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6/15/2023 10:04 AM
Superior Court of California
County of Mendocino

By: 
John Lozano
Deputy Clerk

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

10 MENDOCINO RAILWAY,) Unlimited
11 Plaintiff,) Case No. SCUK-CVED 20-74939
12 vs.) DEFENDANT JOHN MEYER'S
13 JOHN MEYER; REDWOOD EMPIRE) MEMORANDUM OF POINTS AND
14 TITLE COMPANY OF MENDOCINO) AUTHORITIES IN OPPOSITION TO
15 COUNTY; SHEPPARD) MENDOCINO RAILWAY'S MOTION
16 INVESTMENTS; MARYELLEN) TO SET ASIDE AND VACATE
17 SHEPPARD; MENDOCINO COUNTY) PREMATURE JUDGMENT
TREASURER-TAX COLLECTOR; all)
18 other persons unknown claiming an)
interest in the property; and DOES 1)
through 100, inclusive)
19 Defendants.) Date: June 30, 2023
20) Time: 9:30 AM
21) Dept: E

22 Mendocino Railway's ("MR") has filed a motion to set aside and vacate a
23 premature judgment because the judgment was allegedly signed and filed prematurely by
24 the court in violation of California Rules of Court, Rule 3.1590(j). The motion to set
25 aside the judgment is being sought pursuant to Code of Civil Procedure §§ 473(b) and/or
26 473(d), however neither is applicable.

27 Code of Civil Procedure § 473(b) provides that "[t]he court may, upon any terms
28 as may be just, relieve a party or his or her legal representative from a judgment,
dismissal, order or other proceeding taken against him or her through his or her mistake,

1 | inadvertence, surprise, or excusable neglect.”

2 | Section 473(b) is not applicable in this instance because MR is not arguing that
3 | MR or its legal representatives should be relieved from the judgment based of their own
4 | mistake, inadvertence, surprise or excusable neglect, rather MR is arguing that judgment
5 | should be set aside because the court made a mistake.

6 | Section 473(b) does not allow a party to set aside a judgment based upon a mistake
7 | made by the court, as mistakes made by a court are to be addressed by filing an appeal. A
8 | judicial error in a judgment cannot be corrected after entry; judicial error can be rectified
9 | only by attack on the judgment. (*Tokio Marine & Fire Ins. Corp. v. Western Pac. Roofing*
10 | *Corp.* (1999) 75 Cal . App. 4th 110, 117.)

11 | Code of Civil Procedure § 473(d) provides that “[t]he court may, upon motion of
12 | the injured party, or its own motion, correct clerical mistakes in its judgment or orders as
13 | entered, so as to conform to the judgment or order directed, and may, on motion of either
14 | party, set aside any void judgment or order.”

15 | In order to ascertain whether an error is clerical or judicial in nature, a party needs
16 | only to determine whether the judgment entered was the judgment that the court intended
17 | to render. (*Gill v. Epstein* (1965) 62 Cal 2d 611, overruled on other grounds in *Manta*
18 | *Mgmt. Corp. v. City of San Bernadino* (2008) 43 Cal. 400, 412, n.8; CEB, California Trial
19 | Practice: Civil Procedure During Trial 3rd. Ed. § 23.29.)

20 | After a judgment has been entered, the trial court may not use its power to correct
21 | clerical errors to substantially modify it or materially alter the parties rights. (*Ronchin v.*
22 | *Pat Johnson Mfg. Co.* (1998) 67 Cal. App. 4th 1228, 1237; CEB, California Trial Practice:
23 | Civil Procedure During Trial 3rd. Ed. § 23.29.)

24 | The court’s signing and filing of the judgment is not the result of a clerical error,
25 | as the court intended on signing the judgment as presented. Since the error is not clerical
26 | in nature, the judgment cannot be set aside under Code of Civil Procedure § 473(d).

27 | There is no need to analyze the merits of MR’s argument regarding California
28 |

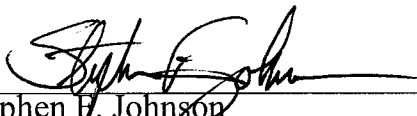
1 Rules of Court, Rule 3.1590(j) because the judgment cannot be set aside.

2 MR's motion must be denied.

3 DATED: June 15, 2023.

MANNON, KING, JOHNSON & WIPF, LLP

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Stephen H. Johnson
Attorney For John Meyer

1 **PROOF OF SERVICE**

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

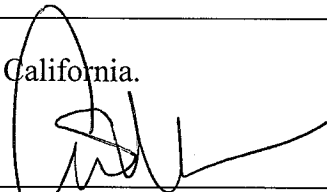
3 I declare that I am over the age of 18 years, employed in the County of Mendocino,
4 and not a party to the within action; my business address is P.O. Box 419, 200 N. School
5 Street, Room 304, Ukiah, CA 95482.

6 On June 15, 2023, I served the **DEFENDANT JOHN MEYER'S MEMORANDUM**
7 **OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S**
8 **OBJECTION TO [PROPOSED] JUDGMENT; MEMORANDUM OF POINTS AND**
9 **AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO**
10 **REOPEN BENCH TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES IN**
11 **OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO SET ASIDE AND**
12 **VACATE PREMATURE JUDGMENT** on the interested parties in this action by placing
13 the original true copies thereof, as follows:

14 **SEE ATTACHED SERVICE LIST**

15 <input checked="" 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.
16 <input 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.
17 <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.
18 <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.
19 <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.
20 <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.

21 Executed on June 15, 2023, at Ukiah, California.

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23 _____
24 Erika Brewer, Legal Assistant

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SERVICE LIST

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

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