Paul J. Beard II (SBN: 210563)	
FISHERBROYLES LLP 4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA 90027 Telephone: (818) 216-3988 Facsimile: (213) 402-5034 Email: paul.beard@fisherbroyles.com Attorneys for Defendant MENDOCINO RAILWAY IN THE SUPERIOR COURT OF	ELECTRONICALLY FILED 1/14/2022 4:18 PM Superior Court of California County of Mendocino By: D. Jess Deputy Clerk F THE STATE OF CALIFORNIA Y OF MENDOCINO Case No.: 21CV00850 [Assigned to the Hon. Clayton Brennan] DEFENDANT MENDOCINO RAILWAY'S NOTICE OF MOTION AND MOTION TO STRIKE PLAINTIFF CITY OF FORT BRAGG'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF Hearing Date: February 10, 2022 Hearing Time: 2:00 p.m. Complaint Filed: October 28, 2021
Defendant's Notice of M	1 Iotion and Motion to Strike
	4470 W. Sunset Blvd., Suite 93165 Los Angeles, CA 90027 Telephone: (818) 216-3988 Facsimile: (213) 402-5034 Email: paul.beard@fisherbroyles.com Attorneys for Defendant MENDOCINO RAILWAY CITY OF FORT BRAGG, a California municipal corporation Plaintiff, v. MENDOCINO RAILWAY and DOES 1-10, inclusive, Defendants.

FISHERBROYLES<sup>4</sup>

## **1** TO PLAINTIFF CITY OF FORT BRAGG AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 10, 2022, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the Ten Mile Branch of the Mendocino County Superior Court, located at 700 South Franklin Street, Fort Bragg, CA 95437, Defendant MENDOCINO RAILWAY will, and hereby does, move to strike the "injunctive relief" allegations, including the prayer for an injunction, made in the Verified Complaint for Declaratory and Injunctive Relief ("Complaint") of Plaintiff CITY OF FORT BRAGG ("City"), as follows:

- 1. Page 1, line 21: "... and/or injunctive relief."
- 2. Page 4, line 25: "... and/or Injunctive Relief."
- 3. Page 4, line 26: "526."
- 4. Page 5, lines 10-12: "... and Plaintiff City has the present right, obligation and need to exercise such control, power, and authority for the public interest, benefit and safety."
- 5. Page 5, paragraphs 18-21.
- 6. Page 6, Prayer ¶ 2.

Mendocino Railway's motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the accompanying Declarations of Paul Beard II and Mike Hart, the accompanying Request for Judicial Notice, the pleadings and files in this case, and any other materials or argument that may be presented prior to or at the hearing of this matter.

20 DATED: January 14, 2022.

# FISHERBROYLES LLP

/s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY

# FISHERBROYLES<sup>4</sup>

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

21

22

23

24

25

26

27

1	TABLE OF CONTENTS	
2	I. INTRODUCTION	4
3	II. LEGAL AND FACTUAL BACKGROUND	5
5	A. Legal Background	5
6	B. Factual Background	6
7	III. STANDARD OF REVIEW	9
8	IV. ARGUMENT	0
9	A. Injunctive Relief Is Barred by State Law	0
10	B. Injunctive Relief Is Barred by Federal Law	
11	V. CONCLUSION	
12		3
13		
14		
15		
16 17		
17		
10		
20		
21		
22		
23		
24		
25		
26		
27		
28		
	<u>3</u> Defendant's Notice of Motion and Motion to Strike	
	Defendant's Notice of Motion and Motion to Strike	

FISHERBROYLES<sup>4</sup>

## I. <u>INTRODUCTION</u>

Defendant Mendocino Railway makes this Motion to Strike Plaintiff City of Fort Bragg's Complaint in the alternative to its concurrently-filed Demurrer.

