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MENDOCINO RAILWAY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MENDOCINO RAILWAY, a California corporation,

Plaintiff

v.

JACK AINSWORTH, in his official capacity as Executive Director of the California Coastal Commission; CITY OF FORT BRAGG, a California municipal corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No.: 4:22-cv-04597-JST

Assigned for all purposes to: Hon. John S. Tigar, Ctrm. 6

PLAINTIFF'S OPPOSITION TO DEFENDANT JACK AINSWORTH'S MOTION TO DISMISS

Hearing Date:	Dec. 22, 2022
Hearing Time:	2:00 p.m.
Dept.:	Courtroom 6
Judge:	Hon. Jon S. Tigar

Complaint Filed: August 9, 2022

Table of Contents

I. INTRODUCTION

Defendant Jack Ainsworth, as Executive Director of the California Coastal Commission (hereinafter, "Commission"), moves to dismiss Plaintiff Mendocino Railway's action based on abstention under *Younger v. Harris*, 401 U.S. 37 (1971). The motion fails.

Younger abstention requires an ongoing state proceeding. While a state-court action involving the Commission and Defendant City of Fort Bragg was pending in the Mendocino County Superior Court, that action was removed to federal court on October 20, 2022. *See* RJN of Mendocino Railway, Exh. 1. Without an ongoing state proceeding, *Younger* abstention is precluded.

Even if that state action were still pending in the Superior Court, the Commission's other arguments for abstention lack merit. The removed action is not a quasi-criminal proceeding. It is an action to establish the Commission's and City's land-use authority over Mendocino Railway's rail-related activities, and to purport to bring the railroad into compliance with state and local land-use laws. The removed action is not aimed to punish anyone.

Nor was there an overriding state interest present in the removed state-court action. Where the central and threshold issues are federal, the federal proceeding does not implicate an important state interest sufficient to justify *Younger* abstention. That is certainly true here. This action concerns Mendocino Railway's federal preemption rights against state and local land-use regulation over rail-related activities. Those federal issues are the threshold questions in the City's and Commission's removed action.

Ultimately, the Court has no basis for abstaining, primarily because there is no existing state proceeding to abstain *for*. The Court should deny the Commission's motion.

II. ARGUMENT

A. *Younger* Abstention Applies Only in Extraordinary Circumstances When Certain Narrow Criteria Are Met

The United States Supreme Court "has cautioned" that, when it otherwise has jurisdiction, "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). "In the main, federal courts are ***obliged*** to decide cases within the scope of federal

jurisdiction." *Sprint*, 571 U.S. at 72 (emphasis added).

The Commission argues for abstention under *Younger*, 401 U.S. 37. *Younger* abstention is rooted in "the basic doctrine of equity jurisprudence that courts of equity should not act . . . to restrain a ***criminal*** prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger*, 401 U.S. at 43-44 (emphasis added). "Following a period of continuous expansion, including to some civil proceedings, the Supreme Court firmly cabined the scope of the doctrine, holding that *Younger* applies only to three categories . . . 1) 'ongoing state criminal prosecutions'; 2) 'certain civil enforcement proceedings'; and 3) 'civil proceedings involving certain orders . . . uniquely in the furtherance of the state courts' ability to perform their judicial functions." *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 588 (quoting *Sprint Comc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013)).

"If a state proceeding falls into one of those three categories, *Younger* abstention is applicable, but only if the three additional factors laid out in *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982) are also met: that the state proceeding is 1) 'ongoing'; 2) 'implicate[s] important state interests'; and 3) 'provide[s] adequate opportunity . . . to raise constitutional challenges.'" *Applied Underwriters*, 37 F.4th at 588 (quoting *Middlesex*, 457 U.S. at 432) (emphasis added). Thus, the necessary predicate for *Younger* abstention is that there be an existing state proceeding. "Absent any pending proceeding in state tribunals, . . . application by the lower courts of *Younger* abstention [is] clearly erroneous." *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992).

