

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: 
D. Jess
Deputy Clerk

6 Attorneys for Plaintiff
CITY OF FORT BRAGG

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

11 CITY OF FORT BRAGG, a
California municipal corporation,

12 Plaintiff,

14 vs.

15 MENDOCINO RAILWAY AND
DOES 1-10, inclusive

16 Defendants.

Case No.21CV00850

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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

JUDGE: CLAYTON BRENNAN

DEPT.: TEN MILE

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

1 **PARTIES**

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

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

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

18 **BACKGROUND FACTS**

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

23 6. In 1998, the Public Utilities Commission issued an opinion that the
24 predecessor owner of the Skunk Train, California Western Railroad (“CWRR”), was not
25 operating a service qualifying as “transportation” under the Public Utilities Code because
26 in providing this “excursion service, CWRR is not functioning as a public utility.”
27 (CPUC Decision 98-01-050, Filed January 21, 1998.)
28

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.
28

1 12. In June, 2017, City staff deemed the roundhouse as so dilapidated that it
2 may be necessary to demolish the building and rebuild instead of repairing. The City even
3 offered to assist with funding to assist with those costs. Attempts to inspect the
4 roundhouse by the County Building Inspector were refused and rebutted with a message
5 from the Defendant that the City has no authority over a railroad. In 2019, when the City
6 red tagged Defendant’s work on a storage shed on the Skunk Train’s property for failure
7 to obtain a City building permit, the Defendant removed the tag and proceeded with the
8 work. More recently in August, the City sent an email to Defendant to inform them that
9 they needed a Limited Term Permit for a special event after 10pm that would create
10 additional noise in the neighborhood surrounding the Defendant’s property. Defendant’s
11 response was that they are “outside the City’s jurisdictional boundaries and thus not
12 subject to a permit”.

13 13. Defendant is directly responsible for the activities occurring as set forth
14 herein in connection with operation of the Skunk Train and the condition of real property
15 in violation of law as alleged herein. Defendant is thus responsible for continuing
16 violations of the laws and public policy of the State of California and/or local codes,
17 regulations and/or requirements applicable to such operations and activities and/or have
18 permitted, allowed, caused, or indirectly furthered such activities/operations in a manner
19 in violation of law, and Defendant’s use of and activities in connection with the Skunk
20 Train and the condition of real property relating thereto, including the allowance or
21 maintenance of such activities, operations and conditions in violation of law are inimical
22 to the rights and interests of the general public and constitute a public nuisance and/or
23 violations of law.

24 **FIRST CAUSE OF ACTION**

25 **Declaratory and/or Injunctive Relief**

26 **[Cal. Civil Proc. Code §§ 1060, 526]**

27 14. Plaintiff realleges and incorporates by reference the allegations in
28 paragraphs 1 through 13 as if fully set forth herein.

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