the CWR, it became an STB-regulated common-carrier railroad. *Burlington*, 596 F.3d at 1220.

Since its 2004 acquisition of the CWR, Mendocino has operated roundtrip excursions on the line. CT 2037. But that excursion service has neither excused nor prevented Mendocino from carrying out its common-carrier obligation to also offer freight and non-tourist-passenger services to the public. In fact, the record shows that Mendocino Railway has continuously offered *and* performed commuter-passenger and freight rail transportation services along the CWR, even after through-service along the entire length of its line was interrupted in 2015. *See, e.g.*, CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares); RT 90:24—91:15, 311:4—312:7, 312:25—313:14.

That year, a negligent contractor collapsed a tunnel along the line ("Tunnel No. 1"), causing the line to be severed. CT 2037;

RT 915:10-19, 916:7-18, 919:1-6, 975:10-15. Despite the collapse, Mendocino has still been able to offer and perform non-excursion passenger and freight transportation on either side of the tunnel. RT 78:17-20, 104:4-18, 348:5-17, 975:10-22; CT 1152 (map of line, marked with "T1" (Tunnel No. 1) and "T2 (Tunnel No. 2)). As Mr. Pinoli explained, the tunnel collapse "hasn't stopped the railroad from getting people to their remote residences or summer camps" or "transporting goods and services to property owners along the route." RT 104:9-14.

Since the Tunnel No. 1 collapse, Mendocino Railway also has worked tirelessly and expended significant resources to reopen the tunnel so that freight and passenger transportation across the entire 40-mile line can be restored. RT 97:18—98:9, 100:22-25. For example, in 2018, 2019, and 2020, it applied for Department of Transportation grants to improve and repair the line's infrastructure, including reopening Tunnel No. 1. RT 99:2—101:8. Most recently, Mendocino was awarded a "Railroad Rehabilitation & Improvement Financing" loan of over $21 million in 2024 by the Federal Railroad Administration ("FRA") to make repairs and improvement along the CWR, including repairs to reopen Tunnel No. 1. *See* Motion for Judicial Notice ("MJN"), Exh. 1.p In making the loan, the FRA recognized Mendocino Railway's status as a "Class III Surface Transportation Board licensed carrier." MJN, Exh. 2 (April 19, 2024, Letter from FRA to California Coastal Commission). The undisputed testimony at trial established that

Mendocino Railway has "[a]bsolutely" no intent "to cease providing freight rail services along its railroad between Willits and Fort Bragg," and—to the contrary—"intend[s] to continue to provide" both "passenger rail transportation services" and "freight rail transportation services" "to the public for the foreseeable future." RT 124:19-23, 312:8-11, 313:15-18.

Because Mendocino Railway is an STB-regulated common-carrier, it is a public utility by virtue of the California Constitution's declaration that all "common carriers . . . are public utilities." Cal. Const. Art. XII, § 3. Mendocino Railway also satisfies the statutory definition of a common-carrier public utility. A "public utility" is defined, in relevant part, as "every common carrier . . . where the service is performed for, or the commodity is delivered to, the public or any portion thereof." Pub. Util. Code § 216(a)(1); A "common carrier" is "every person and corporation providing transportation for compensation to or for the public or any portion thereof," including "[e]very railroad corporation." *Id.* § 211. This Court has construed "transportation" to mean the "taking up of persons or property at some point and putting them down at another" and not a round-trip tourist excursion. *City of St. Helena v. Pub. Util. Comm.* (2004) 119 Cal.App.4th 793, 902. Fundamentally, a common carrier is one who—*just like Mendocino Railway*—"holds himself out as such to the world" and "undertakes generally and for all persons indifferently to carry goods and deliver them for hire," such that "if he refuse, without some just

ground, to carry goods for any one, in the course of his employment and for a reasonable and customary price, he will be liable in an action." *Samuelson v. Pub. Util. Comm.* (1951) 36 Cal.2d 722, 729-30; *see also* CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares); RT 90:24—91:15, 311:10—312:7, 312:25—313:14.

As the record shows, Mendocino Railway's provision and performance of freight and non-excursion transportation on the CWR makes it a common-carrier public utility under the Public Utilities Code.

C. Mendocino Seeks To Expand Its Common-Carrier Capabilities at Its Willits Location, Leading It To Meyer's Property

Mendocino's Fort Bragg station is fully developed as a rail facility, with, among other things, a variety of tracks, a depot building, locomotives, passenger and freight cars, maintenance-of-way equipment, a roundhouse (where freight railcars, passenger railcars, and locomotives are maintained and repaired) and a speeder shed for storage of railroad equipment, all of which is used for freight, passenger, and excursion rail transportation operations. While not as well-developed as Mendocino Railway's Fort Bragg station, its Willits station has, among other things, a train depot located on the NWP line (over which Mendocino has certain trackage rights), tracks of its own, an open-air

maintenance area, and storage for rail cars, railroad tools and maintenance-of-way equipment. CT 1155 (photo depicting Willits station assets); CT 1157-1160 (railroad assets at Fort Bragg and Willits stations); CT 1332-33 (bankruptcy court memorandum describing Willits assets), RT 79:11—80:7, 84:24—85:10, 166:25—167:2, 226-27.

At present, Mendocino lacks adequate maintenance and repair facilities sufficient to fully serve its ongoing and future freight operations at the Willits end of its line. Specifically, Mendocino does not have adequate maintenance or repair facilities, yard space, equipment storage space, or dedicated areas for its growing freight operations. Instead, Mendocino's maintenance and repair activities take place at impermanent facilities and outdoors on the tracks at the Willits end of the line. RT 218:20—220:16, 226:16-24, 231:23-28, 263:6-15, 509:13-22.

Various local businesses have expressed interest in obtaining freight transloading at Willits—something that Mendocino cannot currently provide at that end of its line. Transload facilities would allow commodities and other freight to be taken off trucks and loaded into rail cars for transportation to their destinations, and vice-versa. RT 43:23—43, 706:13-22. The efficiencies that such a transload facility provide are "extraordinary," as "[y]ou can get as much material on one railcar as four trucks." RT 44:3-7. Potential customers expressing interest for transloading services at Willits include, among others, Flow

Beds, North Coast Brewing Company, Geo Aggregates, Redwood Coast Fuels (and other natural gas companies), and Lyme Redwood Forest Company (and other timber companies). *See, e.g.*, CT 1513-23 (letters of customer interest); RT 246:13—251:14, 252:7-15.

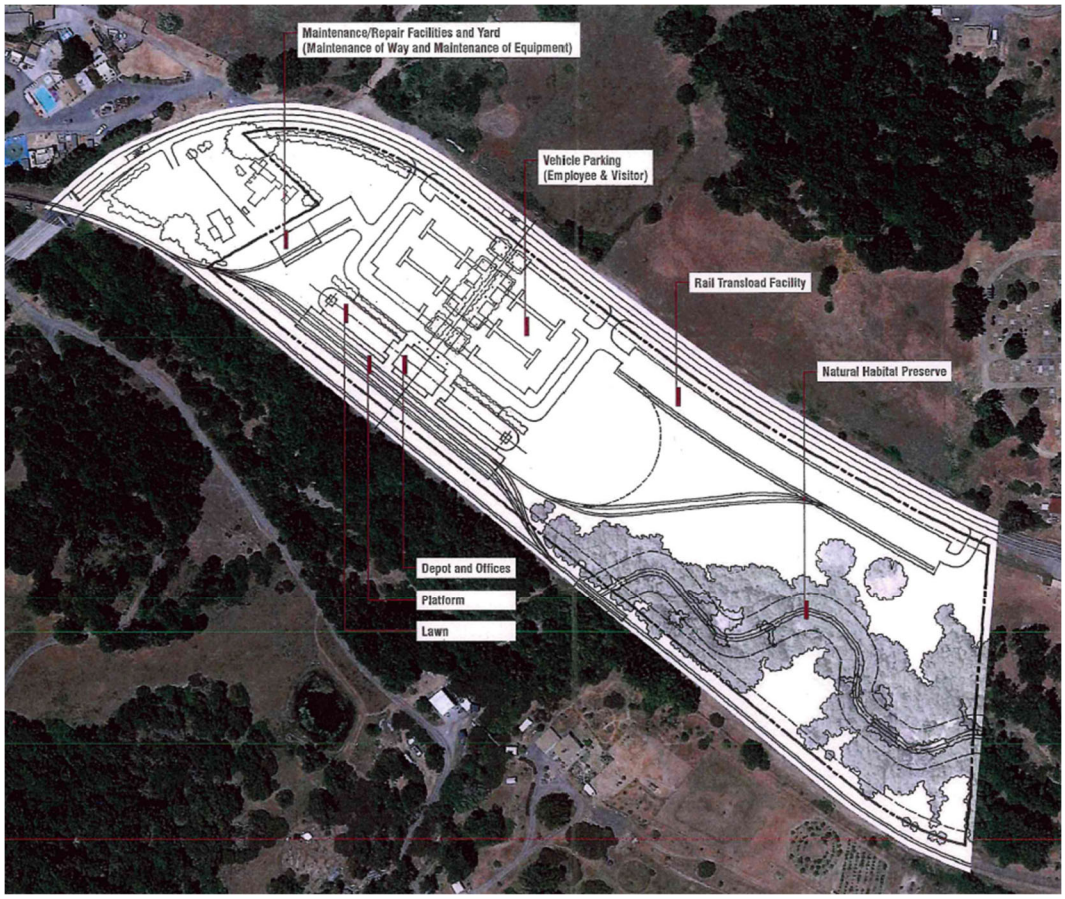
After evaluating different properties in the Willits area, Mendocino identified Mr. Meyer's undeveloped property as the ideal location for construction of the needed facilities. RT 220-223, 407, 427:21-22 (noting Mr. Meyer's property is "vacant" with only "temporary or mobile" buildings).

