

No. 23-15857

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MENDOCINO RAILWAY,

Plaintiff-Appellant,

v.

JACK AINSWORTH, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 22-cv-04597-JST
Hon. Jon S. Tigar

**APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE
REHEARING PETITION;
DECLARATION OF PAUL BEARD II IN SUPPORT THEREOF**

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Attorney for Appellant MENDOCINO RAILWAY

Appellant Mendocino Railway respectfully requests a 29-day extension of time within which to file its petition for panel and/or *en banc* rehearing, from September 12 to October 11, 2024. This is Mendocino Railway's first request for an extension of time to file this petition.

Appellee City of Fort Bragg does not intend to oppose this request. Appellee Jack Ainsworth is not in favor of extending the petition's deadline, but does not intend to respond to this extension request unless the Court requests that it does so.

There is good cause for this request. Mendocino Railway's sole counsel, Paul Beard II, requires additional time to research and brief the rehearing petition in light of the following conflicting litigation obligations, *inter alia*:

- On September 11, filing of an opening brief in a writ action in the Los Angeles Superior Court in *Wu v. City of Azusa* (24STLC03794);
- On September 13, filing of an opening brief in the California Court of Appeals in *Mendocino Railway v. Meyer* (A168497);
- On September 19, oral argument in a writ action in San Luis Obispo Superior Court in *Grow v. City of Pismo Beach* (23CV-0544); and
- On October 9, filing of a motion for preliminary injunction in Sacramento Superior Court in *Western Manufactured Housing Association v. Newsom* (23-2022-00332244).

These constraints make it difficult for Mendocino Railway to research and prepare a petition that will be adequately concise and helpful to the Court absent the requested extension.

For the foregoing reasons, Mendocino Railway respectfully requests that the Court grant its motion for a 29-day extension of time to file a petition for panel and/or *en banc* rehearing.

Date: September 3, 2024

Respectfully submitted,

s/ Paul Beard II

Attorney for Appellant
MENDOCINO RAIWAY

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 269 words excluding the parts exempted by Rule 27(a)(2)(B). This motion's type size and typeface comply with Rule 32(a)(5) and (6).

Date: September 3, 2024

s/ Paul Beard II

Paul Beard II

DECLARATION OF PAUL BEARD II

I, Paul Beard II, declare as follows:

1. I am a partner at the law firm of PIERSON FERDINAND LLP. I am counsel of record for Appellant Mendocino Railway in the above-entitled action. I am a member in good standing of the California Bar and this Court.

2. I submit this declaration in support of Mendocino Railway's request for a 29-day extension of time within which to file a petition for panel and/or *en banc* rehearing, from September 12 to October 11, 2024. This is Mendocino Railway's first request for an extension of time to file this petition. Appellee City of Fort Bragg does not intend to oppose this request. Appellee Jack Ainsworth is not in favor of extending the petition's deadline, but does not intend to respond to this extension request unless the Court requests that it does so.

3. There is good cause for this request. As Mendocino Railway's sole counsel on this action, I require additional time to research and brief the rehearing petition in light of the following conflicting litigation obligations, *inter alia*:

- On September 11, filing of an opening brief in a writ action in the Los Angeles Superior Court in *Wu v. City of Azusa* (24STLC03794);
- On September 13, filing of an opening brief in the California Court of Appeals in *Mendocino Railway v. Meyer* (A168497);
- On September 19, oral argument in a writ action in San Luis Obispo Superior Court in *Grow v. City of Pismo Beach* (23CV-0544); and

- On October 9, filing of a motion for preliminary injunction in Sacramento Superior Court in *Western Manufactured Housing Association v. Newsom* (23-2022-00332244).

4. These constraints make it difficult for me to research and prepare a petition that will be adequately concise and helpful to the Court absent the requested extension.

I declare under perjury, under the laws of the United States, that the foregoing is true and correct.

Date: September 3, 2024

s/ Paul Beard II

Paul Beard II