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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF MENDOCINO**

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|-------------------------------------|---|------------------------------------|
| 11 CITY OF FORT BRAGG, a California |) | 21CV00850 |
| 12 municipal corporation, |) | |
| |) | APPLICATION TO FILE AMICUS |
| 13 Plaintiff, |) | CURIAE BRIEF; AMICUS CURIAE |
| v. |) | BRIEF |
| |) | |
| 14 MENDOCINO RAILWAY AND DOES 1- |) | Date: February 24, 2022 |
| 15 10, inclusive, |) | Time: 2:00 p.m. |
| |) | Dept.: TM |
| 16 Defendants. |) | |
| |) | |
| |) | |

18 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

19 The County of Mendocino (“County”) respectfully submits this brief and request for
20 amicus curiae status to address certain issues related to Mendocino Railway’s (“Railway”)
21 Demurrer to the Verified Complaint for Declaratory and Injunctive Relief (“Complaint”) filed by
22 the City of Fort Bragg (“City”), set to be heard on February 24, 2022, at 2 p.m., in the Ten Mile
23 Department of the Mendocino County Superior Court, located at 700 S. Franklin Street, Fort
24 Bragg, California. Specifically, the County wishes to address what appears to be a mistaken
25 belief by the Railway or some of its employees that public utility status would render it immune
26 to State and local laws when enforced by local government. The County seeks to file this brief
27 to request that any Court order does not unintentionally prejudice future litigation on that issue
28

1 and avoid any statements that might encourage the Railway to ignore local enforcement officials
2 during or after the pendency of this action.

3
4 **THE PROPOSED AMICUS BRIEF WOULD ASSIST THE COURT
IN DECIDING THIS MATTER.**

5 During appeals, the California Rules of Court set forth rules allowing a nonparty to file a
6 brief as amicus curiae. Cal. Rules of Court 8.200(c). No similar rule appears to address the
7 practice before trial courts, but the practice has long been recognized. *See In re Veteran's*
8 *Industries, Inc.*, 8 Cal. App. 3d 902, 924 (1970); *People v. City of Long Beach*, 183 Cal. App. 2d
9 271, 276 (1960). The party seeking amicus curiae status is required to explain its interest and
10 how its brief will assist the Court. Cal. Rules of Court 8.200(c).

11 In this case, the County's brief will assist the Court by providing additional information
12 regarding the issues of preemption if the Railway is determined to be a public utility under
13 California law. Specifically, the County wishes to make the Court aware that, based on the
14 allegations in the Complaint and the County's own experience, the Railway or its staff may have
15 a mistaken belief that status as a public utility render them completely immune to State and local
16 law when enforced by local officials. This belief appears to have already impeded application
17 and enforcement of important protections in the Health and Safety Code.

18
19 **INTEREST OF AMICUS CURIAE.**

20 The County has an interest in ensuring that its regulatory and enforcement duties under
21 State law are not unduly impeded by erroneous legal conclusions. Given that the Railway
22 already appears to have impeded local enforcement efforts by City and County officials, the
23 County is concerned that Railway staff may point to the pendency of this action or any orders
24 issued herein as a basis for obstructing future enforcement or regulatory efforts. Because of this,
25 the County wishes to request that this Court is clear in any orders issued that this matter does not
26 address the scope of any preemption if the Railway were to be adjudged a public utility.

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Dated: February 22, 2022

Respectfully submitted,
CHRISTIAN M. CURTIS, County Counsel

by 
CHRISTIAN M. CURTIS, County Counsel
Attorneys for the County of Mendocino

AMICUS CURIAE BRIEF

I. INTRODUCTION.

The City of Fort Bragg (“City”) has brought this action against Mendocino Railway (“Railway”) seeking a declaration that the Railway is not a public utility under California law and compelling the Railway to comply with City ordinances. The Railway has demurred, arguing that its status as a public utility has been adjudged by the California Public Utilities Commission (“CPUC”) and that the Superior Court lacks jurisdiction to set aside that determination. Both parties point to a 1998 ruling by the CPUC in which the Railway sought and received relief from regulation on the grounds that certain operations fell outside of CPUC jurisdiction. The parties dispute the proper reading and legal significance of that decision.

Although the pleadings present interesting issues regarding the Court’s jurisdiction, the potential for judicial estoppel, and other legal questions, Amicus Curiae County of Mendocino (“County”) writes to address a slightly different issue. The County is concerned, based on the allegations in the Complaint and the County’s own experiences, that the Railway may assert that public utility status confers broad immunity to State and local laws when enforced by local officials. That assertion is not properly framed by these pleadings, and it is unclear whether any dispute on this issue would be ripe at this time. Nevertheless, the County is concerned about the possibility of prejudicing future litigation or unintentionally inducing obstruction of local enforcement efforts and respectfully asks that this Court is careful to craft any orders in a way that avoid such harm.

1 **II. WHILE THE RAILWAY’S POSITION IS UNCLEAR, THERE ARE INDICIA**
2 **THAT ITS PRACTICES MAY DELAY OR OBSTRUCT LOCAL**
3 **ENFORCEMENT OF STATE LAWS.**

4 Based on the allegations in the Complaint and the County’s own experiences, it appears
5 that the Railway may be using public utility status as a grounds for obstructing local officials in
6 the enforcement of various State statutes. These statutes, including but not limited to the
7 Uniform Building Code and the Hazardous Waste Control Act, are creatures of the State
8 Legislature but rely on enforcement by local administrative agencies, much the same way that
9 the Penal Code is enforced by local sheriff’s offices and police departments. While the County
10 is mindful that it has not received a clear articulation of the Railway’s position on this issue,
11 there are two factors that suggest a substantial risk that the Railway may obstruct future
12 enforcement efforts.

