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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF MENDOCINO**

11 MENDOCINO RAILWAY,

12 Plaintiff,

13 v.

14 JOHN MEYER; REDWOOD EMPIRE TITLE
15 COMPANY OF MENDOCINO COUNTY;
16 SHEPPARD INVESTMENTS; MARYELLEN
17 SHEPPARD; MENDOCINO COUNTY
18 TREASURER-TAX COLLECTOR; All other
19 persons unknown claiming an interest in the
20 property; and DOES 1 through 100, inclusive,

21 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO RAILWAY'S
TRIAL BRIEF RE: LEGAL ISSUE
BENCH TRIAL ON DEFENDANT
MEYER'S RIGHT TO TAKE
OBJECTIONS**

RIGHT TO TAKE TRIAL

Date: August 23, 2022

Time: 9:30 a.m.

Dept.: E

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INTRODUCTION

This is an eminent domain action by which Plaintiff Mendocino Railway (“Mendocino Railway”) is acquiring, by eminent domain, the real property commonly known as 1401 West Highway 20, Willits, CA (“Subject Property”) for construction and maintenance of rail facilities related to Mendocino Railway’s ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto (“Project”). Defendant John Meyer (“Meyer”) is the owner of the Subject Property.

Mr. Meyer has asserted various objections and defenses to Mendocino Railway’s right to take the property by eminent domain. Thus, the Court entered an order granting Mendocino Railway’s Motion to Bifurcate and specially set this right-to-take legal issues trial. After the Court’s ruling on this legal issue trial, a jury trial to determine the amount of compensation will be set.

The Subject Property is an approximately 20-acre undeveloped parcel located on Highway 20 east of the Willits city limits. Mendocino Railway’s railroad runs along the southerly boundary of the Subject Property. Below is an aerial photo depicting the Subject Property (outlined in blue) and Mendocino Railway’s railroad (yellow dashed line):



1 (1988) 205 Cal.App.3d 885, 898. However, “Generally, statutory requirements of necessity as a
2 condition of the exercise of the power of eminent domain are liberally construed by the courts so as
3 not to limit unnecessarily the power of the condemning agency.” *Kenneth Mebane Ranches v.*
4 *Superior Court* (1992) 10 Cal.App.4th 276, 285.

6 PLAINTIFF’S RIGHT TO TAKE

7 **1. The Project.**

8 Mendocino Railway has owned and operated this railroad since 2004 when the railroad assets
9 of the former owner, California Western Railroad, were purchased out of bankruptcy. The railroad
10 was built in 1885 to haul felled redwood trees from the surrounding forest to a lumber mill on the
11 coast in Fort Bragg. Thereafter, in addition to hauling timber and finished products to and from the
12 lumber mill, the railroad continuously, to the present, has provided freight and passenger services
13 along its 40-mile railway between Fort Bragg and Willits. Since 2004 and through the present,
14 Mendocino Railway has operated common carrier passenger rail services and freight rail services for
15 compensation. Mendocino Railway, and California Western Railroad before it, publish freight and
16 passenger tariffs setting forth the rail services offered to the public and the charges and fares for such
17 services, among other applicable provisions.

