

**FILED**

07/11/2023

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SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF MENDOCINO

Lozano, John  
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14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF MENDOCINO**

17 MENDOCINO RAILWAY,  
18  
19 Plaintiff,

20 v.

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

Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**~~[PROPOSED]~~ ORDER RE  
PLAINTIFF'S MOTION TO SET  
ASIDE AND VACATE PREMATURE  
JUDGMENT SIGNED BEFORE TIME  
TO FILE OBJECTIONS**

Plaintiff's Motion to Set Aside and Vacate Premature Judgment came on for hearing on June 30, 2023, at 9:30 a.m. Glenn L. Block, Esq. appeared on behalf of Plaintiff and Stephen Johnson appeared on behalf of Defendant. The Motion was denied.

1 Attached hereto as Exhibit A is the transcript of the proceedings.

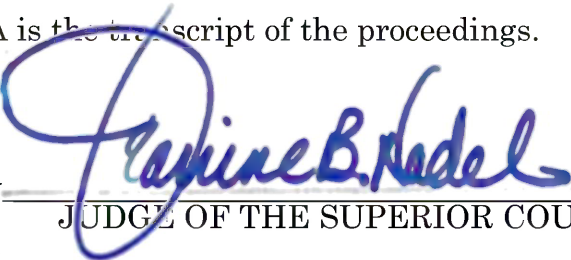
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5 JUDGE OF THE SUPERIOR COURT  
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EXHIBIT A

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF MENDOCINO

3 MENDOCINO RAILWAY,

4 Plaintiff,

5 vs.

No. SCUk CVED-2020-74939

6 JOHN MEYER,

7 Defendant.

8 \_\_\_\_\_/

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13 MOTION HEARING

14 Held at 100 North State Street, Mendocino County  
15 Superior Court, Department E, Ukiah, California  
on Friday, June 30, 2023,

16 Before the Honorable Jeanine B. Nadel, Judge  
Reported by Trisha R. Hathaway-Link, CSR No. 10866

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24 ADAIR, POTSWALD & HENNESSEY  
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P R O C E E D I N G S

THE COURT: All right. Let's take up Mendocino Railway versus Meyer.

MR. JOHNSON: Good morning, Your Honor.  
Stephen Johnson appearing on behalf of John Meyer.

THE COURT: Meyer, sorry.

MR. BLOCK: Good morning, Your Honor. Glenn Block on behalf of Mendocino Railway. Mr. Pinoli is with me today.

THE COURT: All right. Good morning.

Okay. So I asked you folks to appear because I figured as long as -- even if I issued a written tentative ruling, you would have requested argument in any event. So I do have a tentative ruling and I'm going to go ahead and state the tentative ruling.

With respect to the motion to set aside and vacate the judgment, that motion is denied.

The proposed judgment was submitted to the Court and counsel on May 25th via e-mail. Plaintiff had 10 days to file objections and none were received until June 5th. The Court signed the judgment on June 1st after seeing no objections and waited to file it until June 2nd, which was a Friday. Plaintiff waited to file its objections to the judgment until June 5th, the

1 following Monday.

2 In order to demonstrate that the signing of the  
3 judgment two days prior to the cutoff was harmless  
4 error, the Court will accommodate plaintiff in reviewing  
5 the objections to the judgment.

6 Based on the Court's review of those  
7 objections, there is no need to amend the judgment even  
8 if the law allowed me to. The Court was clear in its  
9 decision that a dismissal of the eminent domain claim  
10 was warranted for the reasons set forth in the decision.  
11 The requested conditional judgment will not be ordered.

12 Throughout the trial, plaintiff was steadfast  
13 in its position that this Court maintain jurisdiction  
14 over the eminent domain proceeding. To claim now that a  
15 ruling would potentially interfere with any input from  
16 the Surface Transportation Board as to whether the  
17 Court's decision could constitute an improper regulation  
18 of MR's services and whether such regulations preempted,  
19 is not only disingenuous, but untimely and unsupported  
20 by any legitimate authority.

21 The motion to reopen the case is also denied.

22 The basis for the denial is that this issue was  
23 addressed at trial when Mr. Pinoli testified that  
24 Mendocino Railway assumed the carrier responsibilities  
25 from its affiliates in 2022.

1           This testimony was given despite the fact that  
2 Mr. Pinoli was fully aware of the fact that freight and  
3 passenger transport was virtually nonexistent even in  
4 2022 due to the collapse of the tunnel on the route and  
5 no evidence of passengers being transported.

6           The Court understands the distinction between  
7 the employer versus carrier status, but my decision in  
8 this case was not based solely on the employer's status,  
9 but the fact that Pinoli himself testified that  
10 Mendocino Railway was merely a holding company and had  
11 no employees and did not perform freight and passenger  
12 services between the time of its acquisition in 2004 and  
13 when it allegedly assumed operations from the Sierra  
14 Northern in 2022.

