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Superior Court of California
County of Mendocino

By: 
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MENDOCINO**

10 MENDOCINO RAILWAY,
11 Plaintiff,

12 vs.

13 JOHN MEYER; REDWOOD EMPIRE
TITLE COMPANY OF MENDOCINO
14 COUNTY; SHEPPARD
INVESTMENTS; MARYELLEN
15 SHEPPARD; MENDOCINO COUNTY
TREASURER-TAX COLLECTOR; all
16 other persons unknown claiming an
17 interest in the property; and DOES 1
through 100, inclusive

18 Defendants.

) Unlimited

) Case No. SCUJ-CVED 20-74939

) DEFENDANT JOHN MEYER'S
MEMORANDUM IN SUPPORT OF
MOTION FOR AWARD OF
14 REASONABLE ATTORNEY FEES AND
15 COSTS PURSUANT TO CCP § 1268.610

) Date: August 18, 2023

) Time: 9:30 am

) Dept: E

) Judge: Honorable Jeanine B. Nadel

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I. STATEMENT OF FACTS AND PROCEEDINGS

Defendant John Meyer (“Meyer”) requests an award of litigation expenses pursuant to Code of Civil Procedure § 1268.610(a), as granted in the judgment. This memorandum will briefly recount the litigation’s procedural history and then address Meyer’s entitlement to a fee award for successfully defending Mendocino Railway’s attempt to take his property.

Plaintiff Mendocino Railway (“MR”) is a privately held corporation that operates a commercial tourist sightseeing excursion service commonly known as the “Skunk Train.” On December 22, 2020, MR filed this action against defendant Meyer to take by eminent domain Meyer’s 20 acre parcel located west of Willits, on Highway 20, commonly known as Mendocino County Assessor Parcel Number 038-180-53 (“the Property”). (Johnson Declaration, p. 1-2.)

MR sought to take the Property for the purpose of allegedly constructing a train station and maintenance facility for its railroad operations. The complaint states: “The project (‘Project’) for which Mendocino Railway seeks to acquire the Parcel consists of construction and maintenance of rail facilities related to Plaintiff’s ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto” (“the Project”). (Complaint, Page 2, Paragraph 2.) (Johnson Declaration, p. 2.)

Meyer objected to the taking of the Property on numerous constitutional and statutory grounds. The trial was bifurcated so that the court would first decide whether MR had the legal right to take the Property by eminent domain, and if the court ruled in MR’s favor, then a jury would subsequently decide the amount of damages to be paid to Meyer. (Johnson Declaration, p. 2.)

The parties conducted significant written discovery followed by depositions. The

1 parties also each engaged expert appraisers to prepare appraisal reports to establish the
2 value of the Property to be taken and resulting damages. The parties proceeded with
3 expert depositions after the respective property appraisal reports were served. The parties
4 also participated in a day long mediation, but they were unable to reach a settlement.
5 (Johnson Declaration, p. 2.)

6 Prior to the trial, each of the parties prepared trial briefs which outlined their legal
7 arguments related to the right to take the Property by eminent domain. At trial Meyer
8 filed a motion in limine to exclude testimony and evidence to be offered by Kennan H.
9 Beard III. The court heard and evaluated the motion and found in favor of Meyer,
10 thereby precluding Mr. Beard from testifying at trial. (Johnson Declaration, p. 1.)

11 The bench trial for the first phase of the litigation lasted five days. After the close
12 of evidence the court ordered the parties to submit their final arguments by filing post
13 trial briefs and reply briefs. Meyer filed a motion to reopen the case as a result of newly
14 discovered evidence prior to the parties submitting their post trial briefs. MR opposed the
15 motion to reopen the case. After evaluating the motion the court ordered the reopening of
16 the case. Thereafter, the court heard additional testimony and received additional
17 documentary evidence. (Johnson Declaration, p. 2-3.)

18 Following the submission of post trial briefs the court issued its “Decision After
19 Trial” on April 19, 2023, in which it ruled that MR failed to meet its burden of
20 establishing that it can acquire Meyer’s Property by eminent domain. Accordingly, MR
21 cannot acquire Meyer’s Property by eminent domain, MR took nothing by its complaint,
22 judgment was in favor of Meyer, and Meyer was awarded his litigation expenses,
23 including costs and attorney fees pursuant to Code of Civil Procedure § 1268.610(a).
24 (Johnson Declaration, p. 3.)

