

1 PAUL J. BEARD II (State Bar No. 210563)  
2 FISHERBROYLES LLP  
3 4470 W. Sunset Blvd., Suite 93165  
4 Los Angeles, CA 90027  
5 Telephone: (818) 216-3988  
6 Facsimile: (213) 402-5034  
7 E-mail: paul.beard@fisherbroyles.com

8 Attorneys for Plaintiffs  
9 MENDOCINO RAILWAY

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

MENDOCINO RAILWAY, a California corporation,

Plaintiff

v.

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

Defendants.

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

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

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

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

Complaint Filed: August 9, 2022

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

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

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

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

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

13 DATED: October 20, 2022

**FISHERBROYLES LLP**

14  
15 s/ Paul Beard II

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Attorneys for Plaintiff MENDOCINO RAILWAY

# **EXHIBIT 1**

1 Paul J. Beard II (SBN: 210563)  
2 **FISHERBROYLES LLP**  
3 4470 W. Sunset Blvd., Suite 93165  
4 Los Angeles, CA 90027  
5 Telephone: (818) 216-3988  
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7 Email: paul.beard@fisherbroyles.com

8 Attorneys for Defendant  
9 MENDOCINO RAILWAY

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF MENDOCINO**

12 CITY OF FORT BRAGG, a California  
13 municipal corporation

14 Plaintiff,

15 v.

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

18 Defendants.

19 \_\_\_\_\_  
20 CALIFORNIA COASTAL COMMISSION,

21 Intervenor.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

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

FISHERBROYLES®  
A LIMITED LIABILITY PARTNERSHIP

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

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

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

6  
7 DATED: October 20, 2022

/s/ Paul Beard II

8 Attorneys for Defendant MENDOCINO RAILWAY  
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**PROOF OF SERVICE**

I, Paul Beard II, declare:

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

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

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

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

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

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

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

\_\_\_\_\_  
Paul Beard II

FISHERBROYLES®  
A LIMITED LIABILITY PARTNERSHIP

# **EXHIBIT A**

1 PAUL J. BEARD II (State Bar No. 210563)  
FISHERBROYLES LLP  
2 4470 W. Sunset Blvd., Suite 93165  
Los Angeles, CA 90027  
3 Telephone: (818) 216-3988  
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4 E-mail: paul.beard@fisherbroyles.com

5 Attorneys for Defendant  
MENDOCINO RAILWAY  
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8 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
9 **EUREKA**

10 CALIFORNIA COASTAL COMMISSION; CITY  
11 OF FORT BRAGG,

12 Plaintiffs

13 v.

14 MENDOCINO RAILWAY,

15 Defendant.

Case No.: 1:22-cv-06317

**NOTICE OF REMOVAL**



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

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

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

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

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

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

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

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

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

6  
7 DATED: October 20, 2022

**FISHERBROYLES LLP**

8  
9 s/ Paul Beard II

10 Attorneys for Defendant MENDOCINO RAILWAY  
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**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

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

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

MENDOCINO RAILWAY AND DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CITY OF FORT BRAGG, a California municipal corporation

By: *Dorothy Jess*  
D. Jess  
Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MENDOCINO - TEN MILE BRANCH  
700 South Franklin Street, Fort Bragg, CA 95437

CASE NUMBER: (Número del Caso):  
21CV00850

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Russel A. Hildebrand (SBN 191892)

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

DATE: 10/28/2021  
(Fecha)

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

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

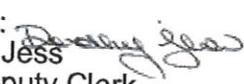
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). D. Jess

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): **Mendocino Railway**  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify): form unknown
4.  by personal delivery on (date): *11-23-21*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Russell A. Hildebrand, SBN 191892; Krista MacNevin Jee, SBN 198650 JONES MAYER - 3777 N. Harbor Boulevard, Fullerton, CA 92835  TELEPHONE NO.: 714-446-1400 FAX NO. (Optional): 714-446-1448 E-MAIL ADDRESS: rah@iones-mayer.com; kmi@iones-mayer.com ATTORNEY FOR (Name): CITY OF FORT BRAGG		FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> 10/28/2021 3:14 PM Superior Court of California County of Mendocino  By:  D. Jess Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO</b> STREET ADDRESS: 700 South Franklin Street MAILING ADDRESS: Same CITY AND ZIP CODE: Fort Bragg, 95437 BRANCH NAME: Ten Mile Branch		CASE NUMBER: <b>21CV00850</b>  JUDGE: CLAYTON BRENNAN DEPT.: TEN MILE BRANCH
CASE NAME: CITY OF FORT BRAGG v. MENDOCINO RAILWAY		
<b>CIVIL CASE COVER SHEET</b>		
<input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

