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[No Fee Pursuant to  
Government Code §6103]  
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Superior Court of California  
County of Mendocino

By:  
John Lozano   
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF MENDOCINO, UKIAH BRANCH**  
12

13 MENDOCINO RAILWAY

Plaintiff,

15 v.

16 JOHN MEYER, ET AL,

17 Defendants.  
18

SCUK-CVED-20-74939

**NOTICE OF MOTION AND MOTION TO  
QUASH SUBPOENA BY WITNESSES  
FRED HARRIS AND CALIFORNIA  
PUBLIC UTILITIES COMMISSION,  
MEMORANDUM OF POINTS AND  
AUTHORITIES, AND DECLARATION OF  
FRED HARRIS IN SUPPORT THEREOF**

Date: August 19, 2022  
Time: 9:30 a.m.  
Dept.: E  
Judge: Jeanine Nadel  
Trial Date: August 23, 2022  
Action Filed: December 22, 2020

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MOTION TO QUASH SUBPOENA, POINTS AND AUTHORITIES,  
AND DECLARATION IN SUPPORT OF MOTION

1 To Plaintiff and its attorney of record:

2 Notice is hereby given that on August 19, 2022 at 9:30 a.m., or as soon thereafter as the  
3 matter may be heard, in Department E of the above entitled Court, witnesses Fred Harris  
4 (“Harris”) and the California Public Utilities Commission (“Commission), will and hereby do  
5 bring this motion for an order to quash the subpoena dated July 22, 2022, issued by Plaintiff  
6 herein (“Subpoena”) which seeks to compel the personal appearance and testimony of Harris and  
7 the production of documents by the Commission. A true and correct copy of the Subpoena that  
8 is the subject of this motion to quash is attached hereto as Exhibit “A”.

9 The Subpoena was issued and served by Plaintiff Mendocino Railway, and seeks to  
10 compel the personal appearance and testimony of Harris for the apparent purpose of  
11 “authenticating” a single page posted by the Commission on its website:

12 [https://www.cpuc.ca.gov/industries-and-topics/railsafety/railroad-operations-and-  
14 safety/regulated-california-railroads](https://www.cpuc.ca.gov/industries-and-topics/railsafety/railroad-operations-and-<br/>13 safety/regulated-california-railroads).

15 Mendocino Railway describes the webpage as “a business record within the files of the CPUC.”

16 This Court should issue an order to quash the Subpoena and set aside the request for  
17 Harris’s personal appearance and testimony, as well as the request for the production of  
18 documents by the Commission, on the grounds that (1) the personal appearance and testimony of  
19 Harris is unnecessary and burdensome, and (2) the declaration submitted in support of the  
20 Subpoena is impermissibly vague.

21 **1. The Personal Appearance and Testimony of Harris is**  
22 **Unnecessary.**

23 Harris’s personal appearance and testimony is unnecessary and unduly burdensome  
24 because the Commission’s website is an official record of a government agency that is publicly  
25 available and is easily verifiable by the Court. Such a webpage can be admitted into evidence  
26 without calling the custodian or other witness to authenticate it. (Cal. Evid. Code, § 1280; *People*  
27 *v. George* (1994) 30 Cal.App.4th 262, 274.) Rather, the foundation for such a publicly available  
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1 record can be established through other means, including judicial notice. (*George, supra*, 30  
2 Cal.App.4th at p. 274.)

3 Evidence Code section 451, subdivision (c), provides that courts may take judicial notice  
4 of “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the  
5 United States . . .” and section 451, subdivision (h) allows notice of “[f]acts and propositions that  
6 are not reasonably subject to dispute and are capable of immediate and accurate determination by  
7 resort to sources of reasonably indisputable accuracy.” Courts routinely take notice of the  
8 contents of government websites, including that of the Commission. (See, *e.g.*, *Scott v.*  
9 *JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 760-61 [taking notice of the contents  
10 of the website of an administrative agency when they were not subject to reasonable dispute];  
11 *Overton v. Uber Techs., Inc.* (N.D. Cal. Aug. 3, 2018, No. 18-cv-02166-EMC) 2018 U.S. Dist.  
12 LEXIS 130986, at p. \*9 n.2 [taking notice of the contents of the Commission’s website “as the  
13 record of a state agency not subject to reasonable dispute.” (internal quotation marks omitted)].)