The Demurrer argues that Complaint should be dismissed in its entirety because the Court lacks subject matter jurisdiction over it. The Complaint contains a single cause of action for a declaration that Mendocino Railway—a public utility long-regulated as such by the California Public Utilities Commission ("CPUC")<sup>1</sup>—has somehow lost its "public utility" status and is no longer subject to the CPUC's jurisdiction. As the Demurrer explains, the Complaint is asking the Court to unlawfully second-guess and interfere with decisions and actions of the CPUC that have consistently affirmed the agency's jurisdiction over a well-established, public-utility railroad. *See, e.g.*, Pub. Util. Code § 1759.

If the Court sustains the Demurrer and dismisses the City's action, then it need not decide this Motion to Strike. But short of complete dismissal, the Court should strike the Complaint's prayer for an injunction on the grounds that injunctive relief is, among other things, "not supported by the allegations of the complaint."<sup>2</sup> Civ. Proc. Code § 431.10(b).

The Complaint demands a sweeping injunction compelling Mendocino Railway to submit to "all" of the City's "ordinances, regulations, . . . codes, jurisdiction and authority." Complaint at 6:12-14, 6:15-18. The Complaint leaves no room for doubt that the City seeks to seize plenary regulatory control over *all* of the railroad's "property" and "operations" (*id.* at 5:25)—*operations that stretch far beyond the City's jurisdiction. Id.* at 1:23-25. But both state and federal law plainly bar the City's attempt to arrogate such vast power over a railroad.

The injunction that the City seeks would oust the CPUC from its historic and present role as the
State authority with exclusive jurisdiction over Mendocino Railway. As alluded to above, state law does
not permit Superior Court actions that interfere with the CPUC's ongoing regulatory authority over a

<sup>&</sup>lt;sup>+</sup> || <sup>1</sup> See Complaint at 2:56 (admitting that Mendocino Railway is currently a CPUC-regulated public utility).

<sup>&</sup>lt;sup>25</sup> Injunctive relief "is an equitable remedy, not a cause of action." *County of Del Norte v. City of Crescent*<sup>26</sup> *City* (1999) 71 Cal.App.4th 965, 973. Therefore, the City's "injunctive relief" allegations are not subject to demurrer, but they are subject to a motion to strike. Civ. Proc. Code § 436 (motion to strike lies to strike any "irrelevant, false or improper matter inserted in any pleading"). If the Court believes the City's "injunctive relief" allegations can and should be treated as a cause of action, then they are subject to demurrer—and dismissal—as argued in Part IV.B of the concurrently filed Demurrer.

public utility like Mendocino Railway. Pub. Util. Code § 1759. Further, there is no dispute that 1 Mendocino Railway is a *federally* recognized railroad subject to the jurisdiction of the federal Surface 2 Transportation Board. The unlimited regulatory control that the City seeks through an injunction is 3 federally preempted. 49 U.S.C. § 10501(b). 4

For these reasons, if the Court does not dismiss the City's action in its entirety, it should strike the City's "injunctive relief" allegations, including its prayer for an injunction, without leave to amend.

#### II. LEGAL AND FACTUAL BACKGROUND

#### Legal Background A.

A "public utility" is defined, in relevant part, as "every common carrier . . . where the service is 9 performed for, or the commodity is delivered to, the public or any portion thereof." Pub. Util. Code § 216(a)(1); see also Cal. Const. art. XII, § 3 ("[C]ommon carriers[] are public utilities."). A "common carrier" is, in turn, defined as "every person and corporation providing transportation for compensation to or for the public or any portion thereof." Id. § 211. A "common carrier" includes "[e]very railroad corporation." Id. § 211(a).