25 MR filed an objection to the court’s decision and Meyer filed an opposition to
26 MR’s objection to the decision. The court summarily denied MR’s objection to the
27 court’s decision. On June 2, 2023, the court filed a signed Judgment After Trial By
28

1 Court. On June 5, 2023, Meyer filed and served a Notice of Entry of Judgment on the
2 parties. On June 5, 2023, MR filed three separate motions, consisting of the following:
3 (1) Motion To Set Aside And Vacate Premature Judgment; (2) Objection To Meyer's
4 [Proposed] Judgment; and (3) Motion To Reopen Bench Trial To Consider New Facts
5 Arising Prior to Judgment. Meyer filed responsive briefs to each of these three motions
6 on June 15, 2023, and the motions are scheduled to be heard on June 30, 2023. (Johnson
7 Declaration, p. 3.)

8 This action has garnered extensive media attention which demonstrates that the
9 public has more than a theoretical interest in being provided adequate information about
10 the proposed project. Numerous news articles have appeared in Sonoma County and
11 Mendocino County newspapers and on local websites. A copy of some of the articles are
12 attached to the Johnson Declaration as Exhibit B. Also a website was established that
13 included all of the pleadings and court rulings that have been filed in this action. A copy
14 of the website is attached to the Johnson Declaration as Exhibit D. (Johnson Declaration,
15 p. 3.)

16 The action also has been actively followed by government agencies and their
17 counsel because the testimony, evidence, and court decision, in the action are potentially
18 relevant to other litigation and governmental actions involving MR. For example, various
19 legal filings referencing the court's decision in this action were filed with Surface
20 Transportation Board, a copy of some of these filed documents are attached to the
21 Johnson Declaration as Exhibit C. (Johnson Declaration, p. 3-4.)

22 **II. MEYER'S AWARD OF LITIGATION EXPENSES**

23 The court's judgment was in favor of Meyer, and Meyer was awarded his litigation
24 expenses pursuant to Code of Civil Procedure § 1268.610(a). Code of Civil Procedure §
25 1268.610 states in pertinent part:

26 “(a) Subject to subdivisions (b) and (c), the court *shall* award the defendant his or
27 her litigation expenses whenever:

- 28 (1) The proceeding is wholly or partly dismissed for any reason.

1 (2) Final judgment in the proceeding is that the plaintiff cannot acquire
2 property it sought to acquire in the proceeding.” (Code of Civil Procedure § 1268.610(a)
3 Emphasis added.)

4 Code of Civil Procedure § 1235.140, defines “litigation expenses” as follows:

5 “‘Litigation Expenses’ includes both of the following:

6 (a) All expenses reasonably and necessarily incurred in the proceeding in preparing
7 for trial, during trial, and in any subsequent judicial proceeding.

8 (b) Reasonable attorney fees, appraisal fees, and fees for the services of other
9 experts where such fees were reasonably and necessarily incurred to protect the
10 defendant’s interests in the proceeding in preparing for trial, during trial, and in
11 any subsequent judicial proceedings whether such fees were incurred for services
12 rendered before or after the filing of the complaint.”

13 Courts have held that the lodestar-adjustment method must be used to determine
14 reasonable attorney fees in eminent domain actions. (CEB, California Attorney Fee
15 Awards 3rd Ed. § 8.6; *People ex rel Department of Transp. v. Yuki* (1995) 31 Cal. App. 4th
16 1754; *City of Oakland v. Oakland Raiders* (1988) 203 Cal. App. 3d 78.) The lodestar-
17 adjustment method in statutory fee-shifting cases was prescribed in *Serrano v. Priest*
18 (*Serrano III*) (1977) 20 Cal. 3d 25, 48 n23, which holds that the lodestar is the “starting
19 point” of every award. As the court explained, the “objectivity” necessitated by the
20 calculation of the lodestar is “vital.” (*Id*; CEB, California Attorney Fee Awards 3rd Ed. §
21 8.3.) In *Press v. Lucky Stores, Inc.* (1983) 34 Cal. 3d 311, 322, the Supreme Court held
22 that the “determination and use of the lodestar figure is extremely important” and
23 “fundamental” and that the trial court’s discretion “must be based on the loadstar
24 adjustment method.”