15           Pinoli's testimony did not even occur until the  
16 case was reopened to address the retirement letter, and  
17 when confronted with the letter, Pinoli then offered  
18 that indeed MR was not operating as a common carrier  
19 until it assumed operations from its affiliates in 2022.

20           This case was filed in 2020 with Mendocino  
21 Railway as the only plaintiff in the action. This case  
22 was filed with the knowledge that Mendocino Railway was  
23 not acting or providing common carrier services. In  
24 fact, despite Mr. Pinoli's testimony, Mendocino Railway,  
25 as a successor to California Western Railway, was not



1 and is not doing today what CWR was allegedly doing for  
2 137 years of existence.

3           Since 2004 the services were allegedly provided  
4 by the affiliate companies, and as stated in my opinion,  
5 there was no evidence submitted to support this  
6 allegation. Mendocino Railway did not offer any  
7 evidence in the form of contracts with the affiliate  
8 entities, operating agreements, or any documents  
9 whatsoever. I laid all of this out in my opinion.

10           Furthermore, it is abundantly clear that at the  
11 time of the filing of the complaint, and even now, that  
12 Mendocino Railway is operating solely as an excursion  
13 service and all income generated from that excursion  
14 services -- service and leases and easements.

15           There was no evidence presented that even the  
16 affiliates generated income from the freight and  
17 passenger services. So to suddenly appear with a letter  
18 from the secretary of the Board of Retirement that now  
19 MR is a common carrier, despite never performing the  
20 service prior to 2022, and even now, is misleading to  
21 the Court and the public.

22           I laid out a road map as to what was needed to  
23 prove -- what was needed to be proved in this case.  
24 Mendocino Railway did not meet their burden and  
25 reopening the case to add what has already been

1 testified to is not probative and won't change my  
2 opinion when the evidence is viewed in its totality.

3           So the motion to reopen, like I said, is  
4 denied.

5           So I'm happy to hear argument. I doubt you're  
6 going to change my mind, but you're welcome to state  
7 your argument for the record.

8           MR. BLOCK: I appreciate that, Your Honor.

9           I certainly appreciate the effort the Court has  
10 put into understanding the issues in this case and  
11 thoughtfully listening to the testimony and re-examining  
12 the testimony.

13           With respect, I think there's a couple of  
14 fundamental issues with the way the Court has expressed  
15 its -- its opinion and its decision here.

16           First, the Court is expressing standards and  
17 requirements -- or imposing standards and requirements  
18 that frankly don't exist in the law either with respect  
19 to the determination of common carrier or public utility  
20 status as well as the -- the eminent domain  
21 requirements.

22           For example, at the end of the tentative, which  
23 the Court read and I'm just hearing on the spot this  
24 morning, the Court mentioned that there was no evidence  
25 that -- that either Mendocino Railway or its affiliate,

1 Sierra Northern Railway, generated revenue from freight  
2 or non-excursion passenger service. That is not the  
3 standard.

4 The definition of transportation, both under  
5 California law and under federal law, states that the  
6 services are provided for compensation.

7 Again -- and this is expressed in our brief --  
8 a public utility can only make the services available.  
9 And that -- and its dedication of its assets -- its  
10 assets in this case, its railway, its equipment, its  
11 personnel -- providing those services, making them  
12 available for compensation, is the standard, and that is  
13 clear and the evidence has amply established that that  
14 is the fact and has been the fact since Mendocino  
15 Railway acquired the assets of CWR in 2004.

16 Moreover, the -- the Court has misinterpreted I  
17 think the testimony of Mr. Pinoli and misinterpreted the  
18 Notice of Exemption in 2004 with respect to the  
19 reference of the -- the, quote/unquote, "holding  
20 company."

21 And this is a standard under the federal  
22 regulations, 49 U.S.C. 10501 or -- I can't remember the  
23 exact number, but this is how the STB looks at the  
24 transaction. Is the entity that is acquiring the assets  
25 an existing carrier or is it a holding company that then

1 becomes a common carrier once it acquires the assets?

2           So it is a moment in time at the time of the  
3 acquisition. At the time that the assets were acquired  
4 through the bankruptcy process, it was a holding company  
5 with no employees.

6           THE COURT: I --

7           MR. BLOCK: Once it -- yeah, please.

8           THE COURT: I understand all of that, and what  
9 you're missing from my -- my point is, even if --  
10 Mendocino Railway testified that they did not perform --  
11 Mr. Pinoli testified that they did not perform the  
12 services, but the services were being performed by their  
13 affiliates.

14           You offered no evidence, nothing, to -- to  
15 substantiate that. There were no agreements with the  
16 affiliates, there were no indemnification agreements,  
17 there were no contracts with the affiliates. It's  
18 all -- I was all -- all -- it was only the testimony of  
19 Mr. Pinoli that said that. Four days of testimony from  
20 Mr. Pinoli -- and no disrespect to your client at all,  
21 four days without any evidentiary support in terms of  
22 documents so that I can determine that indeed Mendocino  
23 Railway was operating through its affiliates, which I  
24 really have suspicion about because there was no  
25 evidence of that, and there was no evidence that those

1 affiliates actually generated any income.