13 First, in its Complaint, the City alleges that the Railway has refused compliance with
14 State building standards and nuisance laws. As to one dilapidated structure, the City contends
15 that “[a]ttempts to inspect the roundhouse by the County [sic] Building Inspector were refused
16 and rebutted with a message from the Defendant that the City has no authority over a railroad.”
17 Complaint ¶ 12. Later, the Railway proceeded to construct a storage shed without a building
18 permit, going so far as to remove the red tag placed on the structure by the City. Complaint ¶ 12.
19 While the County lacks details about these specific disputes, the nature of the alleged conduct is
20 troubling.

21 Second, the County’s department of Environmental Health encountered resistance in its
22 own efforts to enforce hazardous waste laws after a spill on the Railway’s property. In
23 December of 2021, the County received a report of an oil spill on the Railway’s property. RJN
24 #1. The County inspector reported that Railway staff challenged his jurisdiction because “they
25 were under Federal Jurisdiction and that they did not have to follow county regulations . . .”
26 RJN #1, Ex. A. As a result, the County issued a Notice of Violation. RJN #1, Ex. B. The
27 Railway then backtracked, and a representative from the Railway wrote the County,
28 characterizing the situation as a “misunderstanding.” RJN #1, Ex. C. Although the Railway
 indicated that it recognized the County’s authority as the CUPA, there appears to be a significant

1 factual dispute regarding the events of this inspection. Based on the report of the County’s
2 inspector, it appears that senior management at the Railway may have been trained or
3 conditioned to rebuff all regulatory efforts by local officials.

4 Based on these factors, the County is concerned that the Railway or its employees may
5 fundamentally misunderstand the scope of any preemption or immunities that may attach to
6 public utility status. More troublingly, it appears that this misunderstanding may translate to
7 active obstruction of local enforcement efforts. See Complaint ¶ 12. Because of this, the County
8 is asking the Court to ensure that any orders issued in this case are crafted in a way that avoids
9 any risk of furthering this misperception or obstruction of local enforcement efforts.

10 **III. PUBLIC UTILITY STATUS DOES NOT CONVEY BLANKET IMMUNITY TO**
11 **STATE OR LOCAL LAW.**

12 “It has never been the rule in California that the [CPUC] has exclusive jurisdiction over
13 any and all matters having any reference to the regulation and supervision of public utilities.”
14 *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal. 4th 893, 944 (quoting *Vila v. Tahoe*
15 *Southside Water Utility* (1965) 233 Cal. App. 2d 469 at 477); see also Pub. Util. Code § 2902.
16 Although the statutes and regulations governing public utilities can preempt local ordinances, the
17 determination of whether a particular ordinance is preempted must be based on a case-by-case
18 determination regarding the substance of the local ordinance and the relevant State law. See e.g.,
19 *T-Mobile W. LLC v. City & Cty. of S.F.*, 6 Cal. 5th 1107 (2019); *Leslie v. Superior Court*, 73
20 Cal. App. 4th 1042 (1999); *San Diego Gas & Elec. Co. v. City of Carlsbad*, 64 Cal. App. 4th 785
21 (1998).

22 Additionally, public utilities are still subject to various state laws, which may be enforced
23 by local officials. This can include local ordinances that are mandated by statute. See 84 Ops.
24 Cal. Atty. Gen. 209; see also *Leslie v. Superior Court*, 73 Cal. App. 4th 1042, 1048 (1999) (“The
25 County Building Code therefore is not a purely local scheme because it incorporates the
26 comprehensive State Housing Law that speaks to grading and excavation of roads”). Although
27 contained in ordinance, these requirements derive from state statutes that have “equal dignity and
28 authority . . .” as other state laws. *Martin v. Riverside Cty. Dep’t of Code Enft*, 166 Cal. App.

1 4th 1406, 1413 (2008). As such, they may apply to a public utility absent a contrary, more
2 specific rule. *Leslie v. Superior Court*, supra. Thus, in determining whether a particular local
3 ordinance applies to a public utility, it is necessary to determine whether that specific ordinance
4 is an exercise of local police power or a state mandate, whether the ordinance conflicts with any
5 specific state statute or CPUC regulation, and whether the ordinance has touched upon a subject
6 in which the State has elected to occupy the field.

7 As pled, this case does not present an opportunity to address those questions. The City
8 has elected only to challenge whether the Railway is a public utility, not to determine which
9 State or local laws apply if it is. In adjudicating whether the Railway must “comply with *all* City
10 ordinances,” there should be no question of whether the Railway must comply with *any* local
11 ordinances. Complaint [6:15-18] (italics added). Many State and local laws will unambiguously
12 apply to the Railway regardless of any questions regarding its status with the CPUC. Because
13 there are indications that the Railway or some of its employees may not recognize this
14 distinction, however, the County respectfully requests that any orders issued in this matter are
15 crafted so as to avoid any unintentional confusion.

16 **IV. CONCLUSION.**

17 For the reasons stated herein, the County respectfully requests that the Court craft orders
18 issued in this matter so as to avoid unintentional confusion regarding preemption and/or
19 immunities, that could lead to the obstruction of local enforcement efforts.

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21 Respectfully submitted,

22 Dated: February 22, 2022

CHRISTIAN M. CURTIS, County Counsel

23 

24 by

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