D. Mendocino Files an Eminent Domain Action and the Trial Court Rules in Meyer's Favor

As a common-carrier, public-utility railroad, Mendocino Railway "may condemn any property necessary for the construction and maintenance of its railroad." Pub. Util. Code § 611. Thus, following failed negotiations with Mr. Meyer, Mendocino filed a Complaint in Eminent Domain on December 22, 2020, to acquire his 20-acre parcel, located at 1401 West Highway 20 in the County of Mendocino. CT 14, 2036.

As described in Mendocino Railway's complaint, the project would consist of "construction and maintenance of rail facilities related to [its] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto." CT 15. Specifically, the plan would be to construct a rail transload facility, a passenger depot and offices, maintenance-and-repair facilities,

storage tracks, a wye track (allowing locomotives to turn around), and sidings and spurs (for storing rail cars). CT 2256; RT 227:6-25, 229:6-12. Below is Mendocino's preliminary site plan, depicting the transload facilities and other railroad improvements that Mendocino Railway would construct on the subject property.



CT 1156.

A bench trial was held over four days in August and two days in November 2022. CT 2036. The parties filed closing briefs. CT 1954, 1985. On April 19, 2023, the trial court issued its "Decision After Trial" in favor of Mr. Meyer. CT 2036.

1. The Trial Court Denies MR's "Public Utility" Status

The trial court concluded that Mendocino was not a common-carrier public utility, thereby blocking the railroad's exercise of eminent domain. CT 2038-2040. This came as a shock to Mendocino given the evidence about its status that it had presented over the course of the trial's six days, the absence of any contrary evidence, and the trial court's statement at trial that the sole witness to testify—Mendocino's President, Robert Pinoli—was "very credible, articulate, and very knowledgeable." RT 693:13-15. In a surprising about-face, the court in its decision gave "little weight" to Mr. Pinoli's testimony and ultimately concluded that Mendocino operates little more than "a popular excursion train for sightseeing purposes." *See, e.g.*, CT 2038, 2040.

The court ignored the undisputed that Mendocino is an STB-regulated common-carrier railroad (Part II.B, *supra*), making it a public utility under article XII, section 3, of the California Constitution. See Argument II.B, *supra*. The court also discounted unrebutted testimony that, for the past two decades, Mendocino has offered and performed freight and non-excursion passenger transportation on the CWR, qualifying it as a public utility under the Public Utilities Code. RT 90:24—91:15, 311:4—312:7, 312:25—313:14. And, while citing language from one 1998 decision of the California Public Utilities Commission ("CPUC") to the effect that excursion services on the CWR are not a public utility "function," the court ignored other statements from the same decision, as well

as two later decisions of the CPUC, all of which clearly affirm that the line's then-owner (CWRR) remained a public utility in light of its non-excursion transportation offerings. CT 52, 56.

Instead, the court found that Mendocino was not a common carrier because, through 2021, its affiliated entity—SNR—was the one performing the work of transporting freight and non-excursion passenger transportation on Mendocino's behalf. CT 2039. That finding is only half true: The record establishes that Mendocino took over from SNR the work of transporting non-excursion passenger transportation on January 1, 2008 (well before the filing of the underlying action) and took over from SNR the work of transporting freight on January 1, 2022 (prior to the underlying trail). RT 867:14-26, CT 2100.

In addition, the court relied on a 2006 determination of a federal agency, the Railroad Retirement Board ("RRB"), to find that Mendocino Railway was not a common carrier. CT 2039. The court received the document into evidence after the trial was over, when the court granted Mr. Meyer's motion to reopen the trial over Mendocino Railway's objections. CT 933, 1140. In the 2006 determination, the RRB found that Mendocino Railway was not a railroad "employer" obligated to pay into a federal railroad retirement fund because, in relevant part, it was its affiliate *SNR* who had the employees performing the work of transporting freight and non-excursion passengers from 2004 to the end of 2021. CT 1917. The court seized on the RRB's 2006 determination as

"evidence" that Mendocino Railway was not a common carrier. CT 2039.

After the court rendered its Decision After Trial and entered judgment, Mendocino moved to reopen the trial to introduce a newly issued determination by the RRB that corrected the misleading language in the 2006 determination about Mendocino's "common carrier" status. CT 2102. The RRB's 2023 determination clarifies that, "[i]n fact, until January 1, 2022, Mendocino was meeting its common carrier obligations through the affiliate arrangement with Sierra Northern Railway." CT 2100. Despite having reopened the trial to allow Mr. Meyer the opportunity to introduce the 2006 determination, the trial court *denied* the same opportunity to Mendocino to put the 2023 determination into evidence. CT 2219.

Finally, the court largely disregarded Mr. Pinoli's unrebutted testimony of Mendocino's historic and present provision of freight and non-excursion passenger transportation services because Mendocino did not also produce "documentary evidence" of such transportation in the form of "ticket receipts," "ledgers," or "contracts." CT 2040 (citing "best evidence" rule and CACI No. 203).

2. The Trial Court Finds That Mendocino Does Not Satisfy the Requirements for Eminent Domain

Assuming that Mendocino was a public utility, the court proceeded to analyze whether the railroad met the requirements

for exercising eminent domain as to Mr. Meyer's property. Those requirements are: "(a) the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." Civ. Proc. Code § 1240.30.

First, the court reiterated its view that Mendocino operates only an excursion service, such that, in the court's view, the proposed project stood to enhance only that private use. CT 2041.

Second, the court took issue with what it saw as the absence of a concrete and fully-developed plan for the proposed property that demonstrated—to the court's satisfaction—a commitment to developing the property for non-excursion transportation purposes. CT 2041-42. The court misconstrued the import and effect of certain early emails from one of Mendocino's directors, who floated the notion of a campground and RV park—a notion that Mendocino's own president, the final decisionmaker, testified he never would have implemented. CT 2041; RT 307:1-10. The court disregarded Mendocino's *actual* site plan for the property, which depicted the transload facilities, railroad maintenance and repair facilities, a depot, a rail yard, and other rail-related improvements, on the grounds that this plan was developed after the underlying action was filed. CT 2041-42. Because of the site plan's timing, the court questioned Mr. Pinoli's credibility when he testified, in no uncertain terms, that the project would consist of

freight-transload facilities and associated railroad improvements. CT 2042.

Ultimately, the court concluded the project achieved no discernible public use. The court also gave little weight to his assurances that the project would cause little to no impact to residents in and around the subject property. CT 2042. For these reasons, the court held that Mendocino did not satisfy "the statutory requirements of public use and least private injury." CT 2041.

E. The Court Adopts Its "Decision After Trial" As Its Statement of Decision and Enters Judgment

It was unclear to Mendocino whether the trial court's April 19, 2023 "Decision After Trial" was a tentative decision or the court's proposed statement of decision, especially as (in Mendocino's view) the decision did not fully explain the factual and legal bases for each of the controverted issues. Thus, Mendocino moved for a formal statement of decision or, in the alternative, lodged objections to the "Decision After Trial." CT 2044.

