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MENDOCINO RAILWAY  
6

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 CITY OF FORT BRAGG,  
10

11 Plaintiff

12 v.

13 MENDOCINO RAILWAY,  
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15 Defendant.

16 CALIFORNIA COASTAL COMMISSION,  
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18 Plaintiff-Intervenor  
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Case No.: 4:22-cv-06317-JST

**DEFENDANT MENDOCINO RAILWAY'S  
OPPOSITION TO PLAINTIFF CITY OF  
FORT BRAGG'S ADMINISTRATIVE  
MOTION TO EXTEND TIME AND PAGE  
LIMITS FOR EVIDENTIARY OBJECTIONS**

Action Removed: October 20, 2022

## I. INTRODUCTION

1  
2 Plaintiff City of Fort Braggs moves for permission to file 27 pages of evidentiary objections to a  
3 December 5 declaration filed by Defendant Mendocino Railway. The City’s objections should have been  
4 made within the City’s Reply Brief, filed on December 12. The City moves to file those objections late  
5 *and* to significantly enlarge the 15-page limitation for reply briefs in order to accommodate the  
6 objections. But those demands should be rejected.

7 First, the local rules do not authorize enlargement of a brief’s page limitation unless a party  
8 requests it prior to the brief’s due date. Here, the City waited until weeks after its Reply Brief was due  
9 and filed to seek an enlargement of the brief’s page limitations; the rules do not permit post-filing  
10 enlargement of briefing pages. Second, throughout the objections, the City has sprinkled arguments on  
11 the merits, which violates the local rule against supplemental briefing following the filing of a reply  
12 brief. Finally, the City has failed to establish the requisite “excusable neglect” that would justify the late  
13 filing of its proposed evidentiary objections. The Court should deny the motion.

## II. FACTUAL AD PROCEDURAL BACKGROUND

14  
15 The City filed a state-law case in Mendocino Superior Court of the State of California more than  
16 a year ago, on October 28, 2021. Dkt. 1-1. The City’s sole cause of action—for a declaration that MR is  
17 not a public utility under California law—does not arise under federal law. *Id.* But about one year later,  
18 the California Coastal Commission was granted leave to file a complaint that *does* arise under federal  
19 law: Its primary cause of action is for a declaration that, *inter alia*, MR is not a railroad subject to the  
20 STB’s exclusive jurisdiction under the ICCTA. Dkt. 9. The Commission filed its action only after MR  
21 filed, on August 9, a declaratory-relief action *in this Court* against the Commission’s Executive Director  
22 and the City on the *same* federal question. *See Mendocino Railway v. Ainsworth*, 4:22-cv-04597-JST.

23 Given the Commission’s complaint infused the state-court case with a federal claim, MR  
24 immediately removed the case upon the state court’s order granting intervention, well within the 30-day  
25 deadline. There was no basis for removal of the state-court case prior to the Commission’s formal  
26 intervention. Nevertheless, eager to have their federal and other claims heard by the Mendocino County  
27 Superior Court, the Commission and the City moved for remand. Dkts. 14-15. The parties completed  
28 briefing on the remand motions on December 12, 2022, when the City and the Commission filed their

1 reply briefs. The City filed no evidentiary objections with its Reply. Nor did the City ever indicate,  
2 before it filed its Reply, that it needed more time or more pages in order to include its objections.  
3 Declaration of Paul Beard in Support of Opp. to City’s Admin. Motion (“Beard Decl.”), ¶ 2.

4 The City’s counsel of record, Krista MacNevin Jee, went on vacation two days after the City  
5 filed its reply brief, on December 14. She indicated she would be on vacation through December 26. *Id.*,  
6 ¶ 3. Eight days later, on December 20, 2022 at 4:30 p.m., the City filed late objections to the Declaration  
7 of Robert Pinoli that MR had filed with its Opposition Brief on December 15. Dkt. 20. The 27 pages of  
8 objections contained argument and were accompanied by the declaration of City attorney Krista  
9 MacNevin Jee, which attached, as purported “evidence” for its remand motion, three new documents. *Id.*  
10 The City sought no stipulation from MR or a Court order before making the late filing. Beard Decl., ¶ 4.

11 The next morning, MR’s counsel, Paul Beard, reached out to Ms. Jee to meet and confer about  
12 the City’s untimely and improper filing. Beard Decl., ¶ 5. Mr. Beard alerted Ms. Jee to Local Rule  
13 7.3(c), which mandates that “[a]ny evidentiary and procedural objections to the opposition must be  
14 contained within the reply brief or memorandum.” *Id.* Mr. Beard asked the City to withdraw the  
15 objections, explaining: “The . . . filing purports to present evidentiary objections, new ‘evidence,’ and  
16 rehashed and additional arguments re: remand under the pretense of objections. Among other  
17 improprieties, the filing—as evidentiary objections—comes eight days late.” *Id.*

18 Ms. Jee refused to withdraw the late filing unless MR agreed to withdraw alleged “improper  
19 material in the [Pinoli] declaration.” Beard Decl., ¶ 6. Apparently conceding the lateness of the filing,  
20 though not addressing the pleading’s substantive defects (e.g., new evidence, additional argument, etc.),  
21 Ms. Jee further stated she would “file a motion requesting that the court accept the evidentiary  
22 objections . . . by next week.” *Id.* Mr. Beard noted that, irrespective of the City’s intent to eventually file  
23 a motion to retroactively authorize the late-filed objections and so long as the objections remained filed,  
24 Local Rule 7-3(d) obligated MR “to prepare—over the holidays and during a pre-planned vacation—  
25 objections to [the City’s] new evidence and arguments” by December 27.

