

1 JONES MAYER
Krista MacNevin Jee, Esq. (SBN 198650)
2 kmj@jones-mayer.com
3 3777 North Harbor Boulevard
Fullerton, CA 92835
4 Telephone: (714) 446-1400
Facsimile: (714) 446-1448

5 Attorneys for Plaintiff
CITY OF FORT BRAGG

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9/26/2022 6:14 PM
Superior Court of California
County of Mendocino

By:
John Lozano
Deputy Clerk



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MENDOCINO

11 MENDOCINO RAILWAY,
12 Plaintiff,
13 v.
14 JOHN MEYER, et al.
15 Defendants.

Case No. SCUK-CVED-2020-74939

**CITY OF FORT BRAGG'S OBJECTION TO
MENDOCINO RAILWAY'S REPLY IN
SUPPORT OF ITS NOTICE OF RELATED
CASES; DECLARATION OF PAUL BEARD II
IN SUPPORT OF REPLY BRIEF**

JUDGE: Hon. Jeanine B. Nadel

DATE: September 30, 2022

TIME: 9:30 a.m.

DEPT.: E

21 City of Fort Bragg ("City") hereby objects to, and requests that this Court refuse to
22 consider and/or strike, Mendocino Railway's Reply in Support of Its Notice of Related Cases and
23 the Declaration of Paul Beard II in Support of Reply Brief ("Reply"), which is improper:

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1 **CITY OF FORT BRAGG’S OBJECTION TO**
2 **IMPROPER REPLY AND DECLARATION**

3 Mendocino Railway has improperly filed a purported Reply and supporting declaration to
4 its Notice of Related Cases, the latter of which was filed on or about June 22, 2022.

5 California Rules of Court, Rule 3.300 governs notices of related cases. It provides that the
6 circumstances and timing of parties giving notice to the Court of related case. It also provides the
7 procedures for doing so, including a response being permitted “supporting or opposing the
8 notice.” Cal. Rules Ct., Rule 3.300 (g). It does *not* provide for any “reply” to that response.
9 Further, the Reply presents a situation where the City has been prevented from substantively
10 responding to MR’s claims. Indeed, no notice of motion or notice of hearing, nor any supporting
11 points and authorities, documentation or declarations, were ever filed or served in connection
12 with the Notice of Related Case originally filed and served by MR, which consisted only of
13 Judicial Council Form (CM-015).¹ Thus, the City’s response, which was required to be filed
14 within only *5 days* of the Notice of Related Case, could not respond to any substantive points now
15 being raised for the first time in the Reply and declaration. The City, therefore, requests that this
16 Court disregard the Reply and supporting declaration, and/or strike it as improper.

17 Further, the Reply impermissibly presents new grounds and new evidence in support of
18 the Notice of Related Case. As noted above, the original Notice of Related Case contained no
19 motion, and no supporting documentation other than the form originally filed by MR.² A party
20 certainly may not be permitted to raise new issues and/or evidence at a hearing by way of a
21 purported Reply brief and new declaration. Generally, a court may consider “only the grounds
22 specified in the notice of motion,” although it may also consider “supporting materials [that]
23 discuss and support [a different] ground for relief . . .” but only when they are also contained
24 within or in support of the original motion. *Luri v. Greenwald*, 107 Cal. App. 4th 1119, 1126

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26 ¹ This is not to suggest that any such notice or supporting documentation is necessarily required
27 with a Notice of Related Case, but only to note that the Notice of Related Case was *not* a noticed
28 motion, and the original filing provided little substantive support – in contrast to the Reply now
being presented to the Court by MR.


² Although MR did serve the City with notice (and an amended notice) of the hearing as currently
scheduled, this was not done until September 8, 2022, and contained only hearing information.

1 (2003). In addition, “[t]he general rule of motion practice, which applies here, is that new
2 evidence is not permitted with reply papers.” *Jay v. Mahaffey*, 218 Cal. App. 4th 1522, 1537
3 (2013). Based on these principles, and the City’s inability to have sufficient time or opportunity
4 to respond to purported new grounds stated in the Reply for the Notice of Related Case, and as to
5 the supporting declaration, this Court should additionally disregard and/or strike the Reply and
6 declaration as improper.

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Dated: September 26, 2022

JONES MAYER

By: 

Krista MacNevin Jee,
Attorneys for Defendant,
CITY OF FORT BRAGG

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 September 26, 2022, I served the foregoing document(s) described as **CITY OF
9 FORT BRAGG'S OBJECTION TO MENDOCINO RAILWAY'S REPLY IN SUPPORT
10 OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN
11 SUPPORT OF REPLY BRIEF**, on each interested party **listed below**/on the attached service
12 list.

13 SEE ATTACHED SERVICE LIST

14 (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary
15 business practices.

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

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

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on September 26, 2022 at Fullerton, California.

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28 _____
WENDY A. GARDEA
wag@jones-mayer.com

SERVICE LIST

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Paul J. Beard, II
Fisherbroyles LLP
4470 W. Sunset Blvd., Suite 93165
Los Angeles, CA 90027
T: (818) 216-3988
F: (213) 402-5034
Email: paul.beard@fisherbroyles.com

Stephen F. Johnson
Mannon, King, Johnson & Wipf, LLP
200 North School Street, Suite 304
Post Office Box 419
Ukiah, California 95482
Email: curtisc@mendocinocounty.org
blantonb@mendocinocounty.org
cocosupport@mendocinocounty.org

Maryellen Sheppard
27200 No. Highway 1
Fort Bragg, California 95437
sheppard@mcn.org

Glen L. Block
California Eminent Domain Law Group, APC
3429 Ocean View Boulevard, Suite L
Glendale, CA 91208
Email: glb@caledlaw.com