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6 Attorneys for Defendant John Meyer

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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
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. SCUUK-CVED 20-74939

) REPLY DECLARATION OF STEPHEN
F. JOHNSON IN SUPPORT OF MOTION
FOR AWARD OF REASONABLE
ATTORNEY FEES AND COSTS
PURSUANT TO CCP § 1268.610

) Date: August 18, 2023

) Time: 9:30 am

) Dept: E

) Judge: Honorable Jeanine B. Nadel

19
20 I, Stephen F. Johnson, declare:

21 I am qualified to practice law in the State of California, and am the attorney of
22 record for defendant John Meyers.

23 The following matters are of my own personal knowledge and if called to testify as
24 a witness I can testify competently thereto:

25 1. MR argues that \$1,750 should be removed from the lodestar calculation because the
26 fees were not billed to the client. Meyer agrees to remove charge of \$1,750, as it was not billed
27 to Meyer, and it was mistakenly referenced in the lodestar amount.

1 2. MR claims that several bill entries referenced as “opening balances” that total \$8,945,
2 appear duplicative. Meyer agrees that this amount was mistakenly double billed. Meyer’s
3 attorneys changed billing programs in June 2023, and the referenced “opening balances” in the
4 June 2023 billing duplicate the May 2023 billing. Meyer shall remove the charges totaling
5 \$8,945, referenced as “opening balances” in the June 2023 billing, as this amount should not
6 have been included in the lodestar amount.

7 3. Contrary to MR’s argument, Meyer raised all of its right to take defenses in its original
8 answer to MR’s complaint. Meyer subsequently amended its answer to include an affirmative
9 defense related to the California Environmental Quality Act, but the amended answer did not add
10 any additional right to take defenses.

11 4. After the complaint was filed Meyer was potentially open to selling his property to
12 MR for a fair and reasonable price. Meyer and his attorneys spent the time and resources
13 necessary to obtain an understanding of the value of the property, and they actively attempted to
14 craft a sale to MR that would be acceptable to both parties.

15 5. Meyer and his attorney knew that MR would vigorously defend any challenges to
16 MR’s right to take real property by eminent domain. Meyer and his attorney reasonably decided
17 that spending significant time and resources on such a challenge should be reasonably avoided
18 prior to trying to negotiate a sale of the “Meyer Property.”

19 6. Even if Meyer wished to quickly jump into a right to take trial, a trial on the issue
20 would not be possible without conducting discovery and completing significant legal research on
21 the eminent domain and railroad related issues. Meyer’s attorney did not begin discovery and set
22 depositions in the litigation for 15 months because Meyer’s attorney was attempting to keep the
23 fees and costs to a minimum in the hopes of negotiating a fair and reasonable sale.

24 7. The parties participated in a day long mediation, but were not successful in reaching
25 an agreement. Only after the mediation failed to result in a settlement did Meyer and his attorney
26 begin the process of gearing up for a trial on the right to take issue. This approach to the
27 litigation was extremely reasonable under the circumstances because if Meyer sold the property
28

1 to MR, or otherwise lost the right to take portion of the trial he would not recover his attorney
2 fees and costs, which would have resulted in Meyer ending up with less money.

3 8. Meyer filed a cost bill as required, and it also filed this motion for attorney fees
4 because it is required. The Judicial Council of California “Memorandum of Costs (Summary)”
5 form that is required to be filed for a cost bill specifically provides as follows: “10. Attorney fees
6 (enter here if the contractual or statutory fees are fixed without the necessity of a court
7 determination; otherwise a noticed motion is required).” The amount of attorney fees that MR is
8 required to pay to Meyer is not fixed and the fees are subject to court determination, therefore a
9 motion must be filed pursuant to provision 10 of the cost bill.

10 9. This attorney fee motion required significant legal and factual support for the motion
11 and the requested fees. The hours spent researching, assembling the supporting documents, and
12 writing this motion were reasonable. Additionally, the motion is seeking the court’s approval of
13 Meyer’s attorney fees for this action, which is of paramount importance to Meyer and his
14 attorneys. Given the nature of the motion and the amount in question, other attorneys in such a
15 situation would likely spend a large amount of time in order to prepare a solid and
16 comprehensive motion. The hours spent preparing the motion were reasonable, especially given
17 the nature and complexity of the motion and the required supporting documentation. The
18 lodestar amount should not be deducted for any time spent preparing the motion.

