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Superior Court of California
County of Mendocino

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California Coastal Commission*

By:
Dorothy Jess
Deputy Clerk



**NO FEE REQUIRED PURSUANT
TO GOVERNMENT CODE
SECTION 6103**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MENDOCINO

14 **CITY OF FORT BRAGG,**
15
16 **v.**
17 **MENDOCINO RAILWAY,**
18
19 **CALIFORNIA COASTAL COMMISSION,**
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23

Plaintiff,

Defendant,

Intervenor.

Case No. 21CV00850

**INTERVENOR CALIFORNIA COASTAL
COMMISSION'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
ITS OPPOSITION TO DEFENDANT'S
MOTION FOR STAY; DECLARATION
OF PATRICK TUCK**

Hearing Date: October 19, 2023

Dept: TM

Judge: The Honorable Clayton L.
Brennan

Trial Date: Not Assigned

Action Filed: October 28, 2021

24 Intervenor California Coastal Commission ("Commission") respectfully requests that the
25 Court take judicial notice of the following documents pursuant to Evidence Code sections 452 of
26 each of the following documents in support of its concurrently-filed Opposition to Defendant
27 Mendocino Railway's Motion for Stay:
28

1 1. Exhibit A – Minute Order Re Mendocino Railway’s Notice of Related Cases, filed
2 September 30, 2022, *Mendocino Railway v. John Meyer, et al.* (Mendocino County Superior
3 Court Case No. SCUK-CVED 20-74939).

4 2. Exhibit B – Order Granting Motions to Remand, filed May 11, 2023, *City of Fort*
5 *Bragg v. Mendocino Railway* (U.S. Dist. Ct., N.D. Cal. Case No. 22-cv-06317-JST)

6 3. Exhibit C – Order Awarding Defendant John Meyer Reasonable Attorney Fees and
7 Costs, filed August 23, 2023, *Mendocino Railway v. John Meyer, et al.* (Mendocino County
8 Superior Court Case No. SCUK-CVED 20-74939).

9 4. Exhibit D – *In the Matter of the Application California Western Railroad, Inc.*, Cal.
10 Pub. Util. Comm. Decision, January 21, 1998, 78 CPUC2d 292, 1998 WL 217965.

11 5. Exhibit E – Defendant Jack Ainsworth’s Notice of Motion and Motion to Dismiss,
12 filed September 22, 2022, *Mendocino Railway v. Jack Ainsworth, et al.* (U.S. Dist. Ct., N.D. Cal.
13 Case No. 22-cv-04597-JST).

14 6. Exhibit F – City of Fort Bragg’s Notice of Motion and Motion to Dismiss Plaintiff
15 Mendocino Railway’s Complaint, filed September 22, 2022, *Mendocino Railway v. Jack*
16 *Ainsworth, et al.* (U.S. Dist. Ct., N.D. Cal. Case No. 22-cv-04597-JST).

17 The Commission requests judicial notice of Exhibits A, B, C, E, and F pursuant to Evidence
18 Code section 452, subdivision (d), as records in the court file of any court in the state. (See, e.g.,
19 *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875,
20 882.) These exhibits are records in the court file of the Mendocino County Superior Court (Exhs.
21 A and C) and the court file of the United States District Court for the Northern District of
22 California (Exhs. B, E, and F). The relevance of these documents subject to this request is set
23 forth in the Commission’s Opposition to Mendocino Railway’s Motion for Stay, filed
24 concurrently with this request.

25 The Commission further requests judicial notice of Exhibit D pursuant to Evidence Code
26 section 452, subdivision (c) as a record of “[o]fficial acts of the legislative, executive, and judicial
27 departments of the United States and of any state of the United States;” specifically here, a
28 decision of the California Public Utilities Commission. (See *Pellandini v. Pac. Limestone Prod.*,

1 *Inc.* (1966) 245 Cal.App.2d 774, 776; accord, *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518
2 ["records, reports and orders of administrative agencies" judicially noticeable under Section 452,
3 subdivision (c)].) The relevance of these documents subject to this request is set forth in the
4 Commission's Opposition to Mendocino Railway's Motion for Stay, filed concurrently with this
5 request.

6 As set forth in the attached Declaration of Patrick Tuck, each of the copies included as
7 exhibits to this Request for Judicial Notice are true and correct copies of same.

8
9 Dated: October 6, 2023

Respectfully submitted,

10 ROB BONTA
11 Attorney General of California
12 DAVID G. ALDERSON
13 Supervising Deputy Attorney General



14 PATRICK TUCK
15 Deputy Attorney General
16 *Attorneys for Intervenor*
17 *California Coastal Commission*

1 **DECLARATION OF PATRICK TUCK**

2 I, Patrick Tuck, declare:

3 1. I am an attorney at law licensed to practice before all courts of the State of
4 California. I am a Deputy Attorney General of the State of California and am counsel of record
5 for Intervenor California Coastal Commission (“Commission”) in this action. I have personal
6 knowledge of the following facts. If called upon to testify as a witness, I could and would
7 testify competently to these facts under oath.

8 2. Attached as Exhibits A through F to the Commission’s Request for Judicial Notice
9 in Support of Opposition to Mendocino Railway’s Motion for Stay are true and correct copies
10 of the following documents:

11 Exhibit A – Minute Order Re Mendocino Railway’s Notice of Related Cases,
12 filed September 30, 2022, *Mendocino Railway v. John Meyer, et al.* (Mendocino County
13 Superior Court Case No. SCU-K-CVED 20-74939).

14 Exhibit B – Order Granting Motions to Remand, filed May 11, 2023, *City of*
15 *Fort Bragg v. Mendocino Railway* (U.S. Dist. Ct., N.D. Cal. Case No. 22-cv-06317-JST)

16 Exhibit C – Order Awarding Defendant John Meyer Reasonable Attorney
17 Fees and Costs, filed August 23, 2023, *Mendocino Railway v. John Meyer, et al.* (Mendocino
18 County Superior Court Case No. SCU-K-CVED 20-74939).

19 Exhibit D – *In the Matter of the Application California Western Railroad,*
20 *Inc.*, Cal. Pub. Util. Comm. Decision, January 21, 1998, 78 CPUC2d 292, 1998 WL 217965.

21 Exhibit E – Defendant Jack Ainsworth’s Notice of Motion and Motion to
22 Dismiss, filed September 22, 2022, *Mendocino Railway v. Jack Ainsworth, et al.* (U.S. Dist.
23 Ct., N.D. Cal. Case No. 22-cv-04597-JST).

24 Exhibit F – City of Fort Bragg’s Notice of Motion and Motion to Dismiss
25 Plaintiff Mendocino Railway’s Complaint, filed September 22, 2022, *Mendocino Railway v.*
26 *Jack Ainsworth, et al.* (U.S. Dist. Ct., N.D. Cal. Case No. 22-cv-04597-JST).

1 3. I obtained true and correct copies of Exhibits A, B, C, E, and F from the relevant
2 courts' online dockets, and downloaded a true and correct copy of Exhibit D from Westlaw on
3 October 5, 2023.

4 I declare under penalty of perjury under the laws of the State of California that the above
5 facts are true and correct and that this declaration was executed on October 6, 2023, at
6 Oakland, California.

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Patrick Tuck, Deputy Attorney General

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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO
CLERK'S DOCKET & MINUTES**

Judge: **HONORABLE JEANINE NADEL** Clerk: **CHRISTY RECENDIZ**
Reporter: Bailiff:
Interpreter: # Date: **09/30/2022 9:30 AM**
Language: Sworn Cert/Reg with oath on file as stated by the Court

SCUK-CVED-2020-74939

MENDOCINO RAILWAY; MENDOCINO RAILWAY,

Petitioner,

vs.

**CALIFORNIA PUBLIC UTILITIES COMMISSION;
MENDOCINO COUNTY TREASURER-TAX COLLECTOR;
JOHN MEYER; REDWOOD EMPIRE TITLE COMPANY
OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS;
MARYELLEN SHEPPARD,**

Respondent.

NATURE OF PROCEEDINGS: HEARING

Appearances by court call:

Counsel Block

Counsel Breard

Plaintiff's Notice of related case this case to (21CV00850)

Court states the court does not see that the issues are the same in the two cases and the cases being consolidated would stop the movement on this case.

Counsel Beard states the disqualification in the FB case was denied by the reviewing judge.

They are not seeking consolidation of the two cases. They are just requesting their case be moved to Ukiah jurisdiction department.

Counsel MacNevin objects to plaintiff's request to re-assign the case to this court and presents argument.

Counsel Tuck agrees with MacNevin

Counsel Johnson states Mr. Meyer should not be impacted by a ruling in any other case.

Court denies the Motion to move case to this jurisdiction.

minutes complete/cr

EXHIBIT B

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF FORT BRAGG,
Plaintiff,
CALIFORNIA COASTAL COMMISSION,
Intervenor-Plaintiff,
v.
MENDOCINO RAILWAY,
Defendant.

Case No. 22-cv-06317-JST

**ORDER GRANTING MOTIONS TO
REMAND**

Re: ECF Nos. 14 & 15

Before the Court are Plaintiff City of Fort Bragg’s (“City”) and Intervenor-Plaintiff California Coastal Commission’s (“Commission”) motions to remand. ECF Nos. 14 & 15. The Court will grant the motions.

I. BACKGROUND

This action concerns Defendant Mendocino Railway’s alleged noncompliance with state and local laws and regulations. The City and Commission primarily seek a declaratory judgment that Defendant Mendocino Railway is subject to such laws and regulations. ECF No. 1-1 at 1, 8; ECF No. 1-3 at 1-2, 5-6. The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. ECF No. 1-1 at 5-7. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 (“Coastal Act”), Cal. Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with the Act’s permitting requirements. ECF No. 1-3 at 6-7.

The City filed its complaint in the Superior Court of Mendocino County on October 28,

1 2021. ECF No. 1-1 at 9. Mendocino Railway demurred to the complaint on January 14, 2022,
 2 arguing, *inter alia*, that the Interstate Commerce Commission Termination Act (“ICCTA”), 49
 3 U.S.C. § 10101 *et seq.*, preempts the City’s claims. ECF No. 14-2 at 18-20.¹ The court overruled
 4 the demurrer on April 28, 2022. ECF No. 14-2 at 22-33. The court rejected Mendocino Railway’s
 5 federal preemption argument as “overbroad” because “not all state and local regulations that affect
 6 railroads are preempted” by the ICCTA. *Id.* at 32. Rather “the applicability of preemption” in this
 7 context “is necessarily a ‘fact bound’ question.” *Id.* at 33. The court further concluded that
 8 because Mendocino Railway “is simply a luxury sightseeing excursion service with no connection
 9 to interstate commerce,” “its ‘railroad activities’, for the purposes of federal preemption, are
 10 extremely limited.” *Id.* at 32. Mendocino Railway filed its answer to the City’s complaint on
 11 June 24, 2022, asserting federal preemption as an affirmative defense. *Id.* at 41. On September 8,
 12 2022, the Commission moved to intervene and filed a proposed complaint-in-intervention. *Id.* at
 13 59-82. The complaint notes that Mendocino Railway “contends that state and federal law
 14 preempts” the permitting requirements of the Coastal Act, *id.* at 72, and, as part of the
 15 Commission’s prayer for relief, asks the court to declare that the Coastal Act and the City’s local
 16 laws “are not preempted by any state or federal law,” *id.* at 73.

