

By Fax

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**FILED**

EXEMPT FROM FILING FEES  
[Govt. Code § 6103]

**NOV 18 2020**

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA  
*[Signature]*

Attorneys for Plaintiff MENDOCINO RAILWAY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF MENDOCINO**

MENDOCINO RAILWAY,

Plaintiff,

v.

LORENA RUTH SHEA; MENDOCINO  
COUNTY TREASURER-TAX COLLECTOR;  
CALIFORNIA DEPARTMENT OF HEALTH  
CARE SERVICES; All other persons  
unknown claiming an interest in the  
property; and DOES 1 through 100,  
inclusive,

Defendants.

~~SCWK~~ *CVED* - 20-74846  
Case No.

[APN 008-130-02]

**PLAINTIFF'S MOTION FOR  
PREJUDGMENT POSSESSION  
(CCP§1255.410); MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF ROBERT JASON  
PINOLI IN SUPPORT**

**Date: January 29, 2021**  
**Time: 9:30 a.m.**  
**Dept: E**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on January 29, 2021 at 9:30 a.m., or as soon as thereafter as the matter may be heard in Department E of the above-entitled Court, located at 100 North State Street, Ukiah, California, plaintiff MENDOCINO RAILWAY will move for an order for prejudgment possession of the property to be acquired in the above-captioned action ("Subject Property"). Said order shall empower Plaintiff to take possession ten (10) days following service of the order.

The motion is made pursuant to Code Civ. Proc. § 1255.410. It is made on the grounds that Plaintiff:

- 1 • is entitled to condemn the Subject Property by eminent domain;
- 2 and
- 3 • has deposited the amount of probable compensation with the
- 4 Court.

5 In the event this motion is opposed, it is further made on the grounds that

6 Plaintiff:

- 7 • has an overriding need for possession of the Subject Property prior
- 8 to final judgment and will suffer a substantial hardship if this motion
- 9 is denied or limited; and,
- 10 • will suffer a substantial hardship if this motion is denied, which
- 11 hardship outweighs any hardship on the defendants if this motion is
- 12 granted.

13 This motion is based on this notice, the attached Memorandum of Points  
14 and Authorities and Declaration of Robert Jason Pinoli, the Court's file in this  
15 matter, any matters of which the Court may take judicial notice, and on such  
16 further and other arguments or matters as may be raised at or before the time of  
17 hearing on this matter.

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1           NOTICE IS HEREBY FURTHER GIVEN pursuant to Code Civ. Proc. §1255.410(a)  
2 that you have the right to oppose this motion for an order of possession of your  
3 property. If you oppose this motion, you must serve the plaintiff and file with the  
4 court a written opposition to the motion within thirty (30) days from the date you  
5 were served with this motion.  
6

7 Dated: November 16, 2020

CALIFORNIA EMINENT DOMAIN LAW  
GROUP, a Professional Corporation

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10 By  \_\_\_\_\_  
11           Glenn L. Block  
12           Attorneys for Plaintiff Mendocino Railway  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This is an eminent domain action by which plaintiff, Mendocino Railway  
4 ("Plaintiff"), a California railway corporation, seeks to acquire a property in the  
5 City of Fort Bragg located at 476 Alger Street (the "Subject Property") in  
6 connection with construction and maintenance of Plaintiff's ongoing and future  
7 freight and passenger rail operations (the "Project").

8 The Subject Property is improved with an abandoned single-family  
9 residence in a state of serious disrepair adjacent to plaintiff's ongoing rail  
10 operation. The Subject Property has been and continues to be periodically  
11 illegally used as a gathering place for the use of illegal drugs and other criminal  
12 activity, as well as an unauthorized access point for those engaged in such  
13 criminal activity and others to plaintiff's adjacent rail facilities. As a result of its  
14 condition and the above-referenced criminal activity, the structure on the  
15 Subject Property has been "red-tagged" as uninhabitable by the City of Fort  
16 Bragg. (Declaration of Robert Jason Pinoli, para. 4). The state of disrepair, drug  
17 and other criminal activity at the Subject Property, and use of the Subject  
18 Property as an unauthorized access point to plaintiff's rail facilities, has posed and  
19 continues to pose a danger to Plaintiff's adjacent rail operations and the public  
20 so long as it is permitted to remain. (Pinoli Decl., para. 5).

21 The record owner of the Subject Property is Defendant Lorena Ruth Shea.  
22 (Pinoli Decl., Para. 6). Plaintiff has reached out to Ms. Shea and her family, and  
23 has been informed by Ms. Shea's daughter that Ms. Shea no longer resides on the  
24 Subject Property and is in an assisted living facility, and that the family will not  
25 oppose Plaintiff's acquiring the Subject Property by eminent domain. (Pinoli  
26 Decl., Para. 7).

27 It is necessary for Plaintiff to acquire the Subject Property in order to  
28 properly maintain the safety of Plaintiff's rail operations adjacent to and near the

1 Subject Property. The ongoing illegal activities at the Subject Property  
2 immediately adjacent to Plaintiff's rail facilities, and the fact that criminals and  
3 other members of the public are utilizing the Subject Property as an unauthorized  
4 access point to dump garbage, take drugs and conduct other illegal activities on  
5 Plaintiff's adjacent rail facilities presents a danger to the public and Plaintiff's rail  
6 operations. (Pinoli Decl., Para. 8).

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9 **ARGUMENT**

10 **I. ALL REQUIREMENTS FOR PREJUDGMENT POSSESSION ARE SATISFIED**

11 Code of Civil Procedure sections 1255.410(a) and 1255.410(d)(1) provide  
12 that a public agency may obtain prejudgment possession of property being  
13 acquired by eminent domain. The code sections set forth two requirements for a  
14 motion for prejudgment possession. They are:

- 15 ● that Plaintiff is entitled to condemn the Subject Property by eminent  
16 domain; and
- 17 ● that Plaintiff deposited the amount of probable compensation before  
18 possession is ordered.

19 If the motion is unopposed within 30 days, the Court "shall" issue an Order  
20 for Prejudgment Possession upon making these two findings. Cal. Civ. Proc. Code  
21 § 1255.410(d)(1). As noted, Plaintiff expects that this motion will be unopposed, so  
22 these should be the only two requirements for granting of the motion. As  
23 discussed below, both are satisfied here.

24  
25 **A. Plaintiff Is Entitled To Condemn The Subject Property**

26 Plaintiff is authorized to acquire the Subject Property for the public use  
27 described herein, i.e., construction and maintenance of Plaintiff's ongoing and  
28 future freight and passenger rail operations, pursuant to the California