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

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify):
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 28, 2021

Russell A. Hildebrand

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed in sanctions).
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

CM-010

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

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

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

**CASE TYPES AND EXAMPLES****Auto Tort**

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

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

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

**Non-PI/PD/WD (Other) Tort**

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

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

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

**Real Property**

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

**Unlawful Detainer**

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

**Judicial Review**

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

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

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

**Enforcement of Judgment**

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

**Miscellaneous Civil Complaint**

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

**Miscellaneous Civil Petition**

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

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

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

By: *Dorothy Jee*  
D. Jess  
Deputy Clerk

6 Attorneys for Plaintiff  
CITY OF FORT BRAGG  
7

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

11 CITY OF FORT BRAGG, a  
California municipal corporation,

Case No. 21CV00850

12 Plaintiff,

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

13 vs.

14 MENDOCINO RAILWAY AND  
DOES 1-10, inclusive

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

15 Defendants.  
16

**JUDGE:** CLAYTON BRENNAN  
**DEPT.:** TEN MILE  
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19 Plaintiff CITY OF FORT BRAGG, CA ("City" or "Plaintiff") files this action  
20 seeking judicial declaration regarding the validity of the Mendocino Railway's status as a  
21 public utility pursuant to Code of Civil Procedure section 1060 and/or injunctive relief,  
22 alleging as follows:

23 1. The operations of the Mendocino Railway have been reduced over time and  
24 now consist of only the operation of out and back excursion trips starting in either Fort  
25 Bragg, California or Willits, California and therefore the Mendocino Railway is no longer  
26 entitled to status as a public utility, is in fact an excursion only railroad, and therefore is  
27 subject to the jurisdiction of the City of Fort Bragg and all ordinances, codes and  
28 regulations set forth in the City of Fort Bragg Municipal Code.

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT CODE SECTION 6103

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**PARTIES**

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

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

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

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**BACKGROUND FACTS**

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

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

1           7.     Although the rail lines of the Mendocino Railway and/or the trains it was  
2 operating thereafter apparently did or may have had the capacity to carry freight and  
3 passengers from point-to-point, no rail lines presently have any such capacity. Moreover,  
4 the excursion train, even when it was running previously between Fort Bragg and Willits  
5 was exclusively a sightseeing excursion, was not transportation, was not essential, and did  
6 not otherwise constitute a public utility function or purpose.

7           8.     On April 11, 2013, Defendant's operations were disrupted following the  
8 partial collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,200 feet of track  
9 under rocks and soil, the third major collapse in the over 100-year-old tunnel's history.  
10 The collapse of the tunnel eliminated the ability of rail operations temporarily to continue  
11 between Fort Bragg and Willits. On June 19, Save the Redwoods League announced an  
12 offer to pay the amount required to meet the fundraising goal for repair work, in exchange  
13 for a conservation easement along the track's 40-mile (64 km) right-of-way. The  
14 acceptance of the offer allowed the railroad to resume full service of the whole sightseeing  
15 line in August 2013.

16           9.     Tunnel No. 1 was once again closed in 2016 after sustaining damage from  
17 the 2015–16 El Niño, but Defendant had equipment at the Willits depot to allow the  
18 running of half-routes to the Northspur Junction and back (which had not been the case  
19 during the 2013 crisis), as well as trains running loops from Fort Bragg to the Glen Blair  
20 Junction and back.

21           10.    Plaintiff is informed and believes the estimates for the repair to reopen the  
22 tunnel are in the area of \$5 Million, and that Defendant has stated the tunnel repair will  
23 happen in 2022, but there are currently no construction contracts in place for that repair.