17 Mendocino Railway removed the case to this Court on October 20, 2022. ECF No. 1. The
 18 notice of removal invokes this Court’s federal question jurisdiction on the ground that the
 19 resolution of the City’s and the Commission’s claims requires “a judicial determination of *federal*
 20 *questions* arising under ICCTA.” *Id.* at 2 (emphasis in original). The City and the Commission
 21 filed the instant motions on November 21, 2022. ECF Nos. 14 & 15. The Court took the motions
 22 under submission without a hearing on January 23, 2023. ECF No. 25.

23 **II. LEGAL STANDARD**

24 “A defendant may remove an action to federal court based on federal question jurisdiction
 25 or diversity jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)

26
 27 ¹ The Commission’s requests that the Court take judicial notice of filings from state and federal
 28 court dockets in this and related cases, ECF No. 14-2; ECF No. 18-1, are granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 (citing 28 U.S.C. § 1441). “Federal courts are courts of limited jurisdiction.” *Kokkonen v.*
 2 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). It is “presumed that a cause lies outside
 3 this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting
 4 jurisdiction.” *Id.* “[A]ny doubt about the right of removal requires resolution in favor of remand,”
 5 *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009); accord *Gaus v.*
 6 *Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam).

7 **III. DISCUSSION**

8 The City and the Commission argue that (1) Mendocino Railway’s removal of this case
 9 was untimely, (2) federal preemption is an insufficient basis for removal, and (3) principles of
 10 abstention under *Younger v. Harris*, 401 U.S. 37 (1971) require remand. The Court first considers
 11 the second argument and finds it dispositive

12 For purposes of federal question jurisdiction, “[t]he general rule, referred to as the well-
 13 pleaded complaint rule,’ is that a civil action arises under federal law for purposes of [28
 14 U.S.C.] § 1331 when a federal question appears on the face of the complaint.” *City of Oakland v.*
 15 *BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386,
 16 392 (1987)). “Because federal jurisdiction ‘depends solely on the plaintiff’s claims for relief and
 17 not on anticipated defenses to those claims,’ . . . ‘a case may *not* be removed to federal court on
 18 the basis of a federal defense, including the defense of preemption, even if the defense is
 19 anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is
 20 the only question truly at issue” *Id.* at 903-904 (first quoting *ARCO Env’t Remediation, LLC*
 21 *v. Dep’t of Health & Env’t Quality of Mont.*, 213 F.3d 1108, 1113 (9th Cir. 2000); and then
 22 quoting *Caterpillar*, 482 U.S. at 393 (emphasis in original)).

23 There are two exceptions to the well-pleaded complaint rule, both of which are relevant
 24 here. First, the artful-pleading doctrine “‘allows removal when federal law completely preempts a
 25 plaintiff’s state-law claim,’ . . . meaning that ‘the pre-emptive force of the statute is so
 26 extraordinary that it converts an ordinary state common-law complaint into one stating a federal
 27 claim for purposes of the well-pleaded complaint rule.’” *Id.* at 905 (first quoting *Rivet v. Regions*
 28 *Bank of La.*, 522 U.S. 470, 475 (1998); and then quoting *Caterpillar*, 482 U.S. at 393). “To have

1 this effect, a federal statute must ‘provide[] the exclusive cause of action for the claim asserted and
2 also set forth procedures and remedies governing that cause of action.’” *Id.* (alteration in original)
3 (quoting *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003)). “The Supreme Court has
4 identified only three statutes that meet this criteria:” (1) Section 301 of the Labor Management
5 Relations Act, 9 U.S.C. § 185; (2) Section 502(a) of the Employee Retirement Income Security
6 Act of 1974, 29 U.S.C. § 1132(a); and (3) Sections 85 and 86 of the National Bank Act, 12 U.S.C.
7 §§ 85 & 86. *Id.* at 905-906.

8 Second, there is a “‘small category’ of state-law claims that arise under federal law for
9 purposes of [Section] 1331 ‘because federal law is a necessary element of the . . . claim for
10 relief.’” *Id.* at 904 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699
11 (2006)). This exception applies where “a federal issue is ‘(1) necessarily raised, (2) actually
12 disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the
13 federal-state balance approved by Congress.’” *Id.* (quoting *Gunn v. Minton*, 568 U.S. 251, 258
14 (2013)). “All four requirements must be met for federal jurisdiction to be proper.” *Id.* at 904-905.

15 Because Mendocino Railway’s notice of removal is grounded in the references to federal
16 preemption in the Commission’s complaint-in-intervention, federal question jurisdiction lies only
17 if either of the two exceptions to the well-pleaded complaint rule applies. Mendocino Railway
18 invokes both exceptions, arguing that the “ICCTA’s preemptive force is extraordinary” and citing
19 numerous cases in support. ECF No. 16 at 16.

20 The Court agrees that the scope of preemption under the ICCTA is broad. Indeed, the
21 Ninth Circuit has recognized that the ICCTA “expressly preempts ‘a wide range of state and local
22 regulation of rail activity,” and that “[i]t is difficult to imagine a broader statement of Congress’s
23 intent to preempt state regulatory authority over railroad operations.” *Swinomish Indian Tribal
24 Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1152 (9th Cir. 2020) (emphasis omitted) (first quoting
25 *Ass’n of Am. R.Rs. v. South Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1096-97 (9th Cir.
26 2010); and then quoting *City of Auburn v. United States*, 154 F.3d 1025, 1030 (9th Cir. 1998)).
27 Notwithstanding these generalizations, however, the Ninth Circuit has held that “[t]he ICCTA
28 does not ‘preempt state or local laws if they are laws of general applicability that do not

1 unreasonably interfere with interstate commerce.” *BNSF Ry. Co. v. Cal. Dep’t of Tax and Fee*
2 *Admin.*, 904 F.3d 755, 760 (quoting *Ass’n of Am. R.Rs.*, 622 F.3d 1094 at 1097). Instead, the
3 statute “preempts all state laws that may reasonably be said to have the effect of managing or
4 governing rail transportation, while permitting the continued application of laws having a more
5 remote or incidental effect on rail transportation. What matters is the degree to which the
6 challenged regulation burdens rail transportation[.]” *Id.* at 760-61 (alteration in original) (quoting
7 *Ass’n of Am. R.Rs.*, 662 F.3d at 1097-98). As a result, this “system preserves,” for example, “a
8 role for state and local agencies in the environmental regulation of railroads.” *Ass’n of Am. R.Rs.*,
9 662 F.3d at 1098.

10 Neither exception to the well-pleaded complaint rule applies here. As to the artful-
11 pleading doctrine, Mendocino Railway “do[es] not attempt to show that the ICCTA ‘provide[s]
12 the exclusive cause of action for the claim[s] asserted.’” *Friends of Del Mar Bluffs v. North*
13 *County Transit Dist.*, No. 3:22-CV-503-RSH-BGS, 2022 WL 17085607, at *7 (quoting *Beneficial*,
14 539 U.S. at 8); accord *Californians for Alternatives to Toxics v. N. Coast R.R. Auth.*, No. C-11-
15 4102, 2012 WL 1610756, at *9 (N.D. Cal. May 8, 2012). Because the ICCTA does not preempt
16 state or local laws of general applicability that do not unreasonably interfere with interstate
17 commerce, the Court cannot conclude that “Congress intended to preempt ‘every state law cause
18 of action’ within the scope of the [ICCTA].” *City of Oakland*, 969 F.3d at 907 (quoting *In re NOS*
19 *Commc’ns*, MDL No. 1357, 495 F.3d 1052, 1059 (9th Cir. 2017)). The Ninth Circuit’s
20 delineation of the boundaries of ICCTA preemption demonstrates that such preemption is not “so
21 extraordinary” as to be considered complete. *Id.* at 905 (quoting *Caterpillar*, 482 U.S. at 393).
22 The artful-pleading doctrine thus does not apply.

23 As to the second exception, the Ninth Circuit has held that “a federal issue is not
24 substantial if it is ‘fact-bound and situation-specific.’” *Id.* at 905 (quoting *Empire Healthchoice*,
25 547 U.S. at 700). The Ninth Circuit’s ICCTA preemption inquiry is necessarily fact-bound and
26 situation-specific because it requires courts to assess “the degree to which the challenged [law]
27 burdens rail transportation” in a given case. *BNSF Ry. Co.*, 904 F.3d at 760. The assessment of
28 that degree will invariably turn on the application of the challenged law to the facts of a specific

United States District Court
Northern District of California

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case. Equally fact-bound and situation-specific is the question of whether the ICCTA and its preemption provision apply at all, which turns on whether Mendocino Railway is, in fact, engaged in interstate commerce – an issue the parties dispute in their briefing on the instant motions. The state court reached the same conclusion in overruling Mendocino Railway’s demurrer. *See* ECF No. 14-2 at 22-33. The second exception thus does not apply.

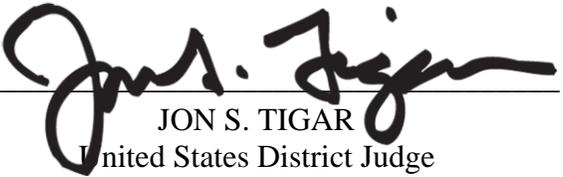
Because neither exception to the well-pleaded complaint rule applies, the Court lacks federal question jurisdiction over the claims asserted in this case.

CONCLUSION

For the foregoing reasons, the City’s and Commission’s motions are granted. This case is remanded to the Superior Court of Mendocino County.

IT IS SO ORDERED.

Dated: May 11, 2023



JON S. TIGAR
United States District Judge

EXHIBIT C

1 JAMES F. KING, SBN 41219
STEPHEN F. JOHNSON, SBN 205244
2 MICHAELYN P. WIPF, SBN 300428
MANNON, KING, JOHNSON & WIPF, LLP
3 200 North School Street, Suite 304
Post Office Box 419
4 Ukiah, California 95482
Telephone: (707) 468-9151
5 Facsimile: (707) 468-0284

6 Attorneys for Defendant John Meyer

FILED

08/23/2023

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Bynum, Dineen ^{Bynum}
DEPUTY CLERK

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MENDOCINO**

10 MENDOCINO RAILWAY,
11 Plaintiff,

12 vs.

13 JOHN MEYER; REDWOOD EMPIRE
TITLE COMPANY OF MENDOCINO
14 COUNTY; SHEPPARD
INVESTMENTS; MARYELLEN
15 SHEPPARD; MENDOCINO COUNTY
TREASURER-TAX COLLECTOR; all
16 other persons unknown claiming an
interest in the property; and DOES 1
17 through 100, inclusive

18 Defendants.

} Unlimited

} Case No. SCUk-CVED 20-74939

} ~~[PROPOSED]~~

} ORDER AWARDING DEFENDANT
JOHN MEYER REASONABLE
ATTORNEY FEES AND COSTS
19 } PURSUANT TO CCP § 1268.610

} Date: August 18, 2023

} Time: 9:30 am

} Dept: E

} Judge: The Hon. Jeanine B. Nadel

20 This matter came before this Court for a hearing on August 18, 2022, at 9:30 a.m.
21 in Department E of the above-entitled court, the Honorable Jeanine B. Nadel, presiding,
22 for a hearing on Defendant John Meyer's Motion For Award of Reasonable Attorney Fees
23 And Costs Pursuant to CCP § 1268.610. Glenn L. Block, Esq., appeared on behalf of
24 plaintiff Mendocino Railway and Stephen F. Johnson, Esq., appeared on behalf of
25 defendant John Meyer.

26 After having reviewed defendants John Meyer's moving and reply papers and
27 plaintiff Mendocino Railway's opposition papers, the court issued a tentative ruling
28 granting defendant John Meyer \$265,533.50, in attorney fees and costs. Neither party

1 requested oral argument after the court issued its tentative ruling.