The grounds for abstaining based on a pending state proceeding are narrow. If not a criminal action, the proceeding must at least be "akin to a criminal prosecution" in "important respects." *Sprint*, 571 U.S. at 79 (cleaned up). Quasi-criminal prosecution is the "hallmark of the civil enforcement proceeding category for *Younger* purposes." *Applied Underwriters*, 37 F.4th at 588. Accordingly, the proceeding must be either "in aid of and closely related to ***criminal*** statutes," or "aimed at ***punishing*** some wrongful act through a penalty or sanction." *Id.* at 589 (citing *Huffman v. Pursue Ltd.*, 420 U.S. 592, 607 (1975) and *Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986)) (emphasis added). In *Applied Underwriters*, the Ninth Circuit indicated that where the overriding purpose of a state proceeding is "to rehabilitate, to deter, or to protect the public," the

proceeding lacks the quasi-criminal quality needed for *Younger* abstention. *Applied Underwriters*, 37 F.4th at 601 (Nguyen, J., dissenting) (summarizing majority's holding).

"*Younger* abstention is not jurisdictional, but reflects a court's prudential decision not to exercise jurisdiction which it in fact possesses." *Benavidez v. Eu*, 34 F.3d 825, 829 (9th Cir. 1994).The Supreme Court cautions that "even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule." *Sprint*, 571 U.S. at 82.

B. No State Proceeding Exists, So *Younger* Abstention Is Barred

On October 20, 2022, and over Mendocino Railway's objection, the Superior Court granted the Commission's motion to intervene in the state action initiated by the City. Given the federal questions presented by the Commission's claims, which now become a part of that action, Mendocino Railway removed the entire action to federal court that same day. 28 U.S.C. § 1441(c) (authorizing removal of entire action). As such, no state proceeding exists. The "filing of a removal petition terminates the state court's jurisdiction." *Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1254 n.11 (11th Cir. 1988); *see also Gastelum v. Am. Family Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 177171, *4 (D. Nev. Dec. 23, 2014) (same); see also 28 U.S.C. § 1446(d) (prohibiting further state-court action upon removal).

Without a pending state proceeding, a federal court may not abstain under *Younger*. *Ankenbrandt*, 504 U.S. at 705 ("Absent any pending proceeding in state tribunals, . . . application by the lower courts of *Younger* abstention [is] clearly erroneous."); *see also Vill. of DePue v. Exxon Mobil Corp.*, 537 F.3d 775, 783 (7th Cir. 2008); *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729, 734 (9th Cir. 1991) ("Removal under 28 U.S.C. § 1441 simply does not leave behind a pending state proceeding that would permit *Younger* abstention."); *Harp v. Starline Tours of Hollywood, Inc.*, 2015 U.S. Dist. LEXIS 63623, *5 (C.D. Cal. May 13, 2015) ("Absent a pending state action, *Younger* abstention is inappropriate."); *Oregon Bureau of Labor & Indus. v. US West Communs., Inc.*, 2000 U.S. Dist. LEXIS 16300, *8 ("Here, there is no state proceeding ongoing because of the removal."); *Zeeco, Inc. v. JPMorgan Chase Bank, N.A.*, 2017 U.S. Dist. LEXIS 211158, **9-10 (N.D. Okla. Dec. 21, 2017) (discussing "several cases concluding that *Younger* cannot apply in the context of removal," and concluding that "these cases" are "persuasive" and that "the *Younger* doctrine [is] inapplicable" when the relevant state action has been removed); *Va. ex rel. Kilgore v. Bulgartabac Holding Group*, 360 F.

Supp. 2d 791, 797 (E.D. Va. Mar. 3, 2005) ("[A]s of the time of removal, the removed action is not pending in the state court. It is extant only in the federal court to which it was removed. For that reason, the removed case cannot satisfy the threshold facet of *Younger* abstention.").

Given the removal of the state-court action that is the linchpin of the Commission's and City's abstention argument, their motions to dismiss fail, and the Court need not consider the other criteria for *Younger* abstention.

C. The Removed Action Is Not a Criminal or Quasi-Criminal Prosecution, So *Younger* Abstention Cannot Apply

Even if Mendocino Railway hadn't removed the state action, the action is not among the narrow categories of cases that can justify abstention under *Younger*. That is because neither the City's claim nor the Commission's claims resemble quasi-criminal prosecutions.

1. The City's Complaint Does Not Resemble a Quasi-Criminal Prosecution

At the time Mendocino Railway filed this action on August 9, only the City's claim was pending in state court. As described above, the City brings a single cause of action for declaratory relief on the question whether Mendocino Railway is a "public utility." City Complaint, pp. 4-6. The City also seeks an injunction requiring the railroad "to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority."[1] City Complaint, p. 6, Prayer ¶ 3.

