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Superior Court of California  
County of Mendocino

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF MENDOCINO**

16 MENDOCINO RAILWAY,

17 Plaintiff,

18 v.

19 JOHN MEYER; REDWOOD EMPIRE  
20 TITLE COMPANY OF MENDOCINO  
21 COUNTY; SHEPPARD  
22 INVESTMENTS; MARYELLEN  
23 SHEPPARD; MENDOCINO COUNTY  
24 TREASURER-TAX COLLECTOR; All  
25 other persons unknown claiming an  
26 interest in the property; and DOES 1  
27 through 100, inclusive,

28 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

**(Assigned to Hon. Jeanine B. Nadel)**

**PLAINTIFF MENDOCINO  
RAILWAY'S OPPOSITION TO  
DEFENDANT JOHN MEYER'S  
MOTION FOR AWARD OF  
ATTORNEY FEES AND COSTS;  
DECLARATION OF GLENN L.  
BLOCK IN SUPPORT THEREOF**

**Hearing**

Date: August 18, 2023

Time: 9:30 a.m.

Dept.: E

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1 **INTRODUCTION**

2 While plaintiff Mendocino Railway disagrees with the Court’s ruling denying  
3 plaintiff the right to exercise eminent domain in this case, plaintiff concedes that given  
4 the Court’s ruling, Cal. Code Civ. Proc. §1268.610 authorizes the Court to award  
5 defendant’s litigation expenses including attorneys’ fees. Here, however, defendant seeks  
6 recovery of unreasonably excessive and improper attorneys’ fee amounts, including fees  
7 that were unnecessarily incurred because of defendant’s own actions. And, as a  
8 procedural matter, defendant failed to seek recovery of attorneys’ fees in the manner  
9 specified by statute. Thus, if the Court finds that defendant is entitled to recover  
10 attorneys’ fees despite the procedural defect, defendant is entitled to a maximum  
11 attorneys’ fee award of \$167,077.74.

12 Defendant’s claimed attorneys’ fees of \$399,296.25, applying a 1.5x positive  
13 lodestar “enhancement,” are unreasonably excessive and include improper amounts.  
14 First, defendant’s lodestar attorneys’ fee figure of \$266,197.50 should be reduced to  
15 eliminate improper amounts, including: \$8,535 for secretarial tasks; \$1,750 in undefined  
16 “fees for time billed at zero dollars on various dates”—*for which defendant was never*  
17 *actually charged*—and, \$8,945 in duplicative charges. (Declaration of Glenn Block  
18 (hereinafter, “Block Decl.”), ¶¶2–5).

19 Defendant’s lodestar figure should also be reduced further to eliminate  
20 unreasonably excessive amounts for unnecessary and inefficient litigation. Cal. Code  
21 Civ. Proc. §1260.110 allowed defendant to limit this case to its right to take challenge,  
22 bifurcating and obtaining an expeditious determination on that issue before proceeding  
23 to address any valuation issues. Availing himself of this straightforward and typical  
24 statutory eminent domain procedure would have dramatically reduced the costs and  
25 time required. Instead, defendant chose *during the first 1½ years of this case* to bypass  
26 this option entirely and to instead focus solely on litigating valuation.<sup>1</sup> (Block Decl., ¶¶7

27  
28 <sup>1</sup> Defendant did not serve any discovery requests prior to the statutory pre-trial exchange of appraisals or otherwise pursue its right to take objections. Defendant only sought the

1 –8). Because of this choice, defendant’s lodestar amount includes \$68,040 in  
2 unreasonable and excessive (and unnecessary) attorneys’ fees.

3 Additionally, defendant’s lodestar figure includes more than \$28,000—*more than*  
4 *80 hours*—for drafting this unnecessary motion for attorney’s fees. (Block Decl, ¶6). Not  
5 only was that effort completely unnecessary, insofar as the proper method of seeking  
6 attorneys’ fees is by simply filing a cost bill, not a motion (Cal. Code Civ. Proc.  
7 §1268.610(d)), but the amount of time claimed is excessive on its face by a factor of about  
8 three times.

9 Defendant also seeks an unwarranted positive lodestar multiplier of 1.5x. A  
10 positive lodestar multiplier is unwarranted in this case because the lodestar amount  
11 already compensates defendant for any skill or complexity factors, to the extent such  
12 factors are present here. Ketchum v. Moses (2001) 24 Cal.4<sup>th</sup> 1122, 1138. Defendant  
13 failed to meet his burden to establish the presence of any of the factors that might justify  
14 a positive lodestar multiplier. However, there are factors present here that could justify  
15 a *negative* lodestar multiplier because: (i) defendant’s counsel acknowledges he lacked  
16 familiarity with eminent domain law; (ii) defendant’s key successful argument at trial—  
17 that Mendocino was not a public utility common carrier railroad—followed a roadmap  
18 set by other attorneys in another case; and, (iii) defendant failed to avail himself of the  
19 typical eminent domain procedure for expeditious resolution of a right to take challenge.  
20 Graciano v. Robinson Ford Sales, Inc. (2006) 144 Cal.App.4<sup>th</sup> 140, 160 – 161. (Block Decl,  
21 ¶¶9–11)

22 Taking these factors together, as discussed further below, defendant’s claimed  
23 “lodestar” of \$266,197.50 is \$111,000 higher than reasonable or appropriate. Plaintiff  
24 submits the appropriate “lodestar” amount in this case is instead no more than  
25 **\$155,197.50**. And, if a lodestar multiplier were to be applied here, it should be negative.

26  
27  
28 deposition of plaintiff’s person most knowledgeable when the parties were scheduling  
expert depositions. And it was not until several weeks after the PMK deposition that  
defendant first served any written discovery requests in this case.

1 As a procedural matter, litigation expenses are only awardable if they are claimed  
2 *in the manner authorized by the statute upon which defendant relies.* Cal. Code Civ. Proc.  
3 §1033.5(a)(10). Here, the statutory authority upon which defendant relies provides that  
4 litigation expenses, “*shall be claimed in and by a cost bill to be prepared, served, filed,*  
5 *and taxed as in a civil action.*” Cal. Code Civ. Proc. §1268.610(d); emphasis added. While  
6 defendant filed a cost bill here (the amount of which—\$11,880.24—plaintiff does not  
7 challenge), defendant’s cost bill fails to include any attorneys’ fees. Thus, because  
8 defendant failed to follow the statutorily mandated procedure for seeking recovery of its  
9 attorney’s fees, the Court would be justified only awarding such amounts properly  
10 included in its cost bill, i.e., \$11,880.24.<sup>2</sup>

