PAUL J. BEARD II (State Bar No. 210563)
FISHERBROYLES LLP
4470 W. Sunset Blvd., Suite 93165
Los Angeles, CA 90027
Telephone: (818) 216-3988
Facsimile: (213) 402-5034
E-mail: paul.beard@fisherbroyles.com

Attorneys for Defendant
MENDOCINO RAILWAY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF FORT BRAGG,

Plaintiff

v.

MENDOCINO RAILWAY,

Defendant.

CALIFORNIA COASTAL COMMISSION,

Plaintiff-Intervenor

Case No.: 4:22-cv-06317-JST

DEFENDANT MENDOCINO RAILWAY'S CONSOLIDATED OPPOSITION TO PLAINTIFFS' MOTIONS TO REMAND

Date: February 2, 2023
Time: 2 p.m.
Dept: Courtroom 6
Judge: Hon. Jon S. Tigar

Action Removed: October 20, 2022

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I. INTRODUCTION

Plaintiffs move to remand this removed action, which they originally filed in Mendocino County Superior Court against Defendant Mendocino Railway ("MR").[1] Initially, the action involved a single cause of action by one of the Plaintiffs—City of Fort Bragg—seeking a declaration that MR is not a "public utility" under state law. The City also seeks injunctive relief forcing MR to sibmit to its plenary land-use authority, despite the fact that MR is a railroad within the exclusive jurisdiction of the federal Surface Transportation Board ("STB"). Because the City's cause of action (regarding MR's "public utility" status under state law) does not arise under federal law, MR had no reason to remove it.

All that changed when Plaintiff California Coastal Commission arrived on the scene. For years, the Commission had been insinuating to MR that it didn't think the railroad was federally regulated, which meant—in the Commission's eyes—that it could also assert plenary land-use permitting authority over MR's rail-related operations. In an effort to resolve the looming controversy over MR's status as a federal railroad, MR filed a federal action in this Court, seeking declaratory and injunctive relief to the effect that federal law preempts *both* the Commission's *and* the City's misguided efforts to assert full regulatory control over the railroad.

Evidently unhappy with having to resolve a quintessentially federal controversy in a federal forum, the Commission rushed to state court with substantially the same claim, seeking a declaration that federal law does *not* preempt its land-use permitting authority over MR's railroad activities. One month after MR filed its federal action, the Commission moved to intervene in the *City's* state action; over MR's objection, the Superior Court granted intervention. With that order in hand, the Commission was able convert the state action into one arising under federal law. Therefore, MR removed the action to this Court, so that it could be resolved alongside MR's suit in this Court.

Plaintiffs' arguments for remand lack merit. Both Plaintiffs claim MR filed an untimely notice of removal. But the removal notice was timely. It was filed as soon as the state action became removable—i.e., within 30 days of the Superior Court's order granting the Commission intervention, which

[1] Because of the substantial overlap between the Plaintiffs' Motions to Remand, and for the convenience of the parties and the Court, MR submits a single consolidated opposition brief to both Motions.

converted the City's original state-law action into an action arising under federal law.

Further, Plaintiffs' contentions that this action does not arise under federal law are specious. Under the "well-pleaded complaint" rule, and the "complete preemption" and "substantial federal issue" doctrines, the action easily states a federal question within this Court's jurisdiction.

Next, *Younger* abstention does not allow, let alone require, a remand. The Commission makes the bizarre claim that the Court must abstain from *this removed action* in order to allow *the same action* to proceed in state court. That's not how *Younger* works. *Younger* requires (in very limited cases) abstention from a federal action in deference to a parallel and ongoing state proceeding. But no such state proceeding exists. Even if *Younger* could apply in the context of a removed action where there is no parallel state proceeding—precisely because it was removed—none of the other *Younger* factors are present.

Finally, the City argues for remand by attempting to argue the *merits* of this action. It asserts—with no relevant or competent evidence—that MR is *not* a railroad subject to the STB's exclusive jurisdiction. Those specious allegations are false and, in any event, do not support a remand. The only question presented by Plaintiffs' motions is whether *this action* arises under federal law. The answer is a definitive "yes." Therefore, the Court has subject matter jurisdiction, making a remand improper.

