

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In Re:

WASATCH RAILROAD CONTRACTORS,

Debtor.

Case No. 21-20392
Chapter 11
Subchapter V

**RESPONSE OF MENDOCINO RAILWAY TO DEBTOR'S NOTICE OF INTENT TO
DISMISS OR CONVERT CHAPTER 11 CASE**

Mendocino Railway, a California corporation, through its undersigned counsel, files this response to the Notice of Intent to Dismiss or Convert Chapter 11 case filed by the Debtor on December 13, 2021.

1. This Chapter 11 was initiated by Wasatch Railroad Contractors on September 14, 2021.

2. On May 10, 2021, Debtor and Mendocino Railway ("Mendocino") executed a "Railcar Construction Agreement" providing that the Debtor would refurbish railcars owned by Mendocino (the "Agreement").

3. Pursuant to the Agreement Mendocino delivered 50 railcars to the Debtor for refurbishment and other work as described in the Agreement and, subsequent thereto, forwarded payments to the Debtor in the amount of \$574,409.81.

4. The Debtor failed in every material way to perform the services it was contractually obligated to provide under the Agreement including, without limitation, failure to provide plans and drawings for the refurbishment of the railcars, failing to maintain physical possession of the railcars, and failure to complete, or even commence, the work required under the Agreement.

5. The Debtor also overbilled Mendocino for its services by at least \$112,103.76, which Debtor admitted, providing Mendocino with a credit of \$112,103.76 (the "Credit"), \$87,154.43 of which remains unspent.

6. The Debtor also, without Mendocino's permission, transferred scrap metal owned by Mendocino to a third-party to whom the Debtor owed money, without receiving appropriate payment therefor and without paying, or crediting, the value of the scrap metal to Mendocino. This illegal transfer is currently under investigation by local law enforcement.

7. Despite Mendocino's Credit, and despite the Debtor's unauthorized transfer of Mendocino's scrap metal, Mendocino paid the Debtor an additional \$52,199.43 after the Debtor represented to Mendocino that it could not meet its payroll and would have to lay off the employees performing services for Mendocino unless Mendocino paid the Debtor such sum. Despite Mendocino's payment of this sum, the Debtor nevertheless laid off its employees, rendering the Debtor unable to perform further services to Mendocino.

8. Because of these defaults by the Debtor Mendocino ceased making any additional payments, and none were required under the Agreement.

9. The Debtor's implication in its Notice of Intent to Dismiss or Convert that Mendocino is in any way responsible for the failure of its business is completely false and contrary to the actual history of the transaction between Mendocino and the Debtor. Mendocino complied with all of its obligations under the Agreement and the Debtor failed to comply with any of its obligations.

Respectfully submitted this 17th day of December, 2021.

WAAS CAMPBELL RIVERA JOHNSON &
VELASQUEZ LLP

/s/ Darrell G. Waas

Darrell G. Waas
1350 Seventeenth Street, Suite 450
Denver, Colorado 80202
Telephone: 720-351-4700
Facsimile: 720-351-4745
E-mail: waas@wcrlegal.com

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2021, I electronically filed the foregoing **RESPONSE OF MENDOCINO RAILWAY TO DEBTOR'S NOTICE OF INTENT TO DISMISS OR CONVERT CHAPTER 11 CASE** with the United States Bankruptcy Court for the District of Wyoming via CM/ECF, which will send electronic notification via ECF to the following parties:

William Cross
Markus Williams Young & Hunsicker LLC
1775 Sherman Street, Suite 1950
Denver, CO 80203

wcross@markuswilliams.com

Attorney for Wasatch Railroad Contractors

Wasatch Railroad Contractors
422 West Parsley Boulevard
Cheyenne, WY 82007

Debtor

Bradley T. Hunsicker
Markus Williams Young & Hunsicker LLC
2120 Carey Avenue, Suite 101
Cheyenne, WY 82001

bhunsicker@markuswilliams.com

Attorney for Wasatch Railroad Contractors

Mark D. Dennis
SL Brigs, A Division of SingerLewak LLP
2000 S. Colorado Blvd., Tower 2
Suite 200
Denver, CO 80222

Trustee

Daniel J. Morse
Assistant U.S. Trustee
308 West 21st Street, Room 203
Cheyenne, WY 82001

Daniel.j.morse@usdoj.gov

U.S. Trustee

/s/ Angie E. Aaron

Angie E. Aaron