25 Under *Serrano III*, a lodestar figure must be calculated by multiplying the number
26 of hours reasonably spent by each billing professional (i.e., attorney, paralegal, law clerk,
27 legal assistant) multiplied by the reasonable hourly rate of each biller. (*Serrano v. Priest*,
28 *supra*, 20 Cal. 3d at 48; CEB, California Attorney Fee Awards 3rd Ed. § 8.2.)

1. Meyer’s Requested Litigation Expenses Are Reasonable.

The lodestar calculation for this case is attached hereto as Exhibit 1, and it is also

1 attached to the Johnson Declaration as Exhibit E. (Johnson Declaration, p. 4.)

2 The litigation expenses sought, including attorneys' fees and costs associated with
3 the action are all reasonable, and were necessarily incurred as a result of the defense of
4 this action through the entry of judgment and this motion. Meyer's claim is fully
5 documented by detailed, contemporaneous time records showing how each hour of work
6 was spent. (Johnson Declaration, p. 4.)

7 **a. Counsel's Hours Are Reasonable.**

8 Under California law, Meyer's counsel are entitled to be compensated for "all
9 hours reasonably spent." (*Ketchum v. Moses* (2001) 24 Cal 4th 1112, 1133, emphasis in
10 original.) Where a party "has obtained excellent results, his attorney should recover a
11 fully compensatory fee. Normally, this will encompass all hours reasonably expended on
12 the litigation, and in some cases in which there is exceptional success, an enhanced
13 award may be justified." (*Feminist Women's Health Ctr. v. Blythe* (1995) 32 Cal. App.
14 4th 1641, 1674.)

15 Under this standard, compensation is appropriate for "every item of service
16 which, at the time rendered, would have been undertaken by a reasonable and prudent
17 lawyer to advance or protect his client's interest." (*Moore v. Jas. H. Matthews & Co.* (9th
18 Cir. 1982) 682 F 2d 830, 839.) "The measure of reasonable hours is determined by the
19 profession's judgment of the time that may be consciously billed and not the least time in
20 which it might theoretically have been done." (*Norman v. Housing Auth.* (11th Cir.
21 1988) 836 F. 2d 1292, 1306.)

22 Once the moving party documents their claim with credible time records, the
23 burden shifts to the responding party to show that specific time is unreasonable. (*Hadley*
24 *v. Krepel* (1985) 167 Cal. App. 3d 677, 682.) In this case there are numerous reasons
25 why every hour claimed by Meyer is compensable and they include the following:

26 1. The records are "the starting point for [the trial court's] lodestar
27 determination." (*Horsford v. Board of Trustees* (2005) 132 Cal. App. 4th 359, 397.)

1 “[T]he verified time statements of the attorneys, as officers of the court, are entitled to
2 credence in absence of a clear indication the records are erroneous.” (*Id.* at 396.)

3 Counsel met its burden and they have also exercised billing judgment, excluding
4 any time that might be considered excessive, redundant, or otherwise unnecessary.
5 Meyer’s claim is fully documented by detailed time records and description of costs that
6 are attached to the Johnson Declaration as Exhibit A. The referenced descriptions in the
7 time records clearly provide an in depth description of how Meyer’s counsel spent their
8 time in defending this action.

9 2. MR was aggressively represented at trial by Glenn Block, Esq., of California
10 Eminent Domain Law Group and Paul J. Beard, Esq., of Fisher Broyles, LLP, both of
11 whom are seasoned counsel, with each having over 22 years of legal experience. They
12 are both based out of Southern California and their respective practices focus on eminent
13 domain litigation. (Johnson Declaration, p. 4.) While MR has every right to strongly
14 pursue this litigation, it must now bear the resulting fees, as a party “cannot litigate
15 tenaciously and be heard to complain about the time necessarily spent by the plaintiff in
16 response.” (*Copeland v. Marshall* (DC Cir. 1980) 641 F 2d 880, 904, quoted in
17 *Serrano v. Unruh* (“*Serrano IV*”) (1982) 32 Cal. 3d 631, 633.)