For these reasons, the Court should deny Plaintiffs' Motions to Remand.

II. STANDARD OF REVIEW

The standard of review applicable to a motion to remand is the same as that applicable to a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *See Leite v. Crane Co.*, 749 F.3d 1117, 1121-22 (9th Cir. 2014) (explaining that "[c]hallenges to the existence of removal jurisdiction should be resolved within [the] same framework" as that applicable to motions to dismiss for lack of subject matter jurisdiction, due to "the parallel nature of the inquiry"). Thus, the removing defendant bears "the burden of proving by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction" is met. *Id.* at 1121.

III. ARGUMENT

A. MR'S NOTICE OF REMOVAL WAS TIMELY

Defendants have thirty days from the filing and service of the "initial pleading" giving rise to

federal-question jurisdiction to file a notice of removal. 28 U.S.C. § 1446(b). Removal may also be triggered by an "amended pleading, motion, order or other paper." *Id.* § 1446(b)(3). MR timely removed the action pursuant to this latter section—i.e., section 1446(b)(3)—based on the Mendocino County Superior Court's order granting the Commission leave to intervene and file a Complaint arising under federal law. None of the Commission's arguments that removal was untimely have merit.

1. The "Initial Pleading"—the City's Complaint—Was Not a Basis for Removal

The "initial pleading"—the City's Complaint—was not a basis for removal because it does not "arise[] under" federal law. *Dennis v. Hart*, 724 F.3d 1249, 1252 (9th Cir. 2013). The federal question "must be disclosed on the face of the complaint, unaided by the answer or by the petition for removal." *California ex rel. Lockyer v. Dynegy, Inc*., 375 F.3d 831, 838 (9th Cir. 2003). Here, the City's Complaint alleges a ***single*** cause of action for a declaration that MR is not a "public utility" regulated by the California Public Utilities Commission under state law. Dkt. No. 1-1. Based on that single cause of action, the City seeks injunctive relief compelling MR to submit to its plenary land-use authority. *Id.* But 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*, 71 Cal.App.4th 965, 973 (1991) (emphasis added). "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).

In sum, on its face, the Complaint states no cause of action arising under federal law. And, while MR's answer raises federal preemption as an affirmative defense to the City's request for an injunction (though not the single cause of action itself), an answer does not confer "federal question" status on a complaint. *Dynegy*, 375 F.3d at 838.

2. The Action Became Removable When the State Court Granted the Commission's Intervention

If, as in this case, "the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3). Here, the action became removable upon the Mendocino County Superior Court's order granting the Commission's intervention, allowing it to file a Complaint arising under federal law. *See,*

e.g., Hekmat v. Kohler Co., 2009 U.S. Dist. LEXIS 149727, *3-4 (C.D. Cal. 2009) (where action did not become removable until a third party intervened with a federal-question claim, "the case did not become removable under 28 U.S.C. § 1446(b) until the Los Angeles Superior Court granted [the third party's] motion to intervene" since before then, "the basis for removal was merely speculative"); *see also Sullivan v. Conway*, 157 F.3d 1092, 1094 (7th Cir. 1998) (holding that action became removable under section 1446(b) when "state court judge granted the plaintiff's motion to amend the complaint to add federal claims"); *Lion Raisins, Inc. v. Fanucchi*, 788 F.Supp.2d 1167, 1172-73 (E.D. Cal. 2011) ("[R]emoval ripens only after the state judge grants the motion to amend.").

The Commission's intervention put MR on notice that the action became removable. That is because the Commission's first cause of action arises under federal law: The Commission seeks a declaration that, inter alia, "sections 10102 and 10501, subdivision (b) of Title 49 of the United States Code" (ICCTA) and "clause 2 of Article VI of the United States Constitution" do not "preempt[]" the Commission's "application of the Coastal Act and the City's LCP to the Railway's actions in the coastal zone of the City." Commission's Complaint, Prayer for Relief, ¶ 2.