2 IT IS HEREBY ORDERED THAT defendant John Meyer is awarded attorney fees
3 and costs in the amount of \$265,533.50, and defendant John Meyer shall be entitled to
4 recover such amount from Plaintiff Mendocino Railway.

8/22/2023 9:26:20 AM

5 DATED: 8/22/2023

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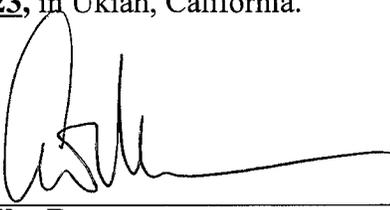
Honorable Jeanine B. Nadel

9 Judge of the Superior Court

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I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on **August 21, 2023**, in Ukiah, California.



Erika Brewer
Legal Assistant

EXHIBIT D

78 CPUC 2d 292, 1998 WL 217965 (Cal.P.U.C.)

In the Matter of the Application California Western Railroad, Inc. for Authority to Modify Scheduled
Commuter Passenger Service and Seek Relief from Regulated Excursion Passenger Scheduling and Fares.

Application 97-08-007

Decision 98-01-050

California Public Utilities Commission

January 21, 1998

***1 INTERIM OPINION**

APPEARANCES: Gary Milliman and Sean J. Hogan, Attorneys at Law, for California Western Railroad, Inc., applicant. Bruce Richard, for Mendocino Transit Authority, and Johanna Burkhardt, Emile's Station, for herself, interested parties. James T. Quinn, Attorney at Law, and James R. Panella, for the Rail Safety and Carriers Division.

Before Conlon, President, and Knight, Jr., Duque, Neepner and Bilas, Commissioners.

BY THE COMMISSION:

The decision concludes that the excursion passenger service provided by California Western Railroad (CWRR) should not be subject to regulation by the Commission.

Background

CWRR transports passengers and freight between Fort Bragg and Willits, California. CWRR also serves a few communities between Fort Bragg and Willits in the Noyo River Valley.

CWRR currently provides one round trip daily except on Thanksgiving Day, Christmas Day and New Year's Day (362 days a year) from Fort Bragg to Willits and returning to Fort Bragg. CWRR charges commutation fares and special intermediate point round-trip-ticket fares for its service. Additionally, at various times of the year, CWRR operates trains between Fort Bragg and Northspur and less frequently between Willits and Northspur. Northspur is located approximately midway between Fort Bragg and Willits.

CWRR's route between Fort Bragg and Willits is very scenic and CWRR attracts several tourists to ride its train. CWRR provides excursion passenger service to tourists on its famous "Skunk Train." CWRR's excursion service is provided for the same fare as the fare for commuter service.

According to the information provided by CWRR, CWRR's excursion service constitutes over 90% of its operations.

CWRR filed this application to seek Commission approval to reduce its commuter service to three days a week during the winter months of October through March. CWRR also seeks relief from regulation by the Commission of its excursion service.

Hearings

Public participation hearings (PPHs) on the application were held in Willits (on October 22, 1997) and Fort Bragg (on October 23, 1997) before Administrative Law Judge (ALJ) Garde. In addition to the PPHs, a prehearing conference (PHC) was held on October 23, 1997 in Fort Bragg.

At the PHC, the ALJ bifurcated the proceeding into two phases. The first phase would address CWRR's request to deregulate its tourist or excursion passenger service. The second phase would address the issue of reduction in commuter passenger service.

It was agreed that the issue of deregulation being a legal issue could be addressed through the filing of briefs. Accordingly, concurrent opening and reply briefs were filed on November 17, 1997 and November 25, 1997, respectively.

An evidentiary hearing in the second phase was held in Fort Bragg on December 4, 1997.

This interim decision addresses the issue of deregulation of CWRR's tourist or excursion passenger service. A separate order will be issued regarding CWRR's request to reduce its commuter passenger service.

*2 CWRR and the Commission's Rail Safety and Carriers Division (RSCD) filed opening briefs. RSCD and Mendocino Transit Authority filed reply briefs.

Commission Regulation of Railroads

Before considering CWRR's request for deregulation, it would be helpful to examine Commission's regulation of other railroads.

There are 15 railroad companies in California that provide excursion passenger service of which all but two are not regulated by the Commission. The two railroads regulated by the Commission are CWRR and the Napa Valley Wine Train (Wine Train).

In the case of Wine Train, the Commission regulation involves the monitoring and enforcement of a program to mitigate any adverse impact of the operation of Wine Train on the environment. The Mitigation Implementation Program adopted by the Commission, under Section 21081.6 of the California Environmental Quality Act (CEQA), was part of the assessment of environmental impact of the operation of trains. Under the Mitigation Implementation Program, the Commission specifies, among other things, the hours of the day during which Wine Train can operate. The Commission does not regulate Wine Train's schedule or rates.

In the case of CWRR, the Commission regulates both the commuter service and excursion service.

Discussion

All parties support deregulation of CWRR's excursion service. The following discussion is a distillation of opinions expressed in the briefs.

In considering CWRR's request for deregulation, we have determined whether CWRR's excursion service qualifies as "transportation" under Public Utilities (PU) Code § 1007 and whether in rendering such service CWRR functions as a public utility. We will examine CWRR's operations in that perspective.

Does CWRR's Excursion Service Constitute Transportation?

What does the term "transportation" mean and what services qualify as transportation addressed by the California Supreme Court in *Golden Gate Scenic Steamship Lines v. Public Utilities Commission*, 57 C.2d 373 (1962). The steamship company operated sightseeing vessels on San Francisco Bay. The passengers being served by the steamship company boarded vessels at a certain point in San Francisco and after cruising the bay in a loop returned to the point of origin. Golden Gate Scenic Steam Ship Lines contended that its operations did not come under the Commission's regulatory authority because it did not transport people between points and thus was not providing transportation as provided in PU Code § 1007.

In that case, the court determined that "transportation" was a key word and that when applied to passenger vessels "plainly" meant transportation of persons between two different points. The court concluded that the steamship company's sightseeing cruises did not come under PU Code § 1007.

In a subsequent proceeding, (Application (A.) 59818 et al.), the Commission, based on the Supreme Court's determination, issued Decision (D.) 93726 (7 CPUC2d at 135-136), which concluded that sightseeing service is not passenger stage corporation service. The Commission stated that:

*3 “Aside from the legal analysis of the statutory scheme, concluding tour or sightseeing service is not passenger stage corporation service, we note that sightseeing or tour service is essentially a luxury service, as contrasted with regular route, point-to-point transportation between cities, commuter service, or home-to-work service. In those cases members of the public may be in a situation where they have no other mode for essential travel. And, there it is in the public interest to regulate rates, schedules, and service for what may very well be captive patrons.

“We recognize that today's decision is a departure from past Commission precedent. We are sure those companies who are already in business and doing well under regulation will take vocal exception with this decision. However, we believe our analysis of the statutory scheme for bus regulation in California is sound. Aside from the legal analysis requiring us to find sightseeing-tour service is not common carriage, we believe this change in our regulation will allow us to engage in better entry and rate regulation over point-to-point common carriers, and ultimately enable us to provide better regulation for the user of regular route, point-to-point bus service.” (7 CPUC2d at 135-136.)

CWRR's excursion service involves transporting passengers from Fort Bragg either all the way to Willits or to midpoint Northspur, and then returning them to Fort Bragg. Also, at some times of the year, CWRR operates a train from Willits to Northspur and then returning to Willits.

The operations described above involve transporting people from one point to a destination and returning them to the point of origin. While the operation does not entail transporting people in a continuous loop as the people using excursion buses or boats, the operation is comparable to the operation of excursion buses or boats. The difference in the operations is of degree, not kind, and should not be determinative of whether or not CWRR's operations meet the judicial definition of transportation under PU Code § 1007.

We conclude that CWRR's excursion service does not constitute “transportation” under PU Code § 1007.

Next, we will consider whether CWRR, in providing its excursion service, functions as a public utility. The primary purpose of CWRR's excursion service is to provide the passengers an opportunity to enjoy the scenic beauty of the Noyo River Valley and to enjoy sight, sound and smell of a train. It clearly entails sightseeing. In D.82-09-087, the Commission stated the following about sightseeing:

“The basic question is whether sightseeing is a public utility function. In the absence of a clear declaration by the Legislature, we conclude that it is not.” (9 CPUC2d at 687.)

Further, the Commission also opined that public utilities are ordinarily understood as providing essential services, the kind that other industries and the public generally require.

While the excursion service provided by CWRR may be beneficial to the economy of Mendocino County and may even be considered essential by the tourist industry, it is not essential to the public in the way that utilities services generally are. In providing its excursion service, CWRR is not functioning as a public utility.

*4 Based on the above, we conclude that CWRR's excursion service should not be regulated by the Commission.

We believe that discontinuance of Commission regulation of schedules and fares of CWRR's excursion service will have no adverse impact in the area of the public interest. Moreover, it would conform the Commission's regulation over CWRR's excursion service with Commission regulation of other such rail services.

Consideration of Safety of CWRR's Operations

While we have concluded that CWRR's excursion services be free from regulation by the Commission as regards to scheduling and fares, we believe that CWRR's excursion services should be subject to regulation in certain other areas. Foremost among these would be regulation with regard to the safety of CWRR's operations, which the Commission conducts as an arm of the Federal Railroad Administration (FRA). It is essential that the Commission staff and FRA personnel continue to inspect CWRR's track, signal and safety practices of CWRR's passenger and freight operations. It is also essential for the Commission to continue to regulate the upkeep and reliability of grade crossings and crossing protection devices under PU Code §§ 1201 et seq.

While the Commission ceased to regulate the schedules and fares of sightseeing tours provided by bus, the safety of bus operators was subject to regulation by state agencies. Accordingly, we conclude that CWRR should remain under the Commission's regulation in all areas of safety of its passenger and freight operations, as it is now.

Findings of Fact

1. CWRR seeks relief from regulation by the Commission of its excursion passenger service.
2. CWRR's excursion service does not constitute "transportation" under the provisions of PU Code § 1007.
3. The primary purpose of CWRR's excursion service is to provide its passengers an opportunity for sightseeing.
4. The Commission has concluded that sightseeing is not a public utility function.
5. The Commission currently regulates the safety of the operation of all services provided by CWRR.
6. While the Commission ceased to regulate the schedules and fares of sightseeing service provided by bus operators, the safety of the operations remained subject to regulation by state agencies.

Conclusions of Law

1. In providing excursion passenger service, CWRR does not function as a public utility.
2. The Commission should not regulate the schedules and fares for the excursion passenger service provided by CWRR.
3. The Commission should continue to regulate the safety of the operation all services provided by CWRR.
4. This order should be made effective today to provide CWRR an opportunity to publish its schedules and fares for the expected tourist season in 1998.

INTERIM ORDER

IT IS ORDERED that:

1. The schedules and fares for the excursion passenger service provided by California Western Railroad (CWRR) shall not be subject to regulation by the Commission.
- *5 2. The safety of the operation of all services, including excursion passenger service, shall remain subject to regulation by the Commission.
3. This proceeding shall remain open to consider CWRR's request to reduce its commuter service.

This order is effective today.

Dated January 21, 1998, at San Francisco, California.

End of Document

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EXHIBIT E

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 8 official capacity as Executive Director of the
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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12
 13 **MENDOCINO RAILWAY,**

14 Plaintiff,

15 v.

