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9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

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 13 SIERRA NORTHERN RAILWAY, a
 California corporation, and MENDOCINO
 14 RAILWAY, a California corporation,

15 Plaintiffs,

16 vs.

17 CITY OF FORT BRAGG, and DOES 1
 18 through 25, inclusive,

19 Defendants.

Case No.: 1:24-cv-04810

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- AMENDED COMPLAINT FOR:**
(1) CERCLA RESPONSE COSTS
(2) FIFTH AMENDMENT TAKING
(3) DECLARATORY RELIEF
(4) CONTRIBUTION & INDEMNITY
(5) NUISANCE
(6) TRESPASS
(7) INVERSE CONDEMNATION

DEMAND FOR JURY TRIAL

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1 Plaintiffs Sierra Northern Railway (“SNR”) and Mendocino Railway (“MRY”), collectively
2 referred to herein as “Plaintiffs,” bring this Amended Complaint (“Complaint”) against Defendant
3 City of Fort Bragg (“Defendant” or “the City”), alleging as follows:

4 **INTRODUCTION**

5 1. SNR currently owns a parcel of real property located at 90 West Redwood Avenue, in
6 Fort Bragg, Mendocino County, California (the “Property”). MRY, an affiliate of SNR, previously
7 owned and currently operates the Property, and therefore has suffered and continues to suffer injury
8 as a result of the City’s conduct, as alleged herein.

9 2. The Property includes a body of water, approximately eight (8) acres in size, known
10 as the “Mill Pond,” and sometimes also referred to as “Pond 8.” Mill Pond has received stormwater
11 on an on-going basis from two catchments located within and controlled by the City of Fort Bragg,
12 which drain into Mill Pond through the culverted Maple and Alder Creeks. This stormwater, running
13 unabated into Mill Pond, has been tested for the presence of hazardous substances. Two such
14 substances have been found in concentrations that exceed applicable water quality standards by one
15 to two orders of magnitude: dioxins and furans. Stormwater entering Mill Pond leaves through a dam
16 spillway that discharges to the Pacific Ocean at Fort Bragg Landing. Thus, the City’s stormwater has
17 a direct connection to navigable waters of the U.S.

18 3. The City’s ongoing contamination of Mill Pond with hazardous substances gives rise
19 to liability under the Comprehensive Environmental Response, Compensation and Liability Act
20 (“CERCLA”), 42 U.S.C. §§ 9601-9675 for costs of response and declaratory and other relief. In
21 addition to the recovery of response costs, SNR seeks declaratory relief with respect to the City’s
22 liabilities and continuing obligations related to the contamination as well as damages and other
23 supplemental claims arising from the release of contaminants at its property.

24 4. Additionally, the City’s ongoing contamination has resulted in a taking under the
25 Takings Clause of the Fifth Amendment to the United States Constitution. Namely, the City’s
26 misfeasance and malfeasance have caused damage to the Property in that it has been invaded by
27 contaminated stormwater, as the direct and proximate result of the City’s authorized customs, policies,
28 and practices. In so doing, the City has caused Plaintiffs to suffer a taking of its property without just

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1 compensation. Further, the City is receiving a benefit in that it is using Mill Pond as a stormwater
2 treatment facility and catchment at the expense of Plaintiffs. Because the pollution is ongoing and
3 unabated, Plaintiffs’ right to enjoy its property is not merely an injury that reduces its value, but is a
4 deprivation of Plaintiffs’ rights over an extended period of time, with no end in sight.

5 5. The City’s taking deprives Plaintiffs of Mill Pond’s use and value without cessation.
6 The continued occupation of Mill Pond by pollutants deposited there by the City constitutes and
7 effects a Fifth Amendment taking for which Plaintiffs are entitled to relief and recovery.

8 6. Plaintiffs have also suffered monetary damages based on the City’s actions and
9 omissions. Remediation and removal of the dioxins and furans is estimated to cost anywhere from \$8
10 million to \$50 million dollars.

11 **THE PARTIES**

12 7. SNR is a California corporation headquartered in West Sacramento, California, that
13 provides rail and intermodal freight transportation and transloading across Northern and Central
14 California. MRY is a Class III common carrier that operates in Northern California. Among other
15 things, it operates the historic “Skunk Train,” which traces its history back to the early 1880s.

16 8. The City is a municipality located in the County of Mendocino that has been named
17 as Defendant on the basis that its stormwater leaves City catchments which drain through the
18 culverted Maple and Alder Creeks and runs into the private property of Plaintiffs, contributing
19 hazardous substances onto the Property and Mill Pond.

