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By:
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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,) Unlimited
11)
Plaintiff,) Case No. SCUK-CVED 20-74939
12 vs.)
13 JOHN MEYER; REDWOOD EMPIRE) DEFENDANT JOHN MEYER'S FIRST
TITLE COMPANY OF MENDOCINO) AMENDED ANSWER TO COMPLAINT
14 COUNTY; SHEPPARD) IN EMINENT DOMAIN
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.)

19
20 1. Pursuant to Code of Civil Procedure § 431.30, defendant John Meyer
21 (“Meyer”) generally denies each and every allegation of plaintiff Mendocino Railway’s
22 (“Plaintiff”) unverified complaint in eminent domain filed in this action on December 22,
23 2020.

24 2. Meyer is the owner of record of the property described in the complaint
25 commonly known as Mendocino County Assessor Parcel Number 038-180-53 (“the
26 Property”).

27 **MEYER’S OBJECTS TO PLAINTIFF’S RIGHT TO TAKE THE PROPERTY.**

28 3. In accordance with Public Utilities Code § 611, “[a] railroad corporation may

1 condemn any property necessary for the construction and maintenance of its railroad.”
2 Plaintiff is not a railroad corporation authorized to take property by eminent domain and
3 the proposed taking is not for railroad purposes. Plaintiff’s purported railroad is not a
4 common carrier. Moreover, even if Plaintiff can establish that it is a valid railroad
5 corporation under Section 230 of the Public Utilities Code, Plaintiff’s ability to take
6 property by eminent domain is limited by Section 611 of that code to property for the
7 construction and maintenance of its railroad, which is not what plaintiff is seeking in this
8 action.

9 4. The complaint fails to describe or specify why the Property is necessary for the
10 Plaintiff’s construction and maintenance of its railroad, as required by Public Utilities
11 Code § 611. The complaint limits its description of the project to the following: “The
12 project (‘Project’) for which Plaintiff seeks to acquire the below described property
13 consists of construction and maintenance of rail facilities related to Plaintiff’s ongoing
14 and future freight and passenger rail operations and all uses necessary and convenient
15 thereto.” (Complaint, Page 2, Paragraph 2.)

16 5. The complaint fails to state with any specificity the nature of the Project, it fails
17 to define “rail facilities,” and it otherwise fails to specify the use to be made by the
18 Plaintiff on the Property. The failure to reference any specific details prevents Meyer and
19 the court from evaluating whether the condemnation of the Property is necessary for the
20 construction and maintenance of Plaintiff’s railroad.

21 6. The complaint fails to provide a general statement of the public use for which
22 the Property is to be taken, as required by Code of Civil Procedure § 1250.310(d)(1). The
23 complaint fails to state with any specificity the nature of the Project, and it otherwise fails
24 to specify the use to be made by the Plaintiff on the Property. The failure to reference any
25 specific details prevents Meyer and the court from evaluating whether the condemnation
26 of the Property is for a public use..

27 7. The complaint fails to provide an allegation of necessity for the taking as
28 required by Code of Civil Procedure § 1240.030, as referenced in Code of Civil

1 Procedure § 1250.310(d)(2). The complaint fails to state with any specificity the nature
2 of the Project, and it otherwise fails to specify the use to be made by the Plaintiff on the
3 Property. The failure to reference any specific details prevents Meyer and the court from
4 evaluating whether the condemnation of the Property is necessary.

5 8. The complaint fails to establish that “public interest and necessity require the
6 project,” as required by Code of Civil Procedure § 1240.030(a). The complaint fails to
7 state with any specificity the nature of the Project, and it otherwise fails to specify the use
8 to be made by the Plaintiff on the Property. The failure to reference any specific details
9 prevents Meyer and the court from evaluating whether the condemnation of the Property
10 is in the public interest and necessity requires the Project.

11 9. The complaint fails to establish that “the project is planned or located in the
12 manner that will be most compatible with the greatest public good and the least private
13 injury,” as required by Code of Civil Procedure § 1240.030(b). The complaint fails to
14 state with any specificity the nature of the Project, and it otherwise fails to specify the use
15 to be made by the Plaintiff on the Property. The failure to reference any specific details
16 prevents Meyer and the court from evaluating whether the condemnation of the Property
17 is planned or located in the manner that will be most compatible with the greatest good
18 and the least private injury.

19 10. The complaint fails to establish that “property sought to be acquired is
20 necessary for the project,” as required by Code of Civil Procedure § 1240.030(c). The
21 complaint fails to state with any specificity the nature of the Project, and it otherwise fails
22 to specify the use to be made by the Plaintiff on the Property. The failure to reference any
23 specific details prevents Meyer and the court from evaluating whether the condemnation
24 of the Property, or only a portion of the Property, is necessary for the Project.

25 11. Plaintiff has failed to comply with the California Environmental Quality Act,
26 which is a complete defense to this condemnation action. See e.g., *Burbank-Glendale-*
27 *Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App. 3d 577, 596.
28

1 **THE TAKING OF THE PROPERTY WILL RESULT IN DAMAGES.**

2 12. Meyer is the owner of the real property commonly known as Mendocino
3 County Assessor Parcel Number 038-180-40 ("Parcel 40") that is adjoining to the
4 Property described in the complaint.

5 13. Meyer was beginning the process of boundary line adjusting and developing
6 the Property and Parcel 40 together at the time that Plaintiff filed this action. Plaintiff's
7 potential taking of the Property will negatively impact the use, value and development of
8 the Property and Parcel 40.

9 14. Plaintiff's taking of the Property will also interfere with an existing agreement
10 that Meyer has executed with California Department of Transportation for payment for
11 the delivery and deposit of fill material on the Property. The taking of the Property will
12 deprive Meyer from the benefit of the referenced agreement.

13 15. As a result of any taking, Meyer should be entitled to receive severance
14 damages under Code of Civil Procedure §§ 1263.410 through 1263.450.

15 16. Meyer also claims compensation for loss of goodwill under Code of Civil
16 Procedure § 1263.510.

17 **AFFIRMATIVE DEFENSES AND OBJECTIONS**

18 **FIRST:** The complaint, and each count or cause of action set forth therein, fails
19 to state facts sufficient to constitute a cause of action or claim for relief.

20 **SECOND:** The action is barred by Plaintiff's laches.

21 **THIRD:** This action is barred by the doctrine of estoppel.

22 **FOURTH:** This action is barred by Plaintiff's unclean hands.

23 **FIFTH:** Plaintiff, through its acts, conduct and omissions, has waived the claims
24 alleged in the complaint and in the purported cause of action alleged therein.

25 **SIXTH:** Plaintiff is not authorized by statute to exercise the power of eminent
26 domain for the purpose stated in the complaint.


27 **SEVENTH:** The stated purpose is not for public use.

28 **EIGHTH:** Plaintiff does not intend to devote the Property to the stated purpose.

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DATED: May 27, 2022.

MANNON, KING, JOHNSON & WIPF, LLP



Stephen F. Johnson, Attorney for Defendant
John Meyer

1 **PROOF OF SERVICE**

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

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

6 On May 27, 2022, I served the **DEFENDANT JOHN MEYER'S FIRST AMENDED**
7 **ANSWER TO COMPLAINT IN EMINENT DOMAIN** on the interested parties in this
8 action by placing the original true copies thereof, as follows:

9 **SEE ATTACHED SERVICE LIST**

10 <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.
11 <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.
12 <input 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.
13 <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.
14 <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.
15 <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.

16 Executed on May 27, 2022, at Ukiah, California.

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18 Rochelle Miller, Legal Assistant

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SERVICE LIST

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

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