16 **JACK AINSWORTH, in his official
 17 capacity as Executive Director of the
 California Coastal Commission; CITY OF
 18 FORT BRAGG, a California municipal
 corporation,**

19 Defendants.
 20

22-cv-04597-JST

**DEFENDANT JACK AINSWORTH'S
 NOTICE OF MOTION, MOTION TO
 DISMISS, AND MEMORANDUM OF
 POINTS AND AUTHORITIES**

Date: December 22, 2022
 Time: 2 p.m.
 Dept: Courtroom 6
 Judge: Honorable Jon S. Tigar
 Trial Date: Not Set
 Action Filed: August 9, 2022

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NOTICE OF MOTION AND MOTION TO DISMISS

TO THE COURT AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 22, 2022, at 2:00 p.m., at the United States District Court, Northern District of California, United States Courthouse, 1301 Clay Street, Oakland, California 94612, Defendant Jack Ainsworth will and hereby does move to dismiss this action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds of abstention under *Younger v. Harris*, 401 U.S. 37 (1971).

Defendant Jack Ainsworth respectfully requests that this Court find that *Younger* abstention applies and on that basis, dismiss Plaintiff's Complaint for Declaratory Judgment in its entirety.

This motion is based on this Notice of Motion and Motion to Dismiss; the accompanying Memorandum of Points and Authorities; the accompanying Request for Judicial Notice; all pleadings and papers on file in this action; and such other matters as the Court may deem appropriate. This motion is made pursuant to Local Rule 7-2.

Dated: September 22, 2022

Respectfully submitted,

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DAVID G. ALDERSON
Supervising Deputy Attorney General

/s/ Patrick Tuck
PATRICK TUCK
Deputy Attorney General
*Attorneys for Defendant
California Coastal Commission*

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

1
2
3 Plaintiff Mendocino Railway (“Plaintiff”) is an excursion rail service located in Mendocino
4 County that operates separate out-and-back sightseeing trips from both Willits and Fort Bragg,
5 California. Portions of Plaintiff’s property and operations in the City of Fort Bragg (“City”) are
6 also located within the State’s coastal zone, and thus, any proposed development in those
7 locations are subject to the California Coastal Act (“Coastal Act”) and to Defendant City of Fort
8 Bragg’s Local Coastal Program (“City’s LCP”). Pursuant to both the Coastal Act and the City’s
9 LCP, Plaintiff is required to apply for a coastal development permit for any development it
10 intends to undertake in the coastal zone. The permitting requirements of the City’s LCP ensure
11 that no person undertakes development within the City’s jurisdiction that may harm the fragile
12 coastal zone.

13 In its Complaint for Declaratory Judgment (“Complaint”), Plaintiff contends that
14 imposition of local and state permitting requirements by the City and the California Coastal
15 Commission (“Coastal Commission” or “Commission”) to Plaintiff’s land-use activities is
16 preempted under federal law. Plaintiff has named Jack Ainsworth, in his official capacity as the
17 Executive Director of the Coastal Commission (“Defendant Ainsworth”) as one of the two
18 Defendants in this case, along with the City. According to Plaintiff, that is because Defendant
19 Ainsworth is “charged with the day-to-day enforcement of the California Coastal Act.” Plaintiff’s
20 Complaint also admits that, more than nine months before Plaintiff filed its federal Complaint, the
21 City filed suit in Mendocino County Superior Court (“Mendocino County action”) seeking to
22 enforce the City’s laws and regulations (which includes the City’s LCP), and Plaintiff has already
23 asserted in the state proceeding a federal preemption defense in all substantive respects identical
24 to its claim in the instant federal matter. That state proceeding is ongoing, and the Coastal
25 Commission filed and served a motion to intervene in the Mendocino County action on
26 September 8, 2022. In the Coastal Commission’s proposed complaint in intervention, the
27 Commission is seeking declaratory and injunctive relief, specifically with regard to Plaintiff’s
28 preemption contention.

1 Defendant Ainsworth respectfully requests that the court dismiss this federal action under
2 the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971) (“*Younger*”). At the
3 time this federal suit was filed, the City had already initiated the aforementioned state proceeding
4 wherein the parties have requested a determination regarding the state and federal preemption
5 claims asserted by Plaintiff, and the Coastal Commission has filed a motion seeking to intervene
6 in that proceeding, similarly seeking a declaratory judgment and injunctive relief pertaining to
7 Plaintiff’s purported preemption arguments. Granting the relief Plaintiff seeks in this federal
8 action would interfere with and effectively enjoin the state proceeding. This federal action should
9 therefore be dismissed on the basis of *Younger* abstention.

10 ALLEGATIONS IN THE PLEADINGS

11 I. MENDOCINO COUNTY ACTION

12 On October 28, 2021, Defendant City of Fort Bragg (“City”) filed and served its Verified
13 Complaint for Declaratory and Injunctive Relief (“Verified Complaint”) in Mendocino County
14 Superior Court (Case No. 21CV00850), naming Plaintiff Mendocino Railway (“Plaintiff”) as the
15 sole Defendant. See Coastal Commission’s Request for Judicial Notice (RJN), attached hereto
16 and filed herewith, Exhibit A. In its Verified Complaint, the City alleges that, in 2017, the City
17 deemed a roundhouse operated by Plaintiff within the City’s jurisdiction to be in such disrepair
18 that it may have to be demolished rather than repaired. RJN, Ex. A, ¶ 12. Subsequently, Plaintiff
19 refused to allow the roundhouse to be inspected by local authorities, claiming that “the City has
20 no authority over a railroad.” *Id.* Two years later, the City alleged that it red tagged Plaintiff’s
21 work on a storage shed due to the fact that Plaintiff failed to obtain a necessary building permit
22 before commencing work on the shed, but Plaintiff removed the red tag and went forward with
23 the unpermitted work. *Id.* And in August 2021, after the City informed Plaintiff that it needed to
24 obtain a Limited Term Permit for an evening event, Plaintiff stated that it was “outside the City’s
25 jurisdictional boundaries and thus not subject to a permit.” *Id.*

26 Due to Plaintiff’s multiple refusals to obtain necessary permits from the City, the City
27 alleges that Plaintiff is “responsible for continuing violations of the laws and public policy of the
28 State of California and/or local codes, regulations and/or requirements” applicable to its

1 operations and activities within the City, and such use and activities by Plaintiff and the condition
2 of its real property “are inimical to the rights and interests of the general public and constitute a
3 public nuisance and/or violations of law.” RJN, Ex. A, ¶ 13.

4 Because Plaintiff “failed to comply with the City’s code enforcement efforts” and Plaintiff
5 has claimed that its purported status as a public utility preempts local jurisdiction and
6 applicability of the City’s local ordinances, as alleged in the City’s Verified Complaint, the City
7 was compelled to file suit against Plaintiff. RJN, Ex. A, ¶¶ 15-16. In the Verified Complaint, the
8 City seeks declaratory relief stating that Plaintiff is not a public utility subject to regulation by the
9 California Public Utilities Commission (thus foreclosing Plaintiff’s state preemption argument)
10 and injunctive relief commanding Plaintiff to comply with the City’s laws and regulations. RJN,
11 Ex. A, Prayer for Relief, ¶¶ 1-2.

12 On January 14, 2022, Plaintiff filed a demurrer to the City’s Verified Complaint. RJN,
13 Exhibit B. In its points and authorities in support of its demurrer, Plaintiff argued that the superior
14 court lacked subject matter jurisdiction over the City’s declaratory relief action due to exclusive
15 regulation of Plaintiff by the California Public Utilities Commission, and, as is relevant here, that
16 “state and local regulatory and permitting requirements are broadly preempted” by the federal
17 Surface Transportation Board’s purported exclusive jurisdiction over Plaintiff. RJN, Ex. B. at 16.
18 The Mendocino County Superior Court subsequently overruled Plaintiff’s demurrer on April 28,
19 2022, finding that “[Plaintiff]’s preemption argument is overbroad” and noting that, with regard
20 to Plaintiff’s federal preemption argument, “[n]ot all state and local regulations that affect
21 railroads are preempted.” RJN, Exhibit C, at 11-12. The Superior Court specifically stated that
22 “[Plaintiff] is not involved in any interstate rail operations” and “is simply a luxury sightseeing
23 excursion service with no connection to interstate commerce.” RJN, Exh C. at 10-11. Finally, the
24 court held that “the applicability of preemption is necessarily a ‘fact-bound’ question, not suitable
25 to resolution by demurrer.” RJN, Exh. C at 12.

26 Plaintiff then appealed the Superior Court’s decision on its demurrer to the California Court
27 of Appeal, which, after initially issuing a stay and requesting briefing on the state preemption
28 issue, denied Plaintiff’s petition for extraordinary writ review. See RJN, Exhibit D. And on June

1 23, 2022, the California Supreme Court denied Plaintiff’s Petition for Review of that appellate
2 decision, in effect upholding the Superior Court’s ruling on the demurrer.

3 The next day, June 24, 2022, Plaintiff filed an answer to the City’s Verified Complaint,
4 admitting that Plaintiff refused the City’s entry onto its rail property “on the grounds of state and
5 federal preemption law” and stated that Plaintiff’s position that its status as “a railroad within the
6 jurisdiction of the federal Surface Transportation Board (‘STB’) broadly preempt environmental
7 pre-clearance review and land-use permitting of Defendant’s rail activities.” RJN, Exhibit E, ¶ 12,
8 15. Similarly, Plaintiff’s “Fourth Affirmative Defense” in its answer states that “[t]he declaratory
9 and injunctive relief sought by [the City] are barred by state and federal preemption, as embodied
10 in statutory and constitutional law, because [Plaintiff] is a CPUC-regulated public utility and a
11 railroad within the jurisdiction of the STB.” RJN, Ex. E. at 5:19-22.

12 Because of the overlap in local regulation of activities in the coastal zone pursuant to the
13 City’s LCP and the Coastal Commission’s enforcement of the Coastal Act, in July 2022, the City
14 requested that the Commission assume responsibility for enforcement against Plaintiff. RJN,
15 Exhibit F, at 13-14, ¶ 5. Consequently, the Commission sent a Notice of Violation letter to
16 Plaintiff on August 10, 2022, one day before Plaintiff served the Commission with the instant
17 Complaint. *Id.*¹ The Coastal Commission subsequently filed and served a Motion to Intervene and
18 a proposed Complaint in Intervention on September 8, 2022, seeking to intervene in the
19 Mendocino County action. RJN, Exh. F. In its Motion to Intervene, the Coastal Commission
20 argues that it meets the requirements for both mandatory and permissive intervention, as it has a
21 strong and direct interest in the litigation and the implementation and enforcement of the Coastal
22 Act and the City’s LCP to Plaintiff’s activities in the coastal zone. RJN, Ex. F at 5-6. In its
23 proposed Complaint in Intervention, the Coastal Commission seeks a “declaration that the
24 application of the Coastal Act and the City’s LCP to Plaintiff’s actions in the coastal zone of the
25 City that constitute development under the Coastal Act and the City’s LCP are not preempted by

26 _____
27 ¹ In fact, as the City noted on June 27, 2022 in its Opposition to a Notice of Related Case
28 filed by Plaintiff, the Coastal Commission was considering seeking to intervene in the Mendocino
County action in mid-July 2022, well before Plaintiff filed its federal Complaint. RJN, Exhibit G,
at 3:3-5, 5:25-6:2.

1 any state or federal law,” as well as civil penalties, injunctive relief, and exemplary damages for
 2 Plaintiff’s past and ongoing violations of the Coastal Act. RJN, Ex. F at 17-18, & Prayer for
 3 Relief.

