

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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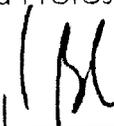
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1 NOTICE IS HEREBY FURTHER GIVEN pursuant to Code Civ. Proc. §1255.410(a)  
2 that you have the right to oppose this motion for an order of possession of your  
3 property. If you oppose this motion, you must serve the plaintiff and file with the  
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  \_\_\_\_\_  
Glenn L. Block  
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).

7  
8  
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

1 Constitution Article 1, section 19; California Public Utilities Code §§ 229, 230, 611  
2 and 7526(g); and Code of Civil Procedure sections 1230.010 *et seq.*

3       Specifically, without limitation, California Public Utilities Code section 611  
4 provides: "A railroad corporation may condemn any property necessary for the  
5 construction and maintenance of its railroad." Cal. Pub. Utilities Code § 611. A  
6 "'[r]ailroad corporation' includes every corporation or person owning, controlling,  
7 operating, or managing any railroad for compensation within this State." Cal.  
8 Pub. Utilities Code § 230. Plaintiff is a California corporation which owns, operates  
9 and manages a railroad in California for compensation. (Pinoli Decl., paras. 2, 3).  
10 Plaintiff is thus a railroad corporation, and therefore has the right and power to  
11 exercise eminent domain for purposes of maintaining its rail facilities pursuant to  
12 Public Utilities Code section 611.

13       Plaintiff accordingly has the right to condemn the Subject Property as a  
14 matter of law.

15  
16       **B. Plaintiff Has Deposited the Amount of Probable Compensation**

17       As set forth in the Notice of Deposit of Probable Compensation filed with  
18 the Court concurrently with this Motion, Plaintiff deposited \$155,000 with the State  
19 Treasurer as probable compensation for the Subject Property.

20       The deposited amount represents the appraised value of Subject Property  
21 as conducted by an independent certified appraiser. (Pinoli Decl., para. 9). The  
22 real property appraisal was conducted by Maryellen Sheppard, a State Licensed  
23 General Appraiser, with a date of value of October 9, 2020. (Id.).

24       The second – and final - prerequisite to issuance of an Order for  
25 Prejudgment Possession without opposition is thus also met. Accordingly,  
26 assuming no opposition is filed within 30 days of service of this motion, the Order  
27 for Prejudgment Possession "shall" issue. Cal. Civ. Proc. Code § 1255.410(d)(1).

1 **II. EVEN IF THE MOTION IS OPPOSED, PLAINTIFF IS ENTITLED TO PREJUDGMENT**  
2 **POSSESSION**

3 If the motion is opposed within 30 days – which Plaintiff does not expect –  
4 the Court is required to make two additional findings as a prerequisite to granting  
5 this motion:

- 6 • that Plaintiff has an overriding need for possession of the property prior  
7 to final judgment and that it will suffer a substantial hardship if this  
8 motion is denied or limited; and
- 9 • that the hardship Plaintiff will suffer if this motion is denied or limited  
10 outweighs any hardship on the Defendants if this motion is granted.

11 Cal. Civ. Proc. Code § 1255.410(d)(2).

12 **A. Plaintiff Has An Overriding Need For Prejudgment Possession And Will**  
13 **Suffer A Substantial Hardship If The Motion Is Denied Or Limited**

14 **1. Plaintiff Has an Overriding Need For Prejudgment Possession.**

15 The criminal activity and trespassing on Plaintiff's rail facilities emanating  
16 from the Subject Property are continuing and ongoing. Plaintiff needs possession  
17 of the Subject Property as soon as possible in order to ensure public safety and  
18 the safe operation of its rail facilities. (Pinoli Decl., para. 10). Any delay in  
19 possession would delay Plaintiff's ability to secure the Subject Property and  
20 prevent further trespasses and criminal activity emanating therefrom to Plaintiff's  
21 rail facilities. (Id.).

22 **2. Plaintiff Will Suffer A Substantial Hardship If The Motion Is Denied**  
23 **Or Limited**

24 Plaintiff will suffer a substantial hardship if prejudgment possession is denied  
25 or limited for the same reasons it has an overriding need for prejudgment  
26 possession. The criminal activity and trespassing on Plaintiff's rail facilities  
27 emanating from the Subject Property are continuing and ongoing and Plaintiff  
28 needs possession of the Subject Property as soon as possible in order to ensure

1 public safety and the safe operation of its rail facilities. (Pinoli Decl., para. 10). If  
2 possession is delayed until conclusion of this action, public safety and the safety  
3 of Plaintiff's rail facilities and passengers would remain at risk throughout the  
4 pendency of this action as Plaintiff would be unable to secure the Subject  
5 Property and prevent access from the Subject Property to Plaintiff's rail facilities.  
6 (Pinoli Decl., para. 11).

