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By:
Dorothy Jess
Deputy Clerk



5 Attorneys for Defendant
6 MENDOCINO RAILWAY

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MENDOCINO**

9 CITY OF FORT BRAGG, a California
10 municipal corporation

11 Plaintiff,

12 v.

13 MENDOCINO RAILWAY and DOES 1-10,
14 inclusive,

15 Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**VERIFIED ANSWER OF DEFENDANT
MENDOCINO RAILWAY**

Complaint Filed: October 28, 2021

16 Defendant MENDOCINO RAILWAY hereby answers the Complaint as follows:

17 Responding to the introductory paragraph at page 1, lines 19-22, Defendant admits that Plaintiff
18 has “file[d] this action seeking judicial declaration regarding the validity of the Mendocino Railway’s
19 status as a public utility,” under the purported authority of Code of Civil Procedure section 1060, “and/or
20 injunctive relief.” Except as specifically admitted, Defendant denies the allegations of the introductory
21 paragraph.
22

23 1. Responding to paragraph 1, Defendant denies each and every other allegation contained
24 therein.

25 2. Responding to paragraph 2, Defendant answers that the allegations are conclusions of law
26 to which no response is required. To the extent a response is required, Defendant denies the allegations.

27 3. Responding to paragraph 3, Defendant admits that it is currently listed as a class III railroad
28 by the California Public Utilities Commission (“CPUC”), and as such is subject to CPUC jurisdiction and

1 has all the legal rights of a public utility. Defendant further admits that, among other operations and
2 services it provides to the public, it owns and operates the Skunk Train, which operates in part in the City
3 of Fort Bragg. Defendant further admits that some of its real property is located in the City of Fort Bragg.
4 Except as specifically admitted, Defendant denies each and every other allegation contained in paragraph
5 3.

6 4. Responding to paragraph 4, Defendant lacks sufficient information and belief to respond
7 to the allegations and on that basis denies them.

8 5. Responding to paragraph 5, Defendant admits that it has a long and storied history of
9 operations between Fort Bragg and Willits. Except as specifically admitted, Defendant denies each and
10 every other allegation contained in paragraph 5.

11 6. Responding to paragraph 6, Defendant admits that, in 1998, the Public Utilities
12 Commission issued at least two decisions of which Defendant is aware, concerning applications made by
13 the Skunk Train's then-owner and operator, California Western Railroad. Except as specially admitted,
14 Defendant denies each and every other purported fact allegation contained in paragraph 6. The remaining
15 allegations are conclusions of law to which no response is required. To the extent a response is required,
16 Defendant denies the allegations.

17 7. Responding to paragraph 7, Defendant admits that Mendocino Railway did have, and
18 continues to have, the capacity to carry freight and passengers. Except as specifically admitted, Defendant
19 denies each and every other purported fact allegation contained in paragraph 7. The remaining allegations
20 are conclusions of law to which no response is required. To the extent a response is required, Defendant
21 denies the allegations.

22 8. Responding to paragraph 8, Defendant answers as follows: As to the first sentence,
23 Defendant admits that, on or about April 11, 2013, its operations were disrupted following the partial
24 collapse of Tunnel No. 1, which buried nearly 50 feet of its 1,122 feet of track under rocks and soil.
25 Defendant lacks sufficient information and belief to respond to the remaining allegation in the first
26 sentence and, on that basis, denies it. As to the second sentence, Defendant admits that the collapse of
27 Tunnel No. 1 temporarily eliminated the ability of its rail operations between Fort Bragg and Willits to
28 continue. As to the third sentence, Defendant admits that, on or about June 18, 2013, Save The Redwoods

1 League announced that it had reached an agreement with Defendant to pay \$300,000 for an option to
2 purchase a conservation easement for the protection of redwoods along Defendant’s “Redwoods Route,”
3 and that Defendant applied said \$300,000 to the total cost for repair of Tunnel No. 1. Except as specifically
4 admitted, Defendant denies all other allegations contained in the third sentence. As to the fourth sentence,
5 Defendant admits that the \$300,000 payment from Save the Redwoods League assisted Defendant in
6 resuming all services on the entire line in August 2013. Except as specifically admitted, Defendant denies
7 all other allegations contained in paragraph 8.

8 9. Responding to paragraph 9, Defendant denies the allegations contained therein.

9 10. Responding to paragraph 10, Defendant admits that it is estimated to cost around \$5 million
10 to repair and reopen Tunnel No. 1. Except as specifically admitted, Defendant denies each and every other
11 allegation contained in paragraph 10.