26 Ms. Jee then argued the commentary to Local Rules 7-2 and 7-3 permitted the parties to  
27 “stipulate to an extension of time for the evidentiary objections and any objections [MR] want[s] to file  
28 in response.” Beard Decl., ¶ 7. Alternatively, she offered to “agree to [MR’s] late filing of objections.”

1 MR did not believe that the Local Rules authorized either option. *Id.* In any event, Ms. Jee’s suggestions  
2 did not address the substantive defects with her filing or the fact that the City would require an  
3 enlargement of the page limitation for its already-filed reply brief to accommodate its objections. *Id.*

4 On December 22, the City voluntarily and “temporarily” withdrew its objections. Dkt. 21. Then,  
5 on December 28, the City filed the present motion. Dkt. 22.

### 6 III. ARGUMENT

#### 7 A. The Applicable Standards

8 Local Rule 7-3(c) provides the rule for reply briefs. It states, in relevant, part: “Any evidentiary  
9 and procedural objections to the opposition must be contained within the reply brief or memorandum.  
10 Pursuant to Civil L.R. 7-4(b), the reply brief or memorandum may not exceed 15 pages of text. The  
11 reply to an opposition must be filed and served not more than 7 days after the opposition was due.”  
12 Further, Local Rule 7-3(d) provides, with limited exceptions not applicable here, that “[o]nce a reply is  
13 filed, no additional memoranda, papers or letters may be filed without prior Court approval.”

14 Local Rule 7-4(b) provides the rule for requesting an enlargement of page limitations. The rule  
15 states: “Unless the Court expressly orders otherwise pursuant to a party’s request *made prior to the due*  
16 *date*, briefs or memoranda filed with opposition papers may not exceed 25 pages of text and the reply  
17 brief or memorandum may not exceed 15 pages of text” (emphasis added).

18 Finally, Rule 6(b) of the Federal Rules of Civil Procedure states in relevant part: “When an act  
19 may or must be done within a specified time, the court may, *for good cause*, extend the time: . . . (B) on  
20 motion made after the time has expired if the party failed to act because of *excusable neglect*”  
21 (emphasis added). “Excusable neglect” is assessed by balancing four factors: “(1) the danger of  
22 prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings;  
23 (3) the reason for the delay; and (4) whether the movant acted in good faith.” *In re Veritas Software*  
24 *Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007). The lack of an adequate reason for delay can  
25 outweigh the remaining factors. *Whitaker v. Brighton Collectibles, LLC*, 2022 U.S. Dist. LEXIS 212085  
26 (N.D. Cal. 2022) (“The most salient factor here is Plaintiff’s asserted reason for the delay. . . .”).

#### 27 B. The City’s Belated Motion Should Be Denied

##### 28 1. The City Is Precluded from Obtaining an Enlargement of the Page Limitation

1 By its own admission, the City’s 27-page objections far exceed the 15-page limitation applicable  
 2 to its Reply Brief. The Reply Brief was filed on December 12. Yet the City never sought and obtained,  
 3 *before the December 12 due date*, an enlargement of the 15-page limitation to accommodate inclusion of  
 4 its objections in said brief as required by Local Rule 7-4(b). Having failed to make the request prior to  
 5 the Reply Brief’s due date, the City is barred from supplementing its Reply Brief with 27 extra pages of  
 6 objections. On this basis alone, the City’s motion should be denied.

## 7 **2. The Arguments and New Evidence Contained in the Objections Are Barred**

8 The objections are riddled with claims and arguments about MR, its tracks, its connection to the  
 9 national rail system, and other matters. *See, e.g.*, Evidentiary Objections (“EO”) at 2:23-24 (argument  
 10 about STB’s jurisdiction over MR); 3:22-24 (argument about MR’s operations); 4:26-5:2 (same); 5:26-  
 11 6:8 (argument about MR’s connectivity to national rail system, track embargos, abandonment  
 12 proceedings, etc.); 7:9-18 (argument about MR’s operations).<sup>1</sup> Such supplemental arguments filed *after*  
 13 the reply brief is filed are not allowed. As Local Rule 7-3(d) states, “[o]nce a reply is filed, no additional  
 14 memoranda, papers or letters may be filed without prior Court approval.” For this reason, material  
 15 contains in the objections is improper and may not be filed.

## 16 **3. The City Has Not Established “Excusable Neglect” to Justify Late Objections**

17 The evidentiary objections themselves (without the improper argument and new evidence) are  
 18 not entitled to late filing, because the City has not established excusable neglect under FRCP 6(b). All  
 19 the factors, especially the absence of a legitimate reason for the delay, weigh against such a finding.

20 It is evident from Ms. Jee’s declaration that, well before the due date for her Reply Brief and  
 21 evidentiary objections, Ms. Jee was fully aware—weeks in advance—of her conflicting work obligations  
 22 and pre-planned vacation that purportedly precluded her from including objections with her Reply Brief  
 23 by December 12. *See* Declaration of Krista MacNevin Jee, ¶¶ 2-6. Indeed, most of the “press of other  
 24 business” identified by Ms. Jee occurred *before MR filed its opposition brief on December 5. Id.*, ¶ 2-4.  
 25 She admits that she “did not anticipate these difficulties sufficiently in advance to be able to have made  
 26 the request [for extension of time] beforehand.” Jee Decl., ¶ 6:21-23. But that concession reveals a lack  
 27

28 <sup>1</sup> These citations are just a sampling of the arguments littered throughout the proposed objections.

