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County of Mendocino

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

17 MENDOCINO RAILWAY,

18 Plaintiff,

19 v.

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

Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO
RAILWAY'S REPLY ISO MOTION TO
REOPEN BENCH TRIAL TO
CONSIDER NEW FACTS ARISING
PRIOR TO JUDGMENT;
DECLARATION OF GLENN L.
BLOCK**

Date: June 30, 2023

Time: 9:30 a.m.

Dept.: E

1 **INTRODUCTION**

2 Incredibly, Mr. Meyer’s Opposition to Mendocino Railway’s Motion to Reopen
3 wholly ignores his prior vehement arguments—in support of his own Motion to
4 Reopen—that a decision by the Railroad Retirement Board (“RRB”) was so “probative
5 on significant issues in this case” that it provided good cause for reopening trial in this
6 case. [Meyer 9/12/22 Motion to Reopen, p. 1; line 25; see also page 4, lines 9 – 12 and
7 Meyer 9/27/22 Reply to Opposition, p. 4, lines 7 – 9.] Certainly, if the 2006 RRB
8 Decision—a 17-year-old decision—had such probative value in Mr. Meyer’s eyes that it
9 required reopening trial, the newly available 2023 RRB Decision must be even more
10 probative of the same key issue: Mendocino Railway’s rail carrier/common carrier
11 status.

12 Not only did this Court grant Mr. Meyer’s Motion to Reopen, agreeing that the
13 RRB’s 2006 Decision had probative value, but this Court then relied on that Decision
14 as a significant basis for its ruling. Good cause thus exists for this Court to also grant
15 Mendocino Railway’s Motion to Reopen Trial to consider the RRB’s newly available
16 2023 Decision as to this same issue. The interest of justice, and consistency with this
17 Court’s prior order granting Mr. Meyer’s Motion to Reopen on the same issue, requires
18 that Mendocino Railway’s Motion to Reopen be granted as well.

19 Despite previously arguing that the RRB’s 2006 Decision was significant on this
20 issue—not only in his Motion to Reopen,¹ but then extensively in both his Closing Trial
21 Brief and his Reply Closing Brief—Mr. Meyer now implausibly argues the RRB’s 2023
22 Decision as to this same issue “will not change the outcome of the trial.” [Meyer
23 Opposition, page 8, lines 14 – 15.] *The [gentleman] doth protest too much, methinks.*
24 *[Hamlet - 3.2.254.]*

25
26 ¹ Incredibly—despite previously arguing vehemently of the importance of the RRB’s
27 2006 Decision to the Court’s evaluation of the issues—Mr. Meyer now completely
28 changes direction to argue that “an RRB determination does not usurp this court’s
evaluation of the issues...”. [Meyer’s Opposition, page 8, 3 – 4.]

1 The RRB's 2023 Decision establishes that Mr. Meyer both mischaracterized and
2 misinterpreted its prior 2006 Decision and continues to do so now. The 2023 RRB
3 Decision unequivocally states that Mendocino Railway is, *and has been*, a rail carrier
4 and common carrier railroad subject to the STB's jurisdiction since its 2004 acquisition
5 of the assets of the California Western Railroad ("CWR").² [Exhibit A, Declaration of
6 Glenn L. Block accompanying Mendocino Railway's Motion to Reopen.] The 2023 RRB
7 Decision thus demonstrates likely legal and factual inaccuracies in the Court's ruling.

8 The 2023 RRB Decision is clearly probative to a material issue in the case: the
9 key foundational fact of whether Mendocino Railway is a common carrier/rail carrier
10 railroad. Nothing in Mr. Meyer's Opposition leads to a different conclusion. To the
11 contrary, Mr. Meyer's disavowal of his prior arguments as to the immense probative
12 value of the RRB's decisions suggests his recognition of the substantial implications of
13 the 2023 RRB Decision given that it directly contradicts his mischaracterizations at
14 trial of the RRB's 2006 Decision. Given Mr. Meyer's prior mischaracterizations,
15 Mendocino Railway would be severely prejudiced if the Court were to simply ignore,
16 and refuse to consider, this substantial newly available evidence demonstrating the
17 possibility of significant legal and factual errors in its ruling. Good cause thus exists for
18 the Court to reopen trial of this matter and doing so is both in the interest of justice
19 and in line with the Court's prior rulings in this case.