Formerly called the Railroad Commission, the CPUC has plenary jurisdiction to "supervise and 15 regulate" California public utilities, including railroads. Pub. Util. Code § 701; see also Public Utilities 16 Comm. v. Superior Court (2010) 181 Cal.App.4th 364, 368-69 (recounting history of CPUC and its 17 regulation of railroads). It "is a state agency of constitutional origin with far-reaching duties, functions 18 and powers." San Diego Gas & Elec. Co. v. Super. Ct. (1996) 13 Cal.4th 893, 914-15 (internal quotes 19 and citations omitted); see also Cal. Const. art. XII (establishing the CPUC). The CPUC's jurisdiction 20 21 includes an expansive police power to "require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and 22 safeguard the health and safety of its employees, passengers, customers, and the public." Pub. Util. Code 23 § 768; see also Sutter Butte Canal Company Co. v. Railroad Comm. (1927) 202 Cal.179, 184 (holding 24 that to the CPUC "has been committed the execution of this police power"-i.e., all power "necessary 25 for the protection of the public health, safety, morals and welfare"— "over public utilities in California"). 26 "In particular, the commission has comprehensive jurisdiction over questions of public health and safety 27 arising from utility operations." San Diego Gas & Electric Co., 13 Cal.4th at 924. In matters over which 28

5

6

7

8

10

11

12

13

the CPUC has jurisdiction, its jurisdiction is "exclusive." *City of Anaheim v. Pacific Bell Telephone Co.* (2004) 119 Cal.App.4th 838, 842 (citing Cal. Const. art. XII, § 8 ("A city ... may not regulate matters
 over which the Legislature grants regulatory power to the [Public Utilities] Commission.")).

Further, the CPUC has the judicial power to determine in the first instance "that the status of [an entity] is that of a public utility subject to regulation as contemplated by the Constitution of this state." *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 629-30. "That [the CPUC] . . . possesses judicial powers"—such as the power to determine whether and how an entity should be regulated as a public utility—"may not be questioned." *Id.* at 630. "When its determinations within its jurisdiction have become final they are conclusive in all collateral actions and proceedings." *Id.* 

## B. <u>Factual Background</u>

Mendocino Railway is a railroad that has operated between the City of Fort Bragg and Willits, in the County of Mendocino. Complaint at 2:19-20. The railroad owns real property in the City. *Id.* at 2:9-10.

As the Complaint admits, Mendocino Railway "is currently listed as a Class III railroad by the California Public Utilities Commission." Complaint at 2:5-6. The railroad therefore "is subject to CPUC jurisdiction and has all legal rights of *a public utility*." *Id.* at 2:6-7 (emphasis added). Consistent with those admissions, the CPUC's official website lists Mendocino Railway as a regulated railroad. Declaration of Paul Beard II ("Beard Decl."), Exh. A (CPUC webpage); Defendants' Request for Judicial Notice ("RJN") at 2:6-17.

The Complaint cites to a January 21, 1998, decision of the CPUC regarding the railroad, which also confirms the CPUC's decades-long history of recognizing and regulating it as a public utility. *Id.* 2:2. There, at the request of the rail line's prior owner, California Western Railroad ("CWRR"), the CPUC agreed to deregulate fares for the railroad's "excursion passenger service" only, which the CPUC did not deem to be a "public utility" function. *In the Matter of the Application* Calif. Western R.R., Inc. ("*In Re CWRR #1*"), 1998 Cal. PUC LEXIS 189, \*11 (Jan. 21, 1998).<sup>3</sup> But in the same decision, the CPUC reaffirmed its jurisdiction over the safety of the entire rail line (including its excursion service),

28 3 See Beard Decl., Exh. B, p. 4 (Jan. 21, 1998 CPUC Decision); RJN at 2:18-21.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

27

1 as well as all aspects of the railroad's commuter service:

"The Commission currently regulates the safety of the operation of all services provided by CWRR.... The safety of the operation of all services, including excursion passenger service, shall remain subject to regulation by the Commission. This proceeding shall remain open to consider CWRR's request to reduce its commuter service."