2           And I understand what you're saying is, yes,  
3 we're sitting here, we're ready, passengers can come and  
4 freight can come -- can't get through the tunnel. We're  
5 not going to be able to really do freight, but so be it,  
6 we're still a common carrier. That's what you're trying  
7 to argue here.

8           MR. BLOCK: But a common carrier -- there's a  
9 couple of things, Your Honor.

10           First of all, common carrier status isn't  
11 something that you turn on and off like a light switch.  
12 It doesn't -- they're not a common carrier today because  
13 they ran a train and then for the next year if they  
14 don't move freight, they're not a common carrier.  
15 That's not the way it works.

16           The other thing is, there -- there is a  
17 process, both under federal law and state law, to --  
18 to -- for the common carrier status, public utility  
19 status, to go away. It is abandonment and it's a formal  
20 process.

21           The other way --

22           THE COURT: But Mr. Pinoli admitted at trial  
23 that he wasn't performing common carrier and he wasn't  
24 acting as -- MR wasn't acting as a common carrier.

25           MR. BLOCK: I --

1 THE COURT: The only way that they were  
2 providing services was through those affiliates.

3 MR. BLOCK: Exactly. And that -- and so there  
4 is -- there are several pieces of evidence that -- that  
5 establish that.

6 Number one --

7 THE COURT: Well, I'm not -- let's not argue  
8 the case over again. I'm not going to do that.

9 MR. BLOCK: That's fine. But I want to address  
10 the Court's tentative ruling where -- where it made  
11 certain statements. And, again, in -- in discussing it  
12 just now, you said that there is no evidence.

13 A couple of things. Number one, there is not a  
14 requirement for documentary evidence. That's -- that's  
15 setting forth the standard that doesn't exist, number  
16 one. Number two, there's the 2004 Notice of Exemption  
17 and the Federal Register, Exhibits 20 and 21, that both  
18 refer to this structure where Mendocino Railway is the  
19 common carrier, the services are provided -- are  
20 performed by someone else.

21 There is also Exhibit 8, which is the -- the  
22 freight tariff which explicitly says Mendocino Railway  
23 providing freight tariff via its affiliate Sierra  
24 Northern Railway.

25 As to contracts, indemnity, and these kinds of

1 things, they're both sister companies under -- under  
2 Sierra Railroad Company. So the fact that they -- and I  
3 don't even know whether or not there are any contracts,  
4 but the Court didn't ask for those things. There's a  
5 comment in the notice --

6 THE COURT: It's not my job to ask for you --  
7 to tell you how to prove the case, sir.

8 MR. BLOCK: Well, a witness' sole --

9 THE COURT: I gave you every opportunity to  
10 actually produce documents to address the issues of  
11 income and relationship and --

12 MR. BLOCK: That was not discussed --

13 THE COURT: -- it was not done; so...

14 MR. BLOCK: It wasn't discussed in the case.

15 There was a question of the MTA contract which  
16 Mr. Pinoli reviewed -- or looked for and could not find,  
17 so --

18 THE COURT: Anyway, we're just dealing with the  
19 motion to reopen to address the letter that you received  
20 from the Retirement Board, and, like I said, that was  
21 already testified to and I don't see any need to reopen  
22 the case to bring in evidence that's already been  
23 presented.

24 MR. BLOCK: Well, it hasn't been presented  
25 because it clarifies and contradicts the -- the 2006

1 Railroad Board decision, which the Court granted  
2 defendant's motion to reopen to allow.

3 But as the Court indicated before, nothing I  
4 can say will change the Court's mind. I think I've  
5 started to establish somewhat of a record of -- of our  
6 response to the Court's ruling, and we respect the  
7 Court's decision. And if there's any other questions or  
8 anything else you'd like to hear from me, I'd be happy  
9 to share.

10 THE COURT: Okay. Mr. Johnson?

11 MR. JOHNSON: Submitted, Your Honor.

12 THE COURT: All right. So I'll have the moving  
13 party go ahead and prepare any proposed orders.

14 Thank you.

15 MR. JOHNSON: Thank you.

16 MR. BLOCK: Thank you, Your Honor.

17 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

I hereby certify that the above transcript of proceedings was taken down, as stated in the caption, and that the foregoing 13 pages represent a complete, true and correct transcript of the proceedings had thereon.

DATED: July 2, 2023.

*Trisha R. Hathaway-Link*  
TRISHA R. HATHAWAY-LINK, CSR 10866  
COURT REPORTER

**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 July 7, 2023, I served the within document(s):


**[PROPOSED] ORDER RE PLAINTIFF'S MOTION TO SET ASIDE AND VACATE PREMATURE JUDGMENT SIGNED BEFORE TIME TO FILE 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 July 7, 2023, in Glendale, California.

  
Debi Carbon

**SERVICE LIST**

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

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