### 11 ARGUMENT

#### 12 **I. DEFENDANT’S ATTORNEYS’ FEES CLAIM IS EXCESSIVE. SOME OF** 13 **THE CLAIMED FEES ARE NON-RECOVERABLE, SOME WERE** 14 **UNNECESSARY OR EXCESSIVE, AND DEFENDANT’S REQUEST** **FOR A 1.5X MULTIPLIER IS UNWARRANTED.**

15 Defendant correctly notes that the first step in determining an award of attorneys’  
16 fees is to determine the reasonable amount of time spent by the attorneys on the case,  
17 after a “careful compilation” of the time spent, multiplied by the attorneys’ reasonable  
18 hourly rate. Ketchum v. Moses (2001) 24 Cal.4<sup>th</sup> 1122, 1131 – 32. The resulting figure is  
19 referred to as the “lodestar.” Id. In determining the “reasonable” time spent by the  
20 attorneys, “inefficient or duplicative efforts [are] not subject to compensation,” i.e., are  
21 not to be included in the “lodestar” amount. Id. at 1132. Once the “lodestar” amount is  
22 determined, the court may then consider whether an adjustment, up or down, to the  
23 lodestar amount is appropriate. Id. at 1134 (“the lodestar figure may be increased or  
24 decreased depending on a variety of factors . . .”). Per the California Supreme Court in  
25 Ketchum, supra, the fee may be adjusted, as relevant, based on “(1) the novelty and

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26 <sup>2</sup> This is not only a procedural issue but goes as well to the *amount* of fees sought by  
27 defendant. As discussed further below, defendant claims *more than 80 hours* of attorney  
28 time for filing the instant motion. That time was unnecessary as the proper method of  
claiming fees under Code of Civil Procedure section 1268.610(d) is by way of cost bill, not  
motion.

1 difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the  
2 extent to which the nature of the litigation precluded other employment by the attorneys,  
3 [and] (4) the contingent nature of the fee award.” Id. “The purpose of such adjustment is  
4 to fix a fee at the fair market value for the particular action.” Id. Typically, fee  
5 enhancements are only awarded as to contingency fee agreements or private attorney  
6 general actions which would otherwise be economically infeasible to competent private  
7 attorneys. See, e.g., Id. at 1132 – 33.

8 “[T]he party seeking a fee enhancement bears the burden of proof.” Id. at 1138.  
9 The court should also be careful to “not consider [enhancement] factors to the extent they  
10 are already encompassed within the lodestar. The factor of extraordinary skill, in  
11 particular, appears susceptible to improper double counting; for the most part, the  
12 difficulty of a legal question and the quality of representation are already encompassed  
13 in the lodestar.” Id. Likewise, it is improper to award an enhancement for the contingent  
14 nature of a fee where the fee is not contingent. Id. at 1141 – 42.

15 Finally, a fee enhancement should not “be imposed for the purpose of punishing  
16 the losing party.” Id. at 1139.

17 Here, while plaintiff does not challenge defendant’s attorneys’ hourly rate as  
18 facially unreasonable, defendant’s billings reveal a number of items that are either non-  
19 recoverable as a matter of law, are excessive, or were unnecessary. Defendant’s  
20 “lodestar” is thus overstated. And as discussed further below, defendant’s request for a  
21 1.5x positive multiplier is unwarranted. To the extent a multiplier may be warranted  
22 here, the factors present in this case support application of a negative multiplier.

23 **A. Defendant’s “Lodestar” Amount is Overstated by \$115,332.50.**

24 **1. Secretarial Tasks Are Not Recoverable as Part of Attorneys’ Fees  
25 and, As Such, Must Be Deducted from the Lodestar Amount.**

26 Defendant’s bills submitted in support of his motion show 56 separate entries from  
27 apparent non-attorneys billing for clearly secretarial and clerical activities such as  
28 making copies, collating documents in binders, calendaring, and submitting documents

1 for filing through the court's e-portal. (Block Decl., ¶3). While these entries are for as  
2 little as \$15, they add up to \$8,535 billed for secretarial and clerical activities.

3 Secretarial and clerical activities have been held to be non-recoverable as part of  
4 attorneys' fees. See, e.g., Mohamed v. Barr (2022) 562 F.Supp.3d 1128, 1136 – 37 (U.S.  
5 Dist. Ct., E.D. Calif.) [specifically identifying creating indexes; filing; updating the case  
6 calendar; copying, scanning, and faxing; and, filing or serving documents as non-  
7 recoverable tasks]. The activities described in Mohamed, supra, are precisely the  
8 activities described in 56 of defendant's billing records, adding up to \$8,535. Thus, the  
9 sum of **\$8,535** should be removed from the "lodestar" calculation.

## 10 **2. Improper and Duplicative Amounts Should be Deducted from the** 11 **Lodestar Amount.**

12 As noted previously, calculation of the lodestar requires a "careful compilation of  
13 the time spent." Id. at 1131. The very last entry in defendant's bills shows an apparent  
14 catch-all item titled "Fees for time billed at zero dollars on various dates" in the amount  
15 of \$1,750, with no explanation as to what these items are, who billed them, how many  
16 hours were spent, or why they are now included when defendant's counsel obviously  
17 previously decided they should not be billed to his client. (Block Decl., ¶4). This hardly  
18 amounts to a "careful compilation" of time spent. Ketchum, supra, 1131 – 32. These  
19 charges are patently inappropriate and, by their own description, were not fees charged  
20 to defendant. Thus, **\$1,750** should be removed from the "lodestar" calculation.

21 Similarly, on the second to the last page of defendant's bills, there are several  
22 entries for "opening balance" for several individuals. These entries do not have any hour  
23 amounts or any other description. (Block Decl., ¶5). Thus, it appears that these amounts  
24 are duplicative of other entries and improperly included in defendant's attorneys' fees  
25 figure. Thus, **\$8,945** should also be removed from the "lodestar" calculation.

## 26 **3. A Significant Portion of Defendant's Counsel's Time Was** 27 **Unnecessary as Defendant's Counsel Focused on Compensation** 28 **Throughout the Litigation and Only Raised the Right to Take** **Challenge on Which He Prevailed at the Eleventh Hour; The** **Lodestar Should be Reduced for This Reason as Well.**



1 As noted previously, only time “reasonabl[y]” spent may be considered in  
2 determining the lodestar amount; “inefficient” time is to be excluded. Ketchum, supra,  
3 24 Cal.4<sup>th</sup> at 1132.

4 Here, a significant portion of defendant’s fees could have been avoided had  
5 defendant focused on his right to take challenges at the outset and availed himself of the  
6 statutory procedure provided in Code of Civil Procedure section 1260.110 for an early  
7 resolution of his right to take objections. See, Cal. Civ. Proc. Code § 1260.110.