18 3. All of Meyer’s requested hours were reasonably spent. Exhibit A of the
19 Johnson Declaration provides a detailed summary of the various tasks that required
20 counsel’s time. Meyer’s counsel had to review, analyze, and become familiar with, the
21 relevant eminent domain and railroad related case law and statutory authorities.
22 Additionally, counsel had to obtain and review the pertinent documents, and then
23 evaluate the numerous issues related to the valuation of the property, larger parcel
24 damages, and Meyer’s loss of business income. The parties participated in a day long
25 mediation that also required briefing and preparation. Additionally Meyer’s counsel had
26 to complete pretrial briefing and conduct a 5-day trial on the merits; prepare substantial
27 post trial briefing, review the decision, prepare responses to MR’s objection to the
28

1 judgment, motion to reopen the case, and motion to vacate the judgment. (Johnson
2 Declaration, p. 4-5.) In the end, the number of hours spent compares favorably to those
3 found reasonable in many other cases, some of which were decidedly less complex or far-
4 reaching.

5 4. This case also was efficiently litigated by Mannon, King, Johnson & Wipf,
6 LLP. Attorney Stephen F. Johnson (“Johnson”) handled nearly all of the work entirely
7 himself, with some assistance from other lawyers and paralegals in his office. (Johnson
8 Declaration, p. 5.)

9 5. Meyer was successful on virtually all theories and contentions in this action.
10 (Johnson Declaration, p. 5.) Under California law, when, as here, excellent or substantial
11 results are achieved and the parties’ claims are “related” – i.e., they challenge the same
12 course of conduct there is no reduction for losing “theories” or “claims.” (*Downey*
13 *Cares v. Downey Community Dev. Comm’n* (1987) 196 Cal. App. 3d 983, 997.)

14 In this action Meyer’s legal claims all were directed at the same conduct and
15 sought the same relief—opposing MR’s illegal attempt to take Meyer’s Property by
16 eminent domain. The desired relief was obtained, and Meyer’s attorneys are entitled to
17 be fully compensated for their work. As the court stated in *Sundance v. Municipal Court*
18 (1987) 192 Cal. App. 3d 268, 273, “it must be remembered that an award of attorney fees
19 is not a gift. It is just compensation for expenses actually incurred in vindicating a
20 public right.” As such, Meyer is entitled to an award of his requested litigation expenses.

21 6. It was also difficult to defend this action due to MR and its President, Robert
22 Pinoli (“Pinoli”), misrepresenting the facts on the material issues in the case.
23 Specifically, MR alleged, and Pinoli testified, throughout this litigation that MR was a
24 “common carrier” that transported passengers and freight—this was not true. MR’s
25 failure to be truthful and candid increased the difficulty of defending this action. MR
26 and Pinoli were subsequently forced to refute their representations and testimony, largely
27 due to Meyer’s counsel’s skill in refuting such misrepresentations with contradictory

1 evidence. (Johnson Declaration, p. 5.)

2 **b. Counsel’s Hourly Rates Are Reasonable.**

3 Meyer’s attorneys’ hourly rates are in line, or if anything, lower, than the rates
4 charged by private attorneys of comparable skill, reputation, and experience for litigation
5 in Mendocino County. Johnson has over 22 years of legal and litigation experience, and
6 he has a very strong transactional and litigation practice that heavily focuses on real
7 property and estate planning. Johnson graduated with a Bachelor of Science from the
8 University of California Berkeley Haas School of Business and a Juris Doctorate from
9 Santa Clara University. (Johnson Declaration, p. 5.)

10 Johnson’s attorney fee rate of \$350 per hour is relatively low, especially given his
11 significant experience and the complex nature of this litigation. (Johnson Declaration.)
12 Additionally, Johnson’s hourly rate is likely much less than the hourly rate paid to either
13 of MR’s counsel in this action. A supplemental declaration specifically referencing
14 hourly rates for local attorneys shall be filed in the near future, as the relatively short
15 time deadline for filing this motion has limited Meyer’s ability to obtain declarations
16 from local counsel before its filing. (Johnson Declaration, p. 5-6.)

17 **III. MEYER IS ENTITLED TO A LODESTAR ENHANCEMENT.**

18 Meyer’s unadorned lodestar represents the fee that would have been paid by a
19 fee-paying client, win or lose, and without consideration for such factors as contingent
20 risk: “[T]he unadorned lodestar reflects the general local hourly rate for a *fee-bearing*
21 *case*; it does not include any compensation for contingent risk, extraordinary skill, or any
22 other factors a trial court may consider.” (*Ketchum v. Moses, supra*, 24 Cal. 4th at 1138,
23 emphasis in original.) In order to determine a fee that truly reflects the legal
24 marketplace, factors in addition to hours and rates, especially contingent risk, must be
25 considered (*Horsford v. Board of Trustees, supra*, 132 Cal App 4th at 399.)