The court denied Mendocino's motion and adopted its "Decision After Trial" as its formal statement of decision. CT 2059. The Court entered judgment on June 2, 2023. CT 2061.

F. The Court Denies Mendocino's Post-Judgment Motions, And Mendocino Timely Appeals

Following entry of the judgment, Mendocino filed two motions: (1) a motion to reopen the trial to introduce the RRB's

2023 determination (referenced above) that made clear the RRB's position that Mendocino has always been a common carrier, and (2) a motion to set aside and vacate the court's premature judgment on the basis that Mendocino was deprived of an opportunity to comment on the proposed judgment offered by Mr. Meyer and signed by the court. CT 2102, 2105. The court denied both motions on July 11, 2023. CT 2154, 2219.

That same day, Mendocino timely appealed the judgment. CT 2238.

G. The Trial Court Grants Meyer's Attorneys' Fees

Mr. Meyer, as the prevailing party, moved for attorneys' fees. Mendocino opposed the motion. On August 18, 2023, the trial court entered an order awarding Mr. Meyer $265,533.50 in fees, and the court subsequently entered an amended judgment to include said award. CT 2240. Mendocino appealed. On July 8, 2024, this Court consolidated the appeals of the judgment and the fee order.

III. STANDARD OF REVIEW

The Court reviews "questions of law de novo." *RSCR Inland, Inc. v. State Dept. of Public Health* (2019) 42 Cal.App.5th 122, 131. "Where there is an issue of statutory interpretation, courts will review such questions de novo and apply the principles of statutory construction." *Fair Education Santa Barbara v. Santa Barbara Unified School Dist.* (2021) 72 Cal.App.5th 884, 895]. Specifically, the Court "review[s] de novo rulings on questions of law such as

interpretation of . . . municipal codes." *Sieg v. Fogt* (2020) 55 Cal.App.5th 77, 88.

The Court "appl[ies] the substantial evidence rule to the trial court's findings of fact." *RSCR*, 42 Cal.App.5th at 131. "Substantial evidence is evidence that is of ponderable legal significance, reasonable in nature, credible, and of solid value, and substantial proof of the essentials which the law requires in a particular case." *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1006 (cleaned up).

Next, the Court reviews a trial court's evidentiary rulings for "abuse of discretion." *Miyamoto v. Department of Motor Vehicles* (2009) 176 Cal.App.4th 1210, 1217. But the standard, while deferential, is not without teeth. In *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355, the Supreme Court explained: "[T]rial court discretion is not unlimited. The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown."

Finally, a judgment will be reversed only upon a showing of prejudicial error. The appellant must how that "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." *Rodriguez v. Parivar, Inc.* (2022) 83 Cal.App.5th 739, 756. "A 'reasonable probability' does not mean more likely than not, but merely a

reasonable chance, more than an abstract possibility." *Id.* at 757 (cleaned up). Indeed, "reversal is necessary when it cannot be determined whether or not the error affected the result." *Id.*

IV. ARGUMENT

A. Mendocino Railway Is Indisputably a Public Utility

1. Mendocino Is a Common-Carrier Railroad That Has Continuously Provided Freight and Non-Excursion Passenger Transportation to the Public for Compensation

Mendocino's historic and continued provision of common-carrier services, its dedication of its railroad assets to common-carrier transportation, and the STB's long-standing recognition of Mendocino as a common carrier support the railroad's status as a public utility.

a. Background Law

As explained above, under the California Constitution, all "common carriers" are "public utilities." Cal. Const. art. XII, § 3. A "common carrier" is "every person and corporation providing transportation for compensation to or for the public or any portion thereof," which includes "[e]very railroad corporation." Pub. Util. Code § 211. A "railroad corporation" includes "every corporation or person owning, controlling, operating, or managing any railroad for compensation within this State." *Id.* § 230.

The Public Utilities Code does not define the terms "providing" and "transportation." "In the absence of a statutory definition, [courts] may look to dictionaries to ascertain the

ordinary, usual meaning of a word or phrase." *San Jose Unified School Dist. v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967, 976. The American Heritage Dictionary's first definition of "provide" is "make available."[2] Similarly, the Collins English Dictionary reports that the most common usage of the term conveys the idea of "mak[ing] available."[3] In other words, to provide a service is to *offer* it by making it available. But to provide something to someone does not necessarily entail the receiver's acceptance or use of that thing. *See, e.g., Meda v. AutoZoners, LLC* (2022) 81 Cal.App.5th 366, 378 (applying the dictionary definition of the term "provide," contained in a regulatory wage order, as "mak[ing] available" or "present or ready for immediate use").

Applying the ordinary meaning of "provide," to "provid[e] transportation" under section 211 is to make transportation available to the public, without any requirement or expectation that many, some, or even anyone at all will use the transportation being made available. This use of the term "provide" is consistent with the well-settled view that it is the *dedication* of property for public use that renders the provider a public utility. "[A]lthough not expressly contained in article XII, section 3, the state Constitution also requires a *dedication* to public use to transform private businesses into a public utility." *Independent Energy*

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[2] Available at https://www.ahdictionary.com/word/search.html?q=provide

[3] Available at https://www.collinsdictionary.com/us/dictionary/english/provide

Producers Assn., Inc. v. State Bd. of Equal. (2004) 125 Cal.App.4th 425, 442 (emphasis added). "The test for determining whether dedication has occurred is whether or not a person has *held himself out*, expressly or impliedly, as engaged in the business of supplying a service or commodity to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served by his system, contradistinguished from his holding himself out as serving or ready to serve only particular individuals, either as an accommodation or for other reasons peculiar and particular to them." *Id.* at 442-43 (emphasis added). "The essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefiniteness or unrestricted quality that gives it its public character." *Story v. Richardson* (1921) 186 Cal. 162, 167.

Because the focus is on making transportation available to the public, the *volume* of transportation that the public actually uses is irrelevant to whether transportation has been *provided*. As the Supreme Court held, "a utility that has dedicated its property to public use is a public utility even though it may serve only one or a few customers." *Richfield Oil Corp. v. Public Utilities Com.* (1960) 54 Cal.2d 419, 431. Indeed, a public utility remains a public utility "no matter how the number of consumers" for its services may "dwindle[], even if it dwindle[s] to none at all." *Van Hoosear v. Railroad Com. of California* (1920) 184 Cal. 553, 557.

As for the term "transportation," caselaw has interpreted it to mean the "taking up of persons or property at some point"—such as commuter passengers and freight—"and putting them down at another. *City of St. Helena*, 119 Cal.App.4th at 902. The California Public Utilities Code broadly defines "transportation of persons" and "transportation of property" to include "every service in connection with or incidental to" the person or property transported. Pub. Util. Code §§ 208, 209.

b. <u>Evidence of Mendocino's Common-Carrier Status</u>

Mendocino is a common carrier because, as detailed below, it is a railroad corporation owning railway tracks, facilities, and property that it has historically used to make available, and continues to use to make available, passenger- and freight-transportation services for compensation to members of the public on the CWR. Pub. Util. Code §§ 211 (definition of "common carrier"), 230 (definition of "railroad corporation"), 229 (definition of "railroad"); CT 1315 (Exh. 18 (Mendocino Railway's corporate registration as a railroad)). The record unequivocally establishes that Mendocino has always offered and made available freight and non-excursion passenger transportation to the public for compensation.

Not only has Mendocino always made freight and passenger transportation services available on demand, but freight and non-excursion passengers have time and again *used* those services over

the last two decades. CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares); RT 90:24—91:15, 311:4—312:7, 312:25—313:14.

Such transportation services continued even after the 2015 collapse of Tunnel No. 1. RT 104:4-18. For example, from 2016 to 2019, Mendocino's "common carrier obligation" was fulfilled "by providing service to shippers/receivers located along the [CWR] Line on average three times a year." CT 1924. "That number increased in 2020/2021 and Mendocino began planning to rehabilitate the Line and market/solicit new business opportunities." *Id.*

Evidencing its dedication of the CWR to continued public use, as its predecessor owners had done since the turn of last century, Mendocino Railway published tariffs for its non-excursion passenger and freight services, publicly setting out "the rates that a common carrier or public utility charges the public who want to get items, people, or goods or services, from one point to another." RT 110-11; CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares). Freight and passenger tariffs have been in effect since before Mendocino acquired the CWR in 2004. *Id.*; RT 90:24—91:15, 311:4—312:7,

312:25—313:14. Mendocino does not discriminate as to which customers can accept its freight and passenger services; any member of the public can avail themselves of Mendocino's transportation offerings on the CWR. RT 111:16-22. Indeed, as an STB-regulated common-carrier railroad, federal law mandates that Mendocino "*shall* provide the transportation or service on reasonable request." 49 U.S.C. § 11101(a).

