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10 MENDOCINO RAILWAY

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MENDOCINO**

13 MENDOCINO RAILWAY,
14 Plaintiff,

15 v.

16 JOHN MEYER; REDWOOD EMPIRE
17 TITLE COMPANY OF MENDOCINO
18 COUNTY; SHEPPARD INVESTMENTS;
19 MARYELLEN SHEPPARD; MENDOCINO
20 COUNTY TREASURER-TAX
COLLECTOR; All other persons unknown
claiming an interest in the property; and
DOES 1 through 100, inclusive,
21 Defendants.

Case No.: SCUK-CVED-2020-74939

[Assigned to the Hon. Jeanine Nadel]

**DEFENDANT MENDOCINO RAILWAY'S
REPLY IN SUPPORT OF ITS NOTICE OF
RELATED CASES; DECLARATION OF
PAUL BEARD II IN SUPPORT OF REPLY
BRIEF**

HEARING

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

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Superior Court of California
County of Mendocino

By: 
Dorothy Jess
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I. Introduction

On June 22, 2022, Plaintiff Mendocino Railway filed a Notice of Related Cases in *Mendocino Railway v. John Meyer* (“the *Meyer* case”), which is pending in this Department, and in *City of Fort Bragg v. Mendocino Railway* (“the *Fort Bragg* case”). Mendocino Railway is the plaintiff in the *Meyer* case and the defendant in the *Fort Bragg* case. As explained below, the two cases are “related” because they require the determination of the same or substantially identical questions of law or fact, as well as substantial duplication of judicial resources. Because *Meyer* is the first-filed case, the *Fort Bragg* case should be reassigned to this Department.

The City of Fort Bragg filed an opposition brief on June 27, urging the Court *not* to relate the two cases or reassign *Fort Bragg* to this Department. Meyer perfunctorily joined in the City’s opposition.

On August 23, the first day of trial in *Meyer*, Mendocino Railway asked the Court to make a determination that the two cases are related under Rule 3.300(a) of the California Rules of Court, and to reassign the *Fort Bragg* case to this Department under Rule 3.300(h)(1)(A). As Mendocino Railway emphasized to the Court, it does not seek *consolidation*, but simply a reassignment of *Fort Bragg* to this Department. The Court declined to make any determination outside the City’s presence, and advised Mendocino Railway that, if it wished to pursue the “related cases” issue, it could set the matter for hearing with the City’s participation. Pursuant to the Court’s direction, Mendocino Railway noticed a hearing for September 30.¹

Since then, a *non-party* to the *Fort Bragg* and *Meyer* cases—the California Coastal Commission—improperly filed an opposition brief protesting, with no reason or argument, the *Fort Bragg* case’s assignment to this Department.

In light of the foregoing, Mendocino Railway respectfully submits this Reply Brief to address the misstatements and omissions in the various opposition briefs.

II. The Cases Should Be Related and *Fort Bragg* Reassigned to This Department

Under California Rules of Court, Rule 3.300(a), cases are “related” when, among other things,

¹ Rule 3.300 expressly provides for reassignment of related cases in response to a Notice of Related Case without a noticed motion.

1 they “[a]rise from the same or substantially identical transactions, incidents, or events requiring the
2 determination of the same or substantially identical questions of law or fact,” or “[a]re likely for other
3 reasons to require substantial duplication of judicial resources if heard by different judges.” Cal. R. Ct.
4 3.300(a).

5 The *Meyer* and *Fort Bragg* cases easily satisfy the definition of “related cases.” Both cases
6 concern Mendocino Railway’s rights as a **public utility**. In the *Meyer* case, Mendocino Railway asserts
7 its right as a public utility to condemn private property pursuant to Public Utilities Code section 611. As
8 the Court witnessed, *Meyer*’s defense turned largely on the allegation that Mendocino Railway is *not* a
9 public utility entitled to condemn property for its railroad operations. Indeed, Meyer has even filed a
10 motion to reopen the trial to present further purported “evidence” on the question of the railroad’s
11 “public utility” status. The “public utility” question is the linchpin of Meyer’s defense.

12 It is also the linchpin of the City’s case against Mendocino Railway. In the *Fort Bragg* case, the
13 City pleads a single cause of action for a declaration that Mendocino Railway is not a public utility.
14 Thus, both *Meyer* and *Fort Bragg* turn on “identical questions of law [and] fact” arising from “the same
15 . . . transactions, incidents, or events”—namely, the historic and current operations of Mendocino
16 Railway on the California Western Railroad line, and the import and effect of certain decisions of the
17 California Public Utilities Commission regarding the prior owner of the railroad line (California
18 Western Railroad, Inc.).