20 9. The true names, identities and capacities of the Defendants, named as DOES 1
21 through 10 inclusive, and sued herein only as to Plaintiffs’ state law claims, are currently unknown
22 to Plaintiffs. Plaintiffs are informed and believe and thereon allege that each said fictitiously named
23 Defendants is in some manner responsible for and liable for the damages complained of herein.
24 Plaintiffs pray leave to amend the state law claims alleged in this Complaint to include the true
25 names, identities and capacities of said fictitiously named Defendants when such names, identities
26 and capacities become known.

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JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

11. Additionally, this Court has authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201 and 2202.

12. The claims presentation requirements of California’s Government Claims Act are inapplicable to (i) claims for non-monetary relief brought under state law, and (ii) claims seeking monetary or non-monetary relief under 42 U.S.C. § 1983.

13. As to all other claims alleged herein, Plaintiffs have complied with the Government Claims Act. On January 22, 2024, Plaintiffs submitted a Claim for Money or Damages Against the City of Fort Bragg describing the damages alleged herein (“Government Claim”) as well as other claims. By letter, dated January 28, 2024, the City’s claims administrator, George Hills, acknowledged receipt of Plaintiffs’ Government Claim, assigning it a George Hills Claim Number: GHC0067337. By letter, dated February 9, 2024, George Hills sent Plaintiffs a document labeled “Notice of Return of Late Claim,” confirming that Plaintiffs had submitted the Government Claim on January 22, 2024, and stating that “no action was taken on the claim.” On or around April 24, 2024, Plaintiffs sent a letter to the City Manager of Fort Bragg, which detailed the contamination and encouraged meaningful discussion. The City did not respond. On or around June 20, 2024, Plaintiffs filed an “Amended Claim for Money or Damages Against the City of Fort Bragg,” pursuant to California’s Government Code. To date, the City has not responded to the Amended Claim. Despite filing a government claim and sending a letter to the City to resolve the matter, the City has refused to take any remedial action, and continues to allow its stormwater to pollute the Property. Plaintiffs were forced to bring this Complaint as a result.

14. Divisional Assignment. Pursuant to Civil L.R. 3-2(c), this action is brought before the U.S. District Court, Northern District of California based upon the location of the Property and the injuries alleged herein.

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FACTUAL ALLEGATIONS

A. The Property and Mill Pond

15. SNR owns the Property, which contains the water body commonly known as “Mill Pond,” and also referred to as “Pond 8.” MRY previously owned the Property and continues to operate on and around Mill Pond. Mill Pond is approximately 7.8 acres in size and is the largest surface water body on site. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of a map showing Mill Pond’s location.

16. Mill Pond has for years received stormwater that enters the pond via sheet flow and via the Alder Creek and Maple Creek outfalls, located in the eastern section of the pond. These two outfalls are referred to as “Station D” and “Station CE” on **Exhibit 1** hereto. These outfalls consist of the ends of two pipelines that convey surface waters that originate from City locations that are upgradient from the Property. Station D represents what is known as “Alder Creek” and Station CE represents what is known as “Maple Creek.”

B. Dioxin and Furan Are Found in Mill Pond

17. The City has, on a continuing and on-going basis, discharged, and continues to discharge municipal stormwater into Mill Pond with no end in sight. The Department of Toxic Substances Control (“DTSC”) has issued a Site Investigation and Remediation Order for Mill Pond.

18. Stormwater quality within the Mill Pond drainage basin has been further evaluated over multiple sampling efforts. A sampling effort was conducted in 2011 to support the design of an alternate surface water conveyance feature for Mill Pond. The results of this evaluation were summarized in reports prepared by a professional engineer with Arcadis U.S., Inc., and more recent reports were prepared by Kennedy Jenks, a water and industrial engineering firm.

19. The reports show, among other things, that (1) stormwater entering Mill Pond contains dioxins and furans at concentrations that exceeded applicable water quality standards by one to two orders of magnitude; (2) a significant majority of the pollutants (80 to 95 percent) entering Mill Pond via stormwater are from drainage areas outside the Property and; (3) approximately 54.5 percent of Mill Pond drainage flows from the City, through stations D and CE.

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1 27. The City is a “person” as that term is defined in 42 U.S.C. § 9601(21).¹

2 28. Alder Creek and Maple Creek are each a “facility” as that term is defined in 42
3 U.S.C. § 9601(9). Further, Mill Pond is a “facility” within subsection (B) of the definition, because
4 the hazardous substances come to be located in the pond.