Those federal questions govern the Commission's second cause of action, too. The second claim alleges violation of certain local land-use permitting requirements and therefore presupposes that the federal questions presented in the first cause of action are resolved in the Commission's favor. Put differently, if the federal ICCTA and the Supremacy Clause bar the Commission from exercising land-use permitting authority over MR's rail operations, then the second claim for permit violations—all related to MR's rail operations on rail property—necessarily falls as a matter of federal law. The second cause turns on the first, so that the Commission's Complaint—on its face, unaided by MR's answer and affirmative defenses—turns predominantly on the resolution of federal questions.

It is undisputed that that MR removed this case within 30 days of the Superior Court's order granting the Commission's intervention, which put MR on notice that the case became removable. Thus, MR's removal was timely.

3. None of the Plaintiffs' Alternative Trigger-Dates for Removal Have Merit

The Commission asserts MR had "multiple opportunities" to remove the City's action—even before the Commission moved to intervene with its Complaint arising under federal law. Commission

Mot. at 7. The City agrees. City Mot. at 13-14. Plaintiffs both offer wildly different 30-day triggers in a scattershot attempt to paint MR's removal as untimely, none of which make any sense. At bottom, their misguided efforts reflect a fundamental understanding of removal law.

First, the Commission argues that, in its demurrer to the City's Complaint in the Superior Court, MR raised "the very defense [i.e., federal preemption] that it now asserts is the basis for this removal." Commission Mot. at 5. The Commission seems to think that MR made a "complete preemption" argument against the City's "single cause of action" for a declaration that MR is not a public utility under California law, and that—somehow—MR had 30 days from service of the City's Complaint to remove the action. Commission Mot. at 6. The City joins in this argument. City Mot. at 14, 16. Both Plaintiffs are wrong.

MR raises the federal-preemption defense against the City's request for a broad-sweeping injunction, not against the City's single state-law claim. *See* Removal Notice ¶ 2. "Because [the City's] complaint had only [a] state-law claim[] and the parties were not diverse, [the City] could not have filed its suit in federal court in the first instance," making the City's action non-removable. *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am*., 768 F.3d 938, 947 (9th Cir. 2014). Further, even if MR's "federal preemption" defense were aimed at the City's single cause of action arising under state law (versus the City's ancillary request for injunctive relief), a federal defense to a state-law claim arising exclusively under state law cannot is not a basis for removal. *Id.*

The Commission's reliance on *Cantrell v. Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989) is misplaced. There, the plaintiff filed a state-court claim clearly arising under federal law. *Id.* at 1251-52. The defendant failed to remove within 30 days of service of the complaint. Almost a year later, the plaintiff amended the complaint to add certain parties, but nothing about the amendment "create[d] federal jurisdiction or [made] the fact of federal jurisdiction newly ascertainable." *Id*. at 1251, 1255. The defendant's removal as to the amended complaint was held to be untimely. *Id.* at 1253-54. By contrast, here, the City's Complaint does not arise under federal law. Indeed, the basis for removal here is the ***Commission****'s* Complaint—specifically, the Commission's first cause of action, which arises under the federal ICCTA and the United States Constitution's Supremacy Clause. The basis for removal is not the City's Complaint, which again contains no cause of action arising under federal law.

Second, the Commission claims MR should have removed within 30 days of the Superior Court's order overruling MR's demurrer (on April 28, 2022) on the grounds the order "addressed its federal preemption argument." Commission Mot. at 7. The Commission faults MR for opting instead to answer the City's Complaint. But there is nothing in the Court's demurrer ruling that made (or could have made) the City's action removable. Tellingly, the Commission doesn't explain why the Court's ruling triggered the 30-day deadline for removal.

