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By:  
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Deputy Clerk



Attorneys for Plaintiff MENDOCINO RAILWAY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MENDOCINO**

MENDOCINO RAILWAY, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) JOHN MEYER; REDWOOD EMPIRE TITLE )  
 ) COMPANY OF MENDOCINO COUNTY; )  
 ) SHEPPARD INVESTMENTS; MARYELLEN )  
 ) SHEPPARD; MENDOCINO COUNTY )  
 ) TREASURER-TAX COLLECTOR; All other )  
 ) persons unknown claiming an interest in the )  
 ) property; and DOES 1 through 100, inclusive, )  
 )  
 ) Defendants. )

Case No. SCUJ-CVED-2020-74939

[APN 038-180-53]

**(Assigned to Hon. Jeanine B. Nadel)**

**PLAINTIFF MENDOCINO RAILWAY'S  
NOTICE OF MOTION AND MOTION  
TO BIFURCATE AND SPECIALLY SET  
BENCH TRIAL ON DEFENDANT'S  
RIGHT TO TAKE OBJECTIONS PRIOR  
TO JURY TRIAL ON COMPENSATION  
ISSUES [Cal. Civ. Proc. Code §1260.110]**

Date: May 13, 2022  
Time: 9:30 a.m.  
Dept.: E

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on May 13, 2022, at 9:30 a.m., or as soon thereafter as the matter may be heard in Department "E" of the above-entitled Court, located at 100 North State Street, Ukiah, CA, the Plaintiff Mendocino Railway ("Plaintiff" or "Mendocino Railway") will and hereby does, move the Court for an order bifurcating and specially setting legal issue bench trial on the right to take objections/challenges raised by Defendant John Meyer ("Defendant" or "Meyer") on the date presently set for trial – July 11, 2022 – with the jury trial on the amount of

1 compensation to which Defendant may be entitled to be scheduled at least 45 days after the  
2 Court's ruling on the right-to-take trial.

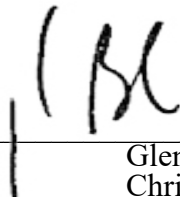
3 This Motion is made pursuant to Cal. Civ. Proc. Code §§598, 1048, 1260.010, and  
4 1260.110. Cal. Civ. Proc. Code §§598 and 1048 provide for separate proceedings when they  
5 promote judicial economy and efficiency and avoid prejudice. Cal. Civ. Proc. Code §1260.010  
6 specifically provides that eminent domain proceedings are entitled to "take precedence over all  
7 other civil actions in the matter of setting the same for hearing or trial in order that such  
8 proceedings shall be quickly heard and determined." Lastly, Cal. Civ. Proc. Code §1260.110  
9 specifically provides that, where objections to the right to take are raised, they are to be heard and  
10 determined by the Court *prior* to the determination of the issue of compensation and the Court  
11 may specially set such objections for trial upon motion of any party.

12 Bifurcating and specially setting the legal issue bench trial of Defendant's right-to-take  
13 objections is in the interest of justice and judicial economy as it would alleviate the necessity of  
14 the parties, witnesses and the Court preparing for both the legal issue bench trial and  
15 compensation jury trial at the same time, before the Court has ruled on Defendant's objections and  
16 determined whether a compensation jury trial is necessary.

17 This Motion is based on this Notice of Motion, the attached Memorandum of Points and  
18 Authorities, the pleadings filed in this action, and any oral argument that may be presented at the  
19 time of the hearing on the Motion.

20  
21 Dated: April 14, 2022

CALIFORNIA EMINENT DOMAIN LAW GROUP,  
a Professional Corporation

22  
23  
24  
25 By  \_\_\_\_\_  
26 Glenn L. Block  
27 Christopher G. Washington  
28 Attorneys for Plaintiff MENDOCINO RAILWAY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 This is an eminent domain action by which Plaintiff Mendocino Railway is acquiring, by  
5 eminent domain, the real property commonly known as 1401 West Highway 20, Willits, County  
6 of Mendocino, State of California (Assessor’s Parcel Number 038-180-53) for construction and  
7 maintenance of rail facilities related to Mendocino Railway’s ongoing and future freight and  
8 passenger rail operations and all uses necessary and convenient thereto (“Project”).

9 This matter is presently set for a jury trial on compensation issues on July 11, 2022.  
10 However, Defendant recently indicated that it intends to pursue objections/challenges to  
11 Mendocino Railway’s right to exercise eminent domain to acquire the Subject Property for the  
12 Project. Thus, the Court would need to first rule on Defendant’s right-to-take  
13 objections/challenges – and only if the Court rules that Mendocino Railway can exercise eminent  
14 domain to acquire the Subject Property for the Project, would the matter proceed to a jury trial on  
15 the amount of compensation to which Defendant may be entitled.