20 **1. THE 2023 RRB DECISION IS PROBATIVE AS IT REVEALS MR.**
21 **MEYER'S MISCHARACTERIZATION AND MISINTERPRETATION**
22 **OF THE RRB'S PRIOR 2006 DECISION.**
23
24

25 ² Not only has Mr. Meyer misinterpreted the RRB's prior 2006 Decision, but he also
26 misinterprets its 2023 Decision, falsely contending that the RRB's 2023 Decision
27 determined Mendocino Railway's *common carrier* status as of January 1, 2022. The
28 RRB's 2023 Decision actually recognizes Mendocino Railway's *common carrier* status
(under STB jurisdiction) as of 2004. What the RRB determined as of January 1, 2022,
was Mendocino Railway's *employer* status. [Exhibit A, Declaration of Glenn L. Block
accompanying Mendocino Railway's Motion to Reopen.]

1 In 2004, the STB approved Mendocino Railway’s Acquisition Exemption relating
2 to Mendocino Railway’s acquisition of the CWR’s assets. [Trial Exhibits 20 and 21]. As
3 the STB has exclusive jurisdiction over rail carriers (aka “common carriers”), its
4 Acquisition Exemption affirmed Mendocino Railway’s rail carrier status effective April
5 2, 2004. 49 U.S.C. §10501. Nothing in the 2006 RRB Decision altered or changed this
6 fact. This is evidenced by the 2023 RRB Decision which clearly recognizes Mendocino
7 Railway’s rail carrier status, since 2004, clarifying any confusion about its 2006
8 Decision.

9 The 2006 RRB Decision merely recognized the fact that Mendocino Railway’s
10 common carrier obligations were *performed* (or *operated*) by its affiliate railroad, Sierra
11 Northern Railway. As such, the RRB determined that, during the period that Sierra
12 Northern Railway, itself a railroad “employer” was *performing* or *operating* freight
13 operations on Mendocino Railway’s behalf, Mendocino Railway was not an “employer.”
14 The 2023 RRB Decision determined, based upon changes in Mendocino Railway’s
15 operations, that Mendocino Railway became an “employer” on January 1, 2022 when it
16 began performing the freight operations directly itself, rather than through its agent,
17 Sierra Northern Railway. But nothing in either decision negated Mendocino Railway’s
18 status—since 2004—as a common carrier railroad, which the 2023 RRB Decision
19 makes clear.

20 Meyer, however, continues to conflate the terms “*employer*” and “*rail carrier*,”
21 mistakenly believing them to be the same and thereby completely misinterpreting and
22 mischaracterizing the RRB’s decisions. Those terms are, however, not synonymous, and
23 the RRB’s determination of Mendocino Railway’s *employer* status was utterly
24 immaterial to its status since 2004 as a *common carrier*. A *rail carrier* is not
25 necessarily an *employer* – as was the case for Mendocino Railway between April 2, 2004
26 and January 1, 2022. 45 U.S.C. §351. This is because it is the STB, not the RRB, that
27 has exclusive jurisdiction over *rail carriers* and is thus the *only* entity that can change
28 Mendocino Railway’s *rail carrier* status. 49 U.S.C. §10501.

1 Mr. Meyer’s failure to understand the differences between these two terms has
2 led him to falsely characterize the 2006 RRB Decision as determining Mendocino
3 Railway not to be a *rail carrier*, when in actuality all it did was determine that
4 Mendocino Railway was “not [then] currently an *employer* under the Acts,” [emphasis
5 added].

