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9 CITY OF FORT BRAGG

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Superior Court of California  
County of Mendocino

By:   
Dorothy Jess  
Deputy Clerk

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF MENDOCINO

13 CITY OF FORT BRAGG, a California  
14 municipal corporation,

15 Plaintiff,

16 v.

17 MENDOCINO RAILWAY AND  
18 DOES 1–10, inclusive

19 Defendants.

Case No. 21CV00850

**OPPOSITION OF CITY OF FORT BRAGG  
TO NOTICE OF RELATED CASE**

**JUDGE:** Hon. Clayton Brennan  
**DEPT.:** Ten Mile

20 Plaintiff City of Fort Bragg (“City”) hereby opposes the Notice of Related Case filed by  
21 Mendocino Railway (“MR”) in the above-captioned matter (the “City Action”) and in *Mendocino*  
22 *Railway v. John Meyer, et al.*, Mendocino County Superior Court Case No. SCU-K-CVED-2020-  
23 74939 (the “Meyer Action”), and submits the following opposition thereto:

**MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION.**

25 MR has belatedly filed a Notice of Related case in the *Meyer* and *City* Actions. The cases  
26 are not related *at all*, even if there could potentially be one similar issue that might be decided in  
27 each. Indeed, the parties are not the same, and nearly all the facts, the underlying subject matter,  
28 and the overall legal claims are all completely unrelated. Even as to the one issue that *may* be

1 similarly presented, there would be no substantial conservation of judicial or other resources, and  
2 there are other significant reasons why the cases are not sufficiently related and/or there would be  
3 severe detriment to the parties from the transfer of the *City* Action. This includes the fact that the  
4 *Meyer* Action is currently set for trial and the City could not timely or adequately participate in  
5 that trial. Further, the Notice appears to be merely an exercise in forum shopping by MR.

6 Thus, the Notice of Related Case should be denied. In the alternative, assuming *arguendo*  
7 that the Court were to find that any issues would overlap in the Actions – although that is highly  
8 speculative, the Court can, at the most under the circumstances presented, informally coordinate  
9 some aspects of the Actions, without transfer of the *City* Action and/or disruption of the set trial  
10 in the *Meyer* Action.

11 **II. STATEMENT OF FACTS.**

12 The *Meyer* action is an eminent domain action filed by MR against John Meyer and  
13 others, relating to specific property *not* within the City of Fort Bragg, but within the City of  
14 Willits (APN 038-180-53).<sup>1</sup> MR's Complaint in the *Meyer* Action was filed on December 22,  
15 2020, and has been pending a year and a half.

16 In fact, it is currently scheduled for a bifurcated trial on July 11, 2022. The issues in the  
17 first part of the bifurcated trial relate to the authority of MR to exercise eminent domain, and  
18 whether there is sufficient justification for public use and necessity of the particular proposed  
19 uses MR's intends or proposes for the specific property in Willits, and alternative properties, at  
20 issue in the *Meyer* Action. (See *Meyer* Action Complaint, at ¶¶ 6-8; Motion to Bifurcate and  
21 Specially Set Bench Trial, filed on or about April 14, 2022.) In the second portion of the  
22 bifurcated trial, the just compensation would need to be determined, if any. Notably, this is a jury  
23 question, whereas all issues in the *City* Action are issues to be determined by the Court, not a  
24 jury.

25 MR filed the Notice of Related Case in both Action on or about June 22, 2022.

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28 <sup>1</sup> The Court is requested to take judicial notice of its own records in both the *Meyer* and the *City*  
Actions. Cal. Evid. Code § 452 (d)(1). - 2 -

1 The *City Action* against MR was filed on October 28, 2021, nearly a year after the *Meyer*  
2 Action commenced. The only parties to the *City Action* are the City of Fort Bragg and MR.  
3 However, the City is informed by counsel for the California Coastal Commission that the  
4 Commission intends to consider whether to seek to intervene in the *City Action* at its next  
5 upcoming regular monthly meetings on July 13-15. Therefore, additional potential parties could  
6 be impacted, and would be even more remotely related to the primary issues in the *Meyer Action*.

7 The City's Action generally seeks a declaration of the rights and duties as between the  
8 City and MR, relating to property owned and/or operated by MR and located in the *City of Fort*  
9 *Bragg*. Specifically, the *City Action* relates to the City's authority as to applicable regulations to  
10 MR's property/ies, potential nuisance activities, uses, and/or buildings and other activities of MR  
11 within the City. While this includes a general legal issue of the public entity status of MR (not its  
12 eminent domain powers, however), there are many other factually and legally distinct issues in  
13 the *City Action*, including the following: a dilapidated building needing repair/demolition;  
14 unpermitted/uninspected and/or non-compliant work; failure to obtain permits; conditions of real  
15 property, including environmental or other health and safety hazards, or other hazardous or  
16 noxious conditions, substances, or activities; activities and/or uses in violation of applicable laws  
17 or regulations; etc. The City seeks declaratory and injunctive relief in order to compel MR to  
18 bring its property/ies *within the City of Fort Bragg* into compliance with the law as may be  
19 applicable to MR.