19 In addition, the two cases require “substantial duplication of judicial resources if heard by
20 different judges.” Cal. R. Ct. 3.300(a). *Meyer* involved four days of testimony and substantial
21 documentary evidence presented at the right-to-take trial regarding Mendocino Railway’s status as a
22 public utility. This Department has a substantial “leg up” on and general familiarity with the factual and
23 legal disputes surrounding that key issue. Simply from an efficiency standpoint, it stands to reason that
24 the same Department should preside over the trial of the identical issue in *Fort Bragg*.

25 There is an additional reason why relating the two cases, and reassigning *Fort Bragg* to this
26 Department, is especially appropriate: Reassignment decreases the risk of inconsistent rulings from two
27 different judges on the question of Mendocino Railway’s “public utility” status. The importance to
28 Mendocino Railway of minimizing the risk of inconsistent rulings on that question—one way or the

1 other—cannot be overstated. With inconsistent rulings, Mendocino Railway would be adjudicated a
2 public utility as to one party (either Meyer or the City), but not as to the other. Such rulings would create
3 undue regulatory and operational uncertainty and confusion for the railroad moving forward. Thus,
4 reducing the likelihood of inconsistent rulings militates strongly in favor of relating the two cases and
5 reassigning *Fort Bragg* to this Department, as authorized under Rule 3.300(h)(1)(A).²

6 **III. The Opposition Briefs Do Not Defeat “Relatedness” or *Fort Bragg*’s Reassignment**

7 Rule 3.300(g) allows a “party” to “serve and file a response supporting or opposing the notice.”
8 Cal. R. Ct. 3.300(g). “The response must state why one or more of the cases listed in the notice are not
9 related or why other good cause exists for the court not to transfer the cases to or from a particular court
10 or department.” *Id.* As explained below, the two parties here—the City and Meyer—have failed to
11 provide a valid reason why the *Meyer* and *Fort Bragg* are unrelated, and they have failed to show “good
12 cause” for *not* transferring *Fort Bragg* to this Department. As for the Commission, it is not a “party” to
13 the *Meyer* and *Fort Bragg* cases, so it lacks standing to file an opposition brief. To the extent its
14 opposition is considered, the Commission fares no better than the City and Meyer in making the
15 requisite showing under Rule 3.300(g) against relatedness or *Fort Bragg*’s reassignment.

16 **A. The City’s Opposition Is Meritless**

17 In their opposition brief, the City raises a number of arguments against relatedness and
18 reassignment. None of them has merit.

19 First, the City contends *Meyer* and *Fort Bragg* are totally different cases with completely
20 different facts and claims. Opp. Br. at 4. The City emphasizes that *Meyer* is an eminent domain case
21 about a particular property, while *Fort Bragg* is a case about the City’s land-use authority over
22 Mendocino Railway. *Id.* at 4-5. Remarkably, the City goes as far as to speculate that “the *Meyer* Action
23 may not even touch on the issue of MR’s status.” *Id.* at 5. The City errs.

24 As this Court knows, most of the *Meyer* trial focused on the facts and legal circumstances
25

26 ² Such a determination and reassignment also may moot Mendocino Railway’s pending objection to
27 Judge Clayton Brennan under Code of Civil Procedure section 170.3. As of the writing of this brief,
28 said challenge has been referred to the Judicial Council for selection of a judge to resolve the dispute,
following Judge Brennan’s answer to the objection in which he argues for his retention of the *Fort*
Bragg matter.

1 surrounding Mendocino Railway’s status as a public utility. The same will be true of the *Fort Bragg*
2 case, which involves a single cause of action challenging the railroad’s “public utility” status. The City
3 cannot avoid the inevitable conclusion that the two cases turn fundamentally on identical questions of
4 law (the railroad’s “public utility” status, including in light of several 1998 decisions of the CPUC) and
5 fact (e.g., the nature and scope of the railroad’s historic and current operations transporting non-
6 excursion passengers and freight). Reassignment of a case does not turn only on the identity of the
7 parties or claims—which is just one factor of several considerations under Rule 3.300(a). Reassignment
8 also is justified on such grounds as the identity of the questions of fact and law in two cases, as well as
9 the conservation of judicial resources. Again, these factors easily justify *Fort Bragg*’s reassignment.³

10 Second, the City makes an argument against reassignment that falsely presupposes Court-ordered
11 **consolidation** of *Meyer* and *Fort Bragg*. Opp. Br. at 4-5. Specifically, the City claims that reassigning
12 the *Fort Bragg* case to this Department will derail progress in *Meyer* or somehow force the City to
13 participate in the *Meyer* trial (which is impossible, since the trial is over). The City’s concerns are totally
14 misplaced.