Finally, the Commission argues that MR filed a federal suit against the Commission's Executive Director in order to "forum shop" and because it "failed to timely remove the City's Verified Complaint." Commission Mot. at 7. It is not "forum shopping" where "a party acted within its rights in filing a suit in the forum of his choice." *Seneca Ins. Co. v. Strange Land, Inc*., 862 F.3d 835, 846 (9th Cir. 2017). When it was filed in August 2022, only the City's "public utility" claim was pending in state court; MR's federal suit didn't replicate any state action. If any party engaged in forum shopping, it was the Commission. One month after MR filed its federal lawsuit on the question whether the Commission and City have the power under federal law to regulate MR's railroad activities, the Commission moved to intervene in the City's case with substantially the same cause of action, because it preferred that claim to be adjudicated in state court rather than in federal court. Further, there is absolutely no evidence that MR filed the federal action because it thought the time to remove *this* action had expired.

4. MR Never "Waived" Its Right to Remove

The City argues that MR "waived" its right to remove "manifest[ing] an intent to litigate in state court." City Mot. at 13. The City cites, among other things, MR's demurrer to the City's complaint, including MR's writs taken from the Superior Court's decision overruling the demurrer. *Id.* But all the litigation in state court described by the City concerned *the City's Complaint*, before the Coastal Commission intervened with its federal-law Complaint. Before the Commission intervened, there was no basis for removal, so MR could not have "waived" its right to remove.

B. <u>THE COMMISSION'S COMPLAINT ARISES UNDER FEDERAL LAW AND WAS THEREFORE REMOVABLE</u>

"The general rule, referred to as the 'well-pleaded complaint rule,' is that a civil action arises under federal law for purposes of section 1331 when a federal question appears on the face of the

complaint." *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). "Under the well-pleaded complaint rule, [courts] must determine whether a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." *Cal. Shock Trauma Air Rescue v. State Comp. Ins. Fund*, 636 F.3d 538, 541 (9th Cir. 2011) (citing *Gully v. First Nat'l Bank*, 299 U.S. 109, 112 (1936)).

Here, in its first cause of action, the Commission plainly pleads a federal question. It asks for the Court's resolution of an "actual controversy" between the parties—namely, "whether the Railway's development activities in the coastal zone are subject to the Coastal Act and the City's LCP," or whether "***federal law*** preempts these permitting requirements." Complaint, ¶¶ 14 (emphasis added). As to that cause of action, the Commission seeks a declaration that, *inter alia*, "the Railway's actions in the coastal zone of the City that constitute development . . . are not preempted by . . . ***federal law***," including but not limited to "Sections 10103 and 10501, subdivision (b) of Title 49 of the United States Code" and "clause 2 of Article VI of the United States Constitution." Commission, Prayer, ¶ 2 (emphasis added). A federal question—concerning the Commission's power under federal ICCTA and the Supremacy Clause to regulate MR's rail activities—clearly appears throughout the Complaint, unaided by MR's answer. Indeed, MR agrees wholeheartedly with the City's assertion that federal-question jurisdiction can be "found within the plaintiff's statement of his own cause of action." City Mot. at 12 (internal citation and quotation marks omitted).

The Commission's Complaint also is removable under the "complete preemption" doctrine and/or under the exception for "state-law claims that implicate significant federal issues." *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). Under the "complete preemption" doctrine, federal jurisdiction lies when "Congress 'so completely pre-preempt[s] a particular area that any civil complaint rising this select group of claims is necessarily federal in character.'" *B & S Holdings, LLC v. BNSF Ry.* , 889 F. Supp. 2d 1252, 1255 (E.D. Wash. 2012) (quoting *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987)). "Under complete preemption, if 'the pre-emptive force of a [federal] statute is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule,'' then 'any claim

purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law.'" *B & S*, 889 F. Supp. 2d at 1255 (quoting *Caterpillar*, 482 U.S. at 393) (holding that ICCTA completed preempted state-law adverse possession claim).

As many courts have held, ICCTA's preemptive force is extraordinary. The statute provides, in relevant part:

> The jurisdiction of the [Surface Transportation] Board over—
>
> (1) transportation by rail carriers, and the remedies provided in this part 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, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law*.