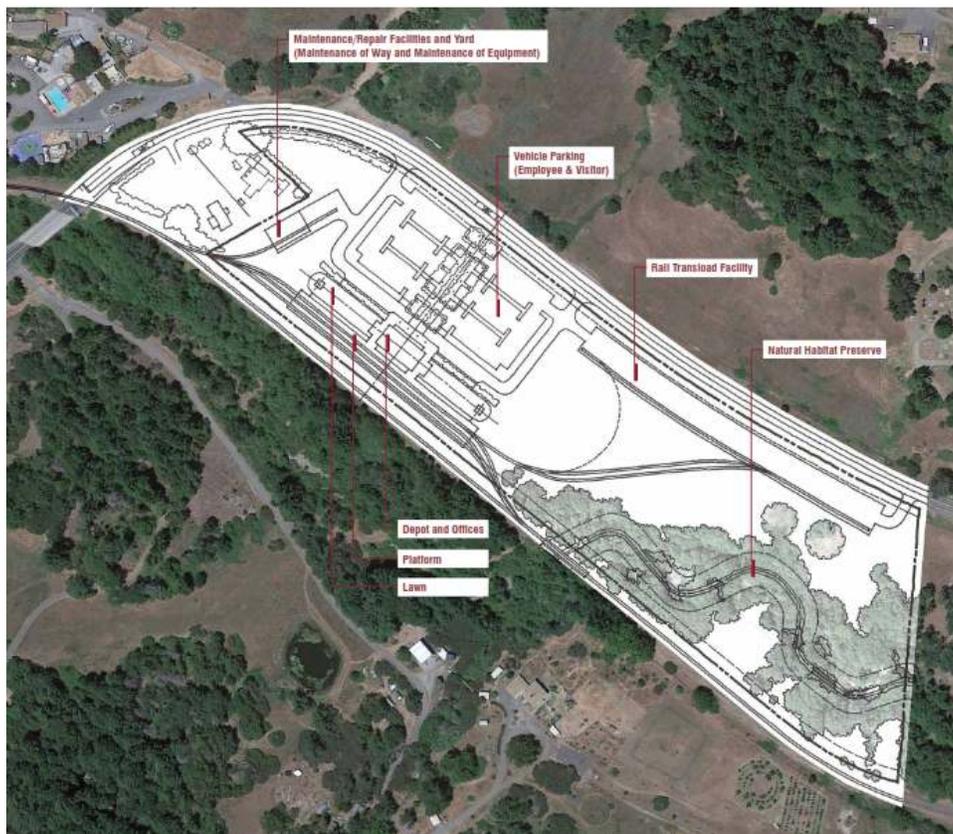
18 Presently, Mendocino Railway lacks maintenance, repair and freight facilities sufficient to
19 serve its ongoing and future operations at the Willits end of the line. While it owns a passenger depot,
20 including offices, at 299 E. Commercial Street in Willits, Mendocino Railway does not have adequate
21 maintenance or repair facilities or yard space, equipment storage space, or dedicated areas for freight
22 operations. Instead, Mendocino Railway’s maintenance and repair activities take place at
23 impermanent facilities and outdoors on the tracks at the Willits end of the line.

24 These physical constraints impair and limit Mendocino Railway’s ability to fully and
25 efficiently operate, maintain and repair its locomotives, equipment and rail cars at the Willits end of
26

27
28 Mendocino Railway is a railroad corporation, not a “public entity,” thus not subject to these
procedures. Cal. Code Civ. Proc. §1235.190.

1 its line. Mendocino Railway also lacks space and facilities at the Willits end of the line necessary to
2 fully operate its freight rail services (lacking laydown and storage yards, transload facilities and rail
3 car storage capacity), and to grow and expand its passenger and freight rail operations. Various local
4 businesses have expressed interest in obtaining freight rail service from Mendocino Railway between
5 Willits and Fort Bragg. These potential customers include, among others, North Coast Brewing
6 Company, GeoAggregates, Redwood Coast Fuels and other natural gas companies, Lyme Timber and
7 other timber companies.

8 As set forth in its Complaint in Eminent Domain, “[t]he project (“Project”) for which Plaintiff
9 seeks to acquire the below described property consists of construction and maintenance of rail
10 facilities related to Plaintiff’s ongoing and future freight and passenger rail operations and all uses
11 necessary and convenient thereto.” Complaint in Eminent Domain, Para. 2. These rail facilities will
12 include a passenger depot, maintenance and repair shops (for maintenance of way and maintenance of
13 equipment), storage tracks, laydown yard and transload facilities, and related improvements. Below
14 is a preliminary conceptual site plan generally depicting the Project rail facilities and improvements
15 Mendocino Railway intends to construct on the Subject Property:



1 Railroads are to be afforded “considerable discretion” in determining the facilities necessary
2 for its operations. *Vallejo & N.R. Co. v. Home Sav. Bank* (1914) 24 Cal.App. 166, 170. And,
3 Mendocino Railway is not restricted to acquisitions for just present needs, but also includes
4 anticipated future needs. *San Diego Gas & Elec. Co. v. Lux Land Co.* (1961) 194 Cal.App.2d 472,
5 480.