*Id.* at \*\*10-11.<sup>4</sup> Soon after the CPUC's decision, the CPUC granted CWRR's motion to withdraw its
request to reduce commuter service. *In the Matter of the Application of* Calif. Western R.R., Inc. 1998
Cal. PUC LEXIS 384 (May 21, 1998) ("*In Re CWRR #2*") (noting that CWRR "transports passengers
and freight).<sup>5</sup>

9 Every decision of the CPUC has only *reaffirmed* its jurisdiction over the railroad as a public 10 utility.

The City concedes that, following the CPUC's 1998 decision, Mendocino Railway "did or may 11 have had the capacity to carry freight and passengers from point-to-point." Complaint at 3:1-3. But the 12 City claims that "no rail lines presently have any such capacity."<sup>6</sup> Id. The City alleges Mendocino 13 Railway operates only "sightseeing excursions." Id. at 3:26. The City attributes the railroad's alleged 14 loss of freight and passenger service to two events: (1) the 2013 "partial collapse of Tunnel No. 1, which 15 buried nearly 50 feet of its 1,200 feet of track under rocks and soil," and (2) the 2016 re-closure of Tunnel 16 No. 1, purportedly following "damage from the 2015-16 El Niño." Id. at 3:7-9, 3:16-17. Yet despite 17 those 2013 and 2016 tunnel closures, the City readily defended Mendocino Railway's "public utility" 18 status as late as August 2019. Beard Decl., Exh. C (1/17/19 Letter from City) & Exh. D (8/1/19 City 19 Analysis); Declaration of Mike Hart, ¶ 2; RJN at 2:22–3:7. 20

21

22

In a January 17, 2019, letter from the City Attorney to the California Coastal Commission, the

25 5 See Beard Decl. Exh. E (May 21, 1998 CPUC Decision); RJN at 3:9-12.

2

3

<sup>&</sup>lt;sup>4</sup> In its Complaint, the City grossly mischaracterizes the CPUC's 1998 decision as somehow stripping the railroad of its "public utility" status. Complaint ¶ 6. The City's self-serving description in the Complaint is belied by the decision itself, which expressly affirms the CPUC's plenary jurisdiction over the railroad, with the limited exception that it no longer regulates its excursion fares.

 <sup>&</sup>lt;sup>6</sup> Mendocino Railway disputes any and all allegations that cast doubt on the railroad's uninterrupted and continued status as a "public utility" under state law and as a federally recognized railroad under federal law. But said allegations are legally irrelevant for purposes of this motion. As explained in the Argument, *infra*, even if those allegations were true (which they are not), the Superior Court has no subject matter jurisdiction to enter an injunction interfering with the CPUC's ongoing jurisdiction over Mendocino Railway.

City defended Mendocino Railway's right, *as a public utility*, to proceed with a land purchase without having to first obtain a state land-use permit. *This defense came after the 2013 and 2016 tunnel closures that interrupted the railroad's full freight and passenger service*. As the City explained in its letter, the CPUC has "recognized the Mendocino Railway as a regulated public utility" with the right to proceed with the transaction without a permit. Beard Decl., Exh. C, p. 2. The City also admitted that "[a]s an established railroad, the question of whether or not the Mendocino Railway is *federally* regulated has not been in question." *Id.* (emphasis added).

Similarly, in an August 1, 2019, letter, the City supported Mendocino Railway's application for 8 a U.S. Department of Transportation grant to repair Tunnel No. 1, and thereby "restore freight and 9 passenger operations over Mendocino Railway's entire 40-mile rail line" ("the Project"). Beard Decl., 10 11 Exh. D, p. 2. Again, the letter came years after the tunnel closures that the City claims disgualified Mendocino Railway of its "public utility" status. In its letter, the City touted Mendocino Railway's long 12 history of providing, not just excursions, but freight and general passenger service as well-service that, 13 as the City acknowledged in the letter, Mendocino Railway was ready, willing, and able to fully restore 14 upon the collapsed tunnel's reopening: 15

The Project would *renew* freight services, increase passenger offerings, and improve railroad safety and operations. . . . Mendocino Railway has a storied legacy of transporting freight and passengers and being the economic engine for the rural areas of Fort Bragg and greater Mendocino County. Various industries are eagerly awaiting *reopening* of Mendocino Railway's Line for freight services. . . . Additionally, it is anticipated that the *reopening* of the approximately 40-mile rail Line for passenger services should generate 25,000 or more passenger trips to be taken over the Line.