7  
8 **B. Plaintiff's Hardship Outweighs That Of Any Defendant**

9 The hardship Plaintiff would suffer if this motion is denied or limited  
10 outweighs any hardship that Defendants would suffer if this motion is granted.

11 As discussed previously, the Subject Property is a vacant, abandoned,  
12 dilapidated, red-tagged single family residence used only by trespassers largely  
13 for criminal drug activity and other illegal activities. The record owner, Lorena  
14 Ruth Shea, no longer occupies the Subject Property. (Pinoli Decl., paras. 6, 7). No  
15 owner or lawful occupant will be displaced as a result of granting Plaintiff  
16 possession. (Pinoli Decl., para. 12). The only other known Defendants are  
17 potential lienholders whose interest is strictly potential entitlement to  
18 compensation. (Pinoli Decl., para. 13). Whatever entitlement to compensation  
19 they may have, if any, will be unimpacted by the Court's granting of this motion.  
20 In fact, to the contrary, by Plaintiff's depositing probable compensation in  
21 support of this motion, the lienholder Defendants may be able to obtain  
22 compensation earlier than they otherwise would.

23 The hardship that Plaintiff will suffer if prejudgment possession is denied or  
24 limited, on the other hand, is significant for the reasons set forth above. It is  
25 therefore evident that Plaintiff's hardship would be greater than any potential  
26 hardship of Defendants.





1           7.     My office has reached out to Ms. Shea and her family, and has  
2 spoken with Ms. Shea's daughter. Ms. Shea's daughter informed my office that  
3 Ms. Shea no longer resides on the Subject Property and is in an assisted living  
4 facility, and that the family would not oppose Mendocino Railway's acquiring the  
5 Subject Property by eminent domain.

6           8.     It is necessary for Mendocino Railway to acquire the Subject Property  
7 in order to properly maintain the safety of its rail operations adjacent to and near  
8 the Subject Property. The ongoing illegal activities at the Subject Property  
9 immediately adjacent to Plaintiff's rail facilities, and the fact that criminals and  
10 other members of the public are utilizing the Subject Property as an unauthorized  
11 access point to dump garbage, take drugs and conduct other illegal activities on  
12 Plaintiff's adjacent rail facilities presents a danger to the public and Plaintiff's rail  
13 operations.

14          9.     In or around October, 2020, Mendocino Railway retained a California  
15 licensed general appraiser, Maryellen Sheppard, to appraise the Subject  
16 Property. Ms. Sheppard valued the Subject Property as of October 9, 2020, and  
17 concluded to a fair market value of \$155,000. Mendocino Railroad has  
18 deposited the amount of \$155,000 with the California State Treasurer as probable  
19 compensation for the Subject Property in this eminent domain action.

20          10.    The criminal activity and trespassing on Mendocino Railway's railroad  
21 facilities emanating from the Subject Property are continuing and ongoing.  
22 Mendocino Railway needs possession of the Subject Property as soon as possible  
23 in order to ensure public safety and the safe operation of its rail facilities. Any  
24 delay in possession would delay Mendocino Railway's ability to secure the  
25 Subject Property and prevent further trespasses and criminal activity emanating  
26 therefrom to Mendocino Railway's rail facilities.

27          11.    If possession is delayed until conclusion of this action, public safety  
28 and the safety of Mendocino Railway's rail facilities and passengers would remain

1 at risk throughout the pendency of this action as Mendocino Railway would be  
2 unable to secure the Subject Property and prevent access from the Subject  
3 Property to Mendocino Railway's rail facilities.

4 12. No owner or lawful occupant will be displaced as a result of granting  
5 Mendocino Railway's motion seeking prejudgment possession.

6 13. Aside from Ms. Shea, the only other potential claimants to the  
7 Subject Property of which I am aware are the Mendocino County Tax Collector,  
8 who I am informed has a lien for property taxes, and possibly the California  
9 Department of Health Services, who I am informed might assert a lien against the  
10 Subject Property related to a potential Medi-Cal reimbursement issue.

11  
12 I, Robert Jason Pinoli, hereby declare under penalty of perjury that the  
13 foregoing is true and correct.

14 Executed this 17th day of November, 2020 at Fort Bragg, California.

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18 Robert Jason Pinoli, Vice President  
19 Mendocino Railway  
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