5 29. The City was, at the times when hazardous substances were disposed of at the
6 Property, the “owner” and/or “operator” of Alder and Maple Creeks within the meaning of 42 U.S.C.
7 § 9601(20)(a) at or during the time of the acts or omissions which resulted in the release of hazardous
8 substances at or around the Creeks, and these substances migrated and threaten to continue to migrate
9 onto the Property and into Mill Pond.

10 30. The City’s activities or omissions at Alder and Maple Creeks resulted in the “release”
11 and “disposal” of hazardous substances at the facility within the meaning of 42 U.S.C. § 9601(22).

12 31. Plaintiffs have incurred, and will incur, necessary response costs in the amount of
13 approximately \$8 million to \$50 million dollars plus attorneys’ fees and may continue to incur
14 necessary response costs within the meaning of 42 U.S.C. § 9601(25), consistent with the National
15 Contingency Plan under CERCLA (*see* 40 CFR §§ 300.64, 300.66), to abate the aforesaid releases or
16 threatened releases of hazardous substances onto the Property and Mill Pond. These response costs
17 include, without limitation, costs of analysis, litigation expenses, and such removal or remedial action
18 as Plaintiffs take or authorities may dictate.

19 32. The City is absolutely and strictly liable as an owner and/or operator, and thus a
20 responsible party, under 42 U.S.C. § 9607(a), for costs of removal or remedial action incurred or to
21 be incurred by Plaintiffs consistent with the National Contingency Plan in response to the releases at
22 the Property and into Mill Pond.

23 33. Contaminants located in the soil and groundwater at Alder and Maple Creeks, which
24 runs onto the Property and into Mill Pond, including but not limited to, dioxins and furans, are
25 “hazardous substance[s]” as that term is defined in 42 U.S.C. § 9601(14).²

26 _____
27 ¹ All citations to 42 U.S.C. §§ 9601-9675 refer to the Comprehensive Environmental Response, Compensation and
28 Liability Act (“CERCLA”), as enacted by the 96th United States Congress on December 11, 1980, including amendments
thereto, 40 CFR Part 307.

² *See* 40 CFR § 302.4.

1 34. There has been a release or threatened release of hazardous substances as defined in
2 42 U.S.C. § 9601(22) at and from Alder and Maple Creeks and onto the Property and into Mill Pond.

3 35. Plaintiffs are entitled to reimbursement from the City, who is strictly, or jointly and
4 severally liable should further defendants be named, for those response costs under 42 U.S.C. § 9607.

5 **SECOND CLAIM FOR RELIEF**

6 (42 U.S.C. § 1983 – Unlawful Taking – Against the City)

7 36. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
8 paragraphs of this Complaint as though set forth in full at this place.

9 37. The City is a municipality, and is a state actor within the meaning of 42 U.S.C. §
10 1983. Section 1983 states, in part, that “[e]very person who, under color of any statute, ordinance,
11 regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes
12 to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the
13 deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be
14 liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”
15 42 USCS § 1983, Part 1 of 16.

16 38. Section 1983 applies to people or entities acting under “color of state law,” commonly
17 called “state actors.” For purposes of section 1983, political subdivisions of a state, including cities,
18 are state actors.

19 39. The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S.
20 Constitution protects against state actors taking private property without just compensation. Federal
21 courts have for generations construed 42 U.S.C. § 1983 to allow courts to enjoin state actors from
22 engaging in conduct that deprives parties of rights afforded under the Due Process Clause of the
23 Fifth and Fourteenth Amendments to the U.S. Constitution.

24 40. As alleged herein, the City, acting under color of state law, has substantially
25 interfered with Plaintiffs’ ownership, operation, and enjoyment of its property for years, including
26 by depriving Plaintiffs of their use and enjoyment of Mill Pond, thereby depriving Plaintiffs of
27 legally-cognizable property interests, and constitutional rights, all of which wrongful conduct
28 violates Plaintiffs’ rights under 42 U.S.C. § 1983 and the U.S. Constitution.

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1 41. Plaintiffs have suffered property losses compensable as a taking, both while MRY
2 was owner and continuing thereafter, because the City has intended to invade and intends to continue
3 invading the Property with polluted stormwater. Even without the City’s intent, such invasion is the
4 direct, natural, or probable result of its authorized activity.

5 42. The City’s invasion of Mill Pond has appropriated a benefit to the City at the expense
6 of Plaintiffs, and, in the least, interfered with their rights to use, enjoy, and operate the Property and
7 Mill Pond without being burdened and injured by the invasion of the City’s polluted stormwater.

8 43. As a direct and proximate result of the City’s wrongful conduct, as alleged herein,
9 Plaintiffs have been damaged, and are also suffering on-going irreparable harm.

