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5 Attorneys for Defendant
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,
14

15 Defendant.

16 CALIFORNIA COASTAL COMMISSION,
17

18 Plaintiff-Intervenor
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Case No.: 4:22-cv-06317-JST

**DECLARATION OF PAUL BEARD IN
SUPPORT OF 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

DECLARATION

I, Paul Beard, declare as follows:

1. I am counsel of record for Defendant Mendocino Railway. I have personal knowledge of the facts stated herein and, if called to testify, I would and could testify competently thereto.

2. The City never indicated to me, at any time before it filed its Reply Brief on December 12, 2022, that needed more time or more pages in order to include its objections with said brief.

3. The City’s counsel of record, Krista MacNevin Jee, went on vacation on December 14—two days after the City filed its Reply Brief. An automatic out-of-office email I received indicated she would be on vacation through December 26.

4. On December 20, the City filed late evidentiary objections to the Declaration of Robert Pinoli, which my client filed with its Opposition Brief (to the Motion for Remand) on December 5. The City did not confer with me before making the late filing.

5. The next morning on December 21, I reached out to Ms. Jee to meet and confer about the City’s untimely and improper filing. I alerted Ms. Jee to Local Rule 7.3(c), which mandates that “[a]ny evidentiary and procedural objections to the opposition must be contained within the reply brief or memorandum.” I asked the City to withdraw the objections, explaining that “[t]he . . . filing purports to present evidentiary objections, new ‘evidence,’ and rehashed and additional arguments re: remand under the pretense of objections. Among other improprieties, the filing—as evidentiary objections—comes eight days late.”

6. Ms. Jee refused to withdraw the late filing unless my client agreed to withdraw alleged “improper material in the [Pinoli] declaration.” Apparently conceding the lateness of the filing, though not addressing the pleading’s substantive defects (e.g., new evidence, additional argument, etc.), Ms. Jee further stated she would “file a motion requesting that the court accept the evidentiary objections . . . by next week.” I noted that, irrespective of the City’s intent to eventually file a motion to retroactively authorize the late-filed objections and so long as the objections remained filed, Local Rule 7-3(d) obligated my client “to prepare—over the holidays and during a pre-planned vacation—objections to [the City’s] new evidence and arguments” by December 27. I had a pre-planned vacation from December 22 through to December 26.

1 7. Ms. Jee then argued to me that the commentary to Local Rules 7-2 and 7-3 permitted the
2 parties to “stipulate to an extension of time for the evidentiary objections and any objections [MR]
3 want[s] to file in response.” Alternatively, she offered to “agree to [MR’s] late filing of objections.” I
4 did not believe that the Local Rules authorized either option. In any event, Ms. Jee’s suggestions did not
5 address the substantive defects with her filing or the fact that the City would require an enlargement of
6 the page limitation for its already-filed reply brief to accommodate its objections.

7 8. If they are allowed, the proposed objections contain new evidence that my client will have
8 to address within 7 days. That means I will have to prepare a response during a month when I have two
9 major appellant briefs due (January 20 and 23), as well as a post-trial brief (January 23). *City of Agoura*
10 *Hills v. Bina* (Cal. Ct. App., Case No. B3232001) (Opening Brief Due 1/23/23); *California Rental*
11 *Housing Association v. Newsom* (9th Cir., Case No. 22-16675) (Opening Brief Due 1/20/23); *Mendocino*
12 *Railway v. Meyer* (Mendocino County Superior Court, Case No. SCUK-CVED 20-74939).

13 9. A true and correct copy of the emails that Ms. Jee and I exchanged on December 21-22,
14 concerning her late and improper filing of evidentiary objections, is attached hereto as Exhibit 1.

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

17 DATED: January 3, 2023



18
19 PAUL BEARD II

EXHIBIT 1

Paul Beard

From: Paul Beard
Sent: Thursday, December 22, 2022 6:46 AM
To: Krista MacNevin Jee; Wendy A. Gardea
Subject: RE: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

Good morning, Krista,

The commentary you cite applies to stipulated extensions for “notice, response, and reply to motions.” The commentary does not apply to evidentiary objections, which must be contained within the reply brief. Perhaps more importantly, the City’s filing goes beyond just objecting to evidence. It also introduces argument and purported “evidence” via a declaration, which violates LR 7-3(d) (“Once a reply is filed, no additional memoranda, papers, or letters may be filed without prior Court approval . . .”). The commentary you cite does not permit the parties, even if they were so inclined, to stipulate to the filing of further briefing and “evidence” after the briefing is completed.

If the City wants to withdraw this improper filing and seek a motion for further briefing – including to belatedly object to our opposition evidence – the City obviously is free to do so, but we would oppose.

Paul Beard II

Partner

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direct: 818-216-3988

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From: Krista MacNevin Jee <kmj@jones-mayer.com>
Sent: Wednesday, December 21, 2022 5:28 PM
To: Paul Beard <Paul.Beard@fisherbroyles.com>; Wendy A. Gardea <WAG@jones-mayer.com>
Subject: Re: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

The commentary to Rules 7-2 and 7-3 references the parties’ ability to stipulate to longer periods than permitted in the rules. I would suggest that we stipulate to an extension of time for the evidentiary objections and any objections you want to file in response. Or in the alternative, I would agree to your late filing of objections. However, the late filing of the evidentiary objections does not prejudice defendant at all in the case of additional time to file any objection and given that the hearing is not until February. I was not able to file them sooner due to travel, limited internet connection, a trial, two new actions just filed, expert deposition preparation and closed session settlement matters on a matter entitled to preference.