19 10. As previously noted, the lodestar amount should be adjusted slightly. The lodestar
20 should be reduced by \$1,750 and \$8,945 because such amounts should not have been reflected in
21 the calculation. The lodestar amount should also be increased by \$10,060.00, for the subsequent
22 attorney time involved in preparing this reply brief, and the estimated time to prepare for, and
23 argue, the motion for attorney fees. A copy of the fees and disbursements are attached as Exhibit
24 1.

25 The revised lodestar amount should be calculated as follows:

26	Original Lodestar Amount:	\$266,197.50
27	Deduction of Attorney Fees:	(1,750.00)
27	Deduction of Attorney Fees:	(8,954.00)
28	Additional Subsequent Attorney Fees:	<u>10,060.00</u>

1	Total Lodestar Amount:	\$265,553.50	
2	Lodestar Enhancement:	1.5 x \$265,553.50 =	\$398,330.25
3	Disbursements Referenced in Cost Bill:		11,880.24
3	Additional Subsequent Disbursements		<u>420.00</u>
4	Total Lodestar Amount With Enhancement & Disbursements		\$410,630.49

5 11. This is an important case as it prevents the illegal taking of Meyer’s private property
6 under the guise of an eminent domain action. In this action Meyer and his counsel had to
7 overcome many significant obstacles, such as MR’s far greater resources; the deferential
8 presumptions that apply to plaintiffs in eminent domain actions; the significant amount of
9 documentation; evaluation of the eminent domain and railroad related law that had to be
10 analyzed and presented; and the inevitable risk of having to convince the court of Meyer’s legal
11 argument.

12 12. Meyer’s attorneys have not been paid for their billed hours, and future payment is not
13 assured. In this case, counsel’s ability to recover compensation for approximately 700 hours of
14 work was largely contingent on winning the case and obtaining a fee award, as Meyer had little
15 financial ability to pay attorney fees and costs. Meyer simply did not, and does not, have the
16 funds or ability to pay his attorney fees. At this time the vast majority of the attorney fees and
17 costs that have been billed and incurred by Meyer remain unpaid, thereby negatively impacting
18 Johnson’s legal practice.

19 13. Here, many of the issues presented were highly technical, complex, and difficult,
20 requiring particular skill and expertise beyond the level that might be expected from counsel
21 billing at the rate requested by Meyer’s counsel.

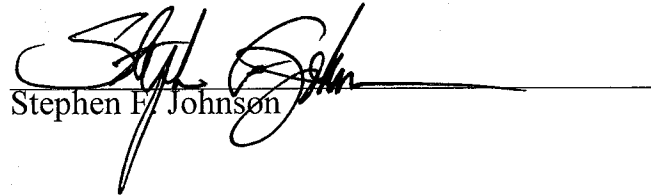
22 14. Given the unique nature of this case, Meyer’s counsel had to review, analyze, and
23 become familiar with the facts and the nuanced eminent domain and railroad related case law and
24 statutory authorities. This case was also difficult to defend due to MR, and MR’s President,
25 Robert Pinoli, misrepresenting the facts on the seminal issues in the case.

26 15. MR argues that Meyer’s counsel was handed a road map by counsel for the City of
27 Fort Bragg based upon a favorable ruling on a demurrer to a complaint for declaratory relief in
28 Mendocino County Superior Court Case, *City of Fort Bragg v. Mendocino Railway* Case No.

1 21CV00850. MR's argument is not supported with any facts, and it seems to reason that if there
2 was some road map to success for Meyer, then likely MR would not have allowed the matter to
3 proceed down such a road to trial. The fact of the matter is that Fort Bragg opposed a demurrer
4 by arguing in a limited fashion that MR is an excursion train, and it is not an interstate rail
5 service that federally preempts state and county jurisdiction. Notwithstanding Fort Bragg's
6 argument, the referenced demurrer definitely did not serve as some road map for Meyer's counsel
7 in this eminent domain litigation. The cases are different, and the demurrer did not provide
8 significant insight into the validity of the arguments for eminent domain purposes.