15 Mendocino Railway is not seeking any Court action that would interfere in any way with the
16 *Meyer* case. The railroad merely seeks *Fort Bragg*’s reassignment to this Department so that the *same*
17 Department presides over the principal dispute that both cases share: Mendocino Railway’s status as a
18 public utility. If reassignment occurs, there will be no scheduling impact on the *Meyer* proceedings. Nor
19 will there be any change in the natural progression of the *Fort Bragg* case.

20 Relatedly, that the trial in *Meyer* is complete, while the *Fort Bragg* case is not, does not change
21 the fact that the cases are “related” as a matter of law. Rule 3.300(a) states that “[a] pending civil case is
22 related to another pending civil case, or to a civil case that was dismissed with or without prejudice, or
23 to a civil case that was disposed of by judgment” if certain criteria are met. Cal. R. Ct. 3.300. In other
24 words, even a just-filed lawsuit can be related to a matter that has already been adjudicated.

25
26 ³ The City notes that *Meyer* has alleged a litany of defenses, of which the railroad’s “public utility”
27 status is just one. In the City’s view, this Court might never reach the “public utility” issue. The City’s
28 speculation lacks merit. As the conduct of the *Meyer* trial demonstrated, whether Mendocino Railway
is a public utility with condemnation authority is a threshold question that this Court appears prepared
to decide. The other defenses argued by *Meyer* presuppose Mendocino Railway is a public utility.

1 Third, the City argues against reassignment on the basis that the Coastal Commission may
2 become a party to the *Fort Bragg* case. Mendocino Railway strongly opposes the Commission’s
3 intervention in the *Fort Bragg* case. But whether or not the Commission ultimately intervenes, it would
4 not change the relatedness of the two cases under Rule 3.300(a). Like Meyer and the City, the
5 Commission challenges the railroad’s “public utility” status. Thus, a major legal question still would
6 predominate even with the Commission’s participation.

7 Finally, the City claims Mendocino Railway delayed in filing its Notice of Related Cases. Not
8 so. Meyer did not formally challenge the railroad’s “public utility” status until he filed his Amended
9 Answer on May 27, 2022. In the Amended Answer, Meyer did not refer to the term “public utility,” but
10 he did add allegations questioning the fact that Mendocino Railway is a “railroad corporation” and
11 “common carrier.” *Compare* Amended Answer, ¶ 3 with Answer, ¶ 3. Following discussions with
12 Meyer’s attorneys, it became clear Meyer was putting the railroad’s “public utility” status at issue.
13 Before then, there was no adequate basis for asserting that the *Meyer* and *Fort Bragg* cases are related.
14 And, as soon as Mendocino Railway had sufficient facts about the nature of Meyer’s challenge, and it
15 was clear the case was not going to be resolved by settlement, Mendocino Railway promptly filed the
16 Notice of Related Cases in both actions on June 22.⁴ (Declaration of Paul Beard, ¶ 2.) The Notice is
17 timely. (Cal. R. Ct. 3.300(e) (requiring filing and service “as soon as possible, but no later than 15 days
18 after the facts concerning the existence of related cases become known”).)

19 **B. The Commission’s Opposition Is Both Barred and Meritless**

20 Despite not being a party to either the *Meyer* or *Fort Bragg* case, the Commission nevertheless

21 _____
22 ⁴ The City notes that Judge Brennan has “already expended judicial resources carefully considering
23 one of the same legal issues that MR now claims that Court should be saved from utilizing further
24 judicial resources to potentially decide further.” Opp. Br. at 6. The City misleads the Court. The City is
25 referring to the Court’s demurrer ruling, which considered only “whether the complaint, standing
26 alone, states a cause of action.” *City of Fort Bragg v. Mendocino Railway*, 4/28/22 Demurrer Ruling
27 (“Ruling”), p. 2. Judge Brennan noted that a demurrer does not test “the truth of the factual
28 allegations” in a complaint or “the sufficiency of the evidence or other matters outside the pleading.”
Except for certain CPUC decisions, Judge Brennan denied Mendocino Railway’s request for judicial
notice of public documents and facts outside the complaint, including the fact that the CPUC has listed
Mendocino Railway as a regulated railroad. Ruling at 4-6. The “judicial resources” expended by Judge
Brennan in deciding Mendocino Railway’s demurrer are vastly different in kind and even amount from
the judicial resources required to adjudicate the City’s claim *on the merits* following consideration of
witness testimony and documentary evidence.

1 filed an opposition to relating the cases and reassigning Fort Bragg to this Department. As noted above,
2 only a “party” may respond to a Notice of Related Cases. Cal. R. Ct. 3.300(g). Because the Commission
3 is not a party to the *Fort Bragg* or *Meyer* cases, its purported opposition is improper, and can and should
4 be disregarded. (Civ. Proc. Code § 387(b) (a proposed intervenor “becomes a party” upon intervention,
5 before which the proposed intervenor is only a “nonparty”).)