8 Instead, defendant’s counsel focused solely on the valuation issue for the first 1 ½  
9 years of this case, rather than the right to take. In ¶16 of his Declaration, Defendant’s  
10 counsel incorrectly contends, “In this action Meyer’s legal claims all were directed at the  
11 same conduct and sought the same relief—opposing MR’s illegal attempt to take Meyer’s  
12 Property by eminent domain.” This is not true. For the entire first 1 ½ years of this case,  
13 Defendant failed entirely to pursue these right to take objections—Defendant  
14 propounded no discovery and took no other action in furtherance of its objections.  
15 Instead, as reflected in Defendant’s counsel’s time records, all of Defendant’s efforts  
16 related to litigating valuation. (Block Decl., ¶¶7 & 12).

17 Indeed, in defendant’s May 2021 discovery responses regarding defendant’s  
18 boilerplate affirmative defenses, defendant offered no specific facts, documents, or  
19 witnesses whatsoever in support of any of defendant’s right to take challenges—  
20 responding simply, “This is a procedural defense and facts have yet to be determined at  
21 this point.” Further, defendant’s counsel did not disclose to either plaintiff or the court  
22 at the Case Management Conference that it intended to pursue right to take objections.  
23 (Block Decl., ¶8).

24 It was not until the end of March 2022—the eve of the parties’ statutory pretrial  
25 exchange of appraisals—that defendant made *any* effort in furtherance of his right to  
26 take challenge. In the course of the parties coordinating the pretrial exchange of  
27 appraisals, scheduling expert depositions and scheduling mediation, defendant’s counsel  
28 first informed plaintiff’s counsel on March 24, 2022 that he *might* pursue a right to take

1 challenge and, accordingly, wished to take plaintiff's PMK deposition. It was at that  
2 point that *plaintiff* requested that the trial be bifurcated—*over defendant's counsel's*  
3 *initial objection*—so as to avoid even more unnecessary fees in litigating valuation  
4 pending a ruling on the right to take. (Block Decl., ¶¶13 – 14 and Exhibit 1). Defendant  
5 then still waited another 2 months, until May 2022—*after having litigated nothing but*  
6 *valuation for 1½ years*—to amend his Answer to assert the right to take defense he  
7 ultimately pursued and prevailed upon. (Block Decl., ¶16).

8 Had defendant and his counsel acted reasonably to avoid excessive fees, wasted  
9 time, and unnecessary litigation in this matter, he had a statutory remedy—commonly  
10 utilized in eminent domain cases—readily available. Specifically, Code of Civil Procedure  
11 section 1260.110 provides for an early resolution of right to take objections prior to the  
12 determination of compensation. Cal. Civ. Proc. Code §1260.110.

13 Yet, instead of availing himself of this commonly used remedy and seeking early  
14 resolution of the right to take, defendant's counsel chose to generate unreasonably  
15 extensive and utterly unnecessary fees litigating valuation. Indeed, even when plaintiff  
16 suggested bifurcating the case so the right to take issue could be heard first, so as to  
17 avoid further unnecessary litigation, defendant's counsel initially refused. (Block Decl.,  
18 ¶14, Exhibit 1). Again, only hours “reasonabl[y]” spent are to be included as part of the  
19 lodestar; “inefficient” time is to be excluded. Ketchum, supra, 24 Cal.4<sup>th</sup> at 1132.

20 Here, until the end of May 2022—after the parties had completed all expert  
21 discovery on valuation and participated in both a Mandatory Settlement Conference and  
22 private mediation (which the parties agreed would be focused on valuation)—*virtually*  
23 *all* of the time incurred by defendant's counsel litigating compensation issues and  
24 ignoring any right to take objections was unnecessary and therefore inefficient. Review  
25 of defendant's time entries reveals that defendant's counsel billed 180.5 hours through  
26 the end of May 2022—out of a total of 717.8 hours billed through July 1, 2023. (Block  
27 Decl., ¶17). Plaintiff accordingly respectfully submits that the court should reduce the  
28 “lodestar” amount by **\$63,175** (180.5 hours x \$350 per hour).

1                   **4. Defendant’s Counsel’s Time Claimed on This Fee Motion Was Both**  
2                   **Unnecessary and Excessive; The Lodestar Should be Reduced for**  
3                   **This Reason as Well.**

4                   Finally, with respect to calculation of the lodestar amount, defendant’s bills show  
5                   that defendant’s counsel claims 81.7 hours for drafting his motion for attorneys’ fees. At  
6                   \$350 per hour, that adds up to \$28,595 for drafting a motion that was completely  
7                   unnecessary and, even if necessary, realistically should have taken no more than about  
8                   a third of the time claimed. (Block Decl., ¶6).

9                   As discussed earlier, *none* of the time incurred for drafting the fees motion was  
10                  necessary insofar as the correct method for seeking fees under Code of Civil Procedure  
11                  section 1268.610 is by way of cost bill, not motion. Cal. Code Civ. Proc. §1268.610(d).  
12                  *Indeed, had defendant (1) sought his fees by way of cost bill as provided in the statute, (2)*  
13                  *not claimed over \$28,595 for drafting an unnecessary fees motion, and (3) not sought a*  
14                  *1.5 multiple of fees, a motion to tax may not even have been necessary.* (Block Decl., ¶18).

15                  Even ignoring that however—and assuming some time would be necessary to  
16                  challenge plaintiff’s motion to tax costs *if* one were filed—the time claimed by defendant’s  
17                  counsel is more than three times what one would expect to see for drafting a fees motion.  
18                  Thus, Defendant’s request for 81.7 hours for this motion is patently excessive. See Rolex  
19                  Watch USA Inc. v. Zeotec Diamonds Inc. (C.D. Cal., Aug. 24, 2021) 2021 WL 4786889, at  
20                  5 [23 hours reasonable to prepare motion for attorneys’ fees and reply]; and, Smith v.  
21                  Jaguar Land Rover North America, LLC (C.D. Cal., Oct. 18, 2019) 2019 WL 9047074, at  
22                  3 [11.2 hours reasonable for preparation of motion for attorneys’ fees].

23                  As the fees for filing defendant’s motion were entirely unnecessary, plaintiff  
24                  respectfully submits that the “lodestar” should be additionally reduced by the amount  
25                  claimed for the fees motion, i.e., **\$28,595**.

26                   **5. Thus, the “lodestar” should be reduced by \$111,000.**

27                  Considering all four factors above warranting reduction of the “lodestar” amount,  
28                  plaintiff respectfully submits that the “lodestar” should be reduced by \$115,865 (\$8,535  
                  + \$1,750 + \$8,945 + \$63,175 + \$28,595 = \$111,000), and that the “lodestar” amount

1 should therefore be reduced from the \$266,197.50 sought by defendant down to  
2 **\$155,197.50** (\$266,197.50 - \$111,000= \$155,197.50).