6 **2. The Public Interest and Necessity Require Mendocino Railway’s Project to Construct**
7 **Rail Facilities for its Ongoing and Future Freight and Passenger Rail Services.**

8 The first of the three eminent domain required elements is that, “[t]he public interest and
9 necessity require the project.” Cal. Code Civ. Proc. §1240.030(a). As a common carrier public utility
10 railroad, Mendocino Railway is authorized to acquire property for its railroad. Cal. Pub. Util. Code
11 §611. “Where the Legislature provides by statute that a use, purpose, object, or function is one for
12 which the power of eminent domain may be exercised, such action is deemed to be a declaration by
13 the Legislature that such use, purpose, object, or function is a public use.” Cal. Code Civ. Proc.
14 §1240.010. Thus, the Project is a public use.

15 Moreover, “The necessity specified by the statute ... does not mean an imperative or
16 indispensable or absolute necessity but only that the taking provided for be reasonably necessary for
17 the accomplishment of the end in view under the particular circumstances.” *Kenneth Mebane*
18 *Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 285; internal citations omitted. And,
19 “[p]ublic interest and necessity’ include all aspects of the public good including but not limited to
20 social, economic, environmental, and esthetic considerations.” *Shell Cal. Pipeline Co. v. City of*
21 *Compton* (1995) 35 Cal.App.4th 1116, 1125.

22 The evidence to be presented at trial by Mendocino Railway will establish generally the
23 public benefits of maintaining and expanding freight and passenger rail services in California, such as
24 Mendocino Railway’s Project, as increasing demand for such services is widely recognized.
25 “Because carload traffic is projected to increase by over 50 percent between 2013 and 2040, short
26 lines will need to grow to handle the increasing carload traffic.” 2018 California State Rail Plan,
27 Caltrans, page 85. These general public benefits include the efficient and cost-effective transportation
28 of freight, facilitating the existing multimodal transportation system, improving public safety, and

1 also providing other environmental benefits. “Within the state of California and throughout North
2 America as a whole, short line railroads have significant benefits not only to industry and commerce
3 but also to the public more generally. ... Short lines can be a more economical shipping solution than
4 truck as well as a net benefit to the public through less highway congestion and fewer transportation
5 emissions.” Short Line Rail Improvement Plan (2021) Caltrans, page 6.

6 The testimony and documentary evidence presented by Mendocino Railway at trial will also
7 establish the specific public benefits of the Project: Mendocino Railway needs to expand its freight
8 and passenger rail facilities at the Willits end of its railroad, including repair and maintenance
9 facilities, to accommodate its ongoing and growing future operations. Presently, Mendocino Railway
10 lacks dedicated maintenance, repair and freight facilities sufficient to properly operate its ongoing
11 and future operations. Among other reasons, the lack of such facilities restricts and limits Mendocino
12 Railway’s ability to efficiently repair and maintain its equipment. The lack of such facilities is also
13 among the reasons limiting and restricting Mendocino Railway’s ability to provide more extensive
14 freight rail service to customers. For many years, Mendocino Railway has received inquiries from a
15 variety of shippers and other customers interested in shipping freight between Willits and Fort Bragg.
16 Mendocino Railway’s Project will facilitate expanded freight rail shipping because, among other
17 reasons, the transload facilities and other improvements to be constructed will provide the space and
18 operational capacity required to accommodate these activities. The Project’s facilities and
19 improvements will also facilitate Mendocino Railway’s restoration of passenger rail service between
20 its end points in Willits and Fort Bragg (in addition to the ongoing passenger rail services along the
21 line).

22 Thus, the testimony and documentary evidence to be introduced at trial by Mendocino
23 Railway will clearly establish that the public interest and necessity require the Project – satisfying the
24 first eminent domain element.

1 **3. Mendocino Railway’s Project is Planned and Located in the Manner Most Compatible**
2 **with the Greatest Public Good and Least Private Injury.**

3 The next of the three eminent domain required elements is that, “[t]he project is planned or
4 located in the manner that will be most compatible with the greatest public good and the least private
5 injury.” Cal. Code Civ. Proc. §1240.030(b).