4 **II. THE FEDERAL COMPLAINT**

5 On August 9, 2022, Plaintiff filed the instant Complaint in the Eureka Division of the U.S.
 6 District Court for the Northern District of California. In its Complaint, Plaintiff states that the
 7 Coastal Commission “has demanded that [Plaintiff] apply for a state land-use permit before
 8 performing any rail-related work on its railroad property located within the coastal zone” and that
 9 the City “has joined with the [Coastal] Commission in demanding that [Plaintiff] submit to its
 10 plenary land-use authority over, and preclearance review of, rail-related activities occurring
 11 within the City’s boundaries.” Complaint, at ¶¶ 3-4. The Railroad goes on to state in its
 12 Complaint that “[t]he City has gone so far as to file a state-court action to compel [Plaintiff] to
 13 apply for permits for any and all work on its railroad property and facilities within City
 14 boundaries,” referencing the Mendocino County action described above. Complaint, at ¶ 4.

15 Just as it alleged in its demurrer and verified answer in the state court proceeding, Plaintiff
 16 asserts in its federal Complaint that “its rail-related work and operations are not subject to state
 17 and local land-use permitting and preclearance regulation” and “[a]s a federally regulated railroad
 18 with preemption rights, [Plaintiff] has refused to submit to the City’s permit jurisdiction, as well.”
 19 Complaint, at ¶¶ 2, 4. Finally, Plaintiff alleges only one cause of action in its federal Complaint,
 20 for Declaratory Judgment against both “the Commission” (which Plaintiff apparently imputes to
 21 Defendant Ainsworth, in his official capacity as Executive Director of the Coastal Commission),
 22 and the City. Complaint, at ¶ 32. In its Prayer for Relief, Plaintiff seeks a declaration that the
 23 actions of “the Commission” and the City to regulate any and all of Plaintiff’s “operations,
 24 practices and facilities” are federally preempted and subject to the Surface Transportation Board’s
 25 exclusive jurisdiction, and an injunction prohibiting the Defendants from interfering with its
 26 operations under the same argument. Complaint, Prayer for Relief, ¶ 1-2.

27 ///

28 ///

1 important countervailing interest.” *Id.* (citation omitted). One such situation is when hearing a
2 case “would interfere . . . with certain types of state civil proceedings.” *Id.* In such situations,
3 abstaining from jurisdiction “preserve[s] respect for state functions” and avoids “unduly
4 interfer[ing] with the legitimate activities of the States.” *Gilbertson v. Albright*, 381 F.3d 965,
5 970-971 (9th Cir. 2004) (en banc) (quoting *Younger v. Harris*, 401 U.S. 37, 43-45 (1971)). This
6 type of abstention is known as *Younger* abstention.

7 In civil cases, the Ninth Circuit has articulated four elements to determine if *Younger*
8 abstention is appropriate, namely “when the state proceedings: (1) are ongoing, (2) are quasi-
9 criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of
10 its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal
11 challenges.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir.
12 2014). “If these ‘threshold elements’ are met, we then consider whether the federal action would
13 have the practical effect of enjoining the state proceedings and whether an exception
14 to *Younger* applies.” *Id.* “The critical date for purposes of deciding whether abstention principles
15 apply is the date the federal action is filed.” *Gilbertson v. Albright*, 381 F.3d 965, 969, n. 4 (9th
16 Cir. 2004).

17 All four elements are met here as of the time of filing of Plaintiff’s federal Complaint.

18 **I. THE STATE PROCEEDING IS ONGOING**

19 As to the first element, the City filed and served its Verified Complaint against Plaintiff in
20 Mendocino County Superior Court nearly 11 months ago, on October 28, 2021, and that case
21 remains ongoing, with the Coastal Commission’s Motion to Intervene currently scheduled to be
22 heard on October 6, 2022. Plaintiff filed its federal Complaint on August 9, 2022.

23 **II. THE STATE PROCEEDING IS A QUASI-CRIMINAL ENFORCEMENT ACTION**

24 The Mendocino County proceeding also meets the second requirement, as it is a quasi-
25 criminal enforcement action whereby the City and the Coastal Commission are seeking
26 confirmation of their authority to regulate Plaintiff’s activities within their jurisdictions and to
27 enforce the City’s LCP and the Coastal Act with regard to those activities. Additionally, the
28 Coastal Commission issued a Notice of Violation against Plaintiff prior to being served with this

1 Complaint and prior to filing its Motion to Intervene in the state proceeding, and that Notice of
2 Violation sets forth the primary basis for the Coastal Commission’s requested civil penalties and
3 exemplary damages against Plaintiff. RJN, Ex. F, Proposed Complaint in Intervention, ¶¶ 5, 17-
4 24, & Prayer for Relief, ¶¶ 3-5.

5 The City’s Verified Complaint explains in detail the efforts the City has undertaken in its
6 attempt to enforce its land use, code enforcement, and permitting regulations upon Plaintiff. RJN,
7 Ex. A. at ¶¶ 12, 13, & 15. The City’s Verified Complaint further describes the multiple occasions
8 when Plaintiff has refused to comply with its local laws and regulations and asserted that it is
9 preempted from such local regulation, which prompted the City to file suit in state court, seeking
10 a declaration that the City’s regulation of Plaintiff is not preempted, and an injunction
11 commanding Plaintiff to comply with the City’s local laws and regulations. RJN, Ex A. at ¶¶ 12,
12 15, 16, & Prayer, at ¶¶ 1-2. Therefore, the state proceeding is “akin to a criminal prosecution” and
13 was “initiated to sanction [Plaintiff], i.e., the party challenging the state action, for [its] wrongful
14 act.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013), quoting *Huffman v. Pursue, Ltd.*,
15 420 U.S. 592, 604 (1975) and citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*,
16 457 U.S. 423, 432 (1982). Because the City’s Verified Complaint and the Coastal Commission’s
17 Motion to Intervene have been initiated to enforce local and state law against Plaintiff, the state
18 proceeding is “a civil enforcement proceeding within the scope of the *Younger* doctrine,” meeting
19 the second requirement. *Herrera v. City of Palmdale*, 918 F.3d 1037, 1045 (9th Cir. 2019).

20 Additionally, as California courts have previously made rulings pertaining to the potential
21 preemptive effects of public utility regulation with regard to sightseeing excursion trains,
22 including Plaintiff’s predecessor and the Napa Valley Wine Train, (see, e.g., *City of St. Helena v.*
23 *Pub. Utilities Com.*, 119 Cal. App. 4th 793, 803 (2004), *as modified on denial of reh’g* (July 21,
24 2004), and *disapproved of on other grounds by Gomez v. Superior Ct.*, 35 Cal. 4th 1125, (2005)),
25 this state proceeding involves a state’s interest in enforcing the orders and judgments of its courts.
26 This is a further basis for finding that the Mendocino County action meets the second *Younger*
27 requirement.
28

1 **III. THE STATE PROCEEDING IMPLICATES AN IMPORTANT STATE INTEREST**

2 The third *Younger* requirement is also met, as the state proceeding implicates an important
3 state interest. Plaintiff has asserted in its overruled demurrer and verified answer that local and
4 state regulation of its activities are preempted under state and federal law. The corollary to this
5 assertion is that Plaintiff is claiming that it is permitted to undertake whatever activities and
6 alterations to its property in the coastal zone it would like, particularly if it believes those
7 activities are “rail-related,” without any oversight or regulation by the Coastal Commission or the
8 City. A ruling allowing such unrestricted and unpermitted activities by Plaintiff threatens
9 vulnerable coastal resources and would significantly hinder the Coastal Commission’s ability to
10 protect the coast, in contravention of the Coastal Act, as well as the City’s LCP and land-use
11 ordinances. See *San Remo Hotel v. City & Cnty. of San Francisco*, 145 F.3d 1095, 1104 (9th Cir.
12 1998) (“We have held that strong, local, *i.e.*, municipal, interests in land-use regulation qualify as
13 important ‘state’ interests for purposes of *Younger* abstention.”). Therefore, the state proceeding
14 involves and implicates important state interests, satisfying the third *Younger* requirement.

15 **IV. THE STATE PROCEEDING ALLOWS LITIGANTS TO RAISE FEDERAL CHALLENGES**

16 As to the fourth and final *Younger* requirement, the review and rulings on Plaintiff’s
17 demurrer and its affirmative defense provided in its answer, discussed above, (which assert
18 federal preemption challenges to the City’s Verified Complaint), demonstrate that the litigants
19 have already raised, and will continue to be able to raise, federal challenges in the state
20 proceeding. Moreover, on multiple occasions in the past decade California state courts have
21 evaluated and ruled on claims of federal preemption by railroad operators, and in each case, the
22 parties were allowed to raise federal challenges. See, *e.g.*, *Town of Atherton v. California High-*
23 *Speed Rail Auth.*, 228 Cal. App. 4th 314, 327-34 (2014); *Friends of the Eel River v. N. Coast R.R.*
24 *Auth.*, 3 Cal. 5th 677, 704-11, 740 (2017); *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App.
25 4th 1513, 1528-31 (2012). There is no reason to believe such would not be the case in the
26 ongoing Mendocino County action. Further, “under California law, a litigant may seek judicial
27 review of an adverse decision and, in doing so, may raise federal claims.” *Citizens for Free*
28 *Speech, LLC v. Cnty. of Alameda*, 953 F.3d 655, 657 (9th Cir. 2020), citing Cal. Code. Civ. P. §

1 1094.5 and *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 629 (1986).

2 Therefore, the fourth *Younger* requirement is met.

3 **V. THE FEDERAL ACTION WILL HAVE THE PRACTICAL EFFECT OF ENJOINING THE**
 4 **STATE PROCEEDING**

5 As discussed above, the four threshold *Younger* factors are satisfied here. As to the question
 6 of “whether the federal action would have the practical effect of enjoining the state proceedings,”
 7 if this federal action is not dismissed, both the court handling the state proceeding and this Court
 8 will be forced to address Plaintiff’s federal preemption claim. *ReadyLink Healthcare*, 754 F.3d at
 9 759. The concern over wasting judicial resources with regard to identical claims by Plaintiff in
 10 two separate courts may cause the state court to stay its action until this Court decides the federal
 11 preemption issue, thus effectively enjoining that state action. *See Citizens for Free Speech* 953
 12 F.3d at 657 (delay in abatement proceeding caused by federal action would have “the practical
 13 effect of enjoining it.”). Further, the City and the Coastal Commission will not have clarity on
 14 whether they may proceed with their enforcement actions against Plaintiff so long as this Court
 15 continues to consider Plaintiff’s federal preemption claim, (even if the state court were to
 16 separately rule on both preemption arguments), thus enjoining the ultimate goal of the City’s
 17 Verified Complaint and the Coastal Commission’s Motion to Intervene.

18 **VI. NO EXCEPTION TO *YOUNGER* APPLIES**

19 Finally, no exception to the *Younger* principles apply to the state proceeding. The Ninth
 20 Circuit discussed potential exceptions to *Younger* abstention in *Gilbertson v. Albright*, 381 F.3d
 21 965 (9th Cir. 2004). In *Gilbertson*, the court explained that some examples of exceptions to
 22 *Younger* include where the state proceeding is “motivated by a desire to harass or is conducted in
 23 bad faith” or where there are flagrant violations of express constitutional prohibitions by the state
 24 or local actor. *Id.* at 983, quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *see also Citizens*
 25 *for Free Speech*, 953 F.3d at 657–58.