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

ICCTA defines "transportation" broadly to include "(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property." *Id.* § 10102(9); *see also Or. Coast Scenic R.R., LLC v. Or. Dep't of State Lands*, 841 F.3d 1069, 1073 (9th Cir. 2016) (same).

Consistent with its far-reaching language and Congressional intent, ICCTA has been recognized as "among the most pervasive and comprehensive of federal regulatory schemes." *City of Auburn v. United States*, 154 F.3d 1025, 1029 (9th Cir. 1998) (citing *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co*., 450 U.S. 311, 318 (1981)). The Supreme Court has made it clear that under the U.S. Constitution's Supremacy Clause (Art. VI, cl. 2), state laws and regulations that are inconsistent with the STB's exclusive authority or with the Congressional policy reflected in ICCTA are preempted. *Id.*

Significantly, the STB's exclusive jurisdiction over a railroad's rail-related activities means that state and local environmental permitting and preclearance regulation of such rail-related activities—

including through the imposition of land-use permitting requirements—are preempted. U.S. Const. art. VI, cl. 2 (Supremacy Clause); 49 U.S.C. § 10501(b); *City of Auburn*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (The ICCTA's preemptive scope is "broad."); *Friends of Eel River v. North Coast R.R.*, 399 P.2d 37, 60 (Cal. 2017) (holding that "state environmental permitting or preclearance regulation that would have the effect of halting a private railroad project pending environmental compliance would be categorically preempted"); *North San Diego County Transit Dev. Bd.—Petition for Declaratory Order*, 2002 WL 1924265 (STB 2002) (holding that the Coastal Act was preempted by ICCTA as applied to rail projects). The STB and the courts have stated that "[f]ederal preemption applies without regard to whether or not the STB actively regulates the railroad operations or activity involved." *Wichita Terminal Ass'n, BNSF Railway Co. & Union Pacific R.R. Co.—Pet. For Declaratory Order*, FD 35765, at 6 (STB served June 23, 2015); *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1068-69 (11th Cir. 2010) (holding that state law claims were preempted even though the STB does not actively regulate—by pre-clearance review and approval—work on a side track); *CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996) ("[I]t is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations" than that contained in section 10501(b) of ICCTA). Further, ICCTA governs intrastate rail lines that are part of the interstate rail system. 49 U.S.C. § 10501(a)(2)(A); *see also California High-Speed Rail Auth'y—Construction Exemption*, FD 35724, at 12 (STB served June 13, 2013) (finding STB jurisdiction over wholly intrastate rail line, in part because of its physical connection to Amtrak's Thruway Bus connection service).

Here, the Commission's Complaint ultimately seeks a declaration that it has plenary land-use permitting authority over MR, a railroad that is part of the interstate rail system. If successful, the Commission would strip MR of its right under federal law to perform rail-related activities on its railroad property unencumbered by the costs and delays associated with the Commission's onerous land-use permitting requirements. This, ICCTA categorically rejects. See, e.g., B&S, 889 F. Supp. 2d at 1258 (denying remand in similar circumstances where "ICCTA completely preempts [the plaintiff's] state law adverse possession cause of action because not only would it interfere with railroad operations, but [it] would divest the railroad of the very property with which it conducts its operations").

In addition, the Commission's Complaint is removable because its "state-law claims . . .

implicate significant federal issues." *Grable*, 545 U.S. at 312. In *Grable*, the United States Supreme Court framed the criteria in a question: "[D]oes a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities?" *Id.* at 314; *see also Gunn v. Minton*, 568 U.S. 251, 258 (2013) (same). The Complaint satisfies *Grable*'s criteria.

First, the Commission's claims necessarily raise federal issues under ICCTA and the Supremacy Clause. Put differently, there is no way to resolve the Commission's claims without addressing those federal issues. Indeed, the Commission specifically *asks* the Court to decide those federal issues in order to establish the existence and scope of its land-use permitting authority over MR.