3 **B. Defendant’s Request for a 1.5x Positive Lodestar Multiplier is**  
4 **Unwarranted; However, A Negative Multiplier is Supported.**

5 As noted, once the “lodestar” amount is determined, the court may then consider  
6 whether an adjustment, up or down, to the lodestar amount is appropriate. Ketchum,  
7 supra, 24 Cal.4<sup>th</sup> at 1134. (“the lodestar figure may be increased or decreased depending  
8 on a variety of factors . . .”). The fee may be adjusted, as relevant, based on factors such  
9 as novelty and difficulty of the issues, skill, if the litigation precluded other employment,  
10 and a contingency fee agreement. Id. “The purpose of such adjustment is to fix a fee at  
11 the fair market value for the particular action.” Id. Typically, fee enhancements are  
12 awarded only in the case of contingency fee agreements and in private attorney general  
13 actions. See, e.g., Id. at 1132 – 33.

14 “[T]he party seeking a fee enhancement bears the burden of proof.” Id. at 1138;  
15 emphasis added. And a trial court “should not consider [enhancement] factors to the  
16 extent they are already encompassed within the lodestar. The factor of extraordinary  
17 skill, in particular, appears susceptible to improper double counting; for the most part,  
18 the difficulty of a legal question and the quality of representation are already  
19 encompassed in the lodestar.” Id. Likewise, it is improper to award an enhancement for  
20 the contingent nature of a fee where the fee is not contingent. Id. at 1141 – 42. Finally,  
21 a fee enhancement should not “be imposed for the purpose of punishing the losing party.”  
22 Id. at 1139.

23 As discussed below, defendant failed to satisfy his burden of proof justifying a  
24 positive fee multiplier. See, Id. at 1138.

25 **1. This is Not a Contingency Case.**

26 Defendant’s counsel first suggests that he is entitled to a fee multiplier here  
27 because there was no assurance of payment and the case was thus like a contingency  
28 case. (Motion, p. 10:22 – p. 12:6). This claim is simply incorrect. A typical contingency

1 fee calculates attorneys' fees as a percentage of the recovery in the case. See, e.g., People  
2 ex rel. Dept. of Transportation v. Yuki (1995) 31 Cal.App.4th 1754, 1768.

3 Defendant's counsel offers no (appropriately redacted) contingency fee agreement,  
4 no evidence that his firm's fee was contingent in any way, nor any evidence that his firm  
5 would have waived its right to fees had it not prevailed in this action. Defendant's  
6 counsel, in fact, took no real risk of non-payment in taking this case.

7 To the contrary, defendant's evidence shows that this was an *hourly* fee case.  
8 Moreover, there were always sufficient funds in this case to pay defendant's counsel's  
9 attorney fees. Plaintiff offered and deposited into court the sum of \$350,000 at the outset  
10 of this case. (Block, Decl., ¶19). That sum was available at any time for defendant to  
11 withdraw as a matter of law, even if he lost his right to take challenge. Cal. Code Civ.  
12 Proc. §1255.210. Defendant thus clearly had funds available to pay his attorneys' fees in  
13 this matter.

14 Moreover, and perhaps more significantly, once defendant decided to pursue the  
15 right to take challenge, only one of two things could happen. Either (1) defendant would  
16 prevail, in which case defendant would be entitled to recover his attorney fees per Cal.  
17 Code Civ. Proc. §1268.610; or, (2) defendant would not prevail, in which case defendant  
18 would be entitled to compensation of at least \$350,000 (or as much as \$1,055,000 as  
19 claimed by defendant). In either case, more than sufficient funds to cover defendant's  
20 attorneys' fees. There simply was no risk, as both a practical and legal matter, of  
21 defendant's counsel not getting paid.

22 Defendant's counsel's attempt to characterize this as equivalent to a contingency  
23 case warranting a fee multiplier is thus misplaced. Defendant has not met his burden of  
24 proof to justify a multiplier on the grounds of the case being contingent. This simply was  
25 not a contingency case.

26 **2. The "Novelty, Difficulty and Complexity" of the Action Do Not**  
27 **Warrant a Positive Lodestar Multiplier Here; Even If Those**  
28 **Factors Were Present, They are Already Included in the**  
**"Lodestar" Calculation. If Anything, these Factors Support**  
**Application of a Negative Multiplier.**

1 Defendant's counsel next suggests that he is entitled to a multiplier of his actual  
2 fees because of the novelty, difficulty and complexity of this action and because of his  
3 own skill in pursuing this action. This claim too is misplaced. This is a typical eminent  
4 domain case and has not been deemed complex.

5 As the California Supreme Court warned in the Ketchum case, supra, these  
6 factors are generally already factored into the "lodestar" calculation and are thus very  
7 susceptible to double counting. Id. at 1138. As stated by the Court there: "for the most  
8 part, the difficulty of a legal question and the quality of representation are already  
9 encompassed in the lodestar." Id. In other words, to the extent that the case had novel,  
10 difficult, or complex issues, that time would already be accounted for in the "lodestar"  
11 figure since more complex issues typically take more time to litigate.

12 It is worthy of note here that defendant's counsel was essentially handed a road  
13 map by counsel for the City of Fort Bragg and the already favorable legal ruling the City  
14 had received there. (Block Decl., ¶¶10–11). This is thus not a case in which defendant's  
15 counsel devised a novel legal theory to achieve success. Instead, defendant's counsel  
16 simply coopted the arguments of the City of Fort Bragg, and favorable ruling, before even  
17 pursuing his right to take challenge on essentially the same grounds.<sup>3</sup> Moreover,  
18 Defendant's counsel acknowledges in his Declaration he lacked familiarity with eminent  
19 domain law. (Johnson Declaration, ¶14). And, Defendant's counsel's lack of familiarity  
20 with the eminent domain law is evidenced by his failure to employ the statutory  
21 procedure (Cal. Code Civ. Proc. §1260.110) for an early and expeditious, and more  
22 efficient, resolution of defendant's right to take objections. This is a typical procedure  
23 knowledgeable eminent domain counsel would have utilized. As noted above, this would  
24 have avoided nearly 200 hours of unnecessary time litigating valuation.

25  
26  
27 <sup>3</sup> Defendant's counsel's time records reveal that he reviewed City of Fort Bragg  
28 documents on April 16 and 18, 2022 and thereafter reviewed and did legal research  
regarding "eminent domain taking" and "railroad law." These are the first time entries  
that note any efforts related to Defendant's right to take objections. (Block Decl., ¶10).

1 Thus, these factors—defendant’s counsel following the roadmap set out by the City  
2 of Fort Bragg’s counsel, his lack of familiarity with the eminent domain law, and failure  
3 to avail himself of the more efficient statutory remedy for resolution of the right to take  
4 objections—establish that a negative lodestar multiplier is justified.

