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6/5/2023 2:04 PM
Superior Court of California
County of Mendocino

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13 Attorneys for Plaintiff MENDOCINO RAILWAY

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

16 MENDOCINO RAILWAY,)
17)
18 Plaintiff,)
19 v.)
20)
21 JOHN MEYER; REDWOOD EMPIRE)
22 TITLE COMPANY OF MENDOCINO)
23 COUNTY; SHEPPARD INVESTMENTS;)
24 MARYELLEN SHEPPARD;)
25 MENDOCINO COUNTY TREASURER-)
26 TAX COLLECTOR; All other persons)
27 unknown claiming an interest in the)
28 property; and DOES 1 through 100,)
inclusive,)
Defendants.)

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO
RAILWAY'S OBJECTION TO
DEFENDANT MEYER'S
[PROPOSED] JUDGMENT**

Cal. Rules of Court, Rule 3.1590(j)

Plaintiff Mendocino Railway hereby objects to Defendant John Meyer's
[Proposed] Judgment After Court Trial¹, pursuant to Cal. Rules of Court Rule 3.1590(j),
on the following grounds:

¹ By filing this Objection, and concurrently filed [Proposed] Judgment of Conditional Dismissal, Plaintiff Mendocino Railway is not waiving and reserves all rights, claims and objections including, without limitation as set forth in Mendocino Railway's Request for Statement of Decision or, in the Alternative, Plaintiff's Objections to Proposed Statement of Decision."

- 1 • The [Proposed] Judgment does not comport with the provisions of Cal.
2 Code Civ. Proc. §1260.120 applicable to the court’s determination of right
3 to take objections, and because it ignores and fails to recognize and
4 acknowledge the Court’s obligation to consider ordering conditional
5 dismissal of the proceeding pending such corrective and remedial action as
6 the court may prescribe as just under the circumstances of this case.

7 Conditional dismissal is warranted and in the interest of justice to allow the
8 Court to solicit the views of the Surface Transportation Board (“STB”) as to whether the
9 Statement of Decision could potentially interfere with the STB’s exclusive jurisdiction
10 under 49 U.S.C. §10501(b) to regulate railroads subject to the STB’s jurisdiction.
11 Referral to the STB is especially appropriate in light of the recent decision by the U.S.
12 Railroad Retirement Board (“RRB”) affirming that Mendocino Railway is a common
13 carrier under the jurisdiction of the STB. Attached hereto as Exhibit A, for the Court’s
14 reference, is a true and correct copy of the U.S. Railroad Retirement Board’s May 2,
15 2023 correspondence, its Employer Status Determination (BCD 2023-30), and approved
16 Request for Employer Status, which documents reaffirm Mendocino Railway’s common
17 carrier status subject to STB jurisdiction.

18 Moreover, conditional dismissal is appropriate because immediate dismissal of
19 the proceeding, which would prevent Mendocino Railway from acquiring property to
20 build a freight transload yard and other freight and passenger rail facilities, could
21 constitute improper regulation of, or interference with, Mendocino Railway’s rail
22 transportation services, operation, tracks and/or facilities. Such activities are under
23 the exclusive jurisdiction of the Surface Transportation Board. 49 U.S.C. §10501(b). The
24 STB’s exclusive jurisdiction was summarized by the California Supreme Court: “To
25 review, we have seen that under 49 U.S.C. section 10501, the STB has exclusive
26 jurisdiction over transportation by rail carrier, including the movement of goods and all
27 services related to that movement. Its remedies are exclusive and expressly preempt
28 state remedies ‘with respect to regulation of rail transportation.’ (*Id.* §10501(b).)”

1 *Friends of Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, 711.

2 49 U.S.C. §10501(b) provides:

3 “The jurisdiction of the STB over –

4 (1) transportation by rail carriers, and the remedies provided in this part with
5 respect to rates, classifications, rules (including car service, interchange,
6 and other operating rules), practices, routes, services, and facilities of such
7 carriers; and

8 (2) the construction, acquisition, operation, abandonment, or discontinuance
9 of spur, industrial, team, switching, or side tracks, or facilities, even if the
10 tracks are located, or intended to be located, entirely in one State, [¶] is
11 exclusive. Except as otherwise provided in this part, the remedies provided
12 under this part with respect to regulation of rail transportation are
13 exclusive and preempt the remedies provided under Federal or State law.”