Beard Decl., Exh. D, pp. 2-3 (emphasis added).

Interestingly, the Complaint alleges no new facts or circumstances since the City's admissions in August 2019 that would cast the slightest doubt on Mendocino Railway's status as a public utility.

Nevertheless, the City now complains that Mendocino Railway has previously invoked its right as a CPUC-regulated public utility to rebuff City attempts to impose plenary control over the railroad and its facilities. As examples, the Complaint cites City efforts, in 2017 and 2019, to regulate the use

FISHERBROYLES<sup>4</sup>

16

17

18

19

20

21

22

23

and repair of a roundhouse<sup>7</sup> and storage shed located on Mendocino Railway's land. Complaint at 4:1-1 8. The Complaint also cites a more recent example from August 2021, when the City allegedly demanded 2 that Mendocino Railway obtain a "special event" permit for an unspecified late-night event. Id. at 4:8-3 10. In each instance, claims the City, Mendocino Railway declined to subject itself to local inspections 4 and permit requirements because of its "public utility" status. Id. at 4:-1-12. Curiously, the City in the 5 first two instances attempted to assert regulatory authority over the railroad at a time when the City did 6 not dispute-and even vigorously defended-Mendocino Railway's status as a public utility exempt 7 from just such local regulation. 8

The City has had a sudden change of heart regarding Mendocino Railway's "public utility" status. 9 In a single cause of action, the City purports to seek "declaratory and/or injunctive relief" to the effect 10 that (1) "Mendocino Railway is not subject to regulation [by the CPUC] as a public utility" and (2) 11 Mendocino Railway must "comply with all City ordinances, regulations, and lawfully adopted codes, 12 jurisdiction and authority." Id. at 4:27-28, 6:12-18. Mendocino Railway separately demurs to the entire 13 14 action, on the ground that the Court lacks subject matter jurisdiction to adjudicate it and grant any of the relief that the City seeks. In the alternative, Mendocino Railway moves to strike the Complaint's 15 "injunctive relief" allegations, including the City's prayer for an injunction. 16

## III. STANDARD OF REVIEW

Courts may strike any "irrelevant, false, or improper matter" inserted in a pleading. Civ. Proc. Code § 436. "Irrelevant matter" includes an "allegation that is not essential to the statement of a claim or defense," an "allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense," or a "demand for judgment requesting relief not supported by the allegations of the complaint." *Id.* § 431.10. "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." *Id.* § 437. On a motion to strike, the Court assumes the truth of all facts properly pled in or reasonably inferred from the complaint, but not mere contentions, deductions, or conclusions of law. *Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 985-86.

17

18

19

20

21

22

23

24

25

26

A "roundhouse" is defined as a "a circular building for housing and repairing locomotives." See
 Merriam-Webster, available at <a href="https://www.merriam-webster.com/dictionary/roundhouse">https://www.merriam-webster.com/dictionary/roundhouse</a>.