6 This element requires a comparison between two or more sites. “Proper location is based on
7 two factors: public good and private injury. *Accordingly, the condemnor’s choice is correct or proper*
8 *unless another site would involve an equal or greater public good and a lesser private injury. A*
9 *lesser public good can never be counter-balanced by a lesser private injury to equal a more proper*
10 *location. Nor can equal public good and equal private injury combine to make the condemnor’s*
11 *choice an improper location.” Legislative Committee Comment to Cal. Code Civ. Proc. §1240.030;*

12 internal citations omitted; emphasis added.

13 Mendocino Railway undertook an extensive search, investigation and analysis of several
14 potentially suitable locations for the Project. In consideration of various factors and site
15 characteristics required for the Project, including, without limitation, size, shape, location,
16 topography, Mendocino Railway conducted a search for suitable locations. Generally, the site needs
17 to be relatively level, large enough to accommodate the construction of rail facilities suitable for
18 ongoing and future operations (including a Wye track) and located along Mendocino Railway’s
19 existing rail line. Mendocino Railway identified several potentially suitable locations and conducted
20 further investigations and analysis of each to evaluate whether each site was actually suitable.
21 Mendocino Railway’s analysis also included an evaluation of the private impacts of acquisition such
22 as displacement of residential or commercial occupants and other potential impacts.

23 Among other potential locations considered for the Project, Mendocino Railway initially
24 entered into an agreement to acquire a property available for sale – the former REMCO site. While
25 the REMCO site did not meet all of Mendocino Railway’s requirements for the Project, it was
26 sufficiently suitable for construction of many of the Project improvements. The primary deficiency
27 was that the REMCO site did not have sufficient area to accommodate the full extent of freight rail
28 operations, including a transload facility – thus, another property would also need to be acquired to

1 accommodate the freight/transload operations. The REMCO property owner ultimately cancelled the
2 agreement with Mendocino Railway and sold the property to another buyer.

3 Thereafter, Mendocino Railway proceeded to investigate and analyze other properties
4 including the Subject Property, that might accommodate the entire Project. After considering several
5 potential sites, Mendocino Railway determined that the Subject Property was the only site that met all
6 key site requirements for the Project. The Subject Property is a relatively level parcel of
7 approximately 20 acres located along Mendocino Railway’s main rail line near Willits, with good
8 accessibility to a highway. Moreover, the Subject Property is undeveloped and the property owner,
9 Mr. Meyer, initially indicated a willingness to sell the property.

10 Accordingly, the testimony and documentary evidence to be presented by Mendocino
11 Railway will establish that the Project is planned and located in the manner most compatible with the
12 greatest public good and least private injury.

13 **4. The Subject Property is Necessary for Mendocino Railway’s Rail Project.**

14 The third of the three required eminent domain elements is that, “The property sought to be
15 acquired is necessary for the project.” Cal. Code Civ. Proc. §1240.030(b). “This aspect of necessity
16 includes the suitability and usefulness of the property for the public use. See *City of Hawthorne v.*
17 *Peebles* (1959) 166 Cal.App. 2d 758, 763 (‘necessity does not signify the impossibility of
18 constructing the improvement ... without taking the land in question, but merely requires that the
19 land be reasonably suitable and useful for the improvement.’).” Legislative Committee Comment to
20 Cal. Code Civ. Proc. §1240.030.

21 As discussed in the preceding section, the testimony and documentary evidence to be
22 presented by Mendocino Railway at trial will establish there are several key factors required for
23 construction of the Project – including that the property is approximately 20 acres in size, relatively
24 level, located along Mendocino Railway’s rail line, near the City of Willits, and adjacent to
25 highways. The testimony and documentary evidence will also establish that the Subject Property is
26 the only property identified by Mendocino Railway as having these features and being suitable for the
27 Project.

1 Thus, the testimony and documentary evidence to be presented at trial by Mendocino Railway
2 will establish the Subject Property is necessary for the Project.

3 **DEFENDANT’S RIGHT-TO-TAKE OBJECTIONS**
4

5 In his recently filed Amended Answer, Mr. Meyer has asserted various objections and
6 defenses challenging Mendocino Railway’s right to take the property – including a contention that
7 Mendocino Railway is not a public utility. This contention is apparently based on a misreading of one
8 of *three* 1998 CPUC rulings relating to a former, yet unrelated, operator of the California Western
9 Railroad (“CWR”) line a quarter century ago, (“CWRR”)². Interestingly, Mr. Meyer omits from his
10 recently filed Request for Judicial Notice both of the later 1998 CPUC rulings which unequivocally
11 refute and wholly undermine his contentions.