6 Meyer’s confusion and misunderstanding is compounded because he also
7 conflates the terms “*operate*” (or “*perform*”) and “*provide*” with respect to Mendocino
8 Railway’s common carrier freight rail obligations. Because Meyer conflates these terms
9 as well, he has falsely claimed that Mr. Pinoli’s testimony—and Mendocino Railway’s
10 evidence—was somehow contradicted by the 2006 RRB Decision. But all of Mr. Pinoli’s
11 testimony was truthful, as the RRB’s 2023 Decision confirms.

12 From the outset of the trial, Mr. Pinoli testified that Mendocino Railway’s
13 freight rail transportation services—its common carrier obligations—were *performed*
14 (or *operated*) by its agent, Sierra Northern Railway, an entity that was also Mendocino
15 Railway’s affiliate, as well as being a *rail carrier* and an *employer*. In other words,
16 while Mendocino Railway always *provided* freight rail services to meet its rail
17 carrier/common carrier status and obligations, the actual freight rail service was
18 *performed or operated* by Sierra Northern Railway as Mendocino Railway’s agent from
19 2004 until 2022. Mr. Pinoli testified as such at the beginning of trial (Day 1, TR1,
20 154:18 – 157:10), and consistently thereafter (Day 5, TR5, 64:13 – 65:6; and, Day 6, TR6,
21 17:11 – 18:5, 19:4 – 15, 30:13 – 32:3). Mr. Pinoli’s testimony was confirmed by not just the
22 2004 Notice of Exemption documents (Trial Exhibits 20 & 21) but also by Mendocino
23 Railway’s 2008 Freight Tariff CWR 9500 (Trial Exhibit 8) which explicitly stated, in
24 the middle of its front page: “Freight Operations by Sierra Northern Railway – SERA”.
25 Thus, Mr. Pinoli’s testimony has been entirely truthful, and consistent with all of the
26 documentary evidence, including the actual holdings of the 2006 RRB Decision that
27 has been so badly mischaracterized by Mr. Meyer.
28

1 The RRB’s 2023 Decision explicitly recognizes Mendocino Railway’s rail
2 carrier/common carrier status. “Here, the record establishes that Mendocino is a
3 common carrier subject to STB jurisdiction.” It also clarifies the RRB’s 2006 Decision
4 determining Mendocino Railway’s prior *employer* status, stating, “In 2006, the Board
5 found that Mendocino was not an employer under the Acts because it was not *operating*
6 in interstate commerce. *See*, BCD 2006-42.1. In fact, until January 1, 2022, Mendocino
7 was meeting its common carrier obligation through its agent and affiliate, Sierra
8 Northern Railway, as discussed above. [Exhibit A to Declaration of Glenn L. Block
9 accompanying Mendocino Railway’s Motion to Reopen; 2023 RRB Decision; emphasis
10 added.]

11 **CONCLUSION**

12 Good cause exists to reopen the trial for the Court to receive and consider new
13 facts arising prior to judgment: the 2023 RRB Decision. The 2023 RRB Decision is
14 probative of an issue that is not only material to this case, but that Mr. Meyer has
15 previously argued to be so material that it required the prior reopening of trial, as to
16 which the Court agreed, not only granting Meyer’s Motion to Reopen but using the
17 RRB’s prior 2006 Decision as the basis for its ruling, a ruling that the 2023 RRB
18 Decision shows to be in error. In the interest of justice—and to avoid a miscarriage of
19 justice and severe prejudice to Mendocino Railway—the Court should grant Mendocino
20 Railway’s Motion and reopen the trial for the limited purpose of receiving into evidence
21 the 2023 RRB Decision and testimony and other evidence related thereto.

22 Dated: June 23, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

23
24
25 By  _____
Glenn L. Block
26 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 June 23, 2023, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAY'S REPLY ISO MOTION TO REOPEN BENCH TRIAL TO CONSIDER NEW FACTS ARISING PRIOR TO JUDGMENT; DECLARATION OF GLENN L. BLOCK

- 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 23, 2023, in Glendale, California.


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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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