Mendocino intends to continue to offer passenger and freight rail services on the CWR pursuant to its tariffs. RT 312:8-11, 313:15-18. Indeed, given its plans to *expand* its freight and non-excursion passenger transportation offerings, Mendocino intends to purchase "additional equipment" for "significant infrastructure improvements along the line," including work on Tunnel No. 1, and "upgrad[ing] over 30,000 railroad ties and 2,000 sticks of rail." RT 150:2-11. These improvements will enable Mendocino to continue enhance its non-excursion passenger and freight rail services. RT 151:16-20.

As of the time of the filing of the underlying action in December 2020, "Mendocino Railway's freight operations consisted of carrying goods and/or services in to residents who live along the line" between Fort Bragg and Willits, including "equipment that would be used at various camps or . . . residences." RT 107:2-6. Mendocino "coordinate[s] with other public utilities such as AT&T or Pacific Gas & Electric Company," and "suppl[ies] them with transportation to transport people and equipment to work on their

infrastructure that may be adjacent to or on the railroad's property." RT 107:7-12. The transportation performed on the CWR has been for compensation. *See, e.g.*, RT 110:4-16.

Further, from 2020 to 2021, Mendocino engaged in the transportation of aggregate and steel structures for two streambed restoration projects on the CWR at the request of a member of the public, Trout Unlimited, whose primary focus is to restore streambeds and to make the habitat better for native species." RT 107:16—108:5. While Mendocino was providing transportation to Trout Unlimited, its "freight train was made a priority, and the railroad's excursion schedule was halted to yield to the freight operations of the railroad." RT 704:18-24. Again, this demonstrates Mendocino's unfettered dedication of its railroad to public use. The freight transportation that Mendocino performed for Trout Unlimited was for compensation. RT 110:4-16. And the public continues to avail itself of Mendocino's non-excursion passenger and freight rail transportation services. The Boys & Girls Clubs of San Francisco needed passenger transportation by Mendocino Railway to Camp Mendocino for its Summer 2023 campers and counselors. CT 1740. And, on November 5, 2022, Diesel Motive Company, Inc. entered into an Industry Track Storage Agreement with Mendocino Railway for storage of its freight rail cars on the CWR (interchanged at the NWP line in Willits). CT 1742.

While the 2015 Tunnel No. 1 closure has affected some of CWR's common-carrier services, it has not eliminated the offering and performance of such services. Instead, the closure has meant only that "a through freight car or locomotive or passenger car cannot go through the *entire* line at present" (i.e., between Fort Bragg and Willits). RT 90:3-6 (emphasis added); *see also* RT 104:16-18 (noting that because of the collapse, "a passenger car, a freight car, at present cannot travel freely between the towns of Fort Bragg and Willits"). Even since the Tunnel No. 1 closure, and as Mendocino diligently has worked to reopen the tunnel and fully restore all services across the entire 40-mile line (RT 99-100), Mendocino has provided and performed common-carrier services on the CWR line on either side of Tunnel No. 1. RT 104:9-14. The collapse "hasn't stopped the railroad from getting people to their remote residences or summer camps," or "from transporting goods or services to property owners along the route." *Id.*

In sum, Mendocino is a railroad corporation that has made available and performed common-carrier transportation services for compensation to the public since its acquisition of CWR. According to California's Constitution, California's Public Utilities Code, and caselaw, this makes Mendocino a public utility. And, as a public utility, Mendocino has the power to condemn property necessary for the construction and maintenance of its railroad. Pub. Util. Code § 610-11.

c. The STB's and CPUC's Recognition of Mendocino's Common-Carrier Status

As further evidence of Mendocino's "common carrier" status, the STB has recognized and regulated Mendocino as a common carrier for the CWR line. No evidence to the contrary was submitted to the trial court. Nor could it have been, as no such contrary evidence exists.

In 2004, the STB's approval was required for Mendocino to acquire the CWR's railroad assets, precisely because the CWR is a part of the interstate rail network and therefore imposes on its owner a common-carrier obligation. 69 Fed. Reg. 18999 (copy at CT 1341). Upon the STB's approval of the acquisition, CWRR relinquished its common-carrier rights and duties to Mendocino, who as of that moment became the STB-recognized common carrier on the CWR and assumed the responsibility for offering and making available freight transportation on the line. *Burlington*, 596 F.3d at 1220 (stating that "the acquisition of an active rail line" entails "the corresponding transfer of common carrier obligations" that "requires prior STB approval, even if the acquiring entity is not presently a common carrier"); *see also Bhd. of R.R. Signalmen*, 638 F.3d at 812 ("[T]ypically the noncarrier is acquiring the rail line in order to become a carrier and provide the transportation in place of the selling carrier, which typically relinquishes some or all of its right to use the line."). There is no legal principle or evidence

in the record refuting the fact that the STB regards and regulates Mendocino as a federally licensed common-carrier railroad.

In addition to the STB, the CPUC also recognizes Mendocino as a common carrier—specifically, a Class III railroad. CT 1257 (CPUC's published list of regulated railroads); CT 1259 (confirmation that Mendocino is "regarded as a Class III railroad by the California Public Utilities Commission"). A Class III railroad is also known as a "short line" railroad. RT 152:9—153:7. As Caltrans reported in its published plan to improve short line rail infrastructure in the State: "the network of short lines nationally is an integral part of the larger American freight railroad network." CT 1464 (Short Line Rail Improvement Plan). Not surprisingly, given its status in the eyes of the CPUC, Mendocino has long been regulated and inspected by that agency. *See, e.g.*, CT 1262 (Exh. 13 (sample CPUC inspection report)); RT-171:10-16 (testifying to regular rail inspections by CPUC since 1996 to the present).

2. The Trial Court Committed Several Prejudicial Errors in Denying Mendocino's Status As a Public Utility

The trial court based its conclusion that Mendocino is not a common-carrier public utility on a misunderstanding of common-carrier law, a misinterpretation of certain state- and federal-agency determinations, and an unjustified refusal to credit the testimony of Mr. Pinoli in the face of *no witnesses* and *no documentary evidence* offered by Mr. Meyer to refute said

testimony. Each of these errors is prejudicial because, had they not been committed, the outcome would have been different: The trial court would have affirmed Mendocino's status as a common-carrier, public-utility railroad.

First, the trial court found that Mendocino did not provide transportation under section 211 of the Public Utilities Code, because it is purportedly just an excursion operation—with freight and passenger transportation being "minimal" or even nonexistent.[4] CT 2039. But whether a railroad corporation like Mendocino "provid[es] transportation" under section 211 turns only on whether the railroad *offers* or *makes available* to the public passenger or freight transportation for compensation. The question does not turn on the volume of passengers or freight actually carried at any point in time. If that were the case, section 211 would more narrowly define a "common carrier" as "every

[4] The trial court's findings conflict on this issue. On the one hand, the court's decision acknowledges that Mendocino has transported freight and non-excursion passengers, while describing its excursion service as its "main," but not exclusive, function. CT 2037 (third full paragraph, line 1). The decision thus characterizes Mendocino's history of transporting freight and non-excursion passengers as "minimal," but nevertheless recognizes that Mendocino has in fact engaged in such transportation. CT 2039 (second full paragraph, lines 6-7). But elsewhere, the decision makes the extraordinary finding that 0% of Mendocino's revenue comes from transporting freight and non-excursion passengers. CT 2037 (third full paragraph, last line), 2039 (third full paragraph, lines 1-2). As explained below, there is no substantial evidence to support the court's findings that Mendocino is nothing more than excursion railroad.

person and corporation *transporting*"—not "*providing* transportation."