5 There simply is no basis for a positive multiplier here. Defendant again has not  
6 met his burden of proof on this issue. However, application of a negative multiplier is  
7 supported.

8 **3. Defendant Offers No Evidence of Lost Opportunities Due to this**  
9 **Litigation.**

10 Defendant’s counsel next suggests that he is entitled to a fee multiplier because  
11 his firm allegedly could have taken “several new cases.” (Motion, p. 13, lns. 6 – 7).  
12 Defendant’s counsel offers no evidence as to what these cases were or that they would  
13 have been more lucrative to defendant’s counsel’s firm than the instant case had they  
14 been taken. Defendant’s counsel simply refers to his own conclusory statement in his  
15 own declaration that “this litigation prevented Johnson from taking several new cases.”  
16 (Johnson Decl., para.22, p. 6, lns. 15 – 17).

17 Defendant’s counsel’s time records indicate this case did not prevent defendant’s  
18 counsel from taking other work. Over the course of more than 2½ years of litigation,  
19 defendant’s counsel only devoted more than 50 hours per month to this case five times.  
20 Except for August 2022, during trial when this case may have consumed much of  
21 defendant’s counsel’s work, even in the other 4 months noted above, defendant’s counsel  
22 had sufficient available time to work on other matters. (Block Decl., ¶¶20–21). Moreover,  
23 Plaintiff’s counsel was not deprived of other work while working on this one and was  
24 able to handle other cases and take on new cases. (Block Decl., ¶22).

25 Defendant’s counsel’s conclusory statement—with no evidence of what these  
26 alleged cases were, or any evidence that they might have been more lucrative than the  
27 instant case—hardly amounts to satisfying defendant’s burden of proof justifying a fee  
28 multiple. Moreover, defendant’s counsel’s own time records reveal that this case could  
not have materially precluded any other opportunities.

1                   **4. This is Not a Private Attorney General Case.**

2                   Defendant’s counsel finally attempts to justify receiving multiple of his actual fees  
3 by inexplicably relying on private attorney general cases. Coalition for L.A. County  
4 Planning v. Board of Supervisors (1977) 76 Cal.App.3d 241, upon which defendant relies,  
5 was literally an action brought by public interest groups regarding a county’s land use  
6 plan for the benefit of the public. Id. at 244. The court there held that to award fees in  
7 that instance required that the action “be commenced and maintained as a *representative*  
8 *action.*” Id. at 248; emphasis in original. That case simply bears no resemblance to this  
9 case. This action was not commenced or maintained by defendant as a representative  
10 action on behalf of others. Instead, this was an eminent domain action against defendant,  
11 which defendant litigated for his own benefit.

12                   Defendant’s reliance on Amaral v. Cintas Corp. (2008) 163 Cal.App.4<sup>th</sup> 1157 is  
13 likewise misplaced. That case involved attorneys’ fees awarded in a *class action* with  
14 broad benefits to a large number of individuals. Again, the instant case was not brought  
15 by defendant to pursue the rights of others—to the contrary, *defendant* litigated this  
16 matter to defend his own interests. That other entities may be interested in the outcome  
17 of this litigation is irrelevant. This action was not pursued on their behalf.

18                   **5. A Fee Multiplier May Not “be imposed for the purpose of punishing**  
19 **the losing party.”**

20                   Finally, prominently displayed within defendant’s counsel’s final argument as to  
21 why the court should award it a multiple of its actual fee is the following statement:

22                   “[Plaintiff’s] attempt to take [defendant’s] private property is  
23 wrong on a moral, a constitutional and a statutory level, and  
24 luckily the court was able to prevent an injustice from occurring.”

25 (Motion, p. 13, lns. 19 – 21).

26                   Not only is this statement factually false and belied by both the facts and the case  
27 law, but this statement has no legal bearing on the amount of fees nor on whether a  
28 multiplier is justified. Instead, it appears to be nothing more than a transparent attempt  
to raise the ire of the Court and to attempt to persuade the Court to award a fee  
multiplier in order to punish plaintiff for its good faith belief that it was entitled to



1 acquire defendant's property. That, however, is legally and patently impermissible. As  
2 held by the California Supreme Court in Ketchum, supra, a fee enhancement should not  
3 "be imposed for the purpose of punishing the losing party." Ketchum, supra, 24 Cal.4<sup>th</sup>  
4 at 1139.

5 **II. CODE OF CIVIL PROCEDURE SECTION 1268.610 IS CLEAR ON ITS**  
6 **FACE. LITIGATION EXPENSES "SHALL" BE SOUGHT BY WAY OF A**  
7 **COST BILL. DEFENDANT DID NOT DO SO HERE.**

8 Attorneys' fees are only recoverable in California to the extent provided by  
9 contract or statute. Cal. Code Civ. Proc. §1033.5(a)(10). Here, there is no contract  
10 authorizing an award of attorneys' fees. There is, however, a statute authorizing such an  
11 award where, as here, the Court enters judgment denying a condemning entity the right  
12 to take. Cal. Code Civ. Proc. §1268.610.

13 Insofar as section 1268.610 serves as the sole statutory basis for defendant's  
14 request for attorneys' fees as "litigation expenses," the language of the statute is  
15 controlling. Subsection (d) of section 1268.610 is unambiguous as to the process for  
16 seeking litigation expenses under the statute, "*Litigation expenses under this section*  
17 *shall be claimed in and by a cost bill* to be prepared, served, filed, and taxed as in a civil  
18 action." Cal. Code Civ. Proc. §1268.610(d); emphasis added.

19 The statute must be read as meaning what it says; the Court may not speculate  
20 that the legislature meant something other than what the legislature specifically said.  
21 Los Angeles County v. Reid (1961) 193 Cal.App.2d 748, 752. The term "shall," as a matter  
22 of statutory construction, means "*mandatory*." People v. Standish (2006) 38 Cal.4<sup>th</sup> 858,  
23 869. As a procedural matter, it is thus "*mandatory*" that claims for litigation expenses  
24 be included in a cost bill in order for them to be recoverable under section 1268.610. See,  
25 Miller and Starr, California Real Estate 4<sup>th</sup> – Eminent Domain, §24:78 fn. 16 ("Litigation  
26 expenses [under C.C.P. §1268.610] are claimed by a cost bill prepared, served, filed and  
27 taxed as in a civil action."). By way of example, consistent with this requirement, in the  
28 City of Oakland v. Oakland Raiders case upon which defendant erroneously relies as  
support for a fee multiplier, the Raiders sought their attorneys' fees by way of cost

1 memorandum—not a motion—as mandated by the statute. City of Oakland v. Oakland  
2 Raiders (1988) 203 Cal.App.3d 78, 81.