The City's complaint is aimed at establishing the City's authority over Mendocino Railway and compelling it to comply with land use laws. The City's complaint is "not intended to punish or criminalize" anyone. *Ojavan Investors v. Cal. Coastal Com*., 54 Cal. App. 4th 373, 393 (1997) (rejecting argument that injunction compelling compliance with land-use laws is intended to punish or criminalize the property owner). Nor is the complaint "in aid of and closely related to [any] criminal statute." *Applied Underwriters*, 37 F.4th at 588; *cf. Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc*.,

[1] In its Complaint, the City improperly alleges a cause of action for "declaratory and/or injunctive relief." City Complaint, p. 4:25. Although section 1060 of the California Code of Civil Procedure authorizes a cause of action for declaratory relief, California law does not recognize a "cause of action for injunctive relief." An "injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action." *County of Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965, 973 (1999). "A cause of action must exist before a court may grant a request for injunctive relief." *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 65 (2015).

477 U.S. 619, 629 (1986) (state-initiated administrative proceedings to enforce state civil rights laws, noting "potential sanctions for the alleged sex discrimination"); *Middlesex*, 457 U.S. at 427, 433-34 (state-initiated disciplinary proceedings against lawyer for violation of state ethics rules, noting the availability of "private reprimand" and "disbarment or suspension for more than one year"); *Moore v. Sims*, 442 U.S. 415, 419-20 (1979) (state-initiated proceeding to gain custody of children allegedly abused by their parents, noting the action was "in aid of and closely related to criminal statutes"); *Trainor v. Hernandez*, 431 U.S. 434, 435 (1977) (civil proceeding "brought by the State in its sovereign capacity" to recover welfare payments defendants had allegedly obtained by fraud, "a crime under Illinois law"); *Huffman*, 420 U.S. at 596-98 (state-initiated proceeding to enforce public nuisance laws, which provided for "closure for up to a year of any place determined to be a nuisance," "preliminary injunctions pending final determination of status as a nuisance," and "sale of all personal property used in conducting the nuisance").

In sum, the removed action consisting of the City's single cause of action does not support *Younger* abstention.

2. The Commission's Complaint Does Not Resemble a Quasi-Criminal Prosecution

The Commission's first and primary cause of action is for a declaration that Mendocino Railway is neither a federally regulated railroad under ICCTA nor a state public utility, such that railroad is subject to state and local land-use permit requirements. Commission Complaint, p. 7. Like the City's complaint, the chief purpose of the Commission's first claim is evident: It is to establish its land-use authority over Mendocino Railway, a federally regulated railroad. The first cause of action is not "in aid of and closely related to [any] criminal statute," and does not aim to "punish[]" Mendocino Railway. *Applied Underwriters*, 37 F.4th at 588.

The same is true of the Commission's second cause of action, which (falsely) alleges violations of state and City land-use laws, including the Coastal Act. Commission Complaint, p. 8. The alleged violations are based ***exclusively*** on the mistaken notion that Mendocino Railway was required to, but did not, obtain land-use permits before repairing a roundhouse and storage shed, and completing a lot-line adjustment on parcels it owned. Commission Complaint, p. 3, ¶ 4. The Commission seeks an injunction requiring Mendocino Railway to (a) stop "all" work (even rail-related work) on railroad property located

in the coastal zone, (b) undo its rail improvements and/or apply to the Commission for land-use permits to regularize past work and perform future work, and (c) pay fines associated with the alleged violations. Commission Complaint, p. 8.

An injunction compelling compliance with land-use laws, including the Coastal Act, is "not intended to punish or criminalize" Mendocino Railway. *Ojavan*, 54 Cal. App. 4th at 393. "Rather, the purpose of the injunction [is] to protect the public from violations of the Coastal Act" and the related LCP. *Id.* (rejecting argument that permanent injunction enjoining violations of the Coastal Act constituted punishment).

The Commission appears to argue that the "civil liability" and "exemplary damages" authorized by sections 30820(b) and 30822, respectively, convert its action into a criminal prosecution. Not so. The provisions are not "in aid of and closely related to [any] ***criminal*** statute," or even "***aimed*** at punishing" Mendocino Railway. *Applied Underwriters*, 37 F.4th at 588 (emphasis added). The Commission identifies no relevant criminal statute, because no such statute exists.

