

1 JAMES F. KING, SBN 41219
STEPHEN F. JOHNSON, SBN 205244
2 MICHAELYN P. WIPF, SBN 300428
MANNON, KING, JOHNSON & WIPF, LLP
3 200 North School Street, Suite 304
Post Office Box 419
4 Ukiah, California 95482
Telephone: (707) 468-9151
5 Facsimile: (707) 468-0284

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Superior Court of California
County of Mendocino

By:
John Lozano
Deputy Clerk



6 Attorneys for Defendant John Meyer

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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
interest in the property; and DOES 1
17 through 100, inclusive

18 Defendants.

) Unlimited

) Case No. SCUJ-CVED 20-74939

) DEFENDANT JOHN MEYER'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MENDOCINO RAILWAY'S
OBJECTION TO [PROPOSED]
JUDGMENT

) Date: June 30, 2023
Time: 9:30 AM
Dept: E

19
20 **The Court's Decision And The Proposed Judgment Comply With The**
21 **Law And A Conditional Judgment Is Not Justified.**

22 Mendocino Railway's ("MR") argues, without citing any law, that the Proposed
23 Judgment does not comport with the provisions of Code of Civil Procedure § 1260.120
24 "because it ignores and fails to recognize and acknowledge the Court's obligation to
25 consider ordering conditional dismissal of the proceeding pending such corrective and
26 remedial action as the court may prescribe as just under the circumstances of this case."
27 MR's objection is not supported by the facts or the law, and it should be overruled.

1 Code of Civil Procedure § 1260.120(c) states:

2 “If the court determines that the plaintiff does not have the right to acquire by
3 eminent domain any property described in the complaint, it shall order either of the
4 following:

5 (1) Immediate dismissal of the proceeding as to that property.

6 (2) Conditional dismissal of the proceeding as to that property unless such
7 corrective and remedial action as the court may prescribe has been taken within the
8 period prescribed by the court in the order. An order made under this paragraph
9 may impose such limitations and conditions as the court determines to be just
10 under the circumstances or the particular case including the requirement that the
11 plaintiff pay to the defendant all or part of the reasonable litigation expenses
12 necessarily incurred by the defendant because of the plaintiff’s failure or omission
13 which constituted the basis of the objection to the right to take.”

14 “In the absence of special circumstances, a determination that the plaintiff does not
15 have the right to take the property is followed by immediate dismissal of the proceeding.

16 (8 Witkin Summary of Law (11th Ed.) Constitutional Law § 1357.) “The court has
17 discretion to take the less drastic action of ordering conditional dismissal unless
18 prescribed corrective and remedial action has been taken within the period prescribed by
19 the court in the order.” (*Id.*) “[T]he court may impose those limitations and conditions
20 that the court determines to be just under the circumstances of the particular case.” (*Id.*;
21 Code of Civil Procedure § 1260.120(c)(2); *Lincoln v. Barringer* (2002) 102 Cal. App. 4th
22 1211, 1233.)

23 Pursuant to Code of Civil Procedure § 1260.120(c) the court has the task of
24 choosing either an immediate dismissal of the proceeding or a conditional dismissal of the
25 proceeding. In this case the court found in the favor of defendant John Meyer (“Meyer”)
26 and effectively made an immediate dismissal of the proceeding. Code of Civil Procedure
27 § 1260.120(c) does not require the court to formally evaluate the option to choose one
28 form of dismissal over the other in its decision, rather the statute simply requires that the
court pick one option or the other, which the court appropriately and effectively did in its
decision.

1 Additionally, a conditional dismissal under Code of Civil Procedure
2 § 1260.120(c)(2) is conditioned on the plaintiff taking some corrective or remedial action.
3 MR's objection is not stating that this action should be conditionally dismissed so that it
4 may take some corrective or remedial action, rather it is arguing that the STB should
5 somehow have a veto or appellate power over this California eminent domain action.
6 MR's argument is not supported by the law or facts.

7 MR is the plaintiff in this action and it filed its complaint seeking the Mendocino
8 County Superior Court's approval to take the Meyer property pursuant to the California
9 Constitution and California statutes. MR did not receive the trial decision that it desired,
10 and MR now is effectively requesting that the court conditionally dismiss this action so
11 that the Federal Surface Transportation Board ("the STB") may rule on whether MR has
12 the legal right to take California property by eminent domain. The STB does not have
13 jurisdiction over California eminent domain actions and this request should be denied.

14 MR and Pinoli repeatedly lied regarding the material issues throughout this
15 litigation and then they were caught lying. Meyer and the court have no idea what MR
16 told, or may tell, the STB regarding its operation, nor does the court know how the STB
17 reaches its decision. Most likely the STB is open to having a railroad be subject to its
18 jurisdiction and its safety regulations, but notwithstanding, the STB's determination of
19 common carrier status does not usurp this court's evaluation of the issues as they relate to
20 taking property by eminent domain under the laws of California.

21 MR filed its complaint in this action in December 22, 2020, and since that time
22 Meyer has been forced to endure the burdens of this litigation, including the resulting
23 costs and time involved with defending it. Additionally, Meyer has not been able to
24 enjoy, improve, or develop his property because of this action. **It is not just, and it is**
25 **downright mean spirited, for MR to request a conditional dismissal so that the STB**
26 **can potentially rule on an issue at some undisclosed time in the future.** This action
27 should be unconditionally dismissed so that Meyer may be able to get on with his life and
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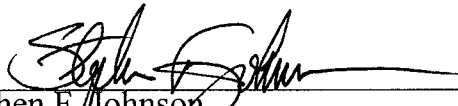
1 the enjoy his property.

2 The court's decision and the judgment comply with Code of Civil Procedure
3 § 1260.120(c)(2), and there is no legal or factual justification for the court granting a
4 condition dismissal in this action. The court should deny MR's objection and reconfirm
5 its judgment.

6 DATED: June 15, 2023.

MANNON, KING, JOHNSON & WIPF, LLP

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Stephen F. Johnson
Attorney For John Meyer

PROOF OF SERVICE

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

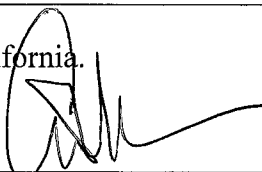
I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On June 15, 2023, I served the **DEFENDANT JOHN MEYER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S OBJECTION TO [PROPOSED] JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO REOPEN BENCH TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO SET ASIDE AND VACATE PREMATURE JUDGMENT** on the interested parties in this action by placing the original true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

<input checked="" type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
<input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 15, 2023, at Ukiah, California.



Erika Brewer, Legal Assistant

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SERVICE LIST

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

Glenn L. Block Christopher Washington California Eminent Domain Group, APC 3429 Ocean View Blvd., Suite L Glendale CA 91208 glb@caledlaw.com cgw@caledlaw.com	Christian Curtis Brina Blanton Office of Mendocino-Administration Center 501 Low Gap Road, Room 1030 Ukiah, CA 95482 curtisc@mendocinocounty.org blantonb@mendocinocounty.org
Maryellen Sheppard 27200 North Highway 1 Fort Bragg, CA 95437 sheppard@mcn.org	Paul J. Beard, II FisherBroyles LLP 4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA 90027 Paul.beard@fisherbroyles.com