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Krista MacNevin Jee
Partner, Appellate Law Specialist*

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Please consider the environment before printing this e-mail



* Certified by the State Bar of California, Board of Legal Specialization

From: Paul Beard <Paul.Beard@fisherbroyles.com>

Date: Wednesday, December 21, 2022 at 12:12 PM

To: Krista MacNevin Jee <kmj@jones-mayer.com>, Wendy A. Gardea <WAG@jones-mayer.com>

Subject: RE: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

Hi Krista –

On what grounds would you justify the late-filed objections?

Note, too, that irrespective of your motion, we are now required under LR 7-3(d) to prepare – over the holidays and during a pre-planned vacation – objections to your new “evidence” and arguments by Tuesday, Dec. 26.

Paul Beard II

Partner

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From: Krista MacNevin Jee <kmj@jones-mayer.com>

Sent: Wednesday, December 21, 2022 2:02 PM

To: Paul Beard <Paul.Beard@fisherbroyles.com>; Wendy A. Gardea <WAG@jones-mayer.com>

Subject: Re: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

Importance: High

Paul,
I will not withdraw the objections, unless you would like to make an offer to withdraw improper material in the declaration. In order to address the issues you have raised, I will file a motion requesting that the court accept the evidentiary objections. I will file that by next week. Given that I am out of the office, I would appreciate your consideration of this time frame for my response. I cannot otherwise respond to your deadline of 3 p.m. today, under the circumstances.



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Krista MacNevin Jee
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* Certified by the State Bar of California, Board of Legal Specialization

From: Paul Beard <Paul.Beard@fisherbroyles.com>
Date: Wednesday, December 21, 2022 at 11:40 AM
To: Wendy A. Gardea <WAG@jones-mayer.com>
Cc: Krista MacNevin Jee <kmj@jones-mayer.com>
Subject: FW: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

Hi Wendy – in response to my email of this morning, below, I received an out-of-office email from Krista saying she was on vacation through Dec. 26. If there is an attorney covering this case in Krista’s absence, we’d like a response to the request below asap. Thank you.

Paul Beard II
Partner

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paul.beard@fisherbroyles.com
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From: Paul Beard
Sent: Wednesday, December 21, 2022 8:15 AM
To: Krista MacNevin Jee <kmj@jones-mayer.com>
Subject: FW: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

Good morning, Krista:

We’d like to meet and confer about your filing below.

Under LR 7.3(c), “[a]ny evidentiary and procedural objections to the opposition must be contained within the reply brief or memorandum.” The city filed its reply brief on 12/12. The below filing purports to present evidentiary objections, new “evidence,” and rehashed and additional arguments re: remand under the pretense of objections. Among other improprieties, the filing—as evidentiary objections—comes eight days late.

If there is authority for your filing that we have missed, please let us know. Otherwise, in an effort to avoid the need for court intervention, we are requesting that the city voluntarily

withdraw its improper filing. Given the impending holidays, please let us know by 3pm today whether the city will do so.

Paul Beard II
Partner

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From: ECF-CAND@cand.uscourts.gov <ECF-CAND@cand.uscourts.gov>
Sent: Tuesday, December 20, 2022 4:31 PM
To: efiling@cand.uscourts.gov
Subject: [External Sender]Activity in Case 4:22-cv-06317-JST City of Fort Bragg et al v. Mendocino Railway Objection

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Jee, Krista on 12/20/2022 at 4:30 PM PST and filed on 12/20/2022

Case Name: City of Fort Bragg et al v. Mendocino Railway
Case Number: [4:22-cv-06317-JST](#)
Filer: City of Fort Bragg
Document Number: [20](#)

Docket Text:

[OBJECTIONS to re \[19\] Reply to Opposition/Response by City of Fort Bragg. \(Attachments: # \(1\) Declaration In support of Reply to Opposition\)\(Jee, Krista\) \(Filed on 12/20/2022\)](#)

4:22-cv-06317-JST Notice has been electronically mailed to:

Krista MacNevin Jee kmj@jones-mayer.com, apg@jones-mayer.com, mkb@jones-mayer.com, sks@jones-mayer.com, wag@jones-mayer.com

Patrick A. Tuck patrick.tuck@doj.ca.gov, najaree.hayfron@doj.ca.gov

Paul J. Beard , II paul.beard@fisherbroyles.com

Russell Allen Hildebrand rah@jones-mayer.com

4:22-cv-06317-JST Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Evid Objs.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=12/20/2022] [FileNumber=19833422-0]
] [95245dced5a8718d7dcf4a0ce38f22545dd9c052d4facadab1df47fc5dc84b0e14e
c223294c40f74b9aedbfd09a8741a6e3053cf0b0baa228b5771bac30e8c1f]]

Document description:Declaration In support of Reply to Opposition

Original filename:C:\fakepath\EVID OBJS - KMJ Decl.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=12/20/2022] [FileNumber=19833422-1]
] [3c41dbb8cb78859b2b8c6cf52d3a56b99c6b8cc952b962c2892d824fa620e6ca3ef
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