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County of Mendocino

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF MENDOCINO**

16 MENDOCINO RAILWAY,

17 Plaintiff,

18 v.

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

28 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

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

Cal. Rules of Court, Rule 3.1590(j)

22 Contrary to Mr. Meyer's contentions in his Opposition to Mendocino Railway's
23 Objection to [Proposed] Judgment, the Court's ruling and the signed [Proposed]
24 Judgment do not comport with Cal. Code Civ. Proc. §1260.120. There is no reference
25 whatsoever to Cal. Code Civ. Proc. §1260.120 in the Court's ruling, nor in Meyer's
26 [Proposed] Judgment. There is thus no basis whatsoever for Mr. Meyer's contention that
27 the Court "pick[ed] one option or the other, which the court appropriately and effectively
28 did in its decision." [Meyer's Opposition, p. 2, lines 26 – 27.]

1 Instead, it appears the Court did not consider the applicable statute as there is no
2 reference even to “dismissal,” the term explicitly referenced in the statute. Furthermore,
3 there is no mention or discussion of the Court’s consideration of, or the merits of,
4 conditional dismissal per Cal. Code Civ. Proc. §1260.120(c)(2). Thus Mr. Meyer’s
5 suggestion that the Court considered the statute or conditional dismissal, let alone
6 determined the matter, is baseless.

7 Substantively, conditional dismissal is appropriate here (if the Court does not
8 otherwise correct the legal and factual errors in its ruling) in the interest of justice and
9 equity. Code Civ. Proc. §1260.120(c)(2) is a remedial statute ensuring an equitable result.
10 “A remedial statute is one which provides a means for the enforcement of a right or the
11 redress of a wrong. (Rich v. Maples (1867) 33 Cal. 102, 106; Miller v. Hart (1938) 11
12 Cal.2d 739, 741, 81 P.2d 923 [remedial statute affords new and additional means of
13 enforcing right].)” *Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1597. And, as a remedial
14 statute, Code Civ. Proc. §1260.120(c)(2) is afforded liberal construction. “A remedial
15 statute ‘must be liberally construed ‘to effectuate its object and purpose, and to suppress
16 the mischief at which it is directed.’” *Id.*, 1598; internal citations omitted.

17 The Law Revision Committee Comment affirms the remedial nature of the
18 statute: “Paragraph (2) of subdivision (c) is designed to ameliorate the all-or-nothing
19 effect of paragraph (1). The court is authorized in its discretion to dispose of an objection
20 in a just and equitable manner. This authority does not permit the court to create a right
21 to acquire where none exists, but it does authorize the court to grant leave to the plaintiff
22 to amend pleadings or take other corrective action that is just in light of all of the
23 circumstances of the case.” Law Revision Commission Comments, Cal. Code Civ. Proc.
24 §1260.120. The appropriate remedial or corrective action here is referral of two discrete
25 questions to the STB for determination (as set forth in Mendocino Railway’s [Proposed]
26 Judgment lodged with the Court on June 5, 2023).

27 The availability of conditional dismissal, an equitable remedy, is entirely
28 consistent with equitable deference afforded the exercise of eminent domain for public

1 purposes, “Generally, statutory requirements of necessity as a condition of the exercise
2 of the power of eminent domain are liberally construed by the courts so as not to limit
3 unnecessarily the power of the condemning agency.” *Kenneth Mebane Ranches v.*
4 *Superior Court* (1992) 10 Cal.App.4th 276, 285.

5 Here, immediate dismissal of the matter by the Court would unnecessarily—and
6 improperly—limit Mendocino Railway’s power of eminent domain for its railroad. This
7 is especially so because immediate dismissal would constitute pre-empted regulation of
8 Mendocino Railway’s common carrier operations and facilities, interfering with the
9 STB’s exclusive jurisdiction. 49 U.S.C. §10501(b).