Even if volume were relevant, substantial evidence in the record fails to support the trial court's finding that no compensated freight or passenger transportation has occurred during Mendocino's ownership of the line. In its decision, the court stated: "Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities" and that "[t]he other 10% of its revenue comes from leases and revenue," with the inference being that no revenue has ever come from the carrying of freight or non-excursion passengers. CT 2039. However, that finding has absolutely no basis in the record and rests on the court's flawed extrapolation from one data point from one year.

The court's finding appears to be based on testimony about Mendocino's revenue from 2020. RT 926:26—928:17. Mr. Pinoli confirmed that, in *2020*, "approximately" 90% of revenue came from excursion operations, with the remaining 10% coming from leases and easements. RT 926:26—927-26. When pressed on whether the company earned exactly "zero income" for freight and commuter services in 2020, Mr. Pinoli demurred, observing: "I don't have a P&L [Profit and Loss spreadsheet] in front of me so I don't want to speculate . . . . I'm not going to be able to opine or comment further simply because guesswork is not something I take pride in." RT 927:27—928:9. In any event, Mr. Pinoli did not, as the trial court found, "clearly testif[y]" that Mendocino never

made any revenue from freight or passenger transportation on the CWR. CT 2039. Quite the contrary. Mr. Pinoli clearly testified that freight and commuter transportation had been performed on the line for compensation. *See, e.g.*, RT 110:4-16, 127:13-15, 327:3-9.

Second, the court found that Mendocino was not a common carrier because, from 2004 to 2021, Mendocino did not *itself* perform the actual work of transporting freight or non-excursion passengers. Instead, Mendocino contracted out that work to an affiliated entity, SNR, as its agent for such services. CT 2039. The trial court's analysis is fatally flawed for the following reasons:

- The trial court found that Mendocino "is a privately held corporation that owns" the CWR line. CT 2036. There is no dispute that Mendocino has *always* been the owner of that line since its acquisition in 2004. That finding is, by itself, sufficient to render Mendocino a "railroad corporation," which is defined as "every corporation . . . *owning*, controlling, operating, or managing any railroad for compensation within this State." Pub. Util. Code § 230 (emphasis added). Under that definition, an entity can be a railroad corporation as long as it owns the line, and even if it retains the services of an agent to perform the transportation. A railroad corporation "providing transportation" is, by definition, a common carrier (and therefore a public utility). *Id.* §§ 211, 216(a). There is no dispute that it is *Mendocino* that has continuously offered

and made available freight and passenger transportation on its CWR line to the public for compensation, as evidenced by Mr. Pinoli's testimony and the railroad's publicly available freight and passenger tariffs through the years. *See, e.g.*, CT 1162 (2022-present Freight Tariff naming Mendocino as the issuer and provider), 1171 (2022-present Passenger Tariff naming Mendocino as the issuer and provider), 1180 (2008-2021 Freight Tariff naming Mendocino as the issuer and provider); RT 311:10—312:7, 312:25—313:14. Conversely, there is no evidence that any another entity (such as SNR) has ever been the one to offer and make available such transportation other than on Mendocino's behalf, as Mendocino's agent.

- Even if it were legally relevant that Mendocino contracted out the physical work of transporting freight and passengers on the CWR line to an agent, the undisputed evidence establishes that Mendocino itself transported *non-excursion passengers*—a common-carrier obligation—since long before this eminent-domain action was filed. From 2004 to 2007, Mendocino contracted out to its affiliated entity and agent (SNR) the task of transporting non-excursion passengers on the CWR. But starting in 2008—12 years before this action was filed—Mendocino directly performed the work of transporting

such passengers. RT 867:14-26. It is true that, from 2004 to *2021*, SNR performed all freight transportation on the CWR on Mendocino's behalf, with Mendocino only directly performing that transportation itself starting in 2022. But the trial court incorrectly concluded that Mendocino did not perform *any* common-carrier transportation (whether non-excursion passenger or freight) until 2022—a conclusion that is categorically false. Again, Mendocino has since 2008 been transporting non-excursion passengers without contracting out that work to any agent. RT 867:14-26. Thus, even assuming *arguendo* that a common carrier must be the one to directly perform the common-carrier obligation of transporting non-excursion passengers—a notion for which there is absolutely no legal support—Mendocino has satisfied that requirement at least since 2008. *See City of St. Helena*, 119 Cal.App.4th at 802 (construing the common-carrier obligation under section 211 of the Public Utilities Code as including "the taking up persons . . . at some point and putting them down at another" (cleaned up)).

Third, the trial court concluded Mendocino is not a common carrier based on the court's erroneous interpretation of and undue weight given to an outdated 2006 determination of the Railroad Retirement Board (CT 2039)—a federal agency with no authority

to grant or deny a carrier's "common carrier" status. Mr. Meyer had the document admitted into evidence after the trial court granted his post-trial request to reopen the trial following the close of evidence and over Mendocino's objection.[5] CT 933, 1140.

In any event, the trial court's reliance on the RRB's 2006 determination was grossly misconstrued. The 2006 determination adjudicated, not Mendocino's common-carrier status, but only its status as an "employer[] under the Railroad Retirement Act . . . and the Railroad Unemployment Insurance Act." CT 1917 (emphasis added). In passing, the RRB's 2006 determination suggested that, from 2004 to 2022, Mendocino was not directly carrying out its common-carrier obligation because the employees of its agent, SNR, were performing the freight and non-excursion transportation—on *Mendocino's line*. That conclusion did not mean to imply that Mendocino was not a common-carrier railroad at the time, as evidenced by the RRB's clarifying determination in May 2023. In that decision, the RRB made clear that "until

[5] Mendocino opposed the request to reopen the trial because Mr. Meyer had utterly failed to establish that the 2006 determination was unavailable to him before or during the trial despite his best efforts and diligence. *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1222 ("A motion to reopen is also subject to a diligence requirement."). Despite unsupported and conclusory representations to the contrary (CT 934-35), Mr. Meyer never propounded any discovery or other request before or during trial to which the 2006 determination would have been even remotely responsive. CT 848-49 (Mendocino's objections for lack of diligence). Despite Mr. Meyer's failure to show the required diligence, the trial court indulged Mr. Meyer and reopened the trial.

January 1, 2022, Mendocino *was* meeting its common carrier obligation through affiliate arrangements with Sierra Northern." CT 2100 (emphasis added).

Mendocino moved to reopen the trial to allow the introduction of the RRB's 2023 determination into evidence. CT The updated determination was necessary to give context to the 2006 determination and to clarify that Mendocino had itself been directly carrying out all freight transportation on the CWR since January 1, 2022. If the court believed the RRB's prior determination to be probative of the "common carrier" issue, then surely the 2023 determination was at least as, if not more, probative of the same issue. But, to Mendocino's surprise, the trial court denied Mendocino's motion to reopen and excluded the RRB's 2023 determination correcting the very mistake that the trial court relied upon in its decision to support its finding that Mendocino is not a common carrier. CT 2198-2213. What makes the outcome all the more unjust is that Mendocino—unlike Mr. Meyer—*did* satisfy the "diligence" requirement for reopening the trial to introduce the newly discovered evidence. CT 2101 (Motion to Reopen). Particularly given its reopening of the trial to admit Mr. Meyer's evidence, despite his not showing any diligence, the trial court abused its discretion in denying the same opportunity to Mendocino. *Johnston v. Johnson* (1954) 127 Cal. App. 2d 464, 471 (reopening of case for further evidence is entirely within discretion of trial court, but reopening at any time before final decision is

favored if reopening will tend to promote justice by bringing all facts before court); *Foster v. Keating* (1953) 120 Cal.App.2d 435, 451-52 (concluding trial court committed prejudicial errors in denying party's motion to reopen case because "[a] party is entitled to have received in evidence and considered by the court, before findings of fact are made, all competent, material, and relevant evidence which tends to prove or disprove any material issue raised by the pleadings," and while it is "within the sound discretion of the trial court to define the issues and direct the order of proof but that may not be so done as to preclude a party from adducing competent, material, and relevant evidence which tends to prove or disprove any material issue.").