Second, the federal issues surrounding the Commission's power under ICCTA and the Supremacy Clause are "actually disputed." Indeed, "on the merits, [they are] the central point of dispute." *Gunn*, 568 U.S. at 259.

Third, the federal issues are "substantial" in that they are important to the federal system and to a particular federal agency—the STB. As discussed above, ICCTA has been recognized as "among the most pervasive and comprehensive of federal regulatory schemes." *City of Auburn*, 154 F.3d at 1029. The intent behind ICCTA was to create a *federal system* of railroads. "Congress and the courts long have recognized a need to regulate railroad operations at the *federal level*." *Id.* (emphasis added). Further, "[t]o ensure that deregulation and federalization of the rail industry would come about, the ICCTA grants exclusive jurisdiction to most rail regulation matters to the Surface Transportation Board." *District of Columbia v. 109,205.5 Square Feet of Land*, 2005 U.S. Dist. LEXIS 7990, * 8 (D.C. Dist. 2005). As for the STB, it has a distinct interest in preserving and protecting its exclusive jurisdiction over railroads like MR that are part of the interstate rail system, in part to promote "its deregulatory mission." *County of Butte v. Department of Water Resources*, 13 Cal. 5th 612, 652 (2022).

The Commission's Complaint raises serious federal issues that are important to the federal system of railroad transportation created by ICCTA, as well as to the STB, which is charged overseeing the industry. The Commission seeks to dislodge the STB's exclusive jurisdiction over MR, and (with the City) impose permitting and other pre-clearance requirements on that railroad. In dispute is the meaning of certain provisions of ICCTA, including when and how an intrastate railroad like MR is connected to

the "interstate rail network," and the extent to which ICCTA preempts railroad activities. 49 U.S.C. § 100501(a)(2)(A). Indeed, the City spends pages of its brief describing what it views as open questions about the scope of ICCTA. City Mot. at 18-19 (speculating (wrongly) that "even regulations related to physical rail lines may not be preempted" under ICCTA). Thus, the federal issues that the Commission's Complaint raises are "substantial." *See Grable*, 545 U.S. at 315 (holding that state complaint was removable in part because it raised a "substantial" federal issue as to the meaning of a federal statute in which a federal agency (IRS) had a strong interest).

Finally, "it will be the rare state [land-use] claim that raises a contested matter of federal law," so that "federal jurisdiction to resolve genuine disagreement over [ICCTA] provisions will portend only a microscopic effect on the federal-state division of labor." *Grable*, 545 U.S. at 315. In light of that, a federal forum may entertain this action "without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Id.* at 314.

The Commission's argument its Complaint does not establish federal question jurisdiction lacks merit. The Commission tries to reframe its Complaint as merely *anticipating* a federal-preemption issue, then invokes the general rule that defenses do not confer federal question jurisdiction. Commission Mot. at 8-9. But "declaratory judgment cases" invoking federal preemption—like the Commission's first claim—"operate under a different rule." *Atay v. Cnty. of Maui*, 842 F.3d 688, 697 (9th Cir. 2016). If "questions of federal preemption are ***front and center***, that determines whether there is federal question jurisdiction." *Id.* at 698 (emphasis added). Here, of course, the Commission's first claim puts the federal preemption issue front and center, and resolution of that issue is determinative of the second claim. As pled, the Commission arises under federal law and is removable.

The Commission's reliance on *Negrete v. City of Oakland*, 46 F.4th 811 (9th Cir. 2022) is misplaced. Commission Mot. at 9. There, the Court applied the *Grable* factors to conclude that a state action, which implicated a federal consent decree, was not removable. *Id.* at 818-20. The Court did not think the action "necessarily rais[ed] a federal issue," especially because plaintiffs' prayer for relief "containe[d] no request to enforce, modify, or otherwise challenge the terms of the Consent Decree at all." *Id.* at 819. Here, by contrast, the Commission directly challenges MR's status as a railroad within the STB's exclusive jurisdiction under ICCTA as a means of obtaining total land-use permitting

authority over it. Unlike the plaintiffs in *Negrete*, the Commission's action necessarily raises federal issues under ICCTA and the Supremacy Clause.