12 Mr. Meyer’s contentions are without merit because the one ruling he cites has no bearing
13 upon Mendocino Railway, a railroad unrelated to CWRR. As a Class III common carrier public
14 utility railroad, Mendocino Railway is authorized to exercise eminent domain to acquire the Subject
15 Property in this action.³

16 And even if a quarter century old ruling as to *a different company with different operations*
17 were somehow relevant to Mendocino Railway’s operations today, the 1998 decision did not
18 repudiate even CWRR’s status as a common carrier public utility railroad. Rather than addressing
19 CWRR’s status as a public utility, the CPUC’s January 1998 decision merely determined that
20 CWRR’s excursion operation was not a “public utility *function*,” thus granting CWRR relief from
21 regulation of its excursion schedules and fares *only*. [In the Matter of the Application CALIFORNIA
22 WESTERN RAILROAD, INC. for authority to modify scheduled commuter passenger service and
23 seek relief from regulated excursion passenger scheduling and fares (1998) 78 CPUC 2d 292.] To the
24

25 ² The former operator being California Western Railroad, Inc., or “CWRR.” In 2004, Mendocino
26 Railway acquired, out of bankruptcy, the assets of CWRR, including the California Western Railroad.

27 ³ Cal. Pub. Util. Code §610 states that eminent domain authority (§611, etc) applies to a public
28 utility. Cal. Pub. Util. Code §216(a)(1) provides, “‘Public Utility’ includes every common carrier
...”

1 extent the CPUC’s January 1998 ruling addressed the CPUC’s regulation of CWRR’s freight or
2 commuter passenger services, or CWRR’s status as a common carrier public utility, it affirmed both,
3 stating, “This proceeding shall remain open to consider CWRR’s request to reduce its commuter
4 service.” The CPUC then, a few months later, in May 1998, issued a ruling explicitly acknowledging
5 that CWRR “transports passengers and freight between Fort Bragg and Willits, California. CWRR
6 also serves a few communities between Fort Bragg and Willits in the Noyo River Valley,” all of
7 which are indisputably public utility functions. The CPUC then also in May 1998 affirmed its
8 regulation of CWRR as a common carrier public utility, granting CWRR’s motion to withdraw its
9 request to reduce its commuter service.

10 The CPUC then in August 1998 issued an even more explicit decision, stating in its
11 Conclusions of Law that, “Applicant [CWRR] is a public utility within the meaning of Section 216(a)
12 of the PU Code,” and holding in footnote 7 that, “[CWRR] is a common carrier, see PU Code Section
13 211, and is therefore a public utility under California law. PUC Code 216(a).” [Application and
14 request for Nunc Pro Tunc Authority, Authority to Merge Corporations, to Split Stock and to Issue
15 Common Stock, and for Expedited Ex Parte Relief (1998) 81 CPUC 2d 514.]

16 Thus, the CPUC *twice* in 1998 explicitly recognized CWRR as a common carrier public
17 utility railroad, doing so after the decision cited by Mr. Meyer. As the evidence at trial will show,
18 Mendocino Railway has always been, and remains, a public utility precisely because it has always
19 provided and continues to provide transportation to passengers and freight for compensation—not
20 just an excursion service. Cal. Pub. Util. Code §§ 211; 216(a).

21 Mendocino Railway is not only a public utility under the Public Utilities Code’s definition of
22 “public utility.” Mendocino Railway also is a Class III common carrier railroad (a railroad federally
23 authorized as part of the interstate rail system). Mendocino Railway’s acquisition of the CWR
24 railroad out of bankruptcy in 2004 was overseen by the STB. The STB authorized Mendocino
25 Railway’s acquisition of the CWR pursuant to 49 C.F.R. § 1150.31. *See* 69 Fed. Reg. 18999 (April 9,
26 2004) (Notice of Acquisition Exemption).⁴ The STB has exclusive jurisdiction over the construction
27

28 ⁴ Available at <https://www.federalregister.gov/documents/2004/04/09/04-8082/mendocino-railway-acquisition-exemption-assets-of-the-california-western-railroad>.

