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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 MENDOCINO RAILWAY,
13 Plaintiff,
14 v.
15 JACK AINSWORTH, et al.,
16 Defendants.

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

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

**DECLARATION OF KRISTA
MACNEVIN JEE IN SUPPORT OF
DEFENDANT CITY'S MOTION TO
DISMISS**

Action Filed: August 9, 2022

17 I, KRISTA MACNEVIN JEE, HEREBY DECLARE AS FOLLOWS:

18 1. I am a Partner with Jones Mayer, the City Attorney and the attorneys of record for
19 the City in the above-entitled action. If called upon, I could and would competently testify to the
20 following facts, of my own personal knowledge.

21 2. After an unsuccessful attempt by Plaintiff Mendocino Railway to obtain a dismissal
22 of the City's complaint in its State Court action in *City of Fort Bragg v. Mendocino Railway*,
23 Mendocino County Superior Court Case No. 21CV00850, by demurrer, Mendocino Railway filed
24 a Petition for Writ of Mandate in the California Court of Appeal, which was denied on June 9,
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EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103



1 2022. Thereafter, Mendocino Railway also filed a Petition for Review with the California Supreme
2 Court on June 20, 2022, which was also denied. The underlying trial court proceedings were briefly
3 stayed by the Court of Appeal pending its decision. In both its Demurrer and subsequent Answer
4 filed in this State court action, Mendocino Railway has asserted broad federal preemption claims.

5 3. On June 22, 2022, Mendocino Railway filed a Notice of Related Case, seeking to
6 have the City's State court action found to be related to an already-pending action by Mendocino
7 Railway in *Mendocino Railway v. John Meyer, et al.*, Mendocino County Superior Court
8 Case No. SCUJ-CVED-20-74939. This earlier action related to Mendocino Railway's
9 attempt to take the private property of an individual, Defendant John Meyer, in the City of
10 Willits by eminent domain. The eminent domain case was at that time pending in another
11 department of the Mendocino Superior Court, before The Honorable Jeanine Nadel,
12 whereas the City's State court action was pending in a different courthouse before The
13 Honorable Clayton L. Brennan. Judge Nadel has since conducted a bifurcated bench trial
14 on the validity of the exercise of eminent domain, concluding trial testimony on or about
15 August 29, 2022. On the bifurcated issue, excluding only damages (if any), the matter is
16 presently in the process of the submittal of written closing arguments to the court. The
17 Notice of Related Case is set to be heard by Judge Nadel on September 30, 2022.

18 4. At a case management conference in the City's State court action before Judge
19 Brennan, on September 1, 2022, I informed the Court that the California Coastal
20 Commission had confirmed to me that they would be shortly filing a Motion to Intervene
21 in the City's action. Even though such motion was not filed until September 8, 2022, and
22 has not yet been decided by the Court but is scheduled to be heard on September 30, 2022,
23 Judge Brennan disclosed to the parties that he currently had a coastal development permit
24 pending for his residence within the coastal zone before the County of Mendocino, and
25 which could be subject to appeal to the California Coast Commission. He stated that he did
26 not believe such permit required or warranted his recusal in the matter, but was merely
27 disclosing this information to the parties. Thereafter, Mendocino Railway filed a Request
28 for Disqualification of Judge Brennan on September 12, 2022, on the grounds of the

1 pending permit application, and the fact that a reasonable person might doubt that Judge
2 Brennan could be impartial as to the California Coastal Commission because he “must gain
3 the support [for his coastal development permit] of the very entity that now seeks relief
4 from him,” due to the fact that the Commission may comment on the permit application,
5 and the permit may be subject to review by the Commission after the County’s decision,
6 which has not yet been set for hearing.

7 5. True and correct copies of the following documents, as designated, are
8 attached to the City’s Request for Judicial Notice, filed concurrently herewith:

9 **Exhibit A:** “Verified Complaint for Declaratory and Injunctive Relief,” in *City of Fort Bragg*
10 *v. Mendocino Railway*, Mendocino County Superior Court Case No. 21CV00850;

11 **Exhibit B:** Ruling on Demurrer to the Complaint, in *City of Fort Bragg v. Mendocino Railway*,
12 Mendocino County Superior Court Case No. 21CV00850, filed April 28, 2022;

13 **Exhibit C:** Letter from California Public Utilities Commission to Sierra Railroad Company,
14 dated August 12, 2022; and

15 **Exhibit D:** B.C.D. 06-42, Railroad Retirement Board (2006), available at
16 <https://secure.rrb.gov/pdf/bcd/bcd06-42.pdf>.

17 I received Exhibit C, which is a public record, directly from another State agency, the
18 California Coastal Commission, and I also obtained a copy of the request by Sierra Railroad
19 Company to the California Public Utilities Commission, to which Exhibit C was the response,
20 regarding Mendocino Railway’s public utility status with the CPUC. Exhibit D was obtained
21 directly from the federal Railroad Retirement Board’s online repository, and accessible as
22 indicated, as of the date of this execution.

23 I declare under penalty of perjury under the laws of the State of California and the United
24 States, that the foregoing is true and correct. Executed this 22nd day of September, 2022.

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27
28 KRISTA MACNEVIN JEE