26 After making the lodestar calculation, the court may then consider other factors
27 that may adjust by either increasing or reducing the lodestar amount. (*Serrano v. Priest*,

1 *supra*, 20 Cal. 3d at 48; CEB, California Attorney Fee Awards 3rd Ed. § 8.2.) There are
2 many factors that may be used to adjust the lodestar figure, and there is “no hard-and-fast
3 rule limiting the factors that may justify an exercise of judicial discretion to increase or
4 decrease a lodestar calculation.” (*Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th
5 189, 834; CEB, California Attorney Fee Awards 3rd Ed. § 10.3.)

6 The initial formulation of factors that may be considered was set out in *Serrano*
7 *III*, in which the California Supreme Court approved the trial court’s use of several
8 factors as a basis for applying the lodestar multiplier. The factors are as follows:

- 9 • The novelty and difficulty of the questions involved and the skill displayed in
10 presenting them;
- 11 • The extent to which the litigation precluded other employment of the attorney;
- 12 • The contingent nature of the award;
- 13 • The fact that the award against the state would eventually fall against the
14 taxpayers;
- 15 • The public or charitable funding of the attorneys;
- 16 • That the money would accrue not the individual attorneys, but to their
17 organizations; and
- 18 • That the court viewed the two law firms involved as having shared equally in the
19 success of the litigation. (*Serrano v. Priest, supra*, 20 Cal. 3d at 49; CEB, California
20 Attorney Fee Awards 3rd Ed. § 10.3.)

21 The court expresses these factors as a number or as an equivalent percentage, and
22 the lodestar is multiplied by that number. Thus the number is referred to as the
23 “multiplier.” For example, if the court determines that these or other relevant factors
24 justify increasing the lodestar figure by 50%, a multiplier of 1.5 or 150% is applied to the
25 lodestar figure to arrive at the reasonable attorney fee. (CEB, California Attorney Fee
26 Awards 3rd Ed. § 10.1.) “The purpose of such adjustment is to fix a fee at fair market
27 value for the particular action. In effect, the court determines, retrospectively, whether

1 the litigation involved a contingent risk or required extraordinary legal skill justifying
2 augmentation of the unadorned lodestar in order to approximate the fair market rate for
3 such services.” (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132.)

4 In order to achieve a fee that truly reflects market value, Meyer requests that a 1.5
5 lodestar enhancement be applied to the fees to account, inter alia, for the great risk
6 Meyer’s counsel took when accepting representation of Meyer in this highly contested
7 action.

8 In the instant case, the lodestar factors fully support a 50 percent enhancement of
9 Meyer’s lodestar (a 1.5 multiplier), and the pertinent factors are specifically addressed
10 hereafter. A 1.5 multiplier is extremely reasonable given the referenced factors,
11 especially given the contingent risk and complexity of the case. Similar factors have
12 justified lodestar enhancements in numerous cases. (For example, in *City of Oakland v.*
13 *Oakland Raiders* (1988) 203 Cal. App. 3d, 78, 82, the court affirmed a 2.34 multiplier in
14 an eminent domain case; in *Coalition For L.A. County Planning v. Board of Supervisors*
15 (1977) 76 Cal. App, 3d 241, 251, the court affirmed a 2.1 multiplier in a land use action,
16 based, inter alia, on contingent risk and importance of the case); in *Kern River Pub.*
17 *Access Comm. v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1229, the court
18 affirmed a 1.5 multiplier because the case was “a relatively complex matter success was
19 not assured and where the appellants fought case at every turn”; and in *Downey Cares v.*
20 *Downey Community Dev. Comm’n* (1987) 196 Cal. App 4th 983, 994 the court affirmed
21 1.5 multiplier for a land use case.)

22 **1. The Great Risk Meyer’s Counsel Took Warrants A Lodestar**
23 **Enhancement.**

24 In the legal marketplace an attorney who takes a significant risk— whose receipt of
25 compensation is dependent upon achieving success for the client, demands and receives
26 a higher fee than an attorney who is paid a market rate without contingency. (*Ketchum v.*
27 *Moses, supra*, 24 Cal. 4th at 1132.) A risk enhancement is not a bonus or a windfall, it is
28 “earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather,

1 it is intended to approximate market-level compensation for such services, which
2 typically includes a premium for the risk of non-payment or delay in payment of attorney
3 fees.” (*Id.* at 1138.)

