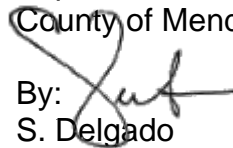


By:   
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Deputy Clerk

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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF MENDOCINO**

10 MENDOCINO RAILWAY,  
11 Plaintiff,

12 vs.

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

18 Defendants.

) Unlimited

) Case No. SCU-K-CVED 20-74939

) DEFENDANT JOHN MEYER'S  
ANSWER TO COMPLAINT IN  
EMINENT DOMAIN

19  
20 1. Pursuant to Code of Civil Procedure § 431.30, defendant John Meyer  
21 (“Meyer”) generally denies each and every allegation of plaintiff Mendocino Railway’s  
22 (“Plaintiff”) unverified complaint in eminent domain filed in this action on December 22,  
23 2020.

24 2. Meyer is the owner of record of the property described in the complaint  
25 commonly known as Mendocino County Assessor Parcel Number 038-180-53 (“the  
26 Property”).

27 **MEYER’S OBJECTS TO PLAINTIFF’S RIGHT TO TAKE THE  
PROPERTY.**

28 3. In accordance with Public Utilities Code § 611, “[a] railroad corporation may

1 condemn any property necessary for the construction and maintenance of its railroad.”

2 4. The complaint fails to describe or specify why the Property is necessary for the  
3 Plaintiff’s construction and maintenance of its railroad, as required by Public Utilities  
4 Code § 611. The complaint limits its description of the project to the following: “The  
5 project (‘Project’) for which Plaintiff seeks to acquire the below described property  
6 consists of construction and maintenance of rail facilities related to Plaintiff’s ongoing  
7 and future freight and passenger rail operations and all uses necessary and convenient  
8 thereto.” (Complaint, Page 2, Paragraph 2.)

9 5. The complaint fails to state with any specificity the nature of the Project, it fails  
10 to define “rail facilities,” and it otherwise fails to specify the use to be made by the  
11 Plaintiff on the Property. The failure to reference any specific details prevents Meyer and  
12 the court from evaluating whether the condemnation of the Property is necessary for the  
13 construction and maintenance of Plaintiff’s railroad.

14 6. The complaint fails to provide a general statement of the public use for which  
15 the Property is to be taken, as required by Code of Civil Procedure § 1250.310(d)(1). The  
16 complaint fails to state with any specificity the nature of the Project, and it otherwise fails  
17 to specify the use to be made by the Plaintiff on the Property. The failure to reference any  
18 specific details prevents Meyer and the court from evaluating whether the condemnation  
19 of the Property is for a public use..

20 7. The complaint fails to provide an allegation of necessity for the taking as  
21 required by Code of Civil Procedure § 1240.030, as referenced in Code of Civil  
22 Procedure § 1250.310(d)(2). The complaint fails to state with any specificity the nature  
23 of the Project, and it otherwise fails to specify the use to be made by the Plaintiff on the  
24 Property. The failure to reference any specific details prevents Meyer and the court from  
25 evaluating whether the condemnation of the Property is necessary.

26 8. The complaint fails to establish that “public interest and necessity require the  
27 project,” as required by Code of Civil Procedure § 1240.030(a). The complaint fails to  
28 state with any specificity the nature of the Project, and it otherwise fails to specify the use

1 to be made by the Plaintiff on the Property. The failure to reference any specific details  
2 prevents Meyer and the court from evaluating whether the condemnation of the Property  
3 is in the public interest and necessity requires the Project.

4 9. The complaint fails to establish that “the project is planned or located in the  
5 manner that will be most compatible with the greatest public good and the least private  
6 injury,” as required by Code of Civil Procedure § 1240.030(b). The complaint fails to  
7 state with any specificity the nature of the Project, and it otherwise fails to specify the use  
8 to be made by the Plaintiff on the Property. The failure to reference any specific details  
9 prevents Meyer and the court from evaluating whether the condemnation of the Property  
10 is planned or located in the manner that will be most compatible with the greatest good  
11 and the least private injury.

12 10. The complaint fails to establish that “property sought to be acquired is  
13 necessary for the project,” as required by Code of Civil Procedure § 1240.030(c). The  
14 complaint fails to state with any specificity the nature of the Project, and it otherwise fails  
15 to specify the use to be made by the Plaintiff on the Property. The failure to reference any  
16 specific details prevents Meyer and the court from evaluating whether the condemnation  
17 of the Property, or only a portion of the Property, is necessary for the Project.

18 **THE TAKING OF THE PROPERTY WILL RESULT IN DAMAGES.**

19 11. Meyer is the owner of the real property commonly known as Mendocino  
20 County Assessor Parcel Number 038-180-40 (“Parcel 40”) that is adjoining to the  
21 Property described in the complaint.

