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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.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**REPLY IN SUPPORT OF DEFENDANT’S
REQUEST FOR JUDICIAL NOTICE**

Hearing Date: February 24, 2022

Hearing Time: 2:00 p.m.

Complaint Filed: October 28, 2021

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1 Plaintiff City of Fort Bragg objects to Defendant Mendocino Railway's request for judicial notice
2 of Exhibits A, C, and D. The City does not object to judicial notice of Exhibits B and E.

3 Mendocino Railway explains, with citations to authorities, why Exhibits A, C, and D are
4 judicially noticeable. The City's objections are generally addressed below:

5 1. Exhibit A: This is the CPUC's list of regulated railroads, taken from the City's official
6 website.

7 a. Purpose: The purpose of this document is to establish (1) the fact that the CPUC has
8 listed Mendocino Railway as a public-utility railroad, and (2) the inference therefrom
9 that the CPUC deems Mendocino Railway to be a public-utility railroad. Those facts
10 are judicially noticeable. Significantly, Mendocino Railway does not seek judicial
11 notice of the truth of the matter stated in the document (i.e., that Mendocino Railway
12 is, in fact, a CPUC-regulated public-utility railroad). The Complaint itself establishes
13 that fact.

14 b. Relevance: The fact that the CPUC has determined that Mendocino Railway is a
15 public-utility railroad goes to the question whether this Superior Court action
16 interferes with the CPUC's determinations and jurisdictions.

17 2. Exhibit C: January 17, 2019, letter from the City to another public agency, the California
18 Coastal Commission.

19 a. Purpose: The purpose of this document is to establish that the City stated, on January
20 17, 2019, that the CPUC has "recognized the Mendocino Railway as a regulated
21 public utility" and that the railroad's status as a federally regulated railroad is "not ...
22 in question." These are statements of fact, not legal opinions. The document's purpose
23 is *not* to establish the truth of the matters stated in the letters (i.e., that Mendocino
24 Railway is a public-utility and federally regulated railroad).

25 b. Relevance: The City's statement is relevant to establishing the City's position as to
26 whether Mendocino Railway is a CPUC- and STB-regulated railroad.

27 3. Exhibit E: August 1, 2019, "Coastal Commission Certification" authored by the City.

28 a. Legal Authority: Mendocino Railway seeks judicial notice of this official act of the

1 City under section 452(c) of the Evidence Code, which provides for judicial notice of
2 “[o]fficial acts of the legislative, executive, and judicial departments of the United
3 States and of any state of the United States.” The City claims that, because it is not a
4 “state,” its official documents are not judicially noticeable. But that is incorrect.
5 *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal.App.4th 364, 376 n.8 (“We
6 granted in part and denied in part appellants' request for judicial notice, and their
7 second request for judicial notice of documents pertaining to the ‘official acts of the
8 City of Los Angeles.’ (See Evid. Code, § 452, subd. (c)).

- 9 b. Purpose: The purpose of this document is not to prove the truth of the matters stated
10 therein, but to establish that the City made the statements contained in the document
11 concerning Mendocino Railway’s current and future rail operations.
- 12 c. Relevance: The document is relevant to the City’s position on the history of
13 Mendocino Railway’s freight and passenger service, as well as on whether the
14 railroad is ready, willing, and able to resume full service upon the tunnel’s reopening.

15 DATED: February 16, 2022

/s/ Paul Beard II

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Attorneys for Defendant MENDOCINO RAILWAY