Moreover, the Commission's pursuit of a monetary exaction under sections 30820 and 30822 is not aimed at punishing Mendocino Railway. As the complaint shows, it is aimed at securing compliance with the Coastal Act. *Id*. Even if particular "civil penalties may have a punitive or deterrent aspect, their primary purpose"—their ultimate ***aim***—"is to secure obedience to statutes and regulations imposed to assure important public policy objectives." *Kizer v. County of San Mateo*, 53 Cal. 3d 139, 147-148 (1991); *City and County of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1315 (2000) (same); *see also Hale v. Morgan*, 22 Cal. 3d 388, 398 (1978) (observing that state-law penalties serve "as a means of securing obedience to statutes"). ICCTA federally preempts the Commission's demand to subject a federally regulated railroad to unfettered state and local land-use permitting authority. But whatever the demerits of its claims, the state action unequivocally evinces the primary objective of compelling Mendocino Railway to submit to the Commission's plenary land-use authority, including through the tool of imposing monetary liability.

Last year, the California Court of Appeal addressed the nature and purpose of a similar Coastal Act provision—section 30821—that authorizes monetary liability against individuals. *Lent v. California Coastal Com.*, 62 Cal. App. 5th 812 (2021). Section 30821 authorizes the imposition of a so-called

"administrative civil penalty" against an individual who violates the Coastal Act's "public access" policies. Pub. Res. Code § 30821. Section 30820 (at issue in this case) differs from section 30821 in terms of who can impose liability. Under section 30820, only the superior court may impose monetary liability; on the other hand, section 30821 allows the Commission to unilaterally impose a penalty at an administrative hearing. *Compare* Pub. Res. Code § 30820 *with id.* § 30821. Otherwise, the two statutes are substantially the same for purposes of this analysis.

In *Lent*, property owners challenged the facial constitutionality of section 30821. *Lent*, 62 Cal. App. 5th at 843-849. The owners argued that, because section 30821 imposes a "quasi-criminal penalty" that "is more serious than a purely civil remedy," the statute has insufficient due process protections for those facing such a penalty. *Id.* at 849. The Court of Appeal rejected the owners' characterization of the penalty statute, explaining:

> [T]he Lents assert that, by definition, a quasi-criminal penalty is more serious than a purely civil remedy, and that point is appropriately considered in the balancing-factor analysis under procedural due process. But the Legislature has characterized the penalty imposed under section 30821 as an "administrative ***civil*** penalty" (§ 30821, subd. (a)), not a "***criminal***" penalty or fine. Like the civil penalty the Supreme Court considered in [*People v. Super. Ct. ("Kaufman")*, 12 Cal. 3d 421 (1974)], a penalty imposed under section 30821 does not expose the defendant to the stigma of a criminal conviction.

Id. (cleaned up) (emphasis added).

Simply put, even a "penalty" like the one that section 30821 authorizes bears the hallmarks of a criminal or quasi-criminal sanction. It is fundamentally "civil" in nature, as the Legislature labeled it. The same is true of sections 30820 and 30822, neither of which even refers to the monetary liability they authorize as "penalties." Section 30820 authorizes a monetary "civil liability." Pub. Res. Code § 30820. Section 30822 authorizes "exemplary ***damages***" and focuses on the objective of "deter[ring] further violations." Pub. Res. Code § 30822 (emphasis added); *see also Ojavan*, 54 Cal. App. 4th at 383 (noting that superior court denied "the Commission's request for exemplary damages under section 30822 on the ground such damages were unnecessary to deter further violations in light of the fines imposed" under section 30820).

In *People v. Toomey*, 157 Cal. App. 3d 1 (1984), both the Attorney General and the DA (on behalf of "the People") prosecuted a business owner for engaging unfair business practices against his customers. *Id.* at 7. The People sought an injunction and substantial "civil penalties" under the

California Business & Professions Code ("BPC"). The superior court entered judgment against the owner, entering a permanent injunction, ordering him to pay $300,000 in civil penalties, and requiring him to make refunds and restitution to former customers. *Id.* at 10. The owner appealed the judgment, including on the grounds that he was deprived of due process in what he characterized as a "quasi-criminal case" against him. *Id.* at 17.

