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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 INVESTMENTS;
22 MARYELLEN SHEPPARD;
23 MENDOCINO COUNTY TREASURER-
24 TAX COLLECTOR; All other persons
25 unknown claiming an interest in the
26 property; and DOES 1 through 100,
27 inclusive,

28 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO
RAILWAY'S NOTICE OF MOTION
AND MOTION TO SET ASIDE AND
VACATE PREMATURE JUDGMENT
SIGNED BEFORE TIME TO FILE
OBJECTIONS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Cal. Code Civ. Proc. §§473(b) & §473(d)
Cal. Rules of Court, Rule 3.1590(j)

Date: June 30, 2023

Time: 9:30 a.m.

Dept.: E

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 30, 2023, at 9:30 a.m., or as soon
thereafter as the matter may be heard in Department "E" of the above-entitled Court,
located at 100 North State Street, Ukiah, CA, Plaintiff Mendocino Railway ("Mendocino

1 Railway”) will and hereby does, move the Court for an order Setting Aside and Vacate
2 Premature Judgment Signed Before Time to File Objections.

3 This Motion is made pursuant to Cal. Civ. Proc. Code §473(b) and §473(d) and
4 Cal. Rules of Court, Rule 3.1590(j) on the grounds that the Court denied Mendocino
5 Railway due process of law and the opportunity to file an Objection pursuant to Cal.
6 Rules of Court, Rule 3.1590(j). Moreover, as Cal. Rules of Court, Rule 3.1590(j) provides
7 Mendocino Railway 10 days after service of the [Proposed] Judgment – to at least June
8 7, 2023 – to file an Objection, this Court lacked jurisdiction to sign and file a Judgment
9 prior to June 7.

10 The motion is based upon this notice of motion and motion, the accompanying
11 memorandum of points and authorities, the pleadings and papers on file in this action,
12 and such other materials as may properly come before the Court.

13 Dated: June 5, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

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16 By  _____
17 Glenn L. Block
18 Attorneys for Plaintiff MENDOCINO RAILWAY
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Court entered judgment prematurely, without permitting Plaintiff
3 Mendocino Railway an opportunity to provide comments and objections to the proposed
4 judgment of Defendant Meyer.

5 Rule 3.1590(j) of the California Rules of Court protects one party’s right to
6 comment and object to another party’s proposed judgment. That rule states: “Any party
7 may, within 10 days after service of the proposed judgment, serve and file objections
8 thereto. As the Rutter Guide’s *Civil Trials and Evidence* § 17:167 (2022), states: “In any
9 event, any party has 10 days after service of the proposed judgment to serve and file
10 objections thereto; and a hearing may be held thereon.” Here, the judgment was signed
11 and entered before Mendocino Railway could timely file its objections.

12 Defendant Meyer’s [Proposed] Judgment was lodged with the Court and served
13 by email on Mendocino Railway on May 24, 2023. Thus, Mendocino Railway had until
14 June 7, 2023, to file and serve objections under Rule 3.1590(j). See Civ. Proc. Code §
15 1010.6(a)(3)(B) (adding two court days to the 10-day period for service of proposed
16 judgment by email). Nevertheless, the Court signed Defendant Meyer’s [Proposed]
17 Judgment on June 1, 2023, and it was filed on June 2, 2023.

18 On June 5, 2023, Mendocino Railway filed and served Objections to Meyer’s
19 [Proposed] Judgment, and concurrently filed and served an alternative [Proposed]
20 Judgment of Conditional Dismissal. The Court’s signing and filing of a Judgment on
21 June 1, 2023—prior to the 10-day time for Objections per Cal. Rules of Court, Rule
22 3.1590(j)—violates Mendocino Railway’s due process rights to have its timely Objections
23 and alternative [Proposed] Judgment of Conditional Dismissal heard and considered by
24 the Court. Moreover, the Court lacked jurisdiction to sign and file a Judgment on June
25 1, 2023, prior to the 10-day time for Objections per Cal. Rules of Court, Rule 3.1590(j).

26 Accordingly, pursuant to Cal. Civ. Proc. Code §473(b) and/or §473(d), the Court
27 should vacate and set aside the June 1, 2023 Judgment, and hear and consider
28

1 Mendocino Railway's Objection to Meyer's [Proposed] Judgment (timely filed on June 5,
2 2023) and Mendocino Railway's [Proposed] Judgment of Conditional Dismissal.

3 Dated: June 5, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

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6 By  _____
7 Glenn L. Block
8 Attorneys for Plaintiff MENDOCINO RAILWAY
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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 June 5, 2023, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAY'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE PREMATURE JUDGMENT SIGNED BEFORE TIME TO FILE OBJECTIONS; MEMORANDUM OF POINTS AND AUTHORITIES 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 June 5, 2023, in Glendale, California.



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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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