20 MR initially filed a demurrer in the *City Action* on January 14, 2022. That demurrer was  
21 denied by the Court's written order on April 28, 2022. Unhappy with the result, MR filed a  
22 petition for writ of mandate with the Court of Appeal on May 3, 2022. The Court of Appeal  
23 denied the petition by written order on June 9, 2022. MR then filed a Petition for Review with  
24 the California Supreme Court on June 20, 2022, which was summarily denied on June 23, 2022.

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1 **III. THE TWO ACTIONS ARE NOT SUFFICIENTLY RELATED AND/OR THERE**  
2 **IS OTHERWISE NO VALID BASIS FOR FINDING THE ACTIONS RELATED**  
3 **AND/OR TO TRANSFER THE CITY’S ACTION.**

4 All parties have a duty to provide notice of “related cases” “no later than 15 days after the  
5 facts concerning the existence of related cases become known.” Cal. Rules Ct., Rule 3.300 (b)-  
6 (e). “Related cases” are those which:

- 7 (1) Involve the same parties and are based on the same or similar claims;  
8 (2) Arise from the same or substantially identical transactions, incidents, or events  
9 requiring the determination of the same or substantially identical questions of law or  
10 fact;  
11 (3) Involve claims against, title to, possession of, or damages to the same property; or  
12 (4) Are likely for other reasons to require substantial duplication of judicial resources if  
13 heard by different judges.

14 As noted above, the cases do *not* involve the same parties, the same claims or the same  
15 property. Further, the overall claims in the Actions are not similar at all, and do not arise from  
16 the same or substantially identical transactions, incidents, or events, or involve the same or  
17 substantially identical questions of law or fact. Indeed, the Actions involve completely unrelated  
18 facts, in that the *Meyer* Action pertains to a single property in the City of Willits, and MR’s  
19 purported need for that specific property as justification for eminent domain, whereas the *City*  
20 Action involves MR’s activities within the City of Fort Bragg, and the condition of MR’s  
21 property/ies within the City and/or MR’s activities and the applicability of certain local regulatory  
22 authority over the same. The fact that one legal issue *may* be decided in each case is an  
23 inadequate basis to delay and disrupt the *Meyer* Action and/or to truncate the City’s ability to  
24 adequately and timely participate in the trial already set in that action for July 11<sup>th</sup>.

25 In fact, as noted in MR’s Motion to Bifurcate, MR asserted that the eminent domain action  
26 is entitled to priority; thus, it seems proper that the trial already set should proceed as scheduled,  
27 without delay. If, however, the *City* Action were to be transferred, such action would seem to  
28 require that either the City be required to participate in a trial already set, or the *Meyer* Action  
entirely consumed, since its commencement, solely with MR’s demurrer. MR acknowledged in

1 its Motion to Bifurcate that it would, in fact, be prejudiced, if the right-to-take objections were not  
2 expeditiously determined as to that specific property as part of the *Meyer* Action.

3 Furthermore, it is not clear that either of the Actions will *necessarily* involve the legal  
4 issue of whether MR is a public utility, in that that is only one issue in the *City* Action, and MR's  
5 eminent domain power as to the property in the *Meyer* Action may not even touch on the issue of  
6 MR's status.

7 Thus, even though Defendant Meyer does raise the issue of whether MR is a common  
8 carrier railroad entitled to exercise eminent domain in his Amended Answer, Defendant Meyer  
9 also raises the following issues: whether the complaint sufficiently describes MR's necessity for  
10 the property, the nature of the rail projects for which condemnation is being sought, the specific  
11 nature of the public use proposed by condemnation of the property, whether the proposed use is  
12 most compatible with the greatest public good, etc.; as well as asserting other unrelated  
13 affirmative defenses such as: failure to state a claim, lack of power of eminent domain  
14 specifically "for the purposes stated in the complaint," that "[t]he state purpose is not for public  
15 use," that MR "does not intend to devote the Property to the stated purpose," that "[t]here is no  
16 reasonable probability that Plaintiff will devote the Property to the stated purposes within seven  
17 (7) years, or such other longer period as is reasonable," that "[p]ublic interest and necessity do not  
18 require the proposed Project," that "[t]he proposed Project is not planned or located in the manner  
19 that will be most compatible with the greatest public good and least private injury," and that  
20 "[t]he Property [or all of the Property] is not necessary for the proposed Project." (*See* Defendant  
21 John Meyer's First Amended Answer to Complaint for Eminent Domain, filed on or about May  
22 27, 2022 in the *Meyer* Action, at ¶¶ 4-10; pp. 4-5.) There are a whole host of legal issues that  
23 could well obviate any need for the overall public entity status of MR to ever be decided in the  
24 *Meyer* Action.