16 Accordingly, in the interest of justice and judicial economy, Mendocino Railway  
17 respectfully moves for the Court to issue an Order bifurcating and specially setting the legal issue  
18 bench trial on Defendant’s right-to-take objections/challenges on July 11, 2022 – the date  
19 presently set for trial. And the jury trial to determine the amount of compensation to which  
20 Defendant may be entitled would be set approximately 45 days after the Court’s ruling on  
21 Defendant’s right-to-take challenges/objections.

22  
23 **II. THE LAW REQUIRES THAT EMINENT DOMAIN CASES BE GIVEN**  
24 **PRIORITY OVER ALL OTHER CIVIL CASES.**

25 Eminent domain cases are not actions at law; they are special or “in rem” proceedings  
26 against the property to transfer private ownership to public use. CEB Condemnation Practice in  
27 California, §9.2(A) Eminent Domain is a Special Proceeding (See concurrently filed Request for  
28 Judicial Notice, Exhibit A); see also *Harrington v. Superior Court* (1924) 194 Cal. 185.

1 Accordingly, California law requires that eminent domain proceedings be given priority over all  
2 other civil cases. Cal. Civ. Proc. Code §1260.010 provides:

3 "Proceedings under this title *take precedence over all other civil*  
4 *actions* in the matter of setting the same for hearing or trial *in order*  
5 *that such proceedings shall be quickly heard and determined."* Cal.  
6 Civ. Proc. Code § 1260.010; emphasis added.

7 Eminent domain cases are entitled to statutory priority in order to quickly adjudicate the questions  
8 of public use, necessity and compensation. Describing the reasoning for this principle (of the  
9 predecessor statute), the Court of Appeals stated, "such action shall be brought to trial with such  
10 promptitude as will facilitate the earliest final disposition thereof consistent with a due regard to  
11 all the rights of all the parties thereto, and to that end it shall, in the matter of setting the same for  
12 trial and in the trial thereof, be given preference over any other civil action pending at the same  
13 time." *Bottoms v. Superior Court* (1927) 82 Cal. App. 764, at 772.

14 In order to provide certainty to both the condemnor building a project for public use, and  
15 the condemnee, the legislature specifically provides a preference for eminent domain actions over  
16 all other civil actions.

17  
18 **III. TRIAL OF DEFENDANT JOHN MEYER'S RIGHT-TO-TAKE OBJECTIONS**  
19 **SHOULD PROCEED FIRST.**

20 **a. The Eminent Domain Law specifies that right-to-take objections are tried first; and**  
21 **right-to-take objections may be specially set for trial.**

22 Where a property owner challenges the condemnor's right to acquire property by eminent  
23 domain, those "right-to-take" objections are heard first before the trial of compensation. While a  
24 property owner is entitled to a jury trial on the issue of compensation, the Court first determines  
25 the condemnor's right-to-take at a legal issue bench trial. If the Court finds that the condemnor  
26 has the right-to-take, then the trial proceeds to the compensation phase. Cal. Civ. Proc. Code  
27 §1260.110; see also, CEB Condemnation Practice in California, §6.39(F) Public Use and  
28 Necessity Defenses (See concurrently filed Request for Judicial Notice, Exhibit B); Trial.

1 Pursuant to Cal. Civ. Proc. Code §1260.110:

2 “(a) Where objections to the right-to-take are raised, unless the court orders  
3 otherwise, they shall be heard and determined prior to the determination of the  
4 issue of compensation.

5 (b) *The court may, on motion of any party, after notice and hearing, specially set*  
6 *such objections for trial.*” Cal. Civ. Proc. Code § 1260.110; emphasis added.

7  
8 Here, there is no justification to deviate from the typical order of eminent domain trials.

9  
10 **b. Proceeding with the right-to-take trial first also promotes convenience, judicial**  
11 **economy and avoids prejudice.**

12 Here, proceeding with the right-to-take trial first is not only consistent with the eminent  
13 domain law, but it would also achieve the interests of convenience and judicial economy, and  
14 would avoid prejudice.

15 Pursuant to Cal. Civ. Proc. Code §1048 (b):

16 “The court, in furtherance of convenience or to avoid prejudice, or when separate  
17 trials will be conducive to expedition and economy, may order a separate trial of  
18 any cause of action, including a cause of action asserted in a cross-complaint, or of  
19 any separate issue or of any number of causes of action or issues, preserving the  
20 right of trial by jury required by the Constitution or a statute of this state or of the  
21 United States.” Cal. Civ. Proc. Code §1048(b).

