

No. 23-15857

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MENDOCINO RAILWAY,

Plaintiff-Appellant,

v.

JACK AINSWORTH, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 22-cv-04597-JST
Hon. Jon S. Tigar

**SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE;
DECLARATION OF PAUL BEARD II IN SUPPORT THEREOF**

Paul J. Beard II
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Attorney for Appellant MENDOCINO RAILWAY

Pursuant to Federal Rule of Appellate Procedure 27, Circuit Rule 27-1, and Federal Rule of Evidence 201, Appellant Mendocino Railway requests that the Court take judicial notice of the following documents.

True and correct copies of the exhibits are attached to the Declaration of Paul Beard II (“Beard Decl.”), which follows this motion.

EXHIBIT 3: Mendocino Railway’s most recent Statement of Information, filed with the California Secretary of State.

EXHIBIT 4: Sierra Northern Railway’s most recent Statement of Information, filed with the California Secretary of State.

Under Fed. Rule of Evidence 201, a court may take judicial notice of facts that are “capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned,” including “matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Because a Statement of Information is a record of the State of California Secretary of State, its authenticity can be determined by sources whose accuracy cannot reasonably be questioned and thus may be judicially noticed. *Khoury Invs. Inc. v. Nationwide Mut. Ins. Co.*, 2013 U.S. Dist. LEXIS 203250, *5 (C.D. Cal. 2013); *see also Cohen v. Suleminian*, 2023 U.S. Dist. LEXIS 114371, *6 (C.D. Cal. 2023) (“[T]he Statement of Information documents are matters of public record and therefore proper for judicial notice.”).

The Statements of Information at Exhibit 3 and 4 identify the principal office of Mendocino Railway, Sierra Northern Railway, and their officers, some or

all of whom may be called as witnesses in this case.

The documents are relevant to the question of whether it is more convenient for any or all of these witnesses to travel to the federal court in Oakland or to the state court in Fort Bragg, which is one of the factors in the *Colorado River* analysis as discussed on pages 11-12 of Mendocino Railway's Reply Brief.

For these reasons, Mendocino Railway requests that Exhibits 3 and 4 be judicially noticed.

Date: January 26, 2024

Respectfully submitted,

s/ Paul Beard II

Attorney for Appellant
MENDOCINO RAIWAY

DECLARATION

I, Paul Beard II, declare as follows:

1. I am counsel of record for Appellant Mendocino Railway. I have personal knowledge of the facts stated herein. If called upon to testify, I could and would testify competently thereto.

2. **EXHIBIT 3** is a true and correct copy of Mendocino Railway's most recent Statement of Information filed with the California Secretary of State.

3. **EXHIBIT 4** is a true and correct copy of Sierra Northern Railway's most recent Statement of Information filed with the California Secretary of State.

4. I obtained the Exhibits at the Secretary of State's official website:
<https://bizfileonline.sos.ca.gov/search/business>.

5. I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: January 26, 2024



Paul Beard II

EXHIBIT 3



STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
CORPORATION

California Secretary of State
 1500 11th Street
 Sacramento, California 95814
 (916) 653-3516

For Office Use Only

-FILED-

File No.: BA20230657574

Date Filed: 4/20/2023

B1690-0779 04/20/2023 2:53 PM Received by California Secretary of State

Entity Details			
Corporation Name	MENDOCINO RAILWAY		
Entity No.	2573616		
Formed In	CALIFORNIA		
Street Address of Principal Office of Corporation			
Principal Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Mailing Address of Corporation			
Mailing Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Attention	Torgny Nilsson		
Street Address of California Office of Corporation			
Street Address of California Office	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Officers			
Officer Name	Officer Address	Position(s)	
ROBERT PINOLI	1222 RESEARCH PARK DRIVE DAVIS, CA 95618	Chief Executive Officer	
Torgny Nilsson	1222 Research Park Drive Davis, CA 95618	Secretary	
David Magaw	1222 Research Park Drive Davis, CA 95618	Chief Financial Officer	
Additional Officers			
Officer Name	Officer Address	Position	Stated Position
+ Christopher Hart	1222 RESEARCH PARK DRIVE DAVIS, CA 95618	Vice President	
Directors			
Director Name	Director Address		
Michael Buck	1222 Research Park Drive Davis, CA 95618		
Chris Hart	1222 Research Park Drive Davis, CA 95618		
Michael Hart	1222 Research Park Drive Davis, CA 95618		
David Magaw	1222 Research Park Drive Davis, CA 95618		
Torgny Nilsson	1222 Research Park Drive Davis, CA 95618		
Robert Pinoli	1222 Research Park Drive Davis, CA 95618		

The number of vacancies on Board of Directors is: 0	
Agent for Service of Process	
Agent Name	TORGNY NILSSON
Agent Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618
Type of Business	
Type of Business	PUBLIC UTILITY RAILROAD
Email Notifications	
Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.
Labor Judgment	
No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.	
Electronic Signature	
<input checked="" type="checkbox"/> By signing, I affirm that the information herein is true and correct and that I am authorized by California law to sign.	
<i>Torgny Nilsson</i>	<i>04/20/2023</i>
Signature	Date

EXHIBIT 4



STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
CORPORATION

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File No.: BA20230657655

Date Filed: 4/20/2023

B1690-1073 04/20/2023 3:00 PM Received by California Secretary of State

Entity Details			
Corporation Name	SIERRA NORTHERN RAILWAY		
Entity No.	1647320		
Formed In	CALIFORNIA		
Street Address of Principal Office of Corporation			
Principal Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Mailing Address of Corporation			
Mailing Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Attention	Torgny Nilsson		
Street Address of California Office of Corporation			
Street Address of California Office	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
Officers			
Officer Name	Officer Address	Position(s)	
KENNAN BEARD	1222 RESEARCH PARK DRIVE DAVIS, CA 95618	Chief Executive Officer	
TORGNY NILSSON	1222 RESEARCH PARK DRIVE DAVIS, CA 95618	Secretary	
<input checked="" type="checkbox"/> DAVID MAGAW	1222 RESEARCH PARK DRIVE DAVIS, CA 95618	Chief Financial Officer	
Additional Officers			
Officer Name	Officer Address	Position	Stated Position
None Entered			
Directors			
Director Name	Director Address		
DAVID MAGAW	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
MICHAEL HART	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
KENNAN BEARD	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
<input checked="" type="checkbox"/> MICHAEL BUCK	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
<input checked="" type="checkbox"/> CHRISTOPHER HART	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		
<input checked="" type="checkbox"/> TORGNY NILSSON	1222 RESEARCH PARK DRIVE DAVIS, CA 95618		

The number of vacancies on Board of Directors is: 0

Agent for Service of Process	
Agent Name	TORGNY NILSSON
Agent Address	1222 RESEARCH PARK DRIVE DAVIS, CA 95618
Type of Business	
Type of Business	PUBLIC UTILITY RAILROAD
Email Notifications	
Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.
Labor Judgment	
No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.	
Electronic Signature	
<input checked="" type="checkbox"/> By signing, I affirm that the information herein is true and correct and that I am authorized by California law to sign.	
<i>Torgny Nilsson</i>	<i>04/20/2023</i>
Signature	Date