Fourth, the trial court relied on findings made by the CPUC as to Mendocino's predecessor, CWRR, regarding CWRR's status as a public utility. CT 2037-38. In particular, the court cited a single CPUC decision from January 1998 (hereinafter, "1/21/98 CPUC Decision"). CT 2038 (citing 1998 Cal. PUC Lexis 189 (Jan. 21, 1998) (copy at CT 46)). The court misinterpreted the decision for multiple reasons:

- The 1/21/98 CPUC Decision concerns CWRR's application to deregulate only its excursion service and does not repudiate CWRR's, let alone Mendocino's, status as a public utility railroad given the historic and continuing provision of non-excursion transportation on the line. Indeed, the CPUC acknowledged in its decision that the CWRR provided more

than just excursions, stating that "CWRR transports passengers and freight between Fort Bragg and Willits," as well. CT 46. Throughout the decision, the CPUC repeatedly recognized the existence of the line's passenger and freight operations. CT 47 (acknowledging "commuter service" and "commuter passenger service), 49 (acknowledging "passenger and freight operations").

- When read in its entirety, the 1/21/98 at most states that CWRR's excursion operation was "not a public utility *function*" (emphasis added). While a railroad may operate a service that is not a public utility function, as long as it carries out other public utility functions—such as transporting non-excursion passengers and freight—the railroad retains its public utility status. That is why, in its 1/21/98 decision, the CPUC directed that "[t]his proceeding shall remain open to consider CWRR's request to reduce its commuter service"—a service that undisputedly remained a public utility function. CT 50. What authority would the CPUC have had to regulate the frequency of a railroad's commuter service if the railroad was not a public utility simply because it also offered an excursion service?
- The court relied exclusively on cherry-picked and misconstrued statements in the 1/21/98 Decision, while mistakenly ignoring two subsequent CPUC decisions that unequivocally confirmed CWRR's status as a public utility.

The first was the CPUC's May 21, 1998, decision concerning CWRR's motion to withdraw its request to reduce commuter service. CT 52 (1998 Cal. PUC Lexis 384 (May 21, 1998)). The decision reiterates that CWRR "transports passengers and freight between Fort Bragg and Willits," and "serves a few communities" in between. The decision makes clear that the railroad's "passenger service" is "[i]n addition" to the excursion service. CT 53. The decision notes that the CPUC's Rail Safety and Carriers Division fought (successfully) to retain "jurisdiction over CWRR's passenger service." CT 53. The CPUC ultimately granted CWRR's motion to withdraw its request to reduce commuter service, because "[g]ranting . . . CWRR's motion" was "in the best interest of passengers which use CWRR's service." CT 53. The May 21, 1998, decision therefore reaffirms CWRR's status as a common-carrier public utility. Yet the trial court utterly ignored this decision.

- The second CPUC decision is dated August 6, 1998. CT 56 (1998 Cal. PUC Lexis 606 (Aug. 6, 1998)). It concerns CWRR's application for CPUC approval of certain stock transactions. As the decision notes, "[b]efore a *public utility* may issue stocks and stock certificates, it must obtain an order from this Commission authorizing the issue . . . PUC Code Section 818." CT 59 (emphasis added). CWRR made the application as a public utility, and the Commission accepted

and adjudicated the application based on CWRR's status as a public utility. *Id.* In its "findings of fact," the CPUC specifically found that CWRR "is a common carrier railroad engaged in interstate commerce," and "operates railroad passenger and freight services between Fort Bragg and Willits, California." CT 61. In its "conclusions of law," the CPUC held: "[CWRR] is a public utility within the meaning of Section 216(a) of the PU Code." CT 62. In footnote 7 of its decision, the CPUC also held that "[CWRR] is a common carrier, see PU Code Section 211, and is therefore a public utility under California law. PUC Code 216(a)." CT 58. The CPUC's acknowledgement of CWRR's continued status as a public utility could not be clearer. However, the earlier 1/21/98 Decision might be interpreted, at least *three* times in its subsequent August 6, 1998, the CPUC made unequivocal its view that CWRR was a public utility. Yet the trial court also utterly ignored this decision too.

Somehow, the trial court totally disregarded the most salient findings in each of the three CPUC decisions that confirm CWRR's "public utility" status. No subsequent decision of the CPUC has ever stripped either CWRR or Mendocino of its status as a common-carrier public-utility railroad.[6] In sum, the trial court

[6] Mr. Meyer may cite a 2022 letter by a staff attorney at the CPUC, which purports to disclaim Mendocino's "public utility" status, though—he concedes—only "to the extent it provides excursion rail service." The letter suffers from the same errors committed by the trial court, cherry-picking and misconstruing

committed legal error in misinterpreting the 1/21/98 CPUC Decision and only compounded that error by ignoring the two subsequent decisions of the CPUC that, if anything, only *support* Mendocino's status as a public utility. RT 90:24—91:21, 311:4—312:7, 312:25—313:14 (confirming similar freight and passenger transportation offerings and activities on CWR pre- and post-1998, when CPUC decisions referenced above were rendered).

Fifth, in support of its decision, the trial court cited *City of St. Helena v. Public Utilities Com.* (2004) 119 Cal.App.4th 793. CT 2038. But *City of St. Helena* is readily distinguishable. In *City of St. Helena*, this Court considered whether the Napa Valley Wine Train was a public utility. At bottom, the question was whether the Wine Train "provid[ed] transportation" to the public or a portion thereof, such that it could be deemed a common carrier. *Id.* at 802-04. Ultimately, the Court held it did not, and concluded the Wine Train was not a common-carrier public utility.

The Court's conclusion in *City of St. Helena* is not surprising given the nature of the Wine Train's operations. As the Court noted, "[p]resently, the Wine Train does not pick up passengers at

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isolated language from the 1/21/98 CPUC Decision while disregarding contrary and more-definitive findings in the *same* decision and in the two subsequent CPUC decisions described above, all of which actually confirm CWRR's "public utility" status. In any event, a staff attorney's opinion is not the same as a CPUC decision. Within the CPUC, only the CPUC siting as a commission can adjudicate an entity's "public utility" status. And even then, the Commission is bound to abide by the STB's determination as to the public utility's common-carrier status, the California Constitution, and the Public Utilities Code.

one location and put them down at another location." *Id.* at 803. Nor was there any evidence of the Wine Train providing any freight services. "Rather, the Wine Train provides a round-trip excursion from Napa"—and that's all. *Id.* The Court held that round round-trip excursions do not qualify as "transportation" under section 211 of the PUC. *Id.*

The Court flatly rejected the argument that the Wine Train should be considered a public utility because it might *in the future* be capable of providing transportation in the form of non-excursion passenger services. *Id.* at 803. As the Court concluded, "[t]he fact that the Wine Train could provide transportation in the future does not entitle it to public utility status now." *Id.* "[R]ather, the most that can be said is that the Wine Train has the *capacity* to provide transportation" and thus has the capacity to become a public utility in the *future*. *Id.* (emphasis added).

In stark contrast, the record in this case conclusively establishes that Mendocino has always provided and performed, and continues to provide and perform, non-excursion passenger and freight services to the public for compensation. The *City of St. Helena* decision mentions the fact that the Skunk Train's "excursion service between Fort Bragg and Willits" does not qualify it as a "public utility" either. *Id.* at 804. Mendocino does not dispute that its excursion service is not a public utility *activity* or *function*. But, unlike the Wine Train, Mendocino does not *only* operate excursions on the CWR. Rather, Mendocino and its

predecessors have always operated—and Mendocino Railway continues to operate—*non-excursion* passenger and freight rail transportation services as well. RT 90:24—91:21, 311:4—312:7, 312:25—313:14. Thus, nothing about the *City of St. Helena* case alters the fact that Mendocino has been, and remains, a common-carrier public utility.

Finally, the trial court stated that it "was not persuaded by Pinoli's testimony alone" concerning Mendocino's provision of non-excursion transportation over the last 20 years. CT 2040. The court discounted all of Mr. Pinoli's comprehensive and unrefuted testimony—over the course of a six-day trial—because he did not produce "ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation." *Id.* In its decision, the court cited the "best evidence" rule and Judicial Council of California Civil Jury Instructions ("CACI") No. 203[7] to justify disregarding Mr. Pinoli's testimony. CT 2040. CACI No. 203 has its source in Evidence Code section 412, which states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

The court erred in applying the "best evidence" rule and Evidence Code section 412's inference.

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[7] CACI No. 203 can be accessed via the California Courts' official website at the following link at page 48: https://bit.ly/47KGP4D.