10 In order to avoid an improper and unjust result, conditional dismissal to allow for
11 referral to the STB is reasonable and appropriate—and entirely consistent with the
12 letter and spirit of Cal. Code Civ. Proc. §1260.120(c)(2). Moreover, during trial the Court
13 contemplated just this—consideration of a regulatory agency’s determination of public
14 utility status: “... I’m curious as to whether or not we should wait until we hear from the
15 PUC on that issue before I’d make a decision, because the PUC is the governing body
16 here.” [TR4, p. 40, lines 18 – 20.] Thus, the Court previously recognized the complexity
17 of the “public utility” question and that, perhaps, it was best left to the appropriate
18 regulatory agency. Rather than the California Public Utilities Commission, though,
19 whose jurisdiction is limited by the STB’s broad exclusive jurisdiction over Federally
20 licensed rail carriers per 49 U.S.C. §10501(b), *et seq.*, referral to the STB—the superior
21 regulatory agency—is appropriate here.

22 As set forth in more detail in Mendocino Railway’s Objection to Meyer’s [Proposed]
23 Judgment and Mendocino Railway’s [Proposed] Judgment, the Court’s referral of these
24 discrete questions to the STB would provide the Court with both the STB’s determination
25 of Mendocino Railway’s rail carrier status as well as Federal pre-emption issues. Referral
26 to the STB is a reasonable and expeditious means of ensuring a just and equitable result
27 of this matter. Thus, it would be an entirely appropriate measure for the Court to take
28 in accordance with its discretionary equitable authority per Cal. Code Civ. Proc.

1 §1260.120.

2 Mr. Meyer’s hyperbolic characterization of Mendocino Railway’s contentions
3 regarding Federal pre-emption as STB having “veto” or “appellate” power over this
4 California eminent domain action is inaccurate. Mendocino Railway certainly asserts
5 that the Court’s initial ruling is not only legally and factually incorrect, but it is also
6 Federally pre-empted. Mendocino Railway does not contend the STB has any “veto” or
7 “appellate” powers over this eminent domain action. However, to the extent any ruling
8 in this eminent domain action constitutes improper regulation of Mendocino Railway’s
9 “transportation” activities, services and/or facilities (including construction, acquisition
10 or operation thereof), such ruling would be pre-empted and improper under 49 U.S.C.
11 10501(b), *et seq.*

12 Mendocino Railway could make the same complaint asserted by Mr. Meyer in his
13 Opposition, that the ongoing pendency of the litigation is burdensome, and it should be
14 permitted to move on.¹ This is because the Court’s initial ruling precludes Mendocino
15 Ruling from moving on and commencing construction of its important and necessary rail
16 Project which will provide enhanced freight rail service, among other improvements, to
17 the public in Mendocino County. But any temporal burdens the parties may bear now
18 would not outweigh the Court’s and the parties’ ultimate interest in ensuring a fair and
19

20
21 ¹ Mr. Meyer has only himself to blame for any perceived delay in the litigation due to his
22 dilatory efforts. Although Mr. Meyer raised boiler-plate right-to-take objections in his
23 Answer, he waited *more than a year* before pursuing them. And even then, it was clearly
24 an afterthought that Mr. Meyer pursued *only* as the parties were preparing for the
25 compensation jury trial. Mr. Meyer failed to identify the right-to-take objections in his
26 CMC Statement and did not raise the objections as an issue at the Case Management
27 Conference (or seek a trial thereon). Mr. Meyer *first* initiated “discovery” on his right-to-
28 take objections a few weeks before the parties’ appraisal exchange, advising Mendocino
Railway that he intended to take a PMK deposition. Written discovery (Special
Interrogatories, Requests for Admission and Form Interrogatories) were served two
weeks after the PMK deposition and a few days before the Mandatory Settlement
Conference. Clearly an even later afterthought, Mr. Meyer only first asserted a
contention that Mendocino Railway is not a public utility in its Amended Answer (filed
May 27, 2022 – nearly *a year and a half* after the Complaint was filed).

1 correct result.

2 Conditional dismissal is reasonable and proper here to expeditiously obtain input
3 from the STB and is a minor detour on the path to a just and equitable resolution of this
4 right-to-take trial. Thus, the Court should reject Meyer's [Proposed] Judgment and
5 instead enter Judgement, consistent with Cal. Code Civ. Proc. §1260.120(c)(2), as set
6 forth in Mendocino Railway's [Proposed] Judgment lodged with the Court on June 5,
7 2023.

8
9 Dated: June 23, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

10
11 By  _____
12 Glenn L. Block
13 Attorneys for Plaintiff MENDOCINO RAILWAY

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 23, 2023, I served the within document(s):


PLAINTIFF MENDOCINO RAILWAYS'S REPLY ISO 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 23, 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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