26 Here, there is no evidence that the City or the Coastal Commission is acting in bad faith or
 27 trying to harass Plaintiff in seeking a determination regarding their land-use authority and
 28 Plaintiff’s asserted preemption arguments, and no violations of constitutional prohibitions are

1 implicated. Plaintiff has refused to comply with local and state laws and is now subject to
2 enforcement for those violations. That was the impetus for the City's lawsuit and the Coastal
3 Commission's Motion to Intervene, and thus, no exception to *Younger* applies.

4 **CONCLUSION**

5 Plaintiff Mendocino Railway's Complaint should be dismissed. *Younger* abstention applies
6 here in light of the ongoing state proceeding in Mendocino County. In that state proceeding,
7 Plaintiff's federal preemption claim has already been raised and will be addressed by the state
8 court. Plaintiff's filing of this federal Complaint more than nine months after the City filed its
9 complaint in state court is a blatant attempt at forum shopping. For all of the reasons set forth
10 above, Defendant Jack Ainsworth, in his official capacity as Executive Director of the California
11 Coastal Commission, respectfully requests that this Court dismiss Plaintiff's Complaint in its
12 entirety.

13 Dated: September 22, 2022

Respectfully submitted,

14
15 ROB BONTA
16 Attorney General of California
17 DAVID G. ALDERSON
18 Supervising Deputy Attorney General

19 /s/ Patrick Tuck

20 PATRICK TUCK
21 Deputy Attorney General
22 *Attorneys for Defendant Jack Ainsworth, in*
23 *his official capacity as Executive Director of*
24 *the California Coastal Commission*
25
26
27
28

EXHIBIT F

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9 CITY OF FORT BRAGG

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 MENDOCINO RAILWAY,
13 Plaintiff,
14 v.

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

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

Action Filed: August 9, 2022

15 JACK AINSWORTH, et al.,
16 Defendants.

**CITY OF FORT BRAGG'S NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFF MENDOCINO RAILWAY'S
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[FED. RULES CIV. PROC. 12(B).]

[Filed concurrently with [Proposed] Order]

Date: December 22, 2022
Time: 2:00 p.m.
Crtrm.: 6

17 TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS
18 OF RECORD:

19 PLEASE TAKE NOTICE that on December 22, 2022 at 2:00 p.m. or as soon
20 thereafter as the matter may be heard in Courtroom 6, of the above-entitled Court, located
21 at Oakland Courthouse, Courtroom 6 – 2nd Floor, 1301 Clay Street, Oakland, California

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103



1 94612, although civil motion hearings in this Courtroom are held by Zoom webinar,
2 unless otherwise ordered, Defendant CITY OF FORT BRAGG will and does hereby
3 move to dismiss Plaintiff MENDOCINO RAILWAY'S Complaint pursuant to Federal
4 Rule of Civil Procedure Rule 12 (b)(1), (b)(6) and (h)(3), as the Complaint fails to state a
5 claim upon which relief can be granted based on the following grounds:

6 Plaintiff's first and only Claim for Relief, for Declaratory Judgment pursuant to
7 Fed. Rules Civ. Proc. 57 and 28 U.S.C. § 2201 provides an insufficient and improper basis
8 for this Court's jurisdiction, in that there is no federal subject matter jurisdiction merely
9 for a claimed federal preemption defense, and this Court may decline declaratory
10 judgment under the circumstances; the claims in the Complaint are subject to abstention
11 by this Court; and there is no federal preemption as alleged by Plaintiff.

12 This Motion is based on this Notice of Motion and Motion, the Memorandum of
13 Points and Authorities attached hereto, the Request for Judicial Notice filed concurrently
14 herewith, the file and records in this case, and any further argument the Court deems just
15 and proper to hear at or before the hearing on this Motion.

16 Dated: September 22, 2022

JONES MAYER

17
18
19 By: s/Krista MacNevin Jee
20 Krista MacNevin Jee
21 Attorneys for Defendant,
22 CITY OF FORT BRAGG
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 At its heart, this Declaratory Judgment action is merely Plaintiff Mendocino
4 Railway's additional attempt, among several previous ones, at forum/judge shopping.
5 Further, Plaintiff Mendocino Railway attempts to avoid any local regulatory authority of
6 Defendant City of Fort Bragg by expansively overstating the City's pending State court
7 action against Plaintiff, and attempting to leave no room for local jurisdiction of its multi-
8 varied activities that are *not* limited to rail activities – even assuming *arguendo* that this
9 limitation were to apply. Perhaps most importantly, Mendocino Railway far overstates its
10 own status and authority – ignoring State and Federal agency conclusions that the trains it
11 operates are *only* tourist excursion trains, its rail activities are *not* conducted in interstate
12 commerce, and it does *not* act as a common carrier.

13 Mendocino Railway's action herein in this matter seeks primarily to directly
14 interfere with and curtail *pending State court* jurisdiction in *City of Fort Bragg v.*
15 *Mendocino Railway*, Mendocino County Superior Court Case No. 21CV00850, on
16 claimed federal preemption by the Surface Transportation Board (“STB”), which is an
17 improper basis for any exercise of jurisdiction by this Court, is not the proper subject of
18 Declaratory Judgment, as to matters for which this Court should abstain to exercise any
19 jurisdiction, and to which Mendocino Railway is not even entitled as a matter of law.
20 Indeed, Mendocino Railway desperately seeks merely to avoid Judge Brennan, whose
21 only ruling to date has been to deny its demurrer in the above-referenced State court
22 action. Its desperation extends to unwarranted appeals and effort possible to attempt to
23 move the case anywhere but Judge Brennan's court -- meritless appeals, alleging relation
24 to another case where the only similarity is both cases involve Mendocino Railway as a
25 party, and potential federal defense of preemption that does not exist, or its public utility
26 status under State law, which is not a federal question at all. Our judicial system is not a
27 grocery store where one can select the judge one prefers.
28

1 In sum, no valid claim is stated, this Court does not have valid federal jurisdiction
2 and this Court should decline it in any event. The matter should be dismissed entirely.

3 **II. STATEMENT OF FACTS AND CASE.**

4 The City commenced an action against Plaintiff Mendocino Railway in *City of Fort*
5 *Bragg v. Mendocino Railway*, Mendocino County Superior Court Case No. 21CV00850
6 (“Mendocino County Action”) on October 28, 2021. This action is for Declaratory
7 Judgment as to the City’s regulatory authority of Mendocino Railway. Although the
8 authority at issue in that matter is stated broadly as “whether [Mendocino Railway] is
9 subject to the City’s ordinances, regulations, codes, local jurisdiction, local control, local
10 police power, and other City authority,” the City seeks “a stay, temporary restraining
11 order, preliminary injunction, and permanent injunction commanding the Mendocino
12 Railway to comply with all City ordinances, regulations, and lawfully adopted codes,
13 jurisdiction and authority,” but *only* “as applicable.” See Request for Judicial Notice, filed
14 concurrently herewith (“City’s RJN”), Exhibit A. A related issue to the City’s regulatory
15 authority is Mendocino Railway’s status as a public utility under the authority of the
16 California Public Utilities Commission (“CPUC”), which has determined that Mendocino
17 Railway does not function as a “public utility” pursuant to State law.

18 Mendocino Railway challenged the validity of the City’s Complaint by demurrer
19 filed on or about January 14, 2022. The demurrer was denied by The Honorable Clayton
20 L. Brennan on April 28, 2022. See RJN, Exhibit B. In the demurrer ruling, the State court
21 confirmed that Mendocino Railway is not a public utility according to the CPUC (citing *In*
22 *the Matter of the Application California Western Railroad, Inc.*, 1998 Cal. PUC LEXIS
23 189, 78 CPUC2d 292, Decision 98-01-050 (January 21, 1998)), and the CPUC has
24 subsequently confirmed this by letter. See RJN, Exhibits B and C.

25 Thereafter, Mendocino Railway proceeded to challenge the demurrer ruling to the
26 Court of Appeal and the Supreme Court. There is no right of appeal as to a denial of a
27 demurrer, so Mendocino Railway filed a Petition for Writ of Mandate in the California
28 Court of Appeal, which was denied, and then a Petition for Review with the California

1 Supreme Court, which was also denied. The trial court proceedings were briefly stayed
2 by the Court of Appeal pending decision, until June 9, 2022. *See* Declaration of Krista
3 MacNevin Jee (“Jee Decl.”), filed concurrently herewith, at ¶ 2.

4 Between Mendocino Railway’s filing of its Petition for Review with the California
5 Supreme Court on June 20, 2022, and the Supreme Court’s summary denial of the Petition
6 on June 23, 2022, Mendocino Railway also filed a Notice of Related Case in another case
7 pending in Mendocino County Superior Court, in which Mendocino Railway had been
8 participating as a party for nearly two years, *Mendocino Railway v. John Meyer, et al.*,
9 Mendocino County Superior Court Case No. SCUUK-CVED-20-74939 (“Eminent Domain
10 Action”). (Jee Decl., at ¶ 3.) The Eminent Domain Action relates to Mendocino
11 Railway’s attempt to take the private property of an individual, Defendant John Meyer, in
12 the City of Willits by eminent domain. *Id.* Testimony before Judge Nadel has already
13 concluded as to a bifurcated trial in the Eminent Domain Action on or about August 29,
14 2022. (Jee Decl., at ¶ 4.)

15 Given its lack of success with the appellate courts and in order to avoid the
16 demurrer ruling issued the Mendocino County Action by Judge Brennan, Mendocino
17 Railway apparently sought to avoid Judge Brennan by attempting to have the earlier
18 Eminent Domain Action deemed related to the Mendocino County Action, thereby
19 necessitating the transfer of the latter from Judge Brennan in the Ten Mile Courthouse in
20 Mendocino County to the Honorable Jeanine Nadel in the Ukiah Courthouse. (Jee Decl.,
21 at ¶¶ 2-3.) The Notice of Related Case is still pending and currently set for hearing on
22 September 30, 2022. (Jee Decl., at ¶ 3.)

23 After a case management conference in the Mendocino County Action, Mendocino
24 Railway filed a Request for Disqualification of Judge Brennan, on September 12, 2022,
25 for which no hearing is yet scheduled with a neutral judge pursuant to California Civil
26 Procedure Code Section 170.3. Judge Brennan had disclosed that he had a permit
27 application currently pending before Mendocino County for development in the coastal
28 zone, which could be subject to California Coastal Commission appeal authority. (Jee

1 Decl., at ¶ 4.) He concluded that this did not pose any conflict of interest or basis for him
2 to recuse himself from the matter. *Id.* At the time of Judge Brennan’s oral disclosure to
3 the parties, the City had notified the Court and the parties that the Commission had
4 expressed its intention to file a Motion to Intervene in the Mendocino County Action,
5 which it thereafter filed on or about September 8, 2022. *Id.* This motion is scheduled to
6 be heard on September 30, 2022.

7 Mendocino Railway commenced the above-captioned matter on August 9, 2022,
8 naming the Executive Director to the California Coastal Commission, and the City of Fort
9 Bragg. The sole cause of action is for Declaratory Judgment.

10 Plaintiff acknowledges that the City has a pending “state-court action” against
11 Mendocino Railway, which is the Mendocino County Action. (Complaint, at ¶ 4.)
12 Plaintiff asserts a very broad scope of that action, although the actual scope and nature of
13 the City’s claims in the Mendocino County Action, and the Superior Court’s actual
14 exercise of authority, has not yet moved past initial pleading stages, due to the delay of
15 Mendocino Railway’s appellate challenges.