24           11.    Current operations of the Defendant consist of a 3.5 mile excursion out and  
25 back trip from Fort Bragg to Glen Blair Junction, and a 16 mile out and back trip  
26 originating in Willits to Northspur Junction – both of which are closed loop sightseeing  
27 excursions.

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1           15. An actual controversy has arisen and now exists between Plaintiff and  
2 Defendant. Defendant has failed to comply with City's code enforcement efforts to have  
3 Defendant repair a dangerous building on their property. Defendant also claims its status  
4 as a public utility preempts local jurisdiction and provides immunity from the City's Land  
5 Use and Development Codes. City disagrees and maintains that, as an excursion-only  
6 railroad, Defendant is not a public utility, is not a common carrier, and/or does not provide  
7 transportation, and therefore Defendant is subject to the City's ordinances, regulations,  
8 codes, local jurisdiction, local control and local police power and other City authority.  
9 City is entitled to a declaration of its rights and authority to exercise local  
10 control/regulation over the property and Defendant and Plaintiff City has the present right,  
11 obligation and need to exercise such control, power and authority for the public interest,  
12 benefit and safety.

13           16. A judicial determination of these issues and of the respective duties of  
14 Plaintiff and Defendant is necessary and appropriate at this time under the circumstances  
15 because the Defendant continues to resist compliance with City directives to repair and  
16 make safe the dangerous building on its property, and to comply with the City Land Use  
17 and Development Codes, and/or other valid exercise of City governing authority.

18           17. No other adequate remedy exists by which the rights and duties at issue  
19 herein between the parties can be determined.

20           18. The City and the public will suffer irreparable injury if the nature of  
21 Defendant's conduct, as alleged herein, is not determined by the Court and/or enjoined.

22           19. Plaintiff City also, or in the alternative, seeks injunctive relief against  
23 Defendant and thus brings this action pursuant to California Civil Code Section 526 in  
24 order to enjoin or require Defendant to refrain from engaging in the conduct alleged here,  
25 cease violations of law, and/or to require Defendant to bring its property and operations  
26 into compliance with the law, as applicable.

27           20. Unless and until restrained and enjoined by this Court's issuance of  
28 injunctive relief as requested herein, Defendant will continue to maintain nuisance

1 conditions and violations of law as alleged, to the substantial harm and risk to the health,  
2 safety and welfare of the public, and directly contrary to the lawful and valid authority of  
3 Plaintiff City to regulate such nuisance and dangerous conditions, and to compel  
4 compliance with applicable law.

5 21. Unless and until the activities alleged herein are restrained and enjoined by  
6 this Court, as requested herein, they will continue to cause great and irreparable injury to  
7 Plaintiff City's lawful exercise of jurisdiction and authority over Defendant's operations,  
8 activities, and its real property, and the conditions thereof, as well as allowing the  
9 continuation of injury and risk to the public.

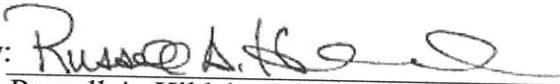
10 **PRAYER**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 1. For a declaration that the Mendocino Railway is not subject to regulation as  
13 a public utility because it does not qualify as a common carrier providing  
14 "transportation.";
- 15 2. For a stay, temporary restraining order, preliminary injunction, and  
16 permanent injunction commanding the Mendocino Railway to comply with  
17 all City ordinances, regulations, and lawfully adopted codes, jurisdiction and  
18 authority, as applicable;
- 19 3. For costs of the suit; and
- 20 4. For such other and further relief as the Court deems just and proper.