The "best evidence" rule "precludes oral testimony to prove *the content of a writing*," and its purpose is "to insure that the trier of fact is presented with the exact words of a writing." *Doe v. Regents of University of California* (2018) 28 Cal.App.5th 44, 57. But in testifying about Mendocino's historic and current operations, Mr. Pinoli was not purporting to testify as to the content of any writing. Rather, Mr. Pinoli was testifying, based on his own personal knowledge, about the fact that the railroad offers and makes available, and performs, non-excursion passenger and freight transportation to the public for compensation.

The trial court's reliance on Evidence Code section 412 is also misplaced. The question of whether the court properly invoked Evidence Code section 412 is reviewed for "substantial evidence, i.e., whether the evidence viewed in the light most favorable to the court's decision supported the application of the statute." *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 363. For an adverse inference to be invoked, it must be established that the allegedly "stronger" evidence actually exists, and that a party is in possession of it, but is simply refusing to produce it. *People v. Morris* (1991) 53 Cal.3d 152, 214. "Evidence Code section 412 deals not with 'best' evidence, but with 'weaker and less satisfactory' evidence." *Largey v. Intrastate Radiotelephone, Inc.* (1982) 136 Cal.App.3d 660, 672.

As the trial came to a close on the fourth day, Mr. Meyer's counsel asked Mr. Pinoli a series of questions on redirect

examination about annual revenues from excursion-passenger and freight transportation services, and Mr. Pinoli stated he could not say for certain since he didn't "have the numbers in front of me and I'm not going to speculate on the numbers." RT 704:25—705:11.[8] When Mr. Pinoli was asked why he "didn't bring [the] numbers today to discuss" the company's revenue numbers, Mr. Pinoli correctly noted that he was never *asked* to bring any documents. RT 705:12-22. Mr. Meyer's last-minute query about documentation surrounding the company's revenues was pursued despite being outside the bounds of redirect examination. RT 706:6—707:9 (court finding questions have "gone far beyond what the redirect was"). When, immediately afterwards, the court discussed the parties' closing briefs and the issues it wanted them to address, it never mentioned a concern about the absence of "stronger and more satisfactory evidence" in the form of receipts, ledgers, and the like. RT 707-09.

After the trial was re-opened for Mr. Meyer to introduce the RRB's 2006 determination into evidence, and at the last moment before the trial definitively closed, Mr. Meyer's counsel asked Mr. Pinoli if any "receipts" for freight and non-excursion passenger transportation services had been examined. Mr. Pinoli responded that no such receipts had been requested by Mr. Meyer or anyone

[8] Mr. Meyer's "revenue" questions arose toward the end of the fourth day of trial, when it originally closed, and the court asked for closing briefs. After the trial ended, Mr. Meyer successfully reopened the matter to introduce and examine Mr. Pinoli about the RRB's 2006 determination.

else. RT 1005:8-24. Mr. Meyer's counsel did not deny the absence of any such request for the production of receipts or similar documents.

The court itself did ask Mr. Pinoli to look for one document it was interested in reviewing: any contract between Mendocino and Mendocino Transit Authority ("MTA") pursuant to which MTA compensated the railroad to take "passengers from either Fort Bragg or Willits to the opposite end one way without restriction." RT 538:11-27, 539:18-24. The court deemed the arrangement—evidence of the railroad's non-excursion passenger transportation—as "important." RT 539:18-20. Mr. Pinoli said he would "absolutely do a search" for any agreement. RT 539:22-24. On the last day of trial, Mr. Pinoli reported that, after searching the company's archives, he could not find any agreement. CT 977:17—978:7. The document simply was not available to Mendocino for production.

In any event, Mendocino's burden was only to show that it has continuously "provided"—i.e., *offered and made available*—freight and non-excursion passenger transportation to the public or a portion thereof for compensation. Pub. Util. Code § 211. The testimony of Mr. Pinoli—the person who, as president, has personal knowledge of the railroad's historic and ongoing operations—and Mendocino's publicly available tariffs and fares over the 31 years constituted the *best* evidence of the railroad's fulfillment of its common-carrier obligation. But even if the law

required evidence of the actual performance of freight and non-excursion passenger transportation, the percipient testimony of Mr. Pinoli—whom the court characterized as "credible, articulate and very knowledgeable"—was *as strong as* secondary evidence in the form of any existing receipts, ledgers, or contracts . Evid. Code, § 411 ("[T]he direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact."); *see also Alperson v. Mirisch Co.* (1967) 250 Cal.App.2d 84, 93 ("It is the rule . . . that the testimony of one witness, if believed by the trier of fact and if not inherently improbable, is sufficient to sustain a finding.").

In sum, substantial evidence in the record does not support the trial court's invocation of Evidence Code section 412 to discount Mr. Pinoli's comprehensive and unrebutted testimony concerning Mendocino's historic and ongoing provision of freight and non-excursion passenger transportation on the CWR.

B. Mendocino Satisfied the Criteria for Acquiring Mr. Meyer's Property by Eminent Domain

As noted above, a public-utility railroad seeking to exercise its eminent domain power to acquire property for railroad use must satisfy the following criteria: "(a) the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." Civ. Proc. Code § 1240.30.

Mendocino bore the burden of proving, by a preponderance of the evidence, that each of these three elements are met. *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 898. However, "[g]enerally, statutory requirements of necessity as a condition of the exercise of the power of eminent domain are liberally construed by the courts so as not to limit unnecessarily the power of the condemning agency." *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 285.

1. The Public Interest and Necessity Require Mendocino Railway's Project to Construct Rail Facilities for its Ongoing and Future Freight and Non-Excursion Passenger Rail Services

The first of the three eminent domain required elements is that, "[t]he public interest and necessity require the project." Civ. Proc. Code §1240.030(a). As a public-utility railroad, Mendocino is authorized to acquire property for its railroad. Pub. Util. Code §611. "Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use." Civ. Proc. Code §1240.010. The project proposes a quintessentially railroad-related project—transloading facilities and related rail improvements—which is a public use.

Moreover, "[t]he necessity specified by the statute . . . does not mean an imperative or indispensable or absolute necessity but

only that the taking provided for be reasonably necessary for the accomplishment of the end in view under the particular circumstances." *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 285. Further, "'[p]ublic interest and necessity' include all aspects of the public good including but not limited to social, economic, environmental, and esthetic considerations." *Shell Cal. Pipeline Co. v. City of Compton* (1995) 35 Cal.App.4th 1116, 1125.

The evidence at trial established the public benefits of the project. Mendocino needs to expand its freight and passenger rail facilities at the Willits end of its railroad, including transloading and repair-and-maintenance facilities, to accommodate its ongoing and growing freight and non-excursion passenger operations. RT 218:20—220:16, 226:16-24, 231:23-28, 232:26—233:2, 247:26-28, 263:6-15, 509:13-22, 547:19-22. Presently, Mendocino lacks dedicated maintenance, repair, and freight facilities sufficient to properly operate its ongoing and future operations. CT 1155 (photo depicting Willits station assets); CT 1157-1160 (railroad assets at Fort Bragg and Willits stations); CT 1332-33 (bankruptcy court memorandum describing Willits assets), RT 79:11—80:7, 84:24—85:10, 166:25—167:2, 218-19, 226-27. The lack of such facilities restricts and limits Mendocino's ability to efficiently repair and maintain its equipment. *Id.* The lack of such facilities is also among the reasons limiting and restricting Mendocino Railway's

ability to provide more extensive freight rail service to customers. *Id.*

The real potential for growing its freight operations through transloading facilities is best demonstrated by the fact that, for many years, a large and diverse number of businesses have expressed strong support for the construction of such facilities. RT 43:23—43, 706:13-22, RT 235:20-25, 236:6-28, 246:13—251:14, 252:7-15; CT 1513-23 (letters of customer interest). A "half a dozen" shippers expressed an interest and commitment to use the transload facility proposed for the subject property to transport freight from Willits to Fort Bragg. RT 923:15-20. Those likely customers submitted letters of interest in 2019, 2020, and 2021. RT 923:21-27. Based on those likely shippers, Mr. Pinoli testified that Mendocino was "[a]bsolutely" "in a position to have a functional freight operation" at the subject property. RT 924:6-9.

The project will facilitate expanded freight rail shipping because, among other reasons, the transload facilities and other improvements to be constructed will provide the space and operational capacity required to accommodate these activities. The project's facilities and improvements will also facilitate Mendocino's full restoration of passenger rail service between its end points in Willits and Fort Bragg once Tunnel No. 1 is reopened. RT 221:4-7, 702:19—703:10, 703:28—704:5.