16 Plaintiff alleges that it is a “federally regulated railroad with preemption rights,”
17 and by the within action, it seeks “[t]o avoid the unlawful enforcement of federally-
18 preempted regulation, the concomitant disruption of its railroad operations and projects,
19 and the uncertainty generated by this dispute. (Complaint, at ¶¶ 4-5.) Specifically,
20 Plaintiff claims that it is “subject to the STB’s jurisdiction,” that it “was and continues to
21 be a federally licensed railroad subject to the STB’s jurisdiction,” and that it is a
22 “common-carrier railroad subject to the STB’s jurisdiction.” (Complaint, at ¶¶ 9, 18.)
23 Plaintiff’s primary claim is that it “is a federally regulated common carrier that is part of
24 the interstate rail network under the STB’s exclusive jurisdiction.” (Complaint, at ¶ 30.)
25 It “seeks a declaration that the actions of the Commission and the City to regulate
26 Mendocino Railway’s operations, practices and facilities are preempted . . . and that
27 Mendocino Railway’s activities are subject to the STB’s exclusive jurisdiction.”
28

1 None of these matters establish any valid claim or any valid basis for federal
2 subject matter jurisdiction, and are, in fact, false. Further, this Court should abstain from
3 exercising jurisdiction in this matter due to comity and the fact that Declaratory Judgment
4 is not warranted under the facts and circumstances.

5 **III. LEGAL STANDARD.**

6 The City of Fort Bragg seeks dismissal of the Complaint in this matter based on
7 Federal Rules of Civil Procedure, Rule 12 (b)(1) for lack of subject matter jurisdiction, 12
8 (b)(6) for failure to state a claim upon which relief can be granted, and 12 (h)(3).

9 Generally, a complaint must be supported by factual allegations. *Ashcroft v. Iqbal*,
10 556 U.S. 662 (2009). “While legal conclusions can provide the framework of a
11 complaint, they must be supported by factual allegations.” *Id.* at 679. “[N]either legal
12 conclusions nor conclusory statements are themselves sufficient, and such statements are
13 not entitled to a presumption of truth. *Wicks v. Chrysler Group, LLC*, 2011 U.S. Dist.
14 LEXIS 98439, *4 (E.D. Cal. August 31, 2011) (citing to *Iqbal*, 556 U.S. at 678-679).

15 Dismissal under Federal Rule of Civil Procedure 12 (b)(6) is appropriate when it is
16 clear that no relief could be granted under any set of facts that could be proven consistent
17 with the allegations set forth in the Complaint. *See Big Bear Lodging Ass'n v. Snow*
18 *Summit, Inc.*, 182 F.3d 1096, 1101 (9th Cir. 1999); *Newman v. Universal Pictures*, 813
19 F.2d 1519, 1521-22 (9th Cir. 1987). A court should dismiss a claim if it lacks a cognizable
20 legal theory or if there are insufficient facts alleged under a cognizable legal theory.
21 *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008).

22 In ruling on a motion to dismiss, the Court must view all allegations in the
23 complaint in the light most favorable to the non-movant and must accept all material
24 allegations - as well as any reasonable inferences to be drawn from them - as true. *See Big*
25 *Bear Lodging Ass'n*, 182 F.3d at 1101; *North Star Int'l v. Arizona Corp. Comm'n*, 720
26 F.2d 578, 581 (9th Cir. 1983). However, “courts ‘are not bound to accept as true a legal
27 conclusion couched as a factual allegation.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
28 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A plaintiff must allege

1 “enough facts, taken as true, to allow a court to draw a reasonable inference that the
2 defendant is liable for the alleged conduct.” *Iqbal*, 556 U.S. at 697 (citations omitted).

3 If an amendment cannot cure a defect, the district court can deny leave to amend.
4 *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). Further, leave to amend “need
5 not be granted where the amendment of the complaint would cause the opposing party
6 undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue
7 delay.” *Ascon Properties, v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

8 Rule 12 (h)(3) provides that, “[i]f the court determines at any time that it lacks
9 subject-matter jurisdiction, the court must dismiss the action.” A motion under Rule 12
10 may be made at any time and if the court lacks subject matter jurisdiction, the suit must be
11 dismissed. *See Augustine v. United States*, 704 F.2d 1074, 1075 n. 3 (9th Cir. 1983);
12 *Csibi v. Fusto*, 670 F.2d 134, 136 n. 3 (9th Cir. 1982). Where a case meets the criteria for
13 *Younger* abstention, subject matter jurisdiction cannot be retained. *Beltran v. State of*
14 *Cal.*, 871 F.2d 777, 782 (9th Cir. 1988).

15 Finally, “in deciding a motion to dismiss for failure to state a claim, courts must
16 [normally] limit their inquiry to the facts stated in the complaint and the documents either
17 attached to or incorporated in the complaint. However, courts may also consider matters
18 of which they may take judicial notice.” *Lovelace v. Software Spectrum*, 78 F.3d 1015,
19 1017-18 (5th Cir. 1996) (citing Fed. Rules Evid., Rule 201(f) (“Judicial notice may be
20 taken at any stage of the proceeding.”). *See also, e.g., Bowers Inv. Co., LLC v. United*
21 *States*, 104 Fed. Cl. 246, 258 n.9 (2011) (“the court may consider materials outside the
22 pleadings—for example, matters of public record of which the court can take judicial
23 notice—under a Rule 12(b)(6) motion to dismiss”).

24 **IV. ARGUMENT.**

25 **A. THIS CASE MUST BE DISMISSED BECAUSE THE COURT DOES NOT** 26 **HAVE SUBJECT MATTER JURISDICTION OVER THE CLAIMS.**

27 The United States Constitution establishes that federal courts have authority to hear
28 cases “arising under [the] Constitution, the laws of the United States, and treaties.” U.S.

1 Const., art. III, § 2. With respect to the original jurisdiction of the courts to hear matters
2 based on a federal question, Congress has provided authority similar to the Constitution:
3 “The district courts shall have original jurisdiction of all civil actions arising under the
4 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Even though both
5 of the above provisions refer broadly to matters “arising under” federal law, the Supreme
6 Court has applied the language more narrowly. *See, e.g., Merrell Dow Pharmaceuticals,*
7 *v. Thompson*, 478 U.S. 804, 813 (1986) (federal question jurisdiction requires a cause of
8 action based on federal statute). The Complaint does not present a federal question that
9 meets these standards, or which can be adjudicated by this Court.

10 Federal question jurisdiction under Title 28 United States Code section 1331 exists
11 in two types of cases: (1) when it is apparent on the face of plaintiff’s complaint that the
12 plaintiff’s cause of action was created by federal law; or (2) when the plaintiff’s cause of
13 action was created by state law, but resolution requires determination of a substantial
14 question of federal law and the implicated federal law provides the plaintiff with a cause
15 of action. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-
16 28 (1983) (there is a federal question if the law creates the cause of action); *Merrell Dow*,
17 478 U.S. at 817 (federal question exists if an element of the state cause of action is a
18 federal statute that creates a federal cause of action for plaintiff).

19 Notably, the Complaint does not rely upon a cause of action created by federal law.
20 Instead, it relies on the Declaratory Judgment Act to assert subject matter jurisdiction in
21 this Court. To be sure, the Act creates a federal remedy in a case of actual controversy,
22 but it “does not provide an independent jurisdictional basis for suits in federal court.
23 *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983) (citing *Skelly Oil Co. v. Phillips*
24 *Petroleum Co.*, 339 U.S. 667, 671-74 (1950). As here, “where the complaint in an action
25 for declaratory judgment seeks in essence to assert a defense to [a] state court action, it is
26 the character of the . . . action, and not of the defense, which will determine federal-
27 question jurisdiction in the District Court.” *Public Service Comm. v. Wycoff Co.*, 344 U.S.
28 237, 248 (1952). If a claim in federal court “does not itself involve a claim under federal

1 law, it is doubtful if a federal court may entertain an action for a declaratory judgment
2 establishing a defense to that claim. This is dubious even though the declaratory
3 complaint sets forth a claim of federal right, if that right is in reality in the nature of a
4 defense to a . . . cause of action.” *Id.*

5 As the Eighth Circuit has recognized, “[t]he Declaratory Judgment Act is
6 procedural; it does not expand federal court jurisdiction. Federal-question jurisdiction may
7 not be created by a declaratory-judgment plaintiff’s ‘artful pleading [that] anticipates a
8 defense based on federal law.’” *Bacon v. Neer*, 631 F.3d 875, 880 (8th Cir. 2011) (change
9 in original) (quoting *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 673 (1950).

10 The Ninth Circuit has also found similarly, in circumstances that are instructive
11 here: “In an effort to engineer federal jurisdiction, the Stillaguamish Tribe of Indians
12 (‘the Tribe’) sued the State of Washington in federal court, seeking a declaration that the
13 Tribe’s sovereign immunity barred any lawsuit arising from a particular contract with
14 Washington. The trouble with this approach is that the Tribe’s anticipatory defense to a
15 state court lawsuit does not net federal jurisdiction.” *Stillaguamish Tribe of Indians v.*
16 *Washington*, 913 F.3d 1116, 1118 (9th Cir. 2019). The Ninth Circuit found “the district
17 court lacked subject matter jurisdiction” as to the “Tribe’s sovereign immunity defense.”
18 *Id.* The court concluded that “[n]either a defense based on federal law nor a plaintiff’s
19 anticipation of such a defense is a basis for federal jurisdiction.” *Id.* See also, *Chicago*
20 *Tribune Co. v. Board of Trs. of the Univ. of Ill.*, 680 F.3d 1001, 1003 (7th Cir. 2012) (“it
21 is blackletter law that a federal defense differs from a claim arising under federal law”).

22 As for the second basis for jurisdiction stated above, save for the remedy provided
23 by the declaratory judgment procedure, the Complaint only arises as a defense to the
24 Mendocino County Action already pending in State court, and which relates to state-
25 created actions therein. Thus, it is directly prohibited by the principles states above. It is
26 well-established that anticipation of a federal defense does not establish federal
27 jurisdiction. See *Louisville & Nashville Rd. Co. v. Mottley*, 211 U.S. 149, 152 (1908);
28 *City Nat’l Bank v. Edmisten*, 681 F.2d 942, 945 (4th Cir. 1982) (anticipation of federal

1 defense does not establish federal jurisdiction). The claims in the Complaint simply do
2 *not* arise directly from a federal cause of action or implicate a federal law that provides
3 Plaintiff with any valid, independent cause of action, and thus federal question jurisdiction
4 under section 1331 does not exist. There is no federal cause of action to support the
5 derivative declaratory relief sought under the Declaratory Judgment Act. The Court thus
6 lacks subject matter jurisdiction over the Complaint and it must be dismissed.

7 **B. THIS CASE SHOULD ALSO BE DISMISSED BECAUSE IT RAISES**
8 **QUESTIONS FROM WHICH THIS COURT SHOULD ABSTAIN.**

9 Under the *Younger* doctrine, federal courts should abstain from enjoining or
10 interfering with pending state judicial actions. *Younger v. Harris*, 401 U.S. 37 (1971).
11 Indeed, this action improperly seeks to do just that, although it is indirectly stated as
12 seeking a declaration or prohibition against the *City* interfering with Plaintiff, by the
13 *City*'s local regulatory authority. Although this action does not seek to directly restrict the
14 Superior Court from continuing the Mendocino County Action, the practical effect is no
15 different, in that this action will necessarily directly interfere with the Superior Court's
16 exercise of jurisdiction that is already underway. Plaintiff seeks to have this Court issue a
17 declaratory judgment and/or enjoin the *City* from exercising certain local regulations
18 assertedly preempted by federal law, and such declaration or injunction necessarily
19 includes the *City*'s continuing prosecution of the Mendocino County Action. Importantly,
20 whether those regulations are subject to federal preemption is a fact-intensive issue that
21 has yet to be decided at any substantive level by the Mendocino County Superior Court.