21  
22  
23 Dated: October 28, 2021

JONES & MAYER

24  
25 By:   
26 Russell A. Hildebrand  
27 Krista MacNevin Jee  
28 Attorneys for Plaintiff  
CITY OF FORT BRAGG

**FILED**

10/20/2022

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

Jess, Dorothy

DEPUTY CLERK

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

<b>CITY OF FORT BRAGG, a California Municipal corporation</b>	)	<b>Case No.: 21CV00850</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>MINUTE ORDER GRANTING</b>
	)	<b>CALIFORNIA COASTAL</b>
	)	<b>COMMISSION'S MOTION FOR</b>
<b>MENDOCINO RAILWAY and DOES 1-10, inclusive,</b>	)	<b>LEAVE OF COURT TO INTERVENE</b>
	)	
	)	
<b>Defendants,</b>	)	
	)	
<b>CALIFORNIA COASTAL COMMISSION,</b>	)	
	)	
<b>Intervenor.</b>	)	
	)	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SO ORDERED.

DATED: 10/21/2022



CLAYTON L. BRENNAN  
Judge of the Superior Court

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 8 *California Coastal Commission*

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

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

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

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

23  
 24 **COMPLAINT IN INTERVENTION**

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

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

5 The Commission alleges as follows:

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

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

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

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

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

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

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

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

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





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

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

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

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, the Commission prays for judgment as follows:

19 On the First Cause of Action:

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

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

1           On the Second Cause of Action:

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

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

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

15           On All Causes of Action:

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

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

20  
21 Dated: September 8, 2022

Respectfully submitted,

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

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

## Case Information

21CV00850 | City of Fort Bragg vs Mendocino Railway

Case Number

21CV00850

File Date

10/28/2021

Court

Civil

Case Type

42: Unlimited Other Complaint  
(Not Spec)