The Court of Appeal disagreed with the owner's characterization. *Id.* "[T]he case against appellant was not criminal or quasi-criminal in nature." *Id.* As a result, the Court concluded that the constitutional safeguards required in criminal and quasi-criminal cases do not apply: "[I]t is now firmly established that an action brought pursuant to the unfair business practices act seeks only civil penalties, and accordingly the due process rights which apply in criminal actions, including the right to a jury trial, need not be provided." *Id.*; *see also In re Alva*, 33 Cal. 4th 254, 286 (2004).

In *Humanitarian Law Project v. United States Treasury Dep't*, 578 F.3d 1133 (9th Cir. 2009), the Ninth Circuit considered whether certain "civil penalties" at issue there imposed "quasi-criminal" punishment. *Id.* at 1149. As the Court framed the inquiry: "Even in those cases where the legislature has indicated an intention to establish a civil penalty, we inquire further whether the statutory scheme was so punitive either in purpose or effect, as to transform what was clearly intended as a civil remedy into a criminal penalty." *Id.* (cleaned up). The Court balanced the factors set forth in *Hudson v. United States*, 522 U.S. 93 (1997): "(1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment -- retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may be rationally connected may be assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned." *Humanitarian Law*, 578 F.3d at 1149 (quoting *Hudson*, 522 U.S. at 99-100). Observing that the penalties were legislatively labeled as "civil" versus "criminal," and weighing the *Hudson* factors, the Court concluded that the civil penalties did not rise to the level of quasi-criminal punishment:

> The *Hudson* factors do not indicate that the civil penalties are really criminal. IEEPA's civil penalties are monetary, with no other affirmative disability or restraint. Such monetary penalties have not historically been regarded as punishment. . . . [T]he civil

> penalty provision . . . has [no] *mens rea* requirement, weighing against finding that these are criminal penalties. While civil fines . . . have a deterrent effect, the mere presence of this purpose is insufficient to render a sanction criminal. Finally, the same conduct may be punished both civilly and criminally, but this alone does not render all the penalties criminally punitive.

Humanitarian Law, 578 F.3d at 1150 (emphasis added).

Applying the same analysis to sections 30820 and 30822 yields the same result. The provisions relied on by the Commission to pursue a monetary exaction against Mendocino Railway do contain a *mens rea* requirement. Pub. Res. Code §§ 30820(b), 3082. But all the other *Hudson* factors weigh decisively against characterizing such liability as quasi-criminal punishment. Both provisions authorize what the Legislature specifically labeled as "civil"—not "criminal"—liability. Both provisions impose only *monetary* liability, not any other affirmative disability or restraint. While both provisions may have a deterrent effect, they are employed primarily to secure an alleged violator's compliance with certain laws and regulations, not to punish him. *Ojavan*, 54 Cal. App. 4th at 393; *see also Humanitarian Law*, 578 F.3d at 1150 ("While civil fines . . . have a deterrent effect, the mere presence of this purpose is insufficient to render a sanction criminal." (cleaned up)). Where pursuit of monetary liability "serves an alternative function other than punishment"—e.g., compelling legal compliance—it cannot be deemed akin to a criminal prosecution. *Id.* Finally, the conduct complained of—alleged failure to obtain land-use permits—cannot be punished both civilly and criminally. *Humanitarian Law*, 578 F.3d at 1150 ("Finally, the same conduct may be punished both civilly and criminally, but this alone does not render all the penalties criminally punitive."). On balance, sections 30820 and 30822 are not criminally punitive and do not convert the removed action into one of the narrow categories of state proceedings that can justify *Younger* abstention.

In sum, the chief purpose of the Commission's complaint is to establish unfettered land-use authority over Mendocino Railway, a federally regulated railroad, and compel it to submit to its regulatory jurisdiction. Such an action cannot fairly be characterized as a criminal or quasi-criminal prosecution. It is not a claim in aid of or related to any criminal statute. Nor does it purport to punish the railroad. *Applied Underwriters*, 37 F.4th at 588. Like the City's complaint, the Commission's complaint does not support *Younger* abstention.