25 Moreover, the City has information from legal counsel for the California Coastal  
26 Commission that -- now that the demurrer issue in the *City* Action has been conclusively  
27 determined, the Commission intends to consider intervening in the *City* Action at its upcoming  
28 July meeting. This intended consideration is not anticipated to occur until *after* the set trial in the

1 *Meyer* Action, which again would either impair the normal progression of the City Action, or  
2 would require delay in the *Meyer* Action.

3 In addition, MR has significantly delayed in filing its Notice of Related Case. Despite the  
4 fact that MR itself is a party to *both* actions, MR notably did not file the Notice of Related Case,  
5 despite having notice of the contents of the *City* Action in or about November 2021 when it was  
6 served. As noted above, MR was required to file its Notice of Related Case within *15 days* of its  
7 knowledge of the two purportedly related cases, or in or about *December 2021*. Interestingly,  
8 MR did not immediately file the Notice of Related Case. Indeed, it did not even just belatedly  
9 file the Notice of Related Case at some reasonable time thereafter.

10 Instead, it waited until its demurrer was heard in the Ten Mile Branch by the Honorable  
11 Clayton L. Brennan, after His Honor had already expended judicial resources carefully  
12 considering one of the same legal issues that MR now claims that Court should be saved from  
13 utilizing further judicial resources to potentially decide further. And, MR *still* did not file its  
14 Notice even after that ruling issued by the Superior Court. MR also did not file the Notice after  
15 the denial by the Court of Appeal of MR's Petition for Writ of Mandate.

16 In fact, MR waited until just after filing its Petition for Review with the Supreme Court --  
17 apparently as an insurance policy so that MR could try to obtain a different ruling than the one  
18 already issued *against* it by the Court in the *City* Action. It waited until just prior to all of its  
19 appeal options had expired before filing the Notice. One of the very purposes of the Notice of  
20 Related Case process is to avoid just such forum shopping.

21 In the alternative, assuming *arguendo* that the Court were to find that any issues may  
22 potentially overlap in the Actions, it can, at most, informally coordinate some aspects of the  
23 Actions, without transfer of the *City* Action and/or disruption of the set trial in the *Meyer* Action.

#### 24 **IV. CONCLUSION.**

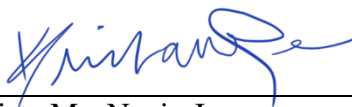
25 For all of the foregoing reasons, in response to the Notice of Related Case, the Court  
26 should find that the cases are not related, since the Actions only *potentially* involve one  
27 underlying issue identified by MR, whereas the two Actions otherwise are dissimilar in all other  
28 respects. There would be no real conservation of judicial resources, and there would only be the

1 “avoid[ance] [of] *potentially* conflicting rulings” – which may never actually materialize. There  
2 would also seem to be significant disruption of the *Meyer* Action, which is already set for an  
3 upcoming trial date, and which would have to, either be delayed, as to an action entitled to  
4 priority, or the City would have inadequate time to fully prepare and participate in that trial.  
5 Further, the *City* Action may involve other parties unrelated to the *Meyer* Action. Taken together,  
6 all of these circumstances require that the cases be found not related, and/or that the *City* Action  
7 not be transferred because the Actions are not properly joined together in the same court. In the  
8 alternative, the Court should, at most, informally coordinate some limited aspects of the Actions,  
9 without transfer.

10 Dated: June 27, 2022

JONES MAYER

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13 By:



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15 Krista MacNevin Jee,  
16 Attorneys for Plaintiff,  
17 CITY OF FORT BRAGG  
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1 *Fort Bragg v. Mendocino Railway*  
2 *Case No. 21CV00850*

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA** )

5 **COUNTY OF ORANGE** ) ss.

6 I am employed in the County of Orange, State of California. I am over the age of 18 and  
7 not a party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, Ca  
8 92835. On June 27, 2022, I served the foregoing document(s) described as **OPPOSITION OF  
9 CITY OF FORT BRAGG TO NOTICE OF RELATED CASE**, on each interested party **listed  
10 below/on** the attached service list.

11 Paul J. Beard, II  
12 Fisherbroyles LLP  
13 4470 W. Sunset Blvd., Suite 93165  
14 Los Angeles, CA 90027  
15 T: (818) 216-3988  
16 F: (213) 402-5034  
17 Email: [paul.beard@fisherbroyles.com](mailto:paul.beard@fisherbroyles.com)

18 — (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary  
19 business practices.

20 I am readily familiar with Jones & Mayer's practice for collection and processing of  
21 correspondence for mailing with the United States Postal Service. Under that practice, it  
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23 thereon fully prepaid at La Habra, California, in the ordinary course of business. I am aware  
24 that on motion of the parties served, service is presumed invalid if postal cancellation date  
25 or postage meter date is more than one day after date of deposit for mailing affidavit.

26 XX (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s) listed  
27 above to the e-mail address(es) of the person(s) set forth above. The transmission was  
28 reported as complete and without error. See Rules of Court, Rule 2.251.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on June 27, 2022 at Fullerton, California.

21   
22 \_\_\_\_\_  
23 WENDY A. GARDEA  
24 wag@jones-mayer.com