10 44. Plaintiffs are entitled to recover attorneys’ fees under 42 U.S.C. § 1988.

11 WHEREFORE, Plaintiffs pray for judgment as set forth below.

12 **THIRD CLAIM FOR RELIEF**

13 (Declaratory Judgment - 28 U.S.C. §§ 2201 and 2202 – Against the City)

14 45. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
15 paragraphs of this Complaint as though set forth in full at this place.

16 46. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
17 2202 that all future costs of removal or remedial action incurred by it in response to releases caused
18 by the City are costs for which the City must reimburse Plaintiffs.

19 47. Pursuant to 28 U.S.C. § 2201, there is an actual controversy between the parties
20 regarding their duties and obligations with respect to the investigation, response, and remediation
21 costs that have been incurred and will continue to be incurred in connection with the release and
22 threatened release of hazardous substances from City catchments and culverts onto the Property and
23 into Mill Pond.

24 48. The declaratory relief sought herein is necessary and appropriate, and in the interest
25 of justice, because it will obviate the need for multiple lawsuits and should provide complete
26 resolution of the dispute between the parties.

27 WHEREFORE, Plaintiffs pray for judgment as set forth below.

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FOURTH CLAIM FOR RELIEF

(Contribution and Indemnity – Against All Defendants)

49. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding paragraphs of this Complaint as though set forth in full at this place.

50. Plaintiffs have a right of contribution and indemnity against the City to recover investigation, remediation, and response costs that Plaintiffs have already incurred and will incur in the future regarding the investigation and clean-up of releases of hazardous substances at the Property and Mill Pond.

51. Alternatively, to the extent that the City is not liable for contribution to the investigation and remediation costs Plaintiffs have incurred and will continue to incur in connection with the release and threatened release of hazardous substances from City-controlled catchments and culverts into Mill Pond, Plaintiffs are entitled to recover from all other defendants amounts in excess of Plaintiffs’ fair and equitable share of such remediation and clean-up costs.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

FIFTH CLAIM FOR RELIEF

(Continuing Nuisance – Against All Defendants)

52. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding paragraphs of this Complaint as though set forth in full at this place.

53. The City-created conditions at the Property and within Mill Pond constitute a continuing nuisance as a result of the City’s release of hazardous substances from City catchments. In addition, the City failed to initiate investigation, monitoring, remediation, or abatement of nuisance, all in violation of California Civil Code § 3479.

54. Upon information and belief, the contamination is actually and practicably abatable by reasonable measures and without unreasonable cost.

55. The contamination constitutes a nuisance and has interfered with, and continues to interfere with, Plaintiffs’ use and enjoyment of Mill Pond and the Property, and has created a risk to human health and the environment.

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1 56. As a direct and proximate result of the City’s activities, Plaintiffs have incurred and
2 will continue to incur damages in an amount according to proof at trial, including but not limited to,
3 costs of the investigation, assessment, monitoring, and remediation of the nuisance; loss of property
4 value; costs to repair and restore Mill Pond to a proper condition; statutory costs; and other damages
5 as a result of the continuing nuisance for which the City is responsible.

6 WHEREFORE, Plaintiffs pray for judgment as set forth below.

7 **SIXTH CLAIM FOR RELIEF**

8 (Continuing Trespass – Against All Defendants)

9 57. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
10 paragraphs of this Complaint as though set forth in full at this place.

11 58. As a result of the control, maintenance, and use of City catchments and culverts,
12 dioxins and furans in stormwater were caused to migrate and continue to migrate onto the Property
13 and into Mill Pond without Plaintiffs’ consent.

14 59. The existence of the ongoing and unabated contamination has unlawfully interfered,
15 and continues to interfere, with Plaintiffs’ possession, use and enjoyment of the Property and Mill
16 Pond.

17 60. The contamination has been released, and continues to be released, as a result of the
18 City’s malfeasance and misfeasance, which stormwater contaminates the Property and Mill Pond
19 with hazardous substances.

20 61. Upon information and belief, the release of hazardous substances is actually and
21 practicably abatable by reasonable measures and without unreasonable cost.

22 62. As a direct and proximate result of the City’s on-going and continuing trespass,
23 Plaintiffs have incurred and will continue to incur damages including, but not limited to, costs of the
24 investigation and remediation of the trespass; loss of property value during the existence of the
25 trespass; losses associated with the contamination; costs to repair and restore the Property and Mill
26 Pond to proper condition; statutory costs; attorney’s fees and costs; and other damages as a result of
27 the continuing trespass for which the City is responsible.