14 By ordering conditional dismissal, the Court will be able to solicit the views of the
15 STB as to whether its Statement of Decision could constitute improper regulation of
16 Mendocino Railway’s services, operation, tracks and facilities and whether such
17 regulation is preempted. 49 U.S.C. §10502(b).

18 Conditional dismissal is also appropriate and in the interest of justice because it
19 would enable the Court to, in any subsequent Judgment issued after referral, address
20 the Court’s concern that Mendocino Railway plans to construct a campground rather
21 than the Project identified and described in the Complaint and Mr. Pinoli’s testimony,
22 and also depicted in the site plan. To ensure that Mendocino Railway does not construct
23 a campground on the Subject Property, the Court could include a provision prohibiting
24 Mendocino Railway from constructing a campground on the Subject Property.

25 And, by ordering conditional dismissal, the Court could include such other and
26 further provisions resolving the right to take objections in a just and equitable manner,
27 including, if warranted, awarding reasonable litigation expenses to the defendant.

1 Filed concurrently herewith is a [Proposed] Judgment of Conditional Dismissal
2 addressing the foregoing matters.

3
4 Dated: June 5, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

5
6 By Glenn L. Block
7 Attorneys for Plaintiff MENDOCINO RAILWAY

EXHIBIT A



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-1275

BOARD MEMBERS:

ERHARD R. CHORLÉ, CHAIRMAN
JOHN BRAGG, LABOR MEMBER
THOMAS JAYNE, MANAGEMENT MEMBER

May 2, 2023

Beth Ann Head
Employment Tax Policy
Small Business/Self-Employed
Fountains Business Center
380 Office Court
Fairview Heights, IL 62208-2059

Internal Revenue Service
Submission Processing
333 W. Pershing Road
Kansas City, MO 64108-4302

Dear Sir or Madam:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which the Board has expressed its determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:

Medocino Railway
1222 Research Park Drive
Davis, CA 95618

Sincerely,

STEPHANIE
HILLYARD Digitally signed by
STEPHANIE HILLYARD
Date: 2023.05.02
08:42:45 -05'00'

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board

Enclosures



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-1275

BOARD MEMBERS:

ERHARD R. CHORLÉ, CHAIRMAN
JOHN BRAGG, LABOR MEMBER
THOMAS JAYNE, MANAGEMENT MEMBER

May 2, 2023

Mr. Robert J. Pinoli, President
Medocino Railway
1222 Research Park Drive
Davis, CA 95618

In reply refer to: 23-CO-0002
Medocino Railway

Dear Mr. Pinoli:

Enclosed is a copy of the Board's determination regarding the coverage of the above-referenced company as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et. seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et. seq.).

The Board's regulations provide that you may request reconsideration of the Board's decision in this case. Any such request must be in writing and must be filed with this office within one year following the date on which the initial determination was issued. (20 CFR § 259.3(a)).

We will notify the Internal Revenue Service of the decision in this case.

Sincerely,

STEPHANIE HILLYARD
Digitally signed by
STEPHANIE HILLYARD
Date: 2023.05.02
08:43:20 -05'00'

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board

Enclosure

EMPLOYER STATUS DETERMINATION

BCD 2023-30

Mendocino Railway (Mendocino)

BA No. 5761

May 2, 2023

This is a decision of the Railroad Retirement Board (RRB) concerning Mendocino Railway's (Mendocino) status as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) (collectively, "the Acts"). RRA, 45 U.S.C. § 231 *et seq.*; RUIA, 45 U.S.C. § 351 *et seq.*

On April 27, 2022, Crystal Zorbaugh, the attorney representing Mendocino, provided the following information. Mendocino is a wholly owned subsidiary of Sierra Railroad Company (BA No. 2774) and Robert J. Pinoli is Mendocino's president. On January 1, 2022, Mendocino assumed freight maintenance and operations authority from its affiliate Sierra Northern Railway (BA No. 3782). Mendocino took over direct responsibility for fulfilling its common carrier obligation, as well as conducting transload services from Sierra Northern Railway. The rail line extends from milepost 0 (at Fort Bagg, California) to milepost 40 (at Willits, California). At the time Mendocino took over operational authority from Sierra Northern Railway, it had "at most" 25 employees directly involved in freight rail maintenance, management, and operations. The employees were first compensated on January 6, 2022.