3 Here, defendant filed a cost bill, but that cost bill did not include attorneys' fees.  
4 Instead, defendant's cost bill seeks \$11,880.24 in other costs and litigation expenses.  
5 Plaintiff does not dispute defendant's entitlement to these other amounts included in its  
6 cost bill. Plaintiff disputes entitlement only to amounts *not* included in defendant's cost  
7 bill. As a procedural matter, then, as defendant's cost bill fails to include attorneys' fees  
8 as part of its claim for litigation expenses, such fees should be denied.

9 **CONCLUSION**

10 As a procedural matter, insofar as defendant did not include his attorney fee claim  
11 in his cost memorandum as required by Code of Civil Procedure section 1268.610(d),  
12 defendant's litigation costs should be limited to the \$11,880.24 claimed in his statutorily  
13 required cost memorandum. His claim to fees is therefore barred.

14 If the court chooses to overlook this procedural failing, the court should award fees  
15 of no more than \$167,077.74 (attorneys' fees of \$155,197.50+ costs of \$11,880.24). This  
16 amount represents the utter maximum fair value of defendant's actually, reasonably,  
17 and necessarily incurred attorney's fees, after deducting those amounts which defendant  
18 improperly includes or which were unreasonably excessive or unnecessary on their face.

19 Defendant has not established, much less met his burden of proof, for any positive  
20 multiplier of the actual fees incurred. Thus, the award it is respectfully submitted,  
21 should be a maximum of \$167,077.74. Or, the Court should further reduce this amount  
22 by a negative lodestar multiplier to account for defendant's counsel's lack of familiarity  
23 with the eminent domain law, failure to utilize the statutory procedure for early  
24 resolution of right to take objections, and defendant's counsel following the roadmap set  
25 out by the City of Fort Bragg's counsel.

26 Dated: August 3, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,  
a Professional Corporation

27 By: \_\_\_\_\_

28 Glenn L. Block  
Attorneys for Plaintiff MENDOCINO RAILWAY

**DECLARATION OF GLENN L. BLOCK**

I, Glenn L. Block, declare and state that:

1. I am an attorney licensed to practice law in the state of California and am a partner of California Eminent Domain Law Group, counsel of record to Plaintiff MENDOCINO RAILWAY in the above-entitled action now pending in Mendocino Superior Court. As such, I have personal knowledge of the matters set forth herein, or has knowledge on information and belief, and could and would competently testify thereto if called as a witness.

2. Defendant’s lodestar attorneys’ fee figure of \$266,197.50 should be reduced to eliminate improper amounts, including: \$8,535 for secretarial tasks; \$1,750 in undefined “fees for time billed at zero dollars on various dates”—*for which defendant was never actually charged*—and, \$8,945 in duplicative charges.

3. I have reviewed Exhibit A to Mr. Johnson’s Declaration in Support of Meyer’s Motion for Attorney’s Fees, which includes the time records for Mr. Johnson’s law firm. These time records include 56 entries for clerical or secretarial tasks, for individuals with the initials RM, KR or NN. Examples of some of these entries are, “Mailing copies of discovery documents” (5/20/21); “efiling case management conference with the court. Mailing case management conference to counsel Glenn Block” (6/10/21); and, “Printed numerous documents for deposition” (April 25, 2022). All entries describe similar secretarial or clerical tasks. These entries total \$8,535.

4. On the last page of Exhibit A to Mr. Johnson’s Declaration, there is an entry on June 20, 2023 for “Fees for time billed at zero dollars on various dates for \$1,750. There is no explanation as to what these items are, who billed them, how many hours were spent, or why they are now included when defendant’s counsel obviously previously decided they should not be billed to his client.

5. On the second to the last page of Exhibit A of Mr. Johnson’s Declaration, there are 4 entries on June 6, 2023 with the description “Opening balance for …” for Mr. Johnson and 3 other individuals. These entries total \$8,945. It appears that these

1 entries are duplicative of other entries and improperly included in defendant's  
2 attorneys' fee figure.

3 6. In Exhibit A to Mr. Johnson's Declaration, I identified seventeen (17)  
4 entries related to this motion for attorneys' fees. The first entry is on April 20, 2023  
5 and continue thereafter in April, May and June 2023. These entries total 81.7 hours  
6 and \$28,595.

7 7. For the first 1 ½ years of this case (from September 2020 when Mendocino  
8 Railway first contacted Mr. Meyer and indicated its interest in purchasing the  
9 property, through March 2022), defendant's efforts in this litigation were focused solely  
10 on valuation. Although defendant raised boilerplate right to take objections in his  
11 Answer, defendant conducted no discovery at all during this period – no written  
12 discovery requests were propounded by defendant, and defendant did not notice any  
13 depositions. However, through this period the parties exchanged several offers/counter-  
14 offers for plaintiff's purchase of defendant's property.

15 8. In March 2021, plaintiff propounded written discovery to defendant,  
16 including Special Interrogatories, Requests for Production of Documents and Form  
17 Interrogatories. In addition to seeking information and documents related to  
18 defendant's claims for compensation, plaintiff sought information and documents  
19 related to defendant's right to take objections/affirmative defenses. In his May 20, 2021  
20 verified responses to Form Interrogatory No. 15.1, seeking information, documents and  
21 witnesses supporting defendant's thirteen affirmative defenses, defendant merely  
22 offered boilerplate responses asserting that plaintiff failed to state sufficient facts in  
23 the complaint, and, "This is a procedural defense and facts have yet to be determined to  
24 this point."

25 9. In ¶14 of his Declaration, Mr. Johnson acknowledges his lack of  
26 familiarity with the eminent domain law stating, "Meyer's counsel had to review,  
27 analyze, and *become familiar with*, the relevant eminent domain and railroad related  
28 case law and statutory authorities."

1           10.     In reviewing Mr. Johnson’s time records in Exhibit A to his Declaration,  
2 there is an entry on April 16, 2022 for “Reviewed City of Fort Bragg court documents,”  
3 and similarly on April 18, 2022 for “Reviewed City of Fort Bragg litigation and related  
4 court documents.” Thereafter, on April 19, Mr. Johnson has an entry for, “Reviewed  
5 legal issues regarding railroad law and eminent domain taking.” This is the first entry  
6 in Mr. Johnson’s records that describes any tasks related to Meyer’s right to take  
7 challenge or objections.

8           11.     Mr. Johnson’s first entry describing his review of the right to take issues  
9 and law did not occur until April 19, 2022, and took place immediately *after* his review  
10 of the documents in the Fort Bragg litigation against Mendocino Railway. Clearly,  
11 defendant’s counsel was following Fort Bragg’s lead and roadmap in pursuing his right  
12 to take objections. Shortly thereafter, on April 28, 2022, the Court overruled Mendocino  
13 Railway’s demurrer to Fort Bragg’s declaratory relief complaint, a favorable ruling  
14 referencing authorities related to Mendocino Railway’s public utility common carrier  
15 status. Defendant proceeded to coopt these arguments and Fort Bragg’s favorable  
16 ruling, in pursuing his right to take challenge.