1	IV. <u>ARGUMENT</u>
2	The Court should strike the Complaint's "injunctive relief" allegations, including its prayer for
3	an injunction. As a matter of state and federal law, an injunction is not supported by any cause of action
4	or any allegation contained in the Complaint. Civ. Proc. Code § 431.10.
5	A. <u>Injunctive Relief Is Barred by State Law</u>
6	The Public Utilities Code "vests the [CPUC] with broad authority to supervise and regulate every
7	public utility in the State and grants the commission numerous specific powers for the purpose." San
8	Diego Gas, 13 Cal.4th at 915 (quoting Pub. Util. Code § 701) (internal quotation marks omitted). To
9	protect the CPUC's broad mandate and limit judicial interference with the CPUC's work, the Legislature
10	enacted section 1759 of the Public Utilities Code. Subsection (a) of that statute states:
11	No court of this state, except the Supreme Court and the court of appeal,
12	to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to
13	suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties,
14	as provided by law and the rules of court.
15	Pub. Util. Code § 1759 (emphasis added).
16	"By its plain language, section 1759 deprives the superior court of jurisdiction to entertain an
17	action that could undermine the CPUC's authority." Anchor Lighting v. Southern California Edison Co.
18	(2006) 142 Cal.App.4th 541, 548. Thus, apart from the limited review procedures in section 1759 of the
19	Public Utilities Code, "no other court has jurisdiction either to review or suspend the commission's
20	decisions or to enjoin or otherwise interfere with the commission's performance of its duties." San Diego
21	Gas, 13 Cal.4th at 916. Further, "after the commission has assumed jurisdiction over a public utility for
22	the purpose of administering the law applicable to the activities of the utility, the commission has
23	exclusive jurisdiction over the regulation and control of said utility." Pacific Tel. & Tel. Co. v. Superior
24	Court of San Francisco (1963) 60 Cal.2d 426, 430. "The CPUC has exclusive jurisdiction over the
25	regulation and control of utilities and that jurisdiction, once assumed, cannot be hampered or second-
26	guessed by a superior court action addressing the same issue." <i>Anchor Lighting</i> , 142 Cal.App.4th at 548.
27	The Court lacks subject matter jurisdiction to issue an injunction to compel Mendocino Railway

28 to submit to "all" the City's laws and to its plenary jurisdiction. Complaint at 6:15-18. As the City admits,

10 Defendant's Notice of Motion and Motion to Strike

Mendocino Railway "is currently listed as a class III railroad by the California Public Utilities 1 2 Commission," "is subject to CPUC jurisdiction," and "has all legal rights of a public utility. Complaint at 2:3-7. That fact is confirmed by the CPUC's official list that includes Mendocino Railway among 3 "regulated California railroads." Beard Decl., Exh. A ("CPUC regulates all railroads in California." 4 (emphasis added)). Further, it is confirmed in a final decision of the CPUC, in which the CPUC expressly 5 affirmed continuing jurisdiction and regulatory authority over the railroad. Beard Decl., Exh. B, p. 5 6 ("The safety of the operation of all services, including excursion passenger service, shall remain subject 7 to regulation by the Commission."). The CPUC unequivocally has "assumed jurisdiction over a public 8 utility [i.e., Mendocino Railway] for the purpose of administering the law applicable to the activities of 9 the utility." Pacific Tel. & Tel. Co., 60 Cal.2d at 430. Consequently, the CPUC's "regulation and control 10 of said utility" is "exclusive" (id.), and "that jurisdiction . . . cannot be hampered or second-guessed by 11 a superior court action." Anchor Lighting, 142 Cal.App.4th at 548.8 12

The City's injunction would substitute the City for the CPUC. It would second-guess the CPUC's 13 decision that Mendocino Railway is a public utility subject to its jurisdiction and regulatory authority. 14 And it would hamper the CPUC's ability, as the state agency with exclusive authority over public-utility 15 railroads, to oversee and regulate Mendocino Railway. If, as the City's injunction would require, 16 Mendocino Railway were forced to submit to the City's plenary jurisdiction, and all of its regulatory and 17 permitting requirements, the CPUC's plenary jurisdiction and regulatory authority over the railroad 18 would be completely displaced. Section 1759's prohibition on Superior Court actions purporting to 19 second-guess or interfere with the CPUC's rights and duties vis-à-vis a regulated public utility bars 20injunctive relief.

Also, the City's injunction would be preempted by the California Constitution's mandate that "[a] city . . . may not regulate matters over which the Legislature grants regulatory power to the [CPUC]." Cal. Const. art. XII, § 8. "[T]he commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations." San Diego Gas, 13 Cal.4th at 924. For example, the

<sup>8</sup> The CPUC amply regulates public-utility railroads like Mendocino Railway under numerous 27 provisions of the Public Utilities Code, including without limitation: Public Utilities Code sections 28 309.7, 315, 421, 761, 765.5, 768, 7661, 7662, and 7665.2.