4 If counsel are not compensated for their risk, they do not receive the fair market
5 value for their work and may be reluctant to accept future cases. (*Id.* at 1132.) Risk
6 enhancements are essential for the purpose of enticing competent counsel to take
7 important cases: “The purpose of a fee enhancement, or so-called multiplier, for
8 contingent risk is to bring the financial incentives for attorneys enforcing important . . .
9 [rights] into line with incentives they have to undertake claims for which they are paid on
10 a fee-for-services basis.” (*Id.*) Risk enhancements are especially necessary in hard-
11 fought cases like this one, where favorable outcome is uncertain. (*Amaral v. Cintas*
12 *Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1218.)

13 This is an important case as it prevents the illegal taking of Meyer’s private
14 property under the guise of an eminent domain action. In this action Meyer and his
15 counsel had to overcome many significant obstacles: MR’s far greater resources; the
16 deferential presumptions that apply to plaintiffs in eminent domain actions; the
17 significant amount of documentation; evaluation of the eminent domain and railroad
18 related law that had to be analyzed and presented; and the inevitable risk of having to
19 convince the court of Meyer’s legal argument.

20 In this case, counsel’s ability to recover compensation for approximately 700
21 hours of work was largely contingent on winning the case and obtaining a fee award, as
22 Meyer had little financial ability to pay attorney fees and costs. Meyer simply did not,
23 and does not, have the funds or ability to pay his attorney fees, and he has been forced to
24 seek donations to attempt to cover his legal expenses. At this time the vast majority of
25 the attorney fees and costs that have been billed and incurred by Meyer remain unpaid,
26 thereby negatively impacting Johnson’s legal practice. (Johnson Declaration p.6)

27 Law firms simply do not commit that much potentially uncompensated time to a
28

1 case without the expectation of a fee award that will compensate them for such a
2 significant risk. Meyer and his attorneys mounted a defense against MR's action
3 because they felt compelled to rebuff MR's attempt to improperly employ the eminent
4 domain process to take Meyer's Property. This was a difficult and expensive case, but
5 the expectations prevailed, and compensation should be properly awarded for the risk
6 incurred.

7 **2. The Exceptional Novelty, Difficulty, And Complexity of The Action**
8 **Warrant A Lodestar Enhancement.**

9 A lodestar enhancement is also appropriate based on the novelty, difficulty,
10 complexity of the action, and the skill displayed in presenting the case. (*Kern River Pub.*
11 *Access Comm. v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1229.)

12 Here, many of the issues presented were highly technical, complex, and difficult,
13 requiring particular skill and expertise beyond the level that might be expected from
14 counsel billing at the rate requested by Meyer's counsel. The Johnson Declaration
15 provides a detailed summary of the various tasks that required counsel's time. Meyer's
16 counsel had to review, analyze, and become familiar with, the relevant eminent domain
17 and railroad related case law and statutory authorities. Additionally, Meyer's counsel
18 had to obtain and review the pertinent documents, and then evaluate the numerous issues
19 related to the valuation of the property, larger parcel damages, and loss of business
20 income.

21 This case was also difficult to defend due to MR, and MR's President, Robert
22 Pinoli, misrepresenting the facts on the seminal issues in the case. Specifically, MR
23 alleged in its complaint and pleadings, and Pinoli testified at trial, that MR was a
24 "common carrier" that transported passengers and freight. Pinoli was subsequently
25 forced to refute MR's allegations and refute Pinoli's previous trial testimony on these
26 material issues. MR and Pinoli were forced to recant these allegations and testimony
27 largely due to Meyer's counsel's skill in refuting such misrepresentations through
28 contradictory evidence. (Johnson Declaration, p. 5.)

1 **3. The Preclusion of Other Employment Opportunities Warrant A**
2 **Lodestar Enhancement.**

3 The extent to which the litigation precluded other employment of the attorney is a
4 factor that warrants enhancement. (*Serrano v. Priest, supra*, 20 Cal. 3d 25, at 49;
5 *Amaral v. Cintas Corp. No. 2, supra*, 163 Cal. App. 4th at 1218.)

6 The demands of this litigation placed a heavy burden on Johnson’s small law
7 firm, and the hundreds of hours spent on this litigation prevented Johnson from taking
8 several new cases. The preclusion of other employment opportunities warrants a
9 lodestar enhancement. (Johnson Declaration, p. 6.)