D. The Commission's Counter-Arguments Are Meritless

1. Arguments That The State Action Is a "Quasi-Criminal" Action Fail

First, the Commission argues that the removed action is about "seeking confirmation of" the City's and Commission's "authority to regulate Plaintiff's activities within their jurisdiction" and "enforc[ing] the City's LCP and the Coastal Act with regard to those activities." Commission Mot. at 8. The Commission's admission about what the removed action is about only undercuts its argument that the action is a quasi-criminal proceeding against Mendocino Railway. As noted above, the removed action is not in aid of or related to any ***criminal*** statute, and the state action does not have as its ***aim*** the punishment or sanctioning of the railroad. Rather, as the Commission appears to admit, the state action is about the agencies' misguided efforts to—first and foremost—establish their unfettered land-use authority over Mendocino Railway and, secondarily, to bring the railroad into compliance with their land-use laws.

Second, the Commission argues that, prior to intervening in the removed action, it sent Mendocino Railway a letter "sett[ing] forth the primary basis for the Coastal Commission's requested civil penalties and damages." Commission Mot. at 8-9. But, again, that letter only undercuts the Commission's claim of a quasi-criminal prosecution. Commission RJN, Exh. F. The letter seeks information about alleged work at the rail property and reveals that the Commission's objective is to compel compliance with the Coastal Act, not criminally or quasi-criminally *punish* the railroad. Dkt. No. 15-1 at 82 (Commission RJN, Exh. F, 8/10/22 Letter from Commission to Mendocino Railway). As the letter shows, the Commission's purpose has been—and continue to be—about its efforts to assert land-use permitting authority over a federally regulated railroad, which the federal ICCTA categorically preempts. Further, Mendocino Railway is unaware of any decision that holds that a single staff letter speculating about potential violations and seeking further information constitutes a "state proceeding" for purposes of *Younger* abstention.

Third, the Commission attempts to piggy-back onto the City's single claim related to Mendocino Railway's "public utility" status to argue that the *City* is pursuing a quasi-criminal prosecution against the railroad, thereby rendering the entire state action a quasi-criminal prosecution. Commission Mot. at 9. The Commission is wrong. Mendocino Railways explains above why the City is not pursuing an

action that can be reasonably characterized as a quasi-criminal prosecution. As with the Commission's claims, the purpose of the City's action is to establish its land-use authority over a federally regulated railroad, compelling it to submit to its plenary permit jurisdiction. Contrary to the Commission's argument, the City's action was not initiated to "sanction" the railroad for a "wrongful act." Commission Motion at 9.

The Commission cites *Herrera v. City of Palmdale*, 918 F.3d 1037 (9th Cir. 2019). But that case is inapposite. In *Herrera*, a city and county (collectively, "the agencies") investigated two motel owners for violating numerous local and state codes and thereby maintaining a public nuisance at the property. Among other things, the city obtained a "warrant" to investigate the suspected violations, which allegedly included an inspection of the owners' personal residence. *Id.* at 1041. The owners further alleged that the county sheriff's department held the owners and their children "at gunpoint for an hour and a half during the inspection." *Id.* Subsequently, the city issued a notice and order to repair and abate the nuisance within 30 days, identifying 400 code violations on the motel property. *Id.* The city also ordered the owners and tenants to vacate the motel property within two days. Two days later, the agencies closed the motel and evicted the owners and tenants from the motel. *Id.*

The motel owners filed a civil rights action under 42 U.S.C. section 1983 in federal court. Almost simultaneously, the city filed a "Nuisance Complaint" in state court, seeking "a declaration that the motel is a public nuisance, the appointment of a receiver to take possession and control of the property, and injunctive relief" prohibiting future nuisances and violations. *Id*. at 1041-42. Both agencies filed motions to abstain under *Younger*, which the district court granted. *Id.* at 1042. The Ninth Circuit affirmed.