28 WHEREFORE, Plaintiffs pray for judgment as set forth below.

SEVENTH CLAIM FOR RELIEF

(Inverse Condemnation – Against the City)

63. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding paragraphs of this Complaint as though set forth in full at this place.

64. As alleged herein, Mill Pond is situated in and upon the Property, which is currently owned by SNR and was previously owned by MRY. Article I, Section 19 of the California Constitution provides the basis for recovery against government entities under a theory of inverse condemnation. That section requires that just compensation be paid when private property is taken or damaged for a public use. The policy underlying the concept of inverse condemnation is that the costs of a public use benefiting the community should be spread among those receiving the benefit, as opposed to being allocated to a single person within a community.

65. The United States Supreme Court has indicated that by denying just compensation, a governmental action may be both unconstitutional as well as tortious.

66. At times relevant herein, Plaintiffs have held a protectable property interest in the Property and Mill Pond.

67. The City is responsible for the release of stormwater from its catchments and culverts which carry contaminated stormwater onto the Property and into Mill Pond.

68. Plaintiffs are informed and believe and thereon allege that, due to the City’s acts and omissions, Plaintiffs’ real property will continue to be contaminated by the release of hazardous substances.

69. On or around April 24, 2024, Plaintiffs sent a letter to the City Manager of Fort Bragg, demanding that the City cease and desist from discharging contaminated stormwater onto the Property. To date, the City has not responded to that letter.

70. The City’s willingness to allow dioxins and furans to run onto private property proximately and substantially caused hazardous substances to unreasonably intrude upon the Property and into Mill Pond.

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1 71. The intrusion of hazardous substances from the City has made the Property less
2 marketable and has proximately and substantially caused its value to decrease by an amount to be
3 proven at trial.

4 72. The City’s acts and omissions in furtherance of a public purpose substantially and
5 proximately caused the Property and Mill Pond to suffer a direct, substantial, and peculiar burden.
6 Specifically, the Property and Mill Pond are uniquely located and designed such the City’s
7 stormwater runoff collects in Mill Pond. Therefore, Plaintiffs have borne and continue to bear a
8 unique burden based on its location and the City’s willingness to allow the contamination.

9 73. Because of this, Plaintiffs have borne and continue to bear a disproportionate amount
10 of the burden associated with the City’s polluted stormwater runoff.

11 74. Plaintiffs have incurred and will incur attorney’s, appraisal, and other expert fees
12 because of this proceeding. Such amounts cannot yet be ascertained, but are recoverable in this action
13 under section 1036 of the Code of Civil Procedure.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray that judgment be entered in its favor for the following relief:

16 1. Monetary damages for all costs incurred or to be incurred for the investigation,
17 removal, remediation and/or other mitigation of the contamination or damage to the Property and
18 Mill Pond;

19 2. An order requiring the City to take such action as may be necessary to correct the
20 violation, and/or to remediate and/or to remove any and all contamination at the Property and Mill
21 Pond caused or conveyed by the City;

22 3. An order enjoining the City, as well as all persons and entities action in concert with
23 it, from taking any action(s) that would materially interfere with Plaintiffs’ use and enjoyment of the
24 Property and/or Mill Pond, including to cease and desist from continuing to discharge contaminated
25 and polluted stormwater onto the Property and Mill Pond;

26 4. Compensatory damages for the unlawful taking of the Property and Mill Pond in
27 violation of Plaintiffs’ legally-cognizable property interests and constitutional rights;

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1 5. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that all future costs
2 of remedial action incurred by Plaintiffs in response to releases caused by the City are costs for which
3 the City must reimburse Plaintiffs;

4 6. Monetary damages equal to the diminution in the value of the Property, or
5 alternatively, damages in an amount according to proof at trial, for the continued investigation,
6 removal and/or other mitigation or remediation of the contamination to the Property and Mill Pond
7 caused by the City;

8 7. Monetary damages and relief available for the City’s continuing trespass;

9 8. Monetary damages and relief available for the City’s ongoing nuisance;

10 9. Attorney’s fees on the Second Claim for Relief under 42 U.S.C. § 1988; and

11 10. Attorney’s fees and costs awardable on the Seventh Claim for Relief under section
12 1036 of the Code of Civil Procedure.

13 11. For such further and other relief as the Court deems just and equitable.

14 **JURY DEMAND**

15 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury
16 on all claims and issues so triable.

17
18 Dated: November 1, 2024

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19
20 By: /s/ David A. Diepenbrock
21 David A. Diepenbrock
22 Attorneys for Plaintiffs
23 SIERRA NORTHERN RAILWAY and
24 MENDOCINO RAILWAY
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