17           12.     In ¶16 of Mr. Johnson’s Declaration, he incorrectly states, “In this action  
18 Meyer’s legal claims all were directed at the same conduct and sought the same relief—  
19 opposing MR’s illegal attempt to take Meyer’s Property by eminent domain.” As set  
20 forth in ¶7 above, this is not true. For the entire first 1 ½ years of this case, defendant  
21 failed entirely to pursue these right to take objections—defendant propounded no  
22 discovery and took no other action in furtherance of its objections. Instead, as reflected  
23 in defendant’s counsel’s time records, all of defendant’s efforts related to litigating  
24 valuation.

25           13.     In late March 2022, I reached out to Mr. Johnson to coordinate pre-  
26 scheduling expert depositions for a date shortly after the parties’ April 12, 2022  
27 statutory pre-trial exchange of appraisal, and to discuss scheduling of mediation vis a  
28 vis the scheduled Mandatory Settlement Conference. I followed up our telephone

1 conversation with an email. In response to my email, Mr. Johnson advised that he  
2 wanted to schedule a deposition of plaintiff's PMK as well as the expert depositions.  
3 This was the first time that defendant had indicated it intended to pursue right to take  
4 objections (although boilerplate objections had been asserted in his answer). Attached  
5 hereto as Exhibit 1 is a true and correct copy of the chain of email correspondence I had  
6 with Mr. Johnson between March 22, 2022 and March 30, 2022.

7 14. In our correspondence reflected in Exhibit 1, immediately upon learning  
8 that defendant might pursue his right to take objections, I advised Mr. Johnson that  
9 plaintiff would seek to bifurcate and specially set the right to take issue for trial as  
10 soon as possible in advance of the compensation trial. Mr. Johnson responded that his  
11 client would object to bifurcation and setting of a right to take trial.

12 15. Up until this point, in late March 2022, defendant had not served any  
13 discovery at all—let alone on these issues—nor had defendant otherwise raised or  
14 discussed the right to take. All prior communications and discussions between the  
15 parties related solely to valuation and defendant's compensation claims – including  
16 several offers/counter-offers by the parties in informal efforts to resolve the case.

17 16. On May 12, 2022, I received an email from Mr. Johnson advising  
18 defendant wanted to amend its answer to add an allegation, ¶3, alleging that  
19 Mendocino Railway was not a public utility common carrier authorized to exercise  
20 eminent domain. On May 27, 2022, by the parties' Stipulation, defendant filed its  
21 Amended Answer.

22 17. In reviewing Exhibit A to Mr. Johnson's Declaration, I calculated that  
23 defendant's counsel billed 180.5 hours through the end of May 2022.

24 18. If defendant had sought attorneys' fees by filing and serving a cost bill as  
25 required by Cal. Code Civ. Proc. §1268.610(d), not claimed excessive attorneys' fees for  
26 the filing of an unnecessary motion for fees, and not sought a 1.5x positive lodestar  
27 multiplier, it may not have been necessary for plaintiff to even file a motion to tax costs  
28 because a significant portion of the disputed amounts would not have been at issue.

1 Moreover, to the extent that defendant may have sought excessive and unreasonable  
2 fees related to the valuation/compensation issues (prior to May 2022), these issues  
3 could potentially have been resolved informally. In any event, even if a motion to tax  
4 was necessary to address any disputed issue, it would likely have been more limited in  
5 scope.

6 19. At the outset of the litigation, on December 21, 2020 plaintiff made a  
7 deposit of probable compensation of \$350,000. See plaintiff's December 22, 2020 Notice  
8 of Deposit.

9 20. In reviewing Exhibit A to Mr. Johnson's Declaration, I calculated the total  
10 number of hours defendant's counsel billed each month. These calculations are  
11 reflected in the following table:

Sep-20	1.6	Jan-22	0
Oct-20	5.7	Feb-22	3.3
Nov-20	2.2	Mar-22	8.1
Dec-20	0.5	Apr-22	77
Jan-21	13.3	May-22	27.4
Feb-21	13.8	Jun-22	10.4
Mar-21	2.5	Jul-22	51.5
Apr-21	1.3	Aug-22	114.5
May-21	12.1	Sep-22	89.8
Jun-21	0.8	Oct-22	42.4
Jul-21	0	Nov-22	27.4
Aug-21	1.5	Dec-22	24.4
Sep-21	0.9	Jan-23	41.5
Oct-21	7.7	Feb-23	7.9
Nov-21	0.7	Mar-23	0
Dec-21	0.1	Apr-23	24.6
		May-23	25
		Jun-23	77.9

24 21. Based on the foregoing calculations, over the 2 ½ years of litigation in this  
25 case, defendant's counsel only devoted more than 50 hours per month to this case 5  
26 times: in April 2022 (about 77 hours related to the appraisal exchange and expert  
27 depositions); in July 2022 (about 51.5 hours relating to trial preparation); in August  
28 2022 (about 114.5 hours related to the trial and trial preparation); in September 2022

1 (about 90 hours related to the post-trial closing brief and defendant's motion to reopen  
2 trial); and, most recently in June 2023 (post-trial motions and defendant's motion for  
3 attorney's fees). Thus, except for August 2022, during trial when this case may have  
4 consumed much of defendant's counsel's work, defendant's counsel would have had  
5 sufficient available time to work on other matters.

6 22. I have devoted at least as much time as Mr. Johnson to this case, and  
7 during the course of this litigation I have been able to work on dozens of other matters.  
8 Moreover, during the course of this litigation, I have accepted many new cases as well.

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

11 Executed this 3<sup>rd</sup> day of August, 2023 at Glendale, California.

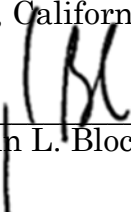
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15 Glenn L. Block  
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EXHIBIT 1

**From:** Stephen F. Johnson <steve@mkjlex.com>  
**Sent:** Wednesday, March 30, 2022 10:59 AM  
**To:** Glenn L. Block  
**Cc:** Debi S. Carbon; Stephen F. Johnson  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Glenn-

As I have mentioned in the past, my client is not necessarily opposed to selling the property, but the issue remains the price. Notwithstanding, he does not, and has never, relinquished his right to defend the lawsuit and oppose the taking of his property. We should have the depositions of the PMK/Pinoli on a different day than the experts. The PMK would generally be the individual that is most knowledgeable of Mendocino Railway's proposed development and subsequent operation of the property in question and knowledgeable regarding the corporate actions taken by Mendocino Railway to commence this eminent domain action. I will also be requesting that documents be produced at the depositions and will forward the deposition notice with the document requests as soon as you provide me with a date.