The Commission also cites *Wayne v. Dhl Worldwide Express*, 294 F.3d 1179 (9th Cir. 2002) for the proposition that a federal-preemption defense does not confer federal question jurisdiction. Commission Mot. at 9. But in that case, the plaintiff filed a state complaint pleading only state-law claims. *Wayne*, 294 F.3d at 1183. On the face of the complaint, there was no federal issue. *Id.* Defendant's removal was based on federal defenses only, so the Court concluded the action was not removable. *Id.* Here, of course, the face of the Commission's complaint pleads a federal question; it is part and parcel of its declaratory-relief claim. Unlike the plaintiff in *Wayne*, the Commission's Complaint does not rise a federal defense; it arises directly under federal law.

C. ***YOUNGER* DOES NOT REQUIRE A REMAND**

1. *Younger* Applies Only in Extraordinary Circumstances

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.

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 "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 (9th Cir. 2022) (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.

2. 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 has nothing to abstain for 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.").

The Commission makes the bizarre claim that Younger requires this Court to abstain from *this removed action* based on the action's former status as a state-court action. It further argues that, because this removed action was "ongoing" in state court "at the time of removal," *Younger*'s first factor is met. Commission Mot. at 11. The Commission turns *Younger* on its head. The purpose of *Younger* is to permit the district court—in narrow circumstances—to abstain from a federal court in favor of a parallel state proceeding. That is not the case here, where the original state proceeding has been removed—leaving behind no parallel state proceeding to abstain in favor of. The Commission cites to no relevant authority to support this application of *Younger* as the basis for a remand. *Wiener v. Cnty. of San Diego*, 23 F.3d 263, 266 (9th Cir. 1994) (not involving a Younger abstention from a removed action); *Kitchens*

v. Bowen, 825 F.2d 1337, 1341 (9th Cir. 1987) (same); *Richter v. Ausmus*, No. 19-CV-08300-WHO, 2021 WL 3112333, at *6 (N.D. Cal. July 22, 2021) (same); *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) (same).

3. The Removed Action Is Not a Criminal or Quasi-Criminal Prosecution

Even if *Younger* could apply to a *removed* action—where there is no parallel state proceeding—the other factors are not met.

a. 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." 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*., 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.

b. 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 of the Pub. Res. Code, 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.

4. The Plaintiffs' Counter-Arguments Are Meritless

a. 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 11. 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 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 13.

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]

[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

To summarize, *Herrera* is distinguishable from this case. To the extent the Commission is 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).

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" 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.

b. The "Important State Interest" Factor Weighs <u>Against</u> *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).

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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*).

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.

5. If This Action Proceeds in This Court, It Will Have No Effect on any State Proceeding

The Commission argues that, if this action remains in this Court, "the state proceedings, (including any non-judicial enforcement actions by the City or the Coastal Commission), cannot move forward while this case is pending." Commission Mot. at 16. Of course, the Commission never identifies *what* state proceedings would be enjoined or *what* enforcement actions would be barred. That is because there are no such proceedings or actions pending anywhere, let alone in state court.

D. <u>The City's Arguments on the *Merits* of the Removed Action Are Irrelevant and Baseless</u>

The City spends much of its Motion to Remand arguing the merits of the underlying dispute, claiming that MR is not a federally regulated railroad within the STB's exclusive jurisdiction. City Mot. at 15-23. But that relevant inquiry does not turn on the merits of the parties' dispute; it turns on whether this action arises under federal law, based on the "well-pleaded complaint" rule, complete preemption, or *Grable*'s criteria for identifying substantial federal issues.

In any event, the City's allegations about MR's operations and its status as a railroad within the STB's exclusive jurisdiction are simply false.