9 16. The demands of this litigation placed a heavy burden on Johnson's small law firm.
10 Approximately 700 hundreds hours were spent on this litigation which prevented Johnson from
11 taking several new cases. Specifically, during the litigation Johnson did not otherwise engage
12 numerous clients because he was busy with this action, and he knew that significant time was to
13 be incurred in preparing for, and participating in, the bifurcated trial. Meyer's attorneys are
14 extremely busy and in demand, they have a significant client base, and the 700 hours that were
15 spent working on this case supports the point that other legal work was not completed and was
16 passed up as a result of time spent working on this case.

17 I declare under penalty of perjury that the foregoing is true and correct and that this
18 document was executed on August 11, 2023, at Ukiah, California.

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21 Stephen F. Johnson
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To:
John Meyer
1605 Fort Bragg Road
Willits, CA 95490

Invoice

Invoice Date: 8/1/2023
Invoice No: 230
Due Date: Due Upon Receipt

Matter: 20-4638

Memo: 20-4638 Meyer, Property issues on 1401 West Highway...

Professional Fees

Date	Description	Hours	Amount	Staff
07/05/2023	Spoke with John; reviewed and responded to e-mails	0.30	\$105.00	SFJ
07/06/2023	Reviewed e-mails	0.20	\$70.00	SFJ
07/07/2023	Reviewed document filings	0.30	\$105.00	SFJ
07/08/2023	Reviewed case law regarding Klopping damages; e-mailed John	2.70	\$945.00	SFJ
07/10/2023	Drafted declarations for attorney fees and e-mailed them to attorneys	1.50	\$525.00	SFJ
07/11/2023	Finalized obtaining declarations for attorney fee motion	0.30	\$105.00	SFJ
07/12/2023	Reviewed filing	0.20	\$70.00	SFJ
07/17/2023	Reviewed and responded to e-mails	0.20	\$70.00	SFJ
		5.70	\$1,995.00	

Disbursements

Date	Description	Amount
07/19/2023	For reporting court hearing 6/30/2023	\$200.00
07/19/2023	For transcript of proceeding	\$20.00
		\$220.00

EXHIBIT ↓

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To:
John Meyer
1605 Fort Bragg Road
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Invoice

Invoice Date: 8/10/2023
Invoice No: 392
Due Date: Due Upon Receipt

Matter: 20-4638

Memo: 20-4638 Meyer, Property issues on 1401 West Highway 20, Willits CA 95490

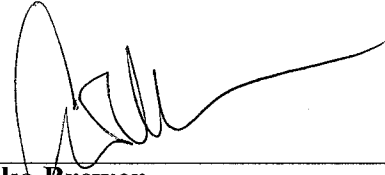
Professional Fees

Date	Description	Hours	Amount	Staff
08/04/2023	Reviewed attorney fee response	0.30	\$105.00	SFJ
08/05/2023	Reviewed attorney fee reply and law	2.40	\$840.00	SFJ
08/06/2023	Reviewed reply brief and evaluated issues to respond	3.30	\$1,155.00	SFJ
08/07/2023	Scheduled court reporter	0.10	\$15.00	FP
08/07/2023	Prepared reply brief	5.50	\$1,925.00	SFJ
08/07/2023	Spoke with Steve regarding fees on motion; researched and prepared specific information for reply	0.70	\$105.00	EB
08/08/2023	Drafted reply brief	6.20	\$2,170.00	SFJ
08/09/2023	Drafted reply brief	4.00	\$1,400.00	SFJ
		22.50	\$7,715.00	
08/18/23	Prepare for and attend court hearing	1.00	\$350.00	
08/18/23	Fee for court reporter for hearing		\$200.00	
			\$8,865.00	

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I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on **August 11, 2023**, in Ukiah, California.



Erika Brewer
Legal Assistant