10 **4. The Case Was Very Important to Meyer, Local Governments, California**
11 **Agencies, and the General Public.**

12 The importance of the case to Meyer, the general public, California Coastal
13 Commission, the City of Fort Bragg, Sonoma County, and the Great Redwood Trail
14 Agency warrants enhancement. (*Coalition For L.A. County Planning v. Board of*
15 *Supervisors* (1977) 76 Cal. App, 3d 241, 251; *Amaral v. Cintas Corp. No. 2* (2008) 163
16 Cal. App. 4th 1157, 1218.)

17 The importance of the court’s decision in this case as it relates to Meyer cannot
18 be overstated. MR used its significant resources, along with alleged constitutional and
19 statutory powers that it could not legally wield, to wrongfully attempt to take Meyer’s
20 Property. MR’s attempt to take Meyer’s private property is wrong on a moral, a
21 constitutional and a statutory level, and luckily the court was able to prevent an injustice
22 from occurring. The two and one-half years of litigation derailed Meyer’s development
23 plans for his Property, but now Meyer can enjoy his Property and continue with his
24 development project. (Johnson Declaration, p. 6.) Notwithstanding, sadly it will be
25 much more difficult and expensive for Meyer to develop his property now due to the
26 subdued business environment, higher interest rates and the inflationary cycle.

27 MR is actively involved in litigation with the California Coastal Commission and
28 the City of Fort Bragg in both Federal Court and Mendocino County Superior Court.

1 Pinoli's trial testimony, and the evidence presented at trial in this action, will likely play
2 a significant role in this ongoing litigation. (Johnson Declaration, p. 7.)

3 MR is also actively attempting to take control of the railroad line that runs from
4 Willits to Cloverdale, California, which is under the jurisdiction of the Surface
5 Transportation Board ("STB"). The Great Redwood Trail Agency, Sonoma County,
6 likely Mendocino County, and much of the general public, are very interested in MR's
7 attempt to take control of the railroad line, as it may negatively impact the development
8 of the "Great Redwood Trail." The court testimony of Pinoli, the evidence presented at
9 trial, and the court's decision in this action, may play a significant role in the STB's
10 evaluation of MR's right to take control of the referenced railroad line. This statement is
11 supported by the documents that reference the court's decision in this action that were
12 filed with STB, a copy of such are attached to the Johnson Declaration as Exhibit C.

13 A portion of the local general public also has an interest in limiting MR's attempt
14 to illegally take property through the eminent domain process, and the public also has an
15 interest in having MR comply with Federal, California and local laws and regulations.
16 The public's interest in this case is readily apparent by logging on to the grassroots
17 website www.savenoyoheadlands.com, as this site lists every pleading and order filed in
18 this action and also references other litigation and regulatory actions involving MR. A
19 copy of the references on the website are attached to the Johnson Declaration as Exhibit
20 D. (Johnson Declaration, p. 7.)

21 **IV. CONCLUSION.**

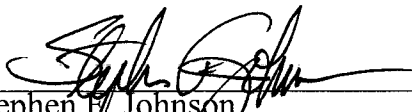
22 In this case Meyer's counsel obtained "excellent results," and they are entitled to
23 fully compensatory fee. Meyer and his attorneys were justified in opposing MR's illegal
24 attempt to take Meyer's Property. Meyer respectfully requests that the court award
25 reasonable attorney fees and costs in the amount of \$411,057.53 based upon the lodestar
26 calculation and a 50% enhancement. Meyer also requests that the court provide Meyer
27 and his counsel with the ability to file subsequent motions for additional subsequently

1 incurred attorney fees and costs, as the litigation of this case has not concluded.

2 DATED: June 20, 2023.

MANNON, KING, JOHNSON & WIPF, LLP

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Stephen F. Johnson
Attorney for Defendant John Meyer

6/20/2023	Hours	Rate	Total
9/15/2020 -5/31/2023	678.6		\$228,297.50
6/1/2023-6/20/2023	81.5		37,900.00
TOTAL	760.1		\$266,197.50

Lodestar Enhancement 1.5 x \$266,197.50 =

\$399,296.25

Disbursements	9/15/2020 - 5/31/2023		\$11,761.28
Disbursements	6/1/2023-6/20/2023		\$118.96

Total Lodestar Fee With Enhancement & Disbursements

\$411,057.53

Exhibit 1

Exhibit 1