The Court noted that "a state nuisance proceeding may warrant *Younger* abstention." *Id.* at 1044. The state nuisance action against the motel owners was particularly akin to a quasi-criminal prosecution because: (1) the city "obtained and executed an inspection warrant," identifying "more than four hundred violations of State and local laws on the motel property"; (2) the city initiated "an action for nuisance abatement and receivership," because the nuisance conditions at the motel "pose[d] a severe life and health and safety hazard to any occupants, nearby residents, and the public"; and (3) the "state nuisance complaint requested," *inter alia*, "the appointment of a receiver to take possession and control

of the property, an injunction preventing [the motel owners] from collecting rent or income from the property and from claiming any state tax deduction on the property, and imposition of civil penalties against [them]." The Court concluded that "such relief would *sanction*" the owners. *Id.* at 1045. Indeed, the combination of a quasi-criminal inspection pursuant to a warrant, and orders allowing the seizure of real property and barring business income, point to an action that "aim[s] at punishing some wrongful act." *Applied Underwriters*, 37 F.4th at 589 (citing *Huffman*, 420 U.S. at 596-98, as an example of a situation involving a quasi-criminal proceeding, because the "state-initiated proceeding to enforce public nuisance laws" led to "closure" of the nuisance property and "sale of all personal property used in conducting the nuisance").

None of the *Herrera* facts are present here. Unlike the state nuisance action in *Herrera*, the removed action here alleges no cause of action for nuisance. Rather, it seeks to first establish unfettered land-use control over a federally regulated railroad, then compel the railroad to comply with state and local land-use laws. Indeed, the state action contains no viable claim of any threat to the "life and health and safety" of the public; in *Herrera*, the nuisance threat was real, which is why the agencies acted to close down the motel and evict the owners and their tenants—even before any of the litigation started. *Herrera*, 918 F.3d at 1041. By contrast, the removed action here is, at bottom, a jurisdictional dispute over whether Mendocino Railway must submit to the land-use permitting authority of the City and Commission. None of the repair work undertaken by the railroad on its rail facilities can be credibly characterized as a "nuisance," as evidenced by the fact that neither the City nor the Commission has filed a nuisance complaint.[2]

To summarize, *Herrera* is distinguishable from this case.[3] To the extent the Commission is

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[2] The only "violations" alleged in the City's complaint is Mendocino Railway's refusal to allow access to a City building inspector to inspect a railroad roundhouse, and its refusal to apply for land-use permits for two activities. Similarly, the only violations alleged in the Coastal Commission's complaint is work on the same roundhouse referenced by the City, work on a storage shed, and a lot-line adjustment, which the Commission complains were undertaken without its pre-approval. But the state action does not contain even a suggestion that the foregoing "violations" constitute public nuisances, let alone that they threaten life, health or safety (as was the case in *Herrera*).

[3] In addition, if the Superior Court grants the Commission intervention in the state litigation in the coming days, thereby infusing it with a federal question, the state litigation will be immediately removed by Mendocino Railway. In that case, and unlike in *Herrera*, there will be no state action to

urging an expansive reading of that decision to cover even *non*-nuisance claims, the Ninth Circuit's 2022 decision in *Applied Underwriters* is instructive. As noted above, *Applied Underwriters* cabins *Younger* abstention to those state proceedings in which the unequivocal aim of the action is to punish; if the action has other purposes, including "to rehabilitate, to deter, or to protect the public," then *Younger* abstention—which remains the exception, not the rule—does not apply. *Applied Underwriters*, 37 F.4th at 601 (Nguyen, J., dissenting) (summarizing majority's holding).

Finally, with little explanation, the Commission argues that "this state proceeding involves a state's interest in enforcing the orders and judgments of its courts." Commission at 9. The Commission generally mentions purported "rulings pertaining to the potential preemptive effects of public utility regulation with regard to sightseeing excursion trains, including Plaintiff's predecessor and the Napa Valley Wine Train." *Id.* But it cites only one state court of appeal decision: *City of St. Helena v. Pub. Util. Com.*, 119 Cal. App. 4th 793 (2004)). The City's argument is as wrong as it is confused.

In *City of St. Helena*, the Court of Appeal considered whether a train—the Napa Valley Wine Train—was a "public utility" under California law. Neither Mendocino Railway, nor the company from whom it purchased the rail line (California Western Railroad ("CWR")), was a party to that action. The appeals court held that the Wine Train was not a "public utility." *Id.* at 804. It rendered *no judgment* about CWR, or Mendocino Railway and its operations.