22 Defendant raised numerous objections and challenges to Mendocino Railway’s right-to-  
23 take the Subject Property, asserting *thirteen* (13) affirmative defenses. Unless and until the Court  
24 rules on these objections and challenges, it is uncertain whether Mendocino Railway will be  
25 entitled to proceed with the acquisition and exercise its power of eminent domain to acquire the  
26 Subject Property. If the Court rules in favor of Defendant, and Mendocino Railway is not entitled  
27 to proceed with the acquisition, there would be no jury trial on compensation.

1 Unless the legal issue trial on Defendant's right to take objections/challenges is bifurcated  
2 and specially set for trial, the parties, witnesses and the Court would be forced to prepare for both  
3 a legal issue bench trial and a jury trial on compensation at the same time (including preparation of  
4 exhibits, motions in limine, etc.) Thus, it is clearly more economical and in the interest of judicial  
5 economy to proceed with the right-to-take trial first.

6 Moreover, Mendocino Railway would be prejudiced if the right-to-take trial did not  
7 proceed first because its eminent domain action is entitled to statutory priority to expeditiously  
8 provide certainty regarding its acquisition of the Subject Property and construction and  
9 maintenance of its rail facilities related to Plaintiff's ongoing and future freight and passenger rail  
10 operations and all uses necessary and convenient thereto. The lack of certainty regarding the  
11 acquisition and Project jeopardizes Mendocino Railway's ability to proceed with the Project  
12 adequately and efficiently. Mendocino Railway is vested with the power of eminent domain to  
13 provide freight rail services as a public utility. However, until Defendant's right-to-take  
14 objections are adjudicated, Mendocino Railway's acquisition of the Subject Property and rail  
15 Project are uncertain and this uncertainty impairs and jeopardizes Mendocino Railway's ability to  
16 provide ongoing freight rail services and plan for its continued and future operations.

17 Accordingly, bifurcating and specially setting the legal issue bench trial of Defendant's  
18 right-to-take objections is appropriate here and in the interest of justice and judicial economy.

19  
20 **IV. CONCLUSION**

21 By law, Mendocino Railway's eminent domain action is entitled to priority for trial, and  
22 the right-to-take issue must be tried first. Mendocino Railway's eminent domain action is entitled  
23 to a statutory priority over all other civil cases per Cal. Civ. Proc. Code §1260.010. In eminent  
24 domain cases, a property owner's objections to the condemnor's right to take property by eminent  
25 domain are heard first, at a bench trial, before the jury trial on the matter of compensation. Cal.  
26 Civ. Proc. Code §1260.110.

27 Proceeding with the right-to-take trial first is also in the interest of convenience, judicial  
28 economy and avoids prejudice. Cal. Civ. Proc. Code §1048(b). This would also avoid the

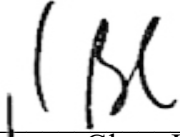
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inefficiency, cost and confusion of a consolidated trial of both the legal issues (to be heard by the Court) and the compensation issues (to be heard by a jury). Furthermore, proceeding in accordance with the statutory priority afforded to eminent domain actions, with adjudication of the right-to-take first, prior to the compensation trial, avoids prejudice by providing Mendocino Railway certainty regarding its acquisition of the Subject Property and construction of its rail Project such that it can proceed with providing continued freight rail services.

For the foregoing reasons, Mendocino Railway respectfully requests that the Court bifurcate and specially set the legal issue bench trial on Defendant’s right to take objections/challenges for July 11, 2022 – with the jury trial on compensation issues, if necessary, to be set at least 45 days after the Court’s ruling on the right to take objections.

Dated: April 14, 2022

CALIFORNIA EMINENT DOMAIN LAW GROUP,  
a Professional Corporation

By   
Glenn L. Block  
Christopher G. Washington  
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 April 14, 2022, I served the within document(s):

**PLAINTIFF MENDOCINO RAILWAY’S NOTICE OF MOTION AND MOTION TO BIFURCATE AND SPECIALLY SET BENCH TRIAL ON DEFENDANT’S RIGHT TO TAKE OBJECTIONS PRIOR TO JURY TRIAL ON COMPENSATION ISSUES [Cal. Civ. Proc. Code §1260.110]**

- 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 April 14, 2022, in Glendale, California.

  
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**SERVICE LIST**

Mendocino Railway v. John Meyer, et al.  
Mendocino Superior Court Case No.: SCUJ-CVED-20-74939

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In Pro Per