6 To the extent it is considered, the opposition brief fails to substantively respond to the Notice. A
7 response “must state why one or more of the cases listed in the notice are not related or why other good
8 cause exists for the court not to transfer the cases to or from a particular court or department.” Cal. R.
9 Ct. 3.300(g). The Commission’s opposition asserts that the *Meyer* and *Fort Bragg* cases “do not
10 sufficiently align . . . so as to warrant relation or reassignment.” Opp. at 2. But the Commission offers no
11 argument or other support for its assertion. Nor does it disclose that one of its claims is that the railroad
12 is not a public utility—a fact that *does* support relation and reassignment, as explained above. Nor does
13 it establish good cause for not reassigning *Fort Bragg* to this Department.

14 **C. Meyer’s Opposition Is Meritless**

15 Meyer has filed two one-page oppositions, simply joining the City’s plea not to reassign *Fort*
16 *Bragg* to this Department. Meyer offers no reasons or argument against reassignment. However, at the
17 *Meyer* trial, Meyer indicated his opposition was based on concerns that *Fort Bragg*’s reassignment
18 would interfere with the proceedings in his case. Like the City, Meyer falls prey to the same error of
19 assuming reassignment means consolidation. It does not. Reassignment would not affect the *Meyer* case
20 in any way, shape, or form. The only effect of reassignment is to ensure that the same Department
21 presides over two closely related cases.

22 **IV. Conclusion**

23 Mendocino Railway has shown good cause for relating *Meyer* and *Fort Bragg*, and reassigning
24 *Fort Bragg* to this Department. The predominating question in both cases—the railroad’s “public utility”
25 status—is identical. The underlying facts informing the answer to that question are identical. Judicial
26 resources and effort would be conserved by having the same judge decide the two cases. And
27 reassignment would reduce the risk of inconsistent rulings on that question.

28 On the other hand, neither the parties nor the nonparty (California Coastal Commission) has

1 provided a valid reason why the cases are *unrelated* or “good cause” why *Fort Bragg* should *not* be
2 reassigned to this Department.

3 The Court should determine that *Meyer* and *Fort Bragg* are related, and order that the *Fort*
4 *Bragg* case be reassigned to this Department.

5 DATED: September 22, 2022

/s/ Paul Beard II

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Attorneys for Plaintiff MENDOCINO RAILWAY

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DECLARATION

I, Paul Beard II, declare as follows:

1. I am one of the attorneys of record for Plaintiff MENDOCINO RAILWAY in this action. I have personal knowledge of the facts stated herein. If called to testify, I could and would testify thereto.

2. My co-counsel Glenn Block and I did not become aware that Defendant John Meyer was formally challenging the railroad’s “public utility” status until he filed his Amended Answer on May 27, 2022. In the Amended Answer, Meyer did not refer to the term “public utility,” but he did add allegations questioning the fact that Mendocino Railway is a “railroad corporation” and “common carrier.” Following discussions with Meyer’s attorneys, it became clear Meyer was putting the railroad’s “public utility” status at issue as his primary defense. Before then, we did not have the full facts concerning the potential relatedness of the two cases. And, as soon as Mendocino Railway had sufficient facts about the nature of Meyer’s challenge, and it was clear the case was not going to be resolved by settlement, we filed the Notice of Related Cases on June 22, 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: September 22, 2022

/s/ Paul Beard II

Attorneys for Plaintiff MENDOCINO RAILWAY

PROOF OF SERVICE

I, Paul Beard II, declare:

My business address is: FisherBroyles LLP, 4470 W. Sunset Blvd., Suite 93165, Los Angeles, CA 90027. I am over the age of 18 and not a party to this action.

On September 22, 2022, I served **DEFENDANT MENDOCINO RAILWAY’S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF** on the following counsel:

Stephen F. Johnson
Email: steve@mkjlex.com
Counsel for Defendant John Meyer

Krista MacNevin Jee
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Counsel for Plaintiff City of Fort Bragg
(in *City of Fort Bragg v. Mendocino Railway*)

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the pleading with One Legal, I simultaneously opted for electronic service of the same on the above-named counsel.

On September 22, 2022, I served **DEFENDANT MENDOCINO RAILWAY’S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF** on:

Patrick Tuck
Email: Patrick.Tuck@doj.ca.gov
Counsel for Proposed Intervenor California Coastal Commission
(in *City of Fort Bragg v. Mendocino Railway*).

BY ELECTRONIC TRANSMISSION at his email address.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 22, 2022 /s/ Paul Beard II

Paul Beard II