14 Here, the contents of the Commission’s webpage are not reasonably subject to dispute  
15 and are capable of immediate and accurate determination. The Court should take judicial notice  
16 of the undisputed fact that the Commission’s website lists Mendocino Railway as a “Class III  
17 Railway.” That website does not, however, address whether Mendocino Railway should be  
18 considered a “public utility” or a “common carrier,” or whether Mendocino Railway is  
19 authorized to exercise the power of eminent domain. Those are legal determinations that the  
20 website does not address, nor to which Harris could competently testify. (See, *e.g.*, *Summers v.*  
21 *A. L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1178 [“There are limits to expert testimony, not  
22 the least of which is the prohibition against admission of an expert's opinion on a question of  
23 law.”].)

24 In sum, the only thing to which Harris could competently testify—the fact that the  
25 Commission’s website says what it appears to say—is also properly the subject of judicial notice,  
26 and does not require Harris’s appearance.  
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1                   **2.     The Subpoena is unduly burdensome to Mr. Harris and the**  
2                   **Commission.**

3                   The Subpoena seeks to compel the personal attendance and testimony of Harris, at 9:00  
4 a.m., on August 23, 2022, in Ukiah. As set forth in Harris’s Declaration below, he is a  
5 Commission employee who resides in San Rafael, California, and he is assigned to the San  
6 Francisco office of the Commission. The Ukiah Branch of the Court is approximately 96 miles  
7 from Harris’s residence, or 115 miles from San Francisco. The Subpoena would require Harris  
8 to travel to Ukiah, likely the day prior to the scheduled date for his appearance, and Harris would  
9 be forced to return to the San Francisco Bay Area, likely to arrive after the close of business on  
10 August 23, or during business hours the following day. As a result, Harris would miss one or  
11 two days of his employment and the Commission would not receive the benefit of Harris’s  
12 services for the time that he would be absent.

13                   The Subpoena is also defective because the Subpoena was not accompanied by a check  
14 for Mr. Harris in the appropriate amount as is required by Gov. Code section 68097.2

15                   **3.     The Subpoena is unenforceable and should be quashed because**  
16                   **the declaration in support of the Subpoena is impermissibly**  
17                   **vague.**

18                   Code of Civil Procedure section 1985, subdivision (b) provides that an affidavit shall be  
19 served with a subpoena duces tecum showing good cause for the production of the matters and  
20 things described in the subpoena “specifying the exact matters or things desired to be produced,  
21 setting forth in full detail the materiality thereof to the issues involved in the case, and stating  
22 that the witness *has the desired matters or things in his or her possession or under his or her*  
23 *control*” (emphasis added).

24                   As indicated above, the Subpoena refers to a specific webpage which Mendocino Railway  
25 describes as “a business record within the files of the CPUC.” Paragraph 4 of the Declaration in  
26 Support of the Subpoena states that the identified webpage “pertains to plaintiff Mendocino  
27 Railway’s status as a regulated common carrier railroad public utility with the power to exercise  
28 eminent domain to acquire property for public use.” However, a plain reading of the webpage

1 reveals that it does not address or say anything about Mendocino Railway’s alleged status as a  
2 “common carrier” or as a “public utility,” or its alleged power to exercise eminent domain.

3  
4 It is also unclear from the Subpoena and the declaration in support thereof whether  
5 Mendocino Railway is seeking to compel the testimony of Harris, or the production of additional  
6 documents by the Commission, to address the additional issues of Mendocino Railway’s alleged  
7 status as a “common carrier,” or a “public utility,” or its ability to exercise of the power of  
8 eminent domain. It is burdensome and oppressive to force the witnesses to guess about the  
9 Subpoena’s goal.