According to Ms. Zorbaugh, Mendocino has been a common carrier subject to Surface Transportation Board jurisdiction since 2004, but it did not take full responsibility for its carrier obligations until January 2022. *See, Mendocino Railway -Acquisition Exemption -Assets of the California Western Railroad*, 2004 STB Fin Dkt. 34465. Prior to the 2004 acquisition, the entity operating the rail line was also a covered employer. *See*, BCD 1997-54. In 2006, the Board found that Mendocino was not an employer under the Acts because it was not operating in interstate commerce. *See*, BCD 2006-42.1. In fact, until January 1, 2022, Mendocino was meeting its common carrier obligation through the affiliate arrangement with Sierra Northern Railway, discussed above.

Under section 1(a)(1)(i) of the RRA, insofar as relevant here, a covered employer is defined as "any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code." RRA § 1(a)(1)(i), 45 U.S.C. § 231(a)(1)(i). Section 1 of the RUIA and section 3231(a) of the Railroad Retirement Tax Act (RRTA) contain substantially similar definitions. RUIA § 1, 45 U.S.C. § 351; RRTA, 26 U.S.C. § 3231.

Here, the record establishes that Mendocino is a common carrier subject to STB jurisdiction. By assuming its common carrier obligations, it is now participating in the interstate rail system as required by STB jurisdiction. Accordingly, it is determined that Mendocino Railway became an employer within the meaning of the Acts effective January 1, 2022, the date it took over its full common carrier obligations and commenced operations.

STEPHANIE HILLYARD Digitally signed by
STEPHANIE HILLYARD
Date: 2023.05.02
08:37:14 -05'00'

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board

REQUEST FOR EMPLOYER STATUS

The Office of General Counsel will complete Part I and Part II, leaving items blank if information is not applicable or available.

Notice No.
23-30

BA No.
5761

Part I

NAME AND ADDRESS OF COMPANY/ORGANIZATION/ASSOCIATION

Mendocino Railway

NAME AND ADDRESS OF CEO/CONTACT OFFICIAL

Robert J. Pinoli - President
1222 Research Park Drive
Davis, CA 95618

NUMBER AND LOCATION OF EMPLOYEES

DETAIL

Here, the record establishes that Mendocino is a common carrier subject to STB jurisdiction. By assuming its common carrier obligations, it is now participating in the interstate rail system as required by STB jurisdiction. Accordingly, it is determined that Mendocino Railway became an employer within the meaning of the Acts effective January 1, 2022, the date it took over its full common carrier obligations and commenced operations.

REFERENCE

EIN # 73-1700581 - (23-CO-0002)

REQUESTED BY

Part II

OPINION NO.
BCD 2023-30

OPINION DATE
05/02/2023

PERIODS DURING WHICH SERVICE IS HELD CREDITABLE

EMPLOYER COVERED AS:

- Operating Company:
- Line Haul Railroad
- Name Change
- Switching & Terminal Company
- Lessor Company
- Railroad Association
- Labor Organization
- Affiliate
- Other: _____

FROM

01/01/2022

TO

CORPORATE SUCCESSOR TO

ASSUMES OBLIGATION OF PREDECESSOR

YES NO

CURRENT EMPLOYER FROM WHICH REPORTS SHALL BE OBTAINED

NOT A COVERED EMPLOYER

EMPLOYER COVERAGE TERMINATED

EMPLOYEES ATTRIBUTED TO ANOTHER

DETAILS OF SEGREGATION (IF APPLICABLE)

REMARKS:

SEE:

APPROVED BY

DATE 05/02/2023

**STEPHANIE
HILLYARD**

Digitally signed by STEPHANIE
HILLYARD
Date: 2023.05.02 08:39:21 -05'00'

PROOF OF SERVICE

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On June 5, 2023, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAYS'S OBJECTION TO DEFENDANT MEYER'S [PROPOSED] JUDGMENT

- ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 5, 2023, in Glendale, California.



Debi Carbon

SERVICE LIST

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

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County Treasurer-Tax Collector