22 12. Meyer was beginning the process of boundary line adjusting and developing  
23 the Property and Parcel 40 together at the time that Plaintiff filed this action. Plaintiff’s  
24 potential taking of the Property will negatively impact the use, value and development of  
25 the Property and Parcel 40.

26 13. Plaintiff’s taking of the Property will also interfere with an existing agreement  
27 that Meyer has executed with California Department of Transportation for payment for  
28 the delivery and deposit of fill material on the Property. The taking of the Property will

1 | deprive Meyer from the benefit of the referenced agreement.

2 | 14. As a result of any taking, Meyer should be entitled to receive severance  
3 | damages under Code of Civil Procedure §§ 1263.410 through 1263.450.

4 | 15. Meyer also claims compensation for loss of goodwill under Code of Civil  
5 | Procedure § 1263.510.

6 | **AFFIRMATIVE DEFENSES AND OBJECTIONS**

7 | **FIRST:** The complaint, and each count or cause of action set forth therein, fails  
8 | to state facts sufficient to constitute a cause of action or claim for relief.

9 | **SECOND:** The action is barred by Plaintiff's laches.

10 | **THIRD:** This action is barred by the doctrine of estoppel.

11 | **FOURTH:** This action is barred by Plaintiff's unclean hands.

12 | **FIFTH:** Plaintiff, through its acts, conduct and omissions, has waived the claims  
13 | alleged in the complaint and in the purported cause of action alleged therein.

14 | **SIXTH:** Plaintiff is not authorized by statute to exercise the power of eminent  
15 | domain for the purpose stated in the complaint.

16 | **SEVENTH:** The stated purpose is not for public use.

17 | **EIGHTH:** Plaintiff does not intend to devote the Property to the stated purpose.

18 | **NINTH:** There is no reasonable probability that Plaintiff will devote the Property  
19 | to the stated purpose within seven (7) years, or such other longer period as is reasonable.

20 | **TENTH:** Public interest and necessity do not require the proposed Project.

21 | **ELEVENTH:** The proposed Project is not planned or located in the manner that  
22 | will be most compatible with the greatest public good and least private injury.

23 | **TWELFTH:** The Property is not necessary for the proposed Project.

24 | **THIRTEENTH:** All of the Property is not necessary for the proposed Project.

25 | **RESERVATION OF AFFIRMATIVE DEFENSES:** Meyer presently has  
26 | insufficient knowledge or information on which to form a belief as to whether he may  
27 | have additional, as yet unstated, defenses and objections available. Meyer reserves the  
28 | right to assert additional defenses and objections at such time and to such extent as

1 warranted by discovery and the factual developments in the case.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Meyer prays:

4 (1) That Plaintiff take nothing by its complaint; or

5 (2) That this court determine and award the just compensation to which Meyer is  
6 entitled by virtue of the taking of Mendocino County Assessor Parcel Number 038-180-  
7 53, and severance damage to the remaining property, compensatory damages and loss of  
8 goodwill;

9 (3) That Meyer be granted allowable litigation expenses and costs of suit incurred;

10 (4) Meyer be granted an appraisal fee of up to \$5,000.00, as provided by Code of  
11 Civil Procedure § 1263.025(a); and

12 (5) That Meyer be granted such other and further relief as the court shall find just  
13 and proper.

14 DATED: February 17, 2021.

MANNON, KING, JOHNSON & WIPF, LLP

15  
16  
17   
18 Stephen F. Johnson, Attorney for Defendant  
John Meyer

1 **PROOF OF SERVICE**

2 Mendocino County Superior Court Case No.: SCUJ-CVED-20-74939

3 I declare that I am over the age of 18 years, employed in the County of Mendocino,  
4 and not a party to the within action; my business address is P.O. Box 419, 200 N. School  
5 Street, Room 304, Ukiah, CA 95482.

6 On February 18, 2021, I served the **DEFENDANT JOHN MEYER'S ANSWER TO  
7 COMPLAINT IN EMINENT DOMAIN** on the interested parties in this action by placing  
8  the original  true copies thereof, as follows:

9 **SEE ATTACHED SERVICE LIST**

|  |   |
|--|---|
| 10 <input type="checkbox"/>            | By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.   |
| 11 <input checked="" type="checkbox"/> | By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.   |
| 12 <input checked="" type="checkbox"/> | By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.  |
| 13 <input type="checkbox"/>            | By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party. |
| 14 <input type="checkbox"/>            | By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.  |
| 15 <input checked="" type="checkbox"/> | (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  |

16 Executed on February 18, 2021, at Ukiah, California.

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18 \_\_\_\_\_  
19 Nancy Nieto, Legal Assistant

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**SERVICE LIST**

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

|  |  |
|--|--|
| Glenn L. Block<br>3429 Ocean View Blvd., Suite L<br>Glendale, CA 91208<br>glb@caledlaw.com |  |
|--|--|