21

22

23

24

25

26

CPUC has the broad and exclusive power to "require every public utility to construct, maintain, and 1 operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote 2 and safeguard the health and safety of its employees, passengers, customers, and the public." Pub. Util. 3 Code § 768; City of Anaheim, 119 Cal.App.4th at 842 (CPUC jurisdiction is "exclusive"). In its 1998 4 decision, the CPUC invoked that same broad authority over the railroad. Beard Decl., Exh. B, p. 5. Yet 5 an injunction purporting to give the City unfettered regulatory authority over a CPUC-regulated public 6 utility, including its operations and rail facilities, would unlawfully encroach upon the CPUC's exclusive 7 jurisdiction under the state constitution. 8

9 || **B**.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

28

# Injunctive Relief Is Barred by Federal Law

Independent of its status as a public utility under California law, the City does not dispute that Mendocino Railway is a *federally* recognized railroad. Beard Decl., Exh. C, p. 2 (City declaring that "[a]s an established railroad, the question of whether or not the Mendocino Railway is federally regulated has not been in question"). Mendocino Railway's status as a federally recognized railroad carries with it federally protected prerogatives that the City's broad injunction would extinguish.

To be a federally recognized railroad is to be regulated by the federal Surface Transportation Board ("STB" or "Board") under the Interstate Commerce Commission Termination Act ("ICCTA"). That law gives plenary and exclusive power to the STB to regulate federally recognized railroads:

"The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part [49 USCS §§ 10101 et seq.] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is *exclusive*. Except as otherwise provided in this part [49 USCS §§ 10101 et seq.], the remedies provided under this part [49 USCS §§ 10101 et seq.] with respect to regulation of rail transportation are *exclusive* and preempt the remedies provided under Federal or State law."

27 49 U.S.C. § 10501(b) (emphasis added).

The STB's exclusive jurisdiction over a federally recognized railroad means that state and local

regulatory and permitting requirements are broadly preempted. U.S. Const. art. VI, cl. 2 (Supremacy 1 Clause); 49 U.S.C. § 10501(b); City of Auburn v. United States (9th Cir. 1998) 154 F.3d 1025, 1030-31 2 (The ICCTA's preemptive scope is "broad."); Friends of Eel River v. North Coast R.R. Auth'y (2017) 3 3 Cal.5th 677, 703 (holding that "state environmental permitting or preclearance regulation that would 4 have the effect of halting a private railroad project pending environmental compliance would be 5 categorically preempted"). 6

The City's injunction would grant it unlimited power and authority over a federally recognized 7 railroad. The injunction would require Mendocino Railway to submit to "all" local laws and regulations, 8 as well as to the total "jurisdiction and authority" of the City. Complaint at 6:15-18 (emphasis added). 9 Under such vast power, the City could force Mendocino Railway to halt or delay rail-related activities 10 pending compliance with local permitting and other preclearance requirements. Indeed, the Complaint itself cites examples of the City trying to exercise local authority to inspect and permit certain of 12 Mendocino Railway's rail-related facilities (i.e., its roundhouse and storage shed). Complaint ¶ 12; see also 49 U.S.C. § 10501(b) (STB has exclusive jurisdiction over rail "facilities"); id. § 10102(9) (STB's 14 exclusive jurisdiction reaches "property" or "equipment ... related to the movement of passengers or 15 property, or both, by rail," including "services related to that movement"). The City's injunction, which 16 would confer on it plenary regulatory authority over Mendocino Railway's operations and facilities, 17 would violate 49 U.S.C. section 10501(b). 18

In sum, even if it were not a CPUC-regulated public utility under state law, Mendocino Railway would still be a federally recognized railroad. And federal law would preempt an injunction subjecting it to "all" the City's laws and plenary jurisdiction.

#### V. **CONCLUSION**

For all the reasons described above, the Court should strike all injunctive relief allegations, 23 including the prayer's request for an injunction. 24

DATED: January 14, 2022 25

/s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY

11

13

19

20

21

22

26

27