Abstention may apply where, among other things, a federal action seeks to enjoin or otherwise interfere with "the state's interest in enforcing the orders and judgments of its courts." *Rynearson v. Ferguson*, 903 F.3d 920, 926 (9th Cir. 2018) (internal citation and quotation marks omitted). This standard "is geared to ensuring that federal courts do not interfere in the procedures by which states administer their judicial system and ensure compliance with their judgments." *Id.* Mendocino Railway's federal action concerns its status, under ICCTA, as a federally regulated railroad with federal preemption rights against the Commission's and City's land-use permit requirements. This federal action has nothing whatsoever to do with Mendocino Railway's "public utility" status under California law. And, as noted above, *City of St. Helena*—which concerned an unrelated entity's "public utility"

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justify *Younger* abstention.

status—has no bearing on this federal action. Simply put, there is nothing in this federal action that would enjoin or otherwise interfere with any state-court decision, order, or judgment, or the procedures by which it administers its judicial system and ensures compliance with judgments.

2. The "Important State Interest" Factor Weighs Against *Younger* Abstention

Younger abstention is appropriate only if important state interests are involved. *Middlesex*, 457 U.S. at 432. It is the state's burden to establish it has met this criterion. "The State must show that it has an important interest to vindicate in its own courts before the federal court must refrain from exercising otherwise proper federal jurisdiction"). *Trainor v. Hernandez*, 431 U.S. 434, 448 (1977) (Blackmun, J., concurring).

Where the central and threshold issues are ***federal***, the federal proceeding does not implicate an important state interest sufficient to justify *Younger* abstention. *See, e.g.*, *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535 (9th Cir. 1995) (finding *Younger* abstention inappropriate where threshold issue was whether state had jurisdiction to prosecute Indians pursuant to state gaming laws); *Fort Belknap Indian Cmty. v. Mazurek*, 43 F.3d 428, 432 (9th Cir. 1994) (refraining from abstention and holding that whether Montana has jurisdiction to prosecute Indians in state court for violations of state liquor laws is issue of federal law).

In *Winnebago Tribe v. Stovall*, 341 F.3d 1202 (10th Cir. 2003), American-Indian tribes and their members sued Kansas state officials in federal court for declaratory and injunctive relief, arguing that a state tax against them was barred by federal law. The federal-court filing came after state officials had begun to seize tribal property and to initiate criminal proceedings against the tribal members who refused to pay the tax. *Id.* at 1204. The State argued the court moved to dismiss under *Younger*, and the district court denied the motion.

The Tenth Circuit affirmed, holding that the state had failed to establish an important state interest—an essential criterion for *Younger* abstention:

> The central and threshold issues in the case are federal Indian law issues, i.e. whether federal law bars the state from imposing the tax, whether federal law preempts the state tax scheme as applied to plaintiff Indian tribes, and whether the state's enforcement violates tribal sovereign immunity, issues which must be resolved before the state criminal proceedings can go forward. The state prosecutions are based on allegations that assume the state can apply its law to these parties.

Id. at 1205.

So, too, here. Even assuming *arguendo* that the removed action meets all the other *Younger* factors, it does not satisfy the "important state interest" factor. That is because, like in *Winnebago*, the "central and threshold issues" are ***federal***—namely, whether federal law preempts the Commission's and City's assertion of land-use permit authority over Mendocino Railway. *Id.* The removed action "is based on allegations that assume [the City and Commission] can apply its law[s] to [the railroad]." *Id.*

In this sense, the Commission's reliance on *San Remo Hotel v. City & County of San Francisco*, 145 F.3d 1095 (9th Cir. 1998) is utterly misplaced. Commission Mot. at 10. The state may have an interest in enforcing its land-use laws, just as the State of Kansas in *Winnebago* had a strong state interest in enforcing its tax laws. But when state and local governments efforts to enforce their laws *presuppose* that ***federal law*** permits such enforcement, then the "central and threshold issues" are federal, the "important state interest" factor does not weigh in favor of *Younger* abstention.

3. This Federal Action Will Not Enjoin a State Proceeding Because No State Proceeding Exists

The Commission argues that abstention is required to ensure that the state action is not enjoined. Commission Mot. at 11. Even if valid, the argument is moot. The state action has been removed, so there is no longer a pending state action at risk of being enjoined.

III. CONCLUSION

For all these reasons, the Court should deny the Commission's motion and refuse to abstain from this federal action.

DATED: October 20, 2022 **FISHERBROYLES LLP**

s/ Paul Beard II

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