Thank you,  
Steve

Stephen F. Johnson  
Mannon, King, Johnson & Wipf, LLP  
200 N. School Street, Suite 304  
P.O. Box 419  
Ukiah, CA 95482  
Phone: (707) 468-9151  
Facsimile: (707) 468-0284  
Email: [steve@mkjlex.com](mailto:steve@mkjlex.com)

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**From:** Glenn L. Block <glb@caledlaw.com>  
**Sent:** Wednesday, March 30, 2022 10:04 AM  
**To:** Stephen F. Johnson <steve@mkjlex.com>  
**Cc:** Debi S. Carbon <dsc@caledlaw.com>  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Steve,

I understand that the right to take objections were never waived, but you had previously indicated that Mr. Meyer was focused on compensation. Based on your comments below, we will proceed with

the expectation that he intends to pursue the objections and request that a bench trial be specially set.

Please advise of the PMK categories so that we can determine the appropriate person. Do you want to proceed with the PMK/Pinoli deposition on the same day as Mendocino Railway's experts, or a different day?

Thanks,  
Glenn

---

**From:** Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Sent:** Wednesday, March 30, 2022 9:52 AM  
**To:** Glenn L. Block <[glb@caledlaw.com](mailto:glb@caledlaw.com)>  
**Cc:** Debi S. Carbon <[dsc@caledlaw.com](mailto:dsc@caledlaw.com)>; Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Glenn-

I raised the objections to the right to take in the answer and we have never waived our objections. I will not necessarily know if we are going to actually pursue the objections to the right to take until I complete some discovery on the issue. I would appreciate receiving a date in April to take the deposition of the person most knowledgeable regarding the litigation issues and also the deposition of Robert Pinoli. Please advise on a date as soon as possible. I am going to object to having a hearing on any objections to the right to take prior to the scheduled trial date. I recommend that we complete the depositions and then address the issue.

Thank you,  
Steve

Stephen F. Johnson  
Mannon, King, Johnson & Wipf, LLP  
200 N. School Street, Suite 304  
P.O. Box 419  
Ukiah, CA 95482  
Phone: (707) 468-9151  
Facsimile: (707) 468-0284  
Email: [steve@mkjlex.com](mailto:steve@mkjlex.com)

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**From:** Glenn L. Block <[glb@caledlaw.com](mailto:glb@caledlaw.com)>  
**Sent:** Tuesday, March 29, 2022 6:28 PM

**To:** Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Cc:** Debi S. Carbon <[dsc@caledlaw.com](mailto:dsc@caledlaw.com)>  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Steve,

Please confirm whether Mr. Meyer will be pursuing right-to-take objections.

Thanks,  
Glenn

---

**From:** Glenn L. Block  
**Sent:** Thursday, March 24, 2022 12:42 PM  
**To:** Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Cc:** Debi S. Carbon <[dsc@caledlaw.com](mailto:dsc@caledlaw.com)>  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Steve,

Thank you for sending the mediator bios – I'll review with Mendocino Railway and get back to you.

We'll cooperate on scheduling regarding your request for a PMK deposition. Please advise of the PMK categories so that we can ensure the proper representative is available.

Presumably, the purpose of the PMK deposition relates to Meyer's right to take objections asserted in his Answer. Based on our prior discussions, my understanding was that Mr. Meyer was focused on compensation and was not pursuing those objections. However, if he intends to pursue those objections now and litigate the right to take, Mendocino Railway will ask the Court to specially set the right to take trial at the Court's earliest available date prior to any compensation trial (CCP 1260.110). Please confirm Mr. Meyer's intentions so that we can plan accordingly.

Thank you,  
Glenn



Glenn L. Block, Esq.  
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Glendale, CA 91208

Phone: (818) 957-6577  
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E-mail: [glb@caledlaw.com](mailto:glb@caledlaw.com)

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**From:** Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Sent:** Thursday, March 24, 2022 12:02 PM  
**To:** Glenn L. Block <[glb@caledlaw.com](mailto:glb@caledlaw.com)>  
**Cc:** Debi S. Carbon <[dsc@caledlaw.com](mailto:dsc@caledlaw.com)>; Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Subject:** RE: Mendocino Railway/Meyer - deposition & mediation

Hi Glenn-

We can work with your schedule below. I have attached biographies of a couple of mediators that I propose using for the mediation. Also, I would like to take the deposition of the person most knowledgeable for Mendocino Railway. Perhaps we could complete the deposition on the same day as the experts. Please advise so we can get this scheduled.

Thank you,  
Steve

Stephen F. Johnson  
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**From:** Glenn L. Block <[glb@caledlaw.com](mailto:glb@caledlaw.com)>  
**Sent:** Tuesday, March 22, 2022 9:08 AM  
**To:** Stephen F. Johnson <[steve@mkjlex.com](mailto:steve@mkjlex.com)>  
**Cc:** Debi S. Carbon <[dsc@caledlaw.com](mailto:dsc@caledlaw.com)>  
**Subject:** Mendocino Railway/Meyer - deposition & mediation

Hi Steve,

Following our conversation yesterday, I propose that we pre-schedule expert depositions a couple of weeks after the exchange of valuation data on April 12. If possible, I think we should schedule the depositions of the parties' respective experts on successive days – either April 26/27 (Tuesday/Wednesday) or April 27/28 (Wednesday/Thursday) in Ukiah. We'll plan to take Meyer's expert(s) deposition(s) at Adair's offices one of the days, and you'd take Mendocino Railway's experts depositions on the other day. And, as we discussed, we'd produce our respective experts' files the prior week.

With regard to mediation, I think it may make sense to schedule the mediation the week after the MSC (May 11, 2022 in Department E), in the event the parties are unable to resolve the matter at the MSC. As you are more familiar with the MSC process, let me know if you believe it would be more productive to schedule the mediation prior to the MSC. Also, please let me know which mediators you propose and I'll review them with Mendocino Railway.

Thank you,  
Glenn



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**PROOF OF SERVICE**

Mendocino Railway v. John Meyer, et al.  
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On August 3, 2023, I served the within document(s):


**PLAINTIFF MENDOCINO RAILWAY'S OPPOSITION TO DEFENDANT JOHN MEYER'S MOTION FOR AWARD OF ATTORNEY FEES AND COSTS; DECLARATION OF GLENN L. BLOCK IN SUPPORT THEREOF**

- ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on August 3, 2023, in Glendale, California.

  
Debi Carbon

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**SERVICE LIST**

Mendocino Railway v. John Meyer, et al.  
Mendocino Superior Court Case No.: SCUJ-CVED-20-74939

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County Treasurer-Tax Collector