10 This Court should take judicial notice of the identified website and quash the Subpoena.

11  
12 Dated: August 4, 2022

Respectfully submitted,

13 CHRISTINE HAMMOND, SBN 206768  
14 JONATHAN KOLTZ, SBN NO. 268793  
15 KEVIN WHEELWRIGHT, SBN NO. 073138

16 By: /s/ KEVIN WHEELWRIGHT

17 \_\_\_\_\_  
Kevin Wheelwright

18 *Attorneys for the California*  
19 *Public Utilities Commission*

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**EXHIBIT A**

**Subpoena of Fred Harris**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Glenn L. Block (SB#208017)/Christopher G. Washington (SB#307804)</b> <b>Cal. Em. Dom. Law Group, 3429 Ocean View, Glendale, CA 91208</b> TELEPHONE NO.: 818-957-0477 FAX NO.: 818-957-3477 E-MAIL ADDRESS: glb@caledlaw.com ATTORNEY FOR (Name): Plaintiff Mendocino Railway	FOR COURT USE ONLY
NAME OF COURT: Superior Court of California, County of Mendocino STREET ADDRESS: 100 North Street MAILING ADDRESS: CITY AND ZIP CODE: Ukiah, CA 95482-4416 BRANCH NAME: Ukiah	
PLAINTIFF/PETITIONER: Mendocino Railway DEFENDANT/RESPONDENT: John Meyer, et al	
<b>CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION</b>	CASE NUMBER: <b>SCUK-CVED-20-74939</b>

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

Fred Harris, Custodian of Records (CPUC) - 505 Van Ness Avenue, San Francisco, CA 94102

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.

a. Date: August 23, 2022	Time: 9:00 a.m.	<input checked="" type="checkbox"/> Dept.: E	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: Superior Court of California, County of Mendocino, 100 North Street, Ukiah, CA 95482-4416				

2. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
3. YOU ARE (item a or b must be checked):
- a.  Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b.  Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.
4. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:
- a. Name of subpoenaing party or attorney: Glenn Block
- b. Telephone number: 818-957-0477
5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: July 22, 2022

David H. Yamasaki

(TYPE OR PRINT NAME)



*David H. Yamasaki*  
 (SIGNATURE OF PERSON ISSUING SUBPOENA)

Clerk of the Court

(Declaration in support of subpoena on reverse)

(TITLE)

Page 1 of 3

PLAINTIFF/PETITIONER: Mendocino Railway	CASE NUMBER:
DEFENDANT/RESPONDENT: John Meyer, et al	SCUK-CVED-20-74939

The production of the documents, electronically stored information, or other things sought by the subpoena on page one is supported by (check one):

- the attached affidavit or  the following declaration:

**DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING**  
(Code Civ. Proc., §§ 1985, 1987.5)

1. I, the undersigned, declare I am the  plaintiff  defendant  petitioner  respondent  
 attorney for (specify): Plaintiff  other (specify):  
in the above-entitled action.

2. The witness has possession or control of the documents, electronically stored information, or other things listed below, and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form (specify the exact documents or other things to be produce; if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

The CPUC webpage at:

<https://www.cpuc.ca.gov/industries-and-topics/rail-safety/railroad-operations-and-safety/regulated-california-railroads>

Continued on Attachment 2.

3. Good cause exists for the production of the documents, electronically stored information, or other things described in paragraph 2 for the following reasons:

This document is a business record within the files of the CPUC and the CPUC is the only entity with access and ability to authenticate this document.

Continued on Attachment 3.

4. The documents, electronically stored information, or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

This document pertains to Plaintiff Mendocino Railway's status as a regulated common carrier railroad public utility with the power to exercise eminent domain to acquire property for public use.

Continued on Attachment 4.

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

Date: 7/22/22

Glenn Block

(TYPE OR PRINT NAME)

(SIGNATURE OF

SUBPOENAING PARTY

ATTORNEY FOR  
SUBPOENAING PARTY)

**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for Request for Accommodations by Persons With Disabilities and Response (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

PLAINTIFF/PETITIONER: Mendocino Railway	CASE NUMBER: SCUK-CVED-20-74939
DEFENDANT/RESPONDENT: John Meyer, et al	

**PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION**

1. I served this *Civil Subpoena (Duces Tecum)* for *Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees (*check one*):

(1)  were offered or demanded and paid. Amount: . . . . . \$ \_\_\_\_\_

(2)  were not demanded or paid.

f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

a.  Not a registered California process server.

b.  California sheriff or marshal.

c.  Registered California process server.

d.  Employee or independent contractor of a registered California process server.

e.  Exempt from registration under Business and Professions Code section 22350(b).

f.  Registered professional photocopier.

g.  Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

Date:

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(SIGNATURE)



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

3 /s/ *RACHEL GALLEGOS*

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5 Rachel Gallegos  
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