2. Mendocino's Project is Planned and Located in the Manner Most Compatible with the Greatest Public Good and Least Private Injury.

The next of the three eminent domain required elements is that "[t]he project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury." Civ. Proc. Code §1240.030(b). This element requires a comparison between two or more sites. "Proper location is based on two factors: public good and private injury. *Accordingly, the condemnor's choice is correct or proper unless another site would involve an equal or greater public good and a lesser private injury.* A lesser public good can never be counter-balanced by a lesser private injury to equal a more proper location. Nor can equal public good and equal private injury combine to make the condemnor's choice an improper location." Civ. Proc. Code §1240.030 (legislative comment) (emphasis added).

As the evidence at trial established, Mendocino undertook an extensive search, investigation, and analysis of several potentially suitable locations for the Project. *See, e.g.*, RT 404-420 (discussing multiple properties). In its search, Mendocino considered various factors and site characteristics required for its project, including, without limitation, size, shape, location, topography. *Id.* Generally, the site needs to be relatively level, large enough to accommodate the construction of rail facilities suitable for ongoing and future operations (including a wye track), and located along Mendocino's existing rail line. RT 259:27—260:5,

262:13—265-13. Mendocino identified several potentially suitable locations and conducted further investigations and analysis of each to evaluate whether each site was actually suitable. RT 404-420. Mendocino's analysis also included an evaluation of the private impacts of acquisition such as displacement of residential or commercial occupants and other potential impacts. *See, e.g.*, RT 500:25—501:1, 510:28-511:1, 516:20—517:14.

Among other potential locations considered for the Project, Mendocino initially entered into an agreement to acquire a property available for sale, the former REMCO site. RT 220:28—221:27. While the REMCO site did not meet all of Mendocino's requirements for the Project, it was sufficiently suitable for construction of many of the Project improvements. *Id*. The primary deficiency was that the REMCO site did not have sufficient area to accommodate the full extent of freight rail operations, including a transload facility; thus, a second property would also need to be acquired to accommodate the freight/transload operations. RT 264:16—265:9. The REMCO property owner ultimately cancelled the agreement with Mendocino and sold the property to another buyer before Mendocino could locate the needed second property. RT 268:8-15, 273:16-22.

Thereafter, Mendocino proceeded to investigate and analyze other properties including the subject property, that might accommodate its entire project. RT 404-420. After considering several potential sites, Mendocino determined that the subject

property was the only site that met *all* key site requirements for the project. RT 259:27—260:5, 264:24—265:9, 267:23—268:7. The subject property is a relatively level parcel of approximately 20 acres located along Mendocino's main rail line near Willits, with good accessibility to a highway. RT 904:13-24. Moreover, the subject property is undeveloped and the property owner, Mr. Meyer, at least initially, indicated a willingness to sell. RT 427:21-22, 434:6-16.

These facts, adduced at trial, establish that the project is planned and located in the manner most compatible with the greatest public good and least private injury.

3. The Subject Property is Necessary for Mendocino's Rail Project

The third of the three required eminent domain elements is that "[t]he property sought to be acquired" be "necessary for the project." Civ. Proc. Code §1240.030(b). "This aspect of necessity includes the suitability and usefulness of the property for the public use. See *City of Hawthorne v. Peebles* (1959) 166 Cal.App.2d 758, 763 ('necessity does not signify the impossibility of constructing the improvement … without taking the land in question, but merely requires that the land be reasonably suitable and useful for the improvement.')." Civ. Proc. Code §1240.030 (Legislative Committee Comment).

As discussed in the preceding section, the trial testimony established that there are several key site requirements for

construction of the project, including that the property be approximately 20 acres in size, relatively level, located along Mendocino's rail line, near the City of Willits, and adjacent to highways. RT 259:27—260:5, 264:24—265:9, 267:23—268:7. And as Mr. Pinoli testified, Mr. Meyer's property is the only property identified by Mendocino as having these features and being suitable for the Project. *Id.*

4. The Trial Court Committed Several Prejudicial Errors in Deciding Mendocino Did Not Satisfy the Eminent-Domain Requirements

The court committed a number of prejudicial errors in concluding that Mendocino failed to satisfy the requirements for eminent domain.

First, the court concluded that the project would only "enhance the operations of MR's excursion service," which is a "private business activit[y]." CT 2041. The court reverted to its claim that 90% of Mendocino's revenue comes from its excursion service, and that there was no explanation distinguishing "the private operations from the 'proposed' freight and passenger enhancements." *Id.* Despite "[a]ssuming for purposes of this opinion that MR has public utility status" (*id.*), the court nevertheless bases its conclusion that the project's purpose is to enhance Mendocino's excursion on the finding that it is *not* a public utility (because, allegedly, 90% of revenues comes from the railroad's excursion service). In any event, the overwhelming evidence in the record establishes that the project entails

construction of a railroad transload facility and related rail improvements; by contrast, there is no substantial evidence in the record to support the finding that the project is excursion-related.

Second, the court disregarded Mendocino's actual site plan for the subject property (CT 1156) in favor of a "concept" that one of Mendocino's directors that a campground or RV park could be operated there. The court saw legal relevance in the timing of the site plan, which came in 2022—after the underlying action was filed. But there is no law—and neither Mr. Meyer nor the trial cited to any—for the proposition that a site plan must be in place by the time of the filing of the complaint in eminent domain. Further, as Mr. Pinoli explained, the campground/RV idea was a concept that Mr. Pinoli never took seriously and never would have implemented. As he pointedly testified, Mendocino is "not in the business of running campgrounds or owning campgrounds." RT 505.

Finally, the court noted that there was no "actual plan for development or funding for the project." CT 2042. But as the authority the court cited immediately following that statement, all that is required is that an "adequate project description . . . be made in all condemnation cases." CT 2042 (quoting *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 113). An adequate project description *was* provided here. CT 14-15 (complaint with project description at paragraph 2), 1156 (site plan). *Stockton* involved a government entity seeking to condemn

property, which is required to pass a resolution of necessity *prior* to filing a condemnation action. Thus, in government condemnation cases, the project description is developed *before* the action is filed. Here, as a privately owned public utility, Mendocino was not subject to the "resolution of necessity" requirement. And there is no legal requirement concerning the timing of when the project description is developed.

Had the court not committed these prejudicial errors, the outcome would have been different, as the court would have found that Mendocino satisfied the eminent-domain requirements.

C. Mr. Meyer's Fee Award Should Be Reversed

The court awarded Mr. Meyer his attorneys' fees on the premise that he was the prevailing party. If the Court reverse the judgment below, it should also reverse the fee order, as Mr. Meyer would no longer be the prevailing party.

V. CONCLUSION

Mendocino Railway abundantly established that it is—both under the applicable law and facts—a common-carrier public utility railroad entitled to exercise eminent domain to acquire Mr. Meyer's property. Since its acquisition of the railroad in 2004, Mendocino has provided and performed, and continues to this day to provide and perform, non-excursion passenger and freight rail transportation services to the public for compensation, in addition to its excursion services. While the volume of its various rail transportation services have varied over the last 20 years due to

circumstances outside of its control, Mendocino's continuous dedication of its line and property for public transportation of persons and goods has not. Moreover, as a matter of law, the volume of such transportation services is immaterial to Mendocino's common-carrier public utility status.

Mendocino also established, by a preponderance of the evidence, each of the elements required to exercise eminent domain to acquire Mr. Meyer's property for Mendocino's freight and non-excursion passenger rail project: (a) the public interest and necessity require the project; (b) the project is planned and located in the manner most compatible with the greatest public good and least private injury; and (c) the subject property is necessary for the property.

Accordingly, the Court should reverse the judgment with instructions for the trial court to enter an order (1) affirming Mendocino's status as a public utility, and (2) determining that Mendocino has established its right to acquire Mr. Meyer's property by eminent domain for its project. It should also reverse the trial court's order awarding Mr. Meyer's trial-court attorneys' fees. And should award Mendocino's costs on appeal.

DATED: September 26, 2024.

/s/ PAUL J. BEARD II
By: _____
Attorneys for Appellant
Mendocino Railway

Certificate of Compliance

I hereby certify that the foregoing APPELLANT'S OPENING BRIEF is proportionately spaced, has a typeface of 13 points or more, and contains 13547 words.

DATED: September 26, 2024 /s/ PAUL J. BEARD II