Judicial Officer

Brennan, Clayton

Case Status

Opened

## Party

Plaintiff

City of Fort Bragg

Active Attorneys ▼

Lead Attorney

HILDERBRAND, RUSSELL A

Retained

Defendant

Mendocino Railway

Active Attorneys ▼

Lead Attorney

BEARD, PAUL J. II

Retained

## Events and Hearings

10/28/2021 First Paper Filed ▼

Complaint Verified for Declaratory and Injunctive Relief

Comment

**Complaint for Declaratory and Injunctive Relief**

10/28/2021 Summons Issued / Filed ▼

Summons

Comment

**Summons Issued/Filed**

10/28/2021 Civil Cover Sheet Filed ▼

Civil Case Cover Sheet

Comment

**Civil Cover Sheet Filed**

10/28/2021 Notice ▼

MCV-101 Notice of Case Management Conference

Comment

**Notice of Case Management Conference**

12/08/2021 Proof of Service ▼

Proof of Service on Mike Heart

Comment

**Proof of Service of Summons and Complaint on Mike Heart**

12/08/2021 Proof of Service ▼

Proof of Service on Robert Pinole

Comment

**Proof of Service of Summons and Complaint on Robert Pinole**

01/07/2022 Declaration ▼

Declaration 30 day extension

Comment

**Declaration of Demurring Party ISO Automatic Extension**

01/14/2022 Motion - \$60 Fee ▼

Notice of Demurrer and Demurrer

Comment

**Notice of Demurrer and Demurrer**

01/14/2022 Memorandum of Points & Authorities ▼

Points and Authority Demurrer

Comment

**Memo of Ps and As re Demurrer**

01/14/2022 Request ▼

Request for Judicial Notice.pdf

Comment

**Request for Judicial Notice**

01/14/2022 Declaration ▼

Declaration of Paul Beard

Comment

**Declaration of Paul Beard**

01/14/2022 Declaration ▼

Declaration of Mike Hart

Comment

**Declaration of Mike Hart**

01/14/2022 Motion - \$60 Fee ▼

Motion to Strike Filed by Defendants

Comment

**Motion to Strike**

01/19/2022 Notice ▼

Notice of New Hearing Date

Comment

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

01/20/2022 Minute Order ▼

Minute Order re: Vacating/ Resetting Hearing

PSN-100 Proof of Service

Comment

**Re: Vacating / Setting of Hearing**

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Motion to Strike Complaint

Comment

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

02/09/2022 Opposition - No Fee ▼

Plaintiffs Opposition to Demurrer

Comment

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

02/09/2022 Objection - No Fee ▼

Plaintiffs Objection to Request for Judicial Notice

Comment

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

02/09/2022 Notice ▼

Notice of Lodging Authority Cites

Comment

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

02/16/2022 Brief Filed ▼

Reply Brief In Support of Defendant Demurrer

Comment

Reply Brief in Support of Demurrer

02/16/2022 Brief Filed ▼

Reply Brief in Support of Def's Mtn to Strike

Comment

Reply Brief in Support of Motion to Strike

02/16/2022 Brief Filed ▼

Reply In Support of Def's Req for Judicial Ntc

Comment

Reply Brief in Support of Request for Judicial Notice

02/22/2022 Notice ▼

NOT - Lodging Authority Cites 2 - Final.pdf

Comment

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

02/22/2022 Brief Filed ▼

Amicus Curiae Application & Brief

Comment

Amicus Curiae Application & Brief

02/22/2022 Request ▼

Request for Judicial Notice

Comment

Request for Judicial Notice

02/22/2022 Proof of Service ▼

Proof of Service

Comment

Proof of Service

02/22/2022 Notice ▼

Notice of Remote Appearance

Comment

Notice of Remote Appearance

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

Original Type

\*Demurrer / Motion to Strike

MINUTES 02/24/2022

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Comment

both Demurrer and a Motion to Strike

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

02/24/2022 \*Case Taken Under Submission

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

Case Management Statement

Comment

Case Management / Status Conference Statement

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

Amended Case Management Statement

Comment

AMENDED Case Management / Status Conference Statement

04/06/2022 Notice ▼

4.6.22 Notice Remote Appearance

Comment

Notice of Remote Appearance

04/07/2022 \*Case Management Conference ▼

Original Type

\*Case Management Conference

04/07/2022 MINUTES

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Parties Present ▲

Defendant

Attorney: BEARD, PAUL J. II

04/07/2022 Remote Appearance Made

04/11/2022 Minute Order ▼

Minute Order Re: Setting Further Case Management Conference

PSN-100 Proof of Service

Comment

Re: Further Case Management Conference

04/13/2022 Request ▼

Defendants Supplemental Request for Judicial Notice

Comment

Supplemental RJN in Support of Demurrer/Motion to Strike

04/28/2022 Ruling ▼

Ruling on Demurrer to the Complaint

PSN-100 Proof of Service

Comment

**On Demurrer to the Complaint**

04/28/2022 Ruling ▼

Ruling On Motion to Strike

PSN-100 Proof of Service

Comment

**On Motion to Strike**

04/28/2022 \*Case Returned from Under Submission

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

Case Management Statement for Defendants

Comment

**Case Management / Status Conference Statement**

05/04/2022 Proof of Service ▼

Proof of Service of Case Management Statement

Comment

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

05/04/2022 Appeal Document ▼

Appeal Document WRIT DECISION

Comment

**WRIT DECISION**

05/09/2022 Minute Order ▼

Minute Order Re: Vacating Case Management Conference

PSN-100 Proof of Service

Comment

**Minute Order Re: Vacating Case Management Conference**

05/09/2022 Appeal Document ▼

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

Comment

**LETTER STAYING PROCEEDINGS PENDING DECISION ON WRIT OF MANDATE.**

05/19/2022 \*Case Management Conference ▼