1 and operations of railroad property and facilities. *Or. Coast Scenic R.R., LLC v. Or. Dep't of State*
2 *Lands*, 841 F.3d 1069, 1072 (9th Cir. 2016). That means that *state and local laws and regulations*
3 *governing railroad construction and operation* are federally preempted; put differently, state law
4 cannot be used to impair a federal railroad's ability to operate and construct needed facilities.

5 In this case, any interpretation of the Public Utilities Code interfering with Mendocino
6 Railway's facilities, operations, or property is federally preempted. See also: *Port City Props. v.*
7 *Union Pac. R.R.*, 518 F.3d 1186, 1188 (10th Cir. 2008) (Congress intended to occupy the field and
8 preempt state jurisdiction over excepted track, even though Congress allowed rail carriers to
9 construct, operate, and abandon such track without STB approval) (emphasis in original); *Cities of*
10 *Auburn and Kent*, STB Finance Docket No. 33200 (1997) ("When sections 10906 and 10501(b)(2)
11 are read together, it is clear that Congress intended to remove [STB] authority over the entry and exit
12 of these auxiliary tracks, while still preempting state jurisdiction over them, leaving the construction
13 and disposition of [them] entirely to railroad management.").

14 Mr. Meyer has identified as a trial exhibit a recent letter from a CPUC lawyer to Mendocino
15 Railway, presumably to buttress his contention that Mendocino Railway is not a public utility. This
16 letter is hearsay and is not otherwise admissible evidence. It merely reflects one attorney's opinion
17 and does not represent an official agency interpretation, decision, or ruling. The letter also
18 substantively reflects a shallow and erroneous analysis which grossly mischaracterizes the January
19 1998 CPUC decision Meyer heavily relies on, and wholly ignores the two subsequent 1998 CPUC
20 decisions (which clearly support CWRR's public utility status). Mendocino Railway has responded to
21 the CPUC attorney's letter to point out its obvious flaws and deficiencies in both fact and law. (If the
22 CPUC letter is admitted and considered, so too should Mendocino Railway's more comprehensive
23 response).

24 The preceding sections of this brief describe the applicable legal standards and set forth the
25 testimony and documentary evidence to be presented at trial by Mendocino Railway establishing its
26 right to exercise eminent domain to acquire the Subject Property, including each of the three essential
27 eminent domain requirements. While Mr. Meyer has raised in his Amended Answer other objections
28 and defenses, these appear to be boilerplate and general objections and defenses so it is uncertain

1 what evidence he intends to offer, if any, in support of these objections and defenses. The exhibits
2 identified by Mr. Meyer thus far do not indicate any substantive objections or defenses beyond his
3 contention that Mendocino Railway is not a public utility.

4 In any event, Mendocino Railway's evidence is more than sufficient to meet its burden of
5 proof to proceed with the acquisition by eminent domain.

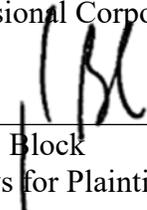
7 **CONCLUSION**

9 Mendocino Railway is a California railroad corporation and Class III common carrier public
10 utility authorized to exercise eminent domain to acquire the Subject Property for its rail Project.

11 At trial, Mendocino Railway will present substantial testimony and documentary evidence
12 establishing each of the three required elements: (1) that the public interest and necessity require the
13 Project for Mendocino Railway's ongoing and future freight and passenger rail operations; (2) the
14 Project is planned and located in the manner consistent with the greatest public good and least private
15 injury because, after investigation and consideration of various potentially suitable locations, the
16 Subject Property is the only property that satisfies all of the characteristics required to accommodate
17 all elements of the Project (location, size, shape, topography, etc.) and there is no other available
18 suitable location; and (3) the Subject Property is accordingly necessary for the Project.

19
20 DATED: August 19, 2022

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

21
22 By: 
23 Glenn L. Block
24 Attorneys for Plaintiff MENDOCINO RAILWAY

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 19, 2022, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAY’S TRIAL BRIEF RE: LEGAL ISSUE BENCH TRIAL ON DEFENDANT MEYER’S RIGHT TO TAKE OBJECTIONS

- 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 19, 2022, in Glendale, California.


Debi Carbon

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SERVICE LIST

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

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In Pro Per