Mendocino Railway is a railroad corporation organized under the laws of the State of California. It owns real property, rail facilities and rail equipment in various regions of the State, including but not limited to the coastal zone and the City of Fort Bragg in Mendocino County. It is a Class III railroad subject to the jurisdiction of the STB. Robert Pinoli Decl., ¶ 2. MR owns and operates a line that runs 40 miles, from its main station in Fort Bragg to its eastern depot in Willits ("Willits Depot"). The Fort Bragg-Willits line—also known as the California Western Railroad ("CWR") line—is not the only line that MR owns and operates. MR has operations in other parts of the State, as well. Mendocino Railway's Fort Bragg station is fully developed as a rail facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry shed for storage of railroad equipment. *Id.* ¶ 3.

Significantly, since acquiring the line in 2004 and up through the present, the Fort Bragg-Willits line owned by MR has operated tourist and non-tourist passenger services***, as well as freight services***.

Id. ¶¶ 4, 13 & Exhs. 1-2. The line has never provided only a "sightseeing" or "excursion" service, as the City incorrectly asserts. *Id.* Indeed, MR's Fort Bragg-Willits line connects to the national rail system via the North Coast Rail Authority line that is operated by Northwestern Pacific Railroad ("NWP"). While the NWP segment that connects to MR has been temporarily embargoed pending track repairs, that segment has not been abandoned and remains a part of the national rail system. *Id.* 4. The STB's National Rail Network Map, showing the Fort Bragg-Willits line (running west-east) connecting to the NWP line (running north-south), is reproduced in the accompanying Declaration of Robert Pinoli, who is MR's President. *Id.* ¶ 4, p. 3. In addition to its connection to the NWP line, the Fort Bragg-Willits line connects via Amtrak, which runs a thruway service at MR's Willits Depot, connecting the line to Amtrak's national railway system. *Id.* ¶ 5.

In furtherance of its freight operations, MR has pursued and continues to pursue a variety of much-needed rail-related activities on property and facilities located in the State's coastal zone. These activities have included, without limitation: (a) improvements to side tracks; (b) repair and maintenance work on its rail station and engine house; (c) clean-up work in and around a dry shed and elsewhere on railroad property; (d) improvements to the dry shed in order to provide space for the storage of rail cars and other railroad equipment, such as tires for steam locomotives, railcar axles, and other parts and components for steam and diesel locomotives; (e) a lot-line adjustment related to the railroad's acquisition of historically rail-related property from Georgia-Pacific LLC; and (f) development of the recently acquired land for rail-related uses. These rail-related activities—pursued in furtherance of MR's railroad operations—are the objects of the Commission's and City's complaints that a land-use permit was not obtained for those activities. *Id.* ¶ 6.

Because MR has always operated and continues to operate freight service on the Fort Bragg-Willits line, which has always been connected—and continues to be connected—to the interstate rail system, MR is within the exclusive jurisdiction of the STB. 49 U.S.C. § 10501(a)(2)(A); *see also California High-Speed Rail Auth'y—Construction Exemption*, FD 35724, at 12 (STB served June 13, 2013) (finding STB jurisdiction over wholly intrastate rail line, in part because of its physical connection to Amtrak's Thruway Bus connection service).

In an effort to cast doubt on MR's federal railroad status, City mischaracterizes a 2006 Railroad

Retirement Board decision. After MR acquired the assets CWR in 2004, and until recently, MR *itself* did not perform the freight rail service on the on the Fort Bragg-Willits line. Pinoli Decl., ¶ 12. Instead, that freight rail service was performed by its sister company, Sierra Northern Railway. *Id.* Recently, MR made application to the U.S. Railroad Retirement Board to take over the performance of the freight service from Sierra Northern Railway on the Fort Bragg-Willits line. *Id.* Given the remote location of the Fort Bragg-Willits line and Sierra Northern's other extensive obligations, MR began performing freight service on the line. *Id.*

IV. CONCLUSION

For all these reasons, the Court should deny the Plaintiffs' Motions to Remand.

DATED: December 5, 2022

FISHERBROYLES LLP

s/ Paul Beard II

Attorneys for Defendant MENDOCINO RAILWAY