12 11. Responding to paragraph 11, Defendant admits that among other services provided to the
13 public in various geographic areas, including freight, passenger, and other excursion services, it operates
14 a 3.5 mile excursion from Fort Bragg to Glenn Blair Junction, and a 16-mile excursion from Willits to
15 Crowley. Except as specifically admitted, Defendant denies each and every other allegation contained in
16 paragraph 11.

17 12. Responding to paragraph 12, Defendant answers as follows: As to the first sentence,
18 Defendant lacks sufficient information and belief to respond to the allegations and on that basis denies
19 them. As to the second sentence, Defendant denies the allegations contained therein. As to the third
20 sentence, Defendant admits that it refused Plaintiff’s attempts to trespass onto its rail property for permit-
21 related inspections of its rail facilities, on the grounds of state and federal preemption law, given
22 Defendant’s status as a public-utility railroad exclusively regulated as such by the CPUC and the STB.
23 Except as specifically admitted, Defendant denies each and every other allegation contained in the third
24 sentence. As to the fourth sentence, Defendant admits that when Plaintiff unlawfully posted a “Stop Work
25 Order” for failure to obtain a building permit for work on Defendant’s storage shed on rail property,
26 Defendant removed the unlawful order and proceeded with the work. Except as specifically admitted,
27 Defendant denies each and every allegation contained in the fourth sentence. As to the fifth sentence,
28 Defendant admits that in August 2021, Plaintiff emailed Defendant a “Limited Term Application,” on the

1 purported grounds that “[t]he Police Dept. notified [Plaintiff] that [Defendant] will be having evening
2 events that potentially can cause noise issues.” Except as specifically admitted, Defendant denies each
3 and every other allegation contained in the fifth sentence. As to the sixth sentence, Defendant admits that
4 Defendant responded to said email by stating, in relevant part: “these events to the extent they exist are
5 outside the city’s jurisdictional boundaries and are thus not subject to a permit.” Except as specifically
6 admitted, Defendant denies each and every other allegation contained in the sixth sentence.

7 13. Responding to paragraph 13, Defendant answers that the allegations constitute conclusions
8 of law to which no response is required. To the extent a response is required, Defendant denies the
9 allegations.

10 14. Responding to paragraph 14, Defendant restates and incorporates herein by reference each
11 and every answer contained in the paragraphs above.

12 15. Responding to paragraph 15, Defendant answers as follows: the first and second sentences
13 consist of allegations that are conclusions of law, to which no response is required. To the extent a response
14 is required, Defendant denies the allegations. As to the third sentence, Defendant admits that it is
15 Defendant’s position that its status as (a) a CPUC-regulated public-utility railroad and (b) a railroad within
16 the jurisdiction of the federal Surface Transportation Board (“STB”) broadly preempt environmental pre-
17 clearance review and land-use permitting of Defendant’s rail activities by Plaintiff, under both state and
18 federal preemption. As to the fourth sentence, Defendant admits that Plaintiff disagrees with Defendant’s
19 position. Except as specifically admitted, Defendant denies each and every other allegation contained in
20 the fourth sentence. As to the fifth sentence, Defendant denies each and every allegation contained therein.

21 16. Responding to paragraph 16, Defendant denies each and every allegation contained therein.

22 17. Responding to paragraph 17, Defendant denies each and every allegation contained therein.

23 18. Responding to paragraph 18, Defendant denies each and every allegation contained therein.

24 19. Responding to paragraph 19, Defendant admits that Plaintiff seeks injunctive relief against
25 Defendant under the purported authority of California Civil Code section 526. Defendant further admits
26 that Plaintiff seeks to require Defendant to submit fully to Plaintiff’s jurisdiction and authority without
27 regard to its status as a CPUC-regulated public utility and STB-regulated federal railroad. Except as
28 specifically admitted, Defendant denies each and every other allegation contained in paragraph 19.

VERIFICATION

I, Robert Pinoli, am President of Defendant Mendocino Railway. I have read the foregoing answer and know the contents thereof. The same is true of my own personal knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true. If called upon to testify, I would and could testify thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed in Mendocino County, California, on this 24th day of June, 2022.



ROBERT PINOLI

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 June 24, 2022, I served **DEFENDANT’S VERIFIED ANSWER** on the following counsel for Respondent:

KRISTA MACNEVIN JEE

JONES MAYER

kmj@jones-mayer.com

Counsel for Plaintiff

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the above entitled document with One Legal, I simultaneously opted for electronic service of the same on Ms. Jee at the email above.

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

DATED: June 24, 2022

/s/ Paul Beard II