Judicial Officer  
**Brennan, Clayton**

Hearing Time  
**2:00 PM**

Cancel Reason  
**Vacated**

06/10/2022 Appeal Document ▼

Appeal Document ORDER DENYING PETITION FILED 06/09/22

Comment  
**ORDER DENYING PETITION FILED 06/09/22**

06/13/2022 Minute Order ▼

Minute Order

PSN-100 Proof of Service

06/23/2022 \*Case Management Conference ▼

Judicial Officer  
**Brennan, Clayton**

Hearing Time  
**2:00 PM**

Cancel Reason  
**Vacated - Set in Error**

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

Verified Answer Filed by Mendocino Railway

Comment  
**Answer / Response / Denial - Unlimited**

06/27/2022 Opposition - No Fee ▼

Opp to Notice of Related Case

Comment  
**Opposition of City of Fort Bragg To Notice of Related Case**

06/29/2022 Minute Order ▼

Minute Order Re: Setting of Case Mangement Conference

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

Comment  
**re: Setting of Case Management Conference**

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

Amended Case Management Statement filed by Defendant Mendocino Railway

Comment

Amended Case Management / Status Conference Statement

08/18/2022 Proof of Service ▼

Proof of Service of CMC statement 8-18-22

Comment

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

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

Case Mangement Statement filed by Plaintiff City of Ft. Bragg

Comment

Case Management / Status Conference Statement

09/01/2022 \*Case Management Conference ▼

Original Type

\*Case Management Conference

09/01/2022 MINUTES

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

Result

Held

Parties Present ▲

Plaintiff: City of Fort Bragg

Defendant: Mendocino Railway

09/01/2022 Remote Appearance Made

09/06/2022 Minute Order ▼

MCV-163 Minute Order Setting Trial-Proceedings Cout Trial

PSN-100 Proof of Service

Comment

Setting Trial and Other Proceedings

09/08/2022 Motion - \$60 Fee ▼

Notice of Motion

Comment

NOTICE OF MOTION AND MOTION FOR LEAVE OF COURT TO INTERVENE

09/13/2022 Objection - No Fee ▼

Comment

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

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

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

PSN-100 Proof of Service

Comment

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

09/16/2022 Opposition - No Fee ▼

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

Comment

**Opposition to Notice of Related Case**

09/22/2022 Brief Filed ▼

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

Comment

**Brief Filed**

09/22/2022 Opposition - No Fee ▼

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

Comment

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

09/26/2022 Non-opposition ▼

City's Non-Opp Motion to Intervene

Comment

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

09/27/2022 Objection - No Fee ▼

Plaintiff's Opposition to Request for Judicial Disqualification

Comment

**Objection to Request for Judicial Disqualification**

09/27/2022 Minute Order ▼

Minute Order

PSN-100 Proof of Service

09/29/2022 Order ▼

Order ON MOTION TO DISQUALIFY JUDGE BRENNAN

Comment

**ON MOTION TO DISQUALIFY JUDGE BRENNAN**

09/30/2022 Minute Order ▼

Minute Order Setting of Hearing Date

PSN-100 Proof of Service

Comment

**Minute Order Re: Setting of Hearing**

10/06/2022 \*Motion ▼

Judicial Officer

**Brennan, Clayton**

Hearing Time

**2:00 PM**

Cancel Reason

**Vacated**

Comment

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

10/12/2022 Notice ▼

Notice of Remote Appearance

Comment

**Notice of Remote Appearance**

10/13/2022 Reply Filed ▼

California Coastal Commission Reply In Support of its Motion to Intervene

Comment

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

10/20/2022 \*Motion ▼

Original Type

**\*Motion**

10/20/2022 MINUTES

Judicial Officer

**Brennan, Clayton**

Hearing Time

2:00 PM

Result

Held

Comment

Intervene

Parties Present ▲

Plaintiff

Attorney: HILDERBRAND, RUSSELL A

Defendant

Attorney: BEARD, PAUL J. II

10/20/2022 Minute Order ▼

Proof of Service of Minute Order granting Motion

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

Comment

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

10/20/2022 Remote Appearance Made

05/10/2023 \*Settlement Conference ▼

Judicial Officer

Nadel, Jeanine

Hearing Time

1:30 PM

Comment

Ghidelli Official

06/15/2023 \*Pretrial Conference ▼

Judicial Officer

Brennan, Clayton

Hearing Time

2:00 PM

06/21/2023 \*Trial: Court ▼

Judicial Officer

Brennan, Clayton

Hearing Time

9:00 AM

Comment

3 day Est



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

City of Fort Bragg, California Coastal Commission

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

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

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

DEFENDANTS

Mendocino Railway

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
49 U.S.C. 10501, et seq. (Interstate Commerce Commission Termination Act--ICCTA)
Brief description of cause:
Declaratory and injunctive relief re: Defendant's status as a federal railroad under ICCTA entitled to federal preemption.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

JUDGE Judge John S. Tigar DOCKET NUMBER 4:22-CV-04597-JST

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

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

DATE 10/20/2022

SIGNATURE OF ATTORNEY OF RECORD

s/ Paul Beard II

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

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

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