22 Indeed, Mendocino Railway impermissibly seeks to have this Court intervene, as
23 mere forum shopping, and in circumstances where this Court's involvement is not even
24 warranted under the law. Federal law supports the fact that local regulations are
25 permissible where they do not interfere with interstate rail operations – *assuming* any such
26 operations would even be implicated in the Mendocino County Action. *See, e.g., Borough*
27 *of Riverdale Petition for Decl. Order the New York Susquehanna and Wester Railway*
28 *Corp.*, STB Finance Docket 33466, 1999 STB LEXIS 531, 4 S.T.B. 380 (1999) (“Many

1 rail construction projects are outside of the Board’s regulatory jurisdiction. For example,
2 railroads do not require authority from the Board to build or expand facilities such as
3 truck transfer facilities, weigh stations, or similar facilities ancillary to their railroad
4 operations, or to upgrade an existing line or to construct unregulated spur or industrial
5 team track.”); (“preemption does not apply to operations that are not part of the national
6 rail network” or “to state or local actions under their retained police powers so long as
7 they do not interfere with railroad operations or the Board’s regulatory programs”) (citing
8 *Hi Tech Trans, LLC-- Petition for Declaratory Order--Hudson County, NJ*, STB Finance
9 Docket No. 34192, 2003 STB LEXIS 475 at *10-11, 2003 WL 21952136 (2003), *aff’d Hi-*
10 *Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3rd Cir. 2004) (“no preemption for activity
11 that is not part of ‘rail transportation’”). Thus, Plaintiff seeks to avoid these limitations by
12 claiming to this Court that preemption under 49 U.S.C. § 10501(b) subsumes and
13 prohibits *all* local regulatory efforts, but this is an inaccurate statement of the law.

14 Further, such claim does not serve to negate the fact that Plaintiff has an adequate
15 opportunity to litigate its preemption defense in state court. To permit Plaintiff’s matter to
16 proceed would be a violation of the principles laid down in *Younger*. “As a matter of
17 comity, federal courts should maintain respect for state functions and should not unduly
18 interfere with the state’s good faith efforts to enforce its own laws in its own courts.”
19 *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 223 (9th Cir. 1994).

20 *Younger* abstention is appropriate where, as here, three factors are present: (1) at
21 the time the federal action was filed, state judicial proceedings were ongoing; (2) the
22 proceedings implicate an important state interest; and (3) the federal plaintiff maintains an
23 adequate opportunity to raise federal questions in the state court proceedings. *Lebbos v.*
24 *Judges of the Superior Court*, 883 F.2d 810, 814 (9th Cir. 1989) (citing *World Famous*
25 *Drinking Emporium v. City of Tempe*, 820 F.2d 1079, 1082 (9th Cir. 1987). Based on
26 satisfaction of these standards here, this Court should dismiss this within action.

27 First, state judicial proceedings were pending in the Mendocino County Action at
28 the time Plaintiff filed this action, these proceedings have yet to be concluded. Since the

1 Mendocino County Action is a pending judicial proceeding within the meaning of the
2 *Younger* factors, this Court should exercise its abstention discretion under the
3 circumstances and the first factor is met. *San Remo Hotel v. City and County of San*
4 *Francisco*, 145 F.3d 1095, 1104 (9th Cir. 1998).

5 In fact, the very purpose of this action is to have a federal court issue declaratory
6 relief before the state court can adjudicate the underlying issues in the City’s State action
7 and/or for Plaintiff to obtain an alternative forum and/or judge, since Plaintiff was not
8 satisfied with Judge Brennan’s ruling on the demurrer and the lack of intervention by writ
9 of mandate from the state appellate courts. This action is just the last among a string of
10 attempts by Plaintiff to try to escape Judge Brennan’s court.

11 Second, the state court proceedings in the Mendocino County Action that are
12 challenged by this action implicate important state interests. It is well-established that
13 states have an important stake in administering their judicial system and seeing that their
14 “orders and judgments are not rendered nugatory.” *Lebbos v. Judges of the Superior*
15 *Court*, 883 F.2d 810, 814-815 (9th Cir. 1989). As well, “municipal interests in land-use
16 regulation qualify as important ‘state’ interests.” *San Remo*, at 1104; *see also Rancho*
17 *Palos Verdes Corp v. City of Laguna Beach*, 547 F.2d 1092, 1094-95 (9th Cir. 1976)
18 (recognizing California municipalities’ interest in land-use regulation). Similarly, “[t]he
19 Supreme Court has . . . recognized that a state nuisance proceeding may warrant *Younger*
20 abstention from federal claims.” *Herrera v. City of Palmdale*, 918 F.3d 1037, 1044 (9th
21 Cir. 2019) (citing *Huffman v. Pursue*, 420 U.S. 592, 607 (1975)).

22 In fact, because Mendocino Railway operates a sightseeing excursion service only,
23 with no service connection to interstate commerce, its railway activities are limited, and
24 not subject to federal preemption. Indeed, the federal Railroad Retirement Board has so
25 held as to Mendocino Railway’s operations. *See City’s RJN*, Exhibit D. The Board
26 issued a decision in B.C.D. 06-42 in 2006, finding that, even though the STB authorized
27 Mendocino Railway’s acquisition in 2004 of the assets of California Western Railroad,
28 Mendocino’s rail lines “between Fort Bragg and Willits . . . connects to another railway

1 line over which there has been no service for approximately ten years,” and significant
 2 “problems on the line will prevent service for some time to come.” The line was, at that
 3 time, “unusable” – and it remains so today.¹ The Board concluded that “Mendocino’s
 4 ability to perform common carrier service is thus limited to the movement of goods
 5 between points on its own line, a service it does not perform.” *Id.* Further, its services
 6 were “characterized as a tourist or excursion railroad operated solely for recreational and
 7 amusement purposes. Since passengers are transported solely within one state, under
 8 section 10501 (a)(2)(A), above, Sierra Entertainment [, Plaintiff’s parent company,] would
 9 not be subject to [STB] jurisdiction. . . .” The Board concluded that “[s]ince Mendocino
 10 reportedly does not and cannot now operate in interstate commerce, the Board finds that it
 11 is not currently an employer under the Acts.” *Id.*

12 In the Mendocino County Action, the City seeks to exercise legitimate police
 13 powers not within the jurisdiction of the STB and not subject to federal preemption.
 14 Further, as noted above, the Railroad Retirement Board concluded, since 2006, that
 15 Mendocino Railway does *not* conduct activities in interstate commerce, is *not* a common
 16 carrier, and is *not* subject to STB authority or jurisdiction. Thus, the allegations Plaintiff
 17 has asserted as to STB exclusive authority and preemption are also simply false. This
 18 Court both lacks jurisdiction over the matters asserted, as well as *Younger* abstention
 19 being warranted, so that the City may further its significant interest in its local regulatory
 20 authority, particularly when there is no federal preemption at issue in any event.

21 Even to the extent Plaintiff’s assertion of preemption remains to be decided, or
 22 factual or legal issues relating thereto, Plaintiff seeks to avoid those altogether by merely
 23 asserting in the Complaint by bare allegation, its purported legal status (e.g. as a common
 24 carrier, acting in interstate commerce, etc.), which is contradicted by judicially noticeable
 25

26
 27 ¹ As alleged in the City’s Complaint in the Mendocino County Action, this line has had a
 28 collapsed tunnel since in or about 2016, and Plaintiff admits that the further connection of
 its line at the Willits Depot end of the Fort Bragg-Willits disconnected line has been
 “temporarily” under federal embargo (since in or about 1998, *see* FRA Emergency Order
 No. 21, Northwestern Pacific Railroad) (Jee Decl., Ex. A, ¶ 9; Complaint, at ¶ 22.)

1 matter. Their bald and unproven essential allegation is insufficient as a matter of law to
2 establish either this Court’s jurisdiction, or any grounds for this Court to refuse to abstain.

3 As to the third *Younger* factor, Plaintiff will have an adequate opportunity to raise
4 questions of alleged federal preemption in the Mendocino County Action. Compliance
5 with this element is established by the fact that Plaintiff has already addressed its federal
6 preemption claims in its Answer, and it also did so in its demurrer. (Jee Decl., at ¶ 2.)
7 Even though the demurrer posed insufficient grounds for dismissal of the entire action at
8 an early stage, this does not mean that Plaintiff will not be able to adequately address any
9 preemption defense as the action proceeds, or that the Superior Court cannot properly
10 determine those issues. *Stone v. Powell*, 428 U.S. 465, 494 n. 35 (1976) (“State courts,
11 like federal courts, have a constitutional obligation . . . to uphold federal law.”).

12 Indeed, since the case is still in its early stages, federal authority and jurisdiction
13 has not yet been substantively decided. Further, the action may not end up implicating
14 federal law or preemption at all. Plaintiff’s action is not only insufficient but premature,
15 and may be ultimately unnecessary.

16 To be sure, “[w]here vital state interests are involved, a federal court should abstain
17 ‘unless state law clearly bars the interposition of constitutional claims.’” *Middlesex*
18 *County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982) (internal
19 citation omitted). Since no constitutional claims are at stake in the Mendocino County
20 Action and the City’s claims have yet to be fully litigated or fleshed out, abstention is
21 eminently proper. In fact, ascertainment of the validity of disputed facts in the Mendocino
22 County Action is no bar to the asserted preemption defense set forth in this matter.

23 Abstention may only be overcome if “federal preemption of the state law at issue is
24 readily apparent,” meaning that the specific matter at issue has been the Supreme Court
25 has already decided such issue. *Woodfeathers v. Wash. County*, 180 F.3d 1017, 1021 (9th
26 Cir. 1999) (internal changes and quotations omitted). Not only is there no such readily
27 apparent decision, but the matters in the Mendocino Court Action implicate *State law*, and
28 are likely to be heavily fact laden, whereas the preemption declaration and/or injunction

1 Plaintiff seeks herein would be far too broad and would likely be overinclusive as to
2 many, if not all, matters subject to local authority and/or valid State court jurisdiction.

3 Moreover, the likelihood of success in state court proceedings is immaterial for
4 *Younger* purposes. *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 224 (9th Cir.
5 1994) (lack of opportunity to raise federal claims only demonstrated when *procedural bar*
6 prevents presentation of federal claims.). The superior court has not denied Plaintiff's
7 federal preemption claims, and may yet still even be required to decide such defenses. In
8 fact, disputed facts have yet to be fully adjudicated, which means that Plaintiff still
9 possesses an adequate opportunity to raise its federal defenses and litigate its claims in
10 this matter in the Mendocino County Action. This Court should thus not prematurely
11 interfere with that process, as sought to be done by Plaintiff's broad and unwarranted
12 Complaint in this matter. Therefore, the third factor for *Younger* abstention is satisfied.

13 Since this case meets the three elements required for *Younger* abstention, this Court
14 should dismiss the within action against the City. The Ninth Circuit has expressly held
15 that, "where a case is properly within the *Younger* category of cases, there is no discretion
16 to grant relief." *Fresh Int'l Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353,
17 1356 (9th Cir. 1986) (citing *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S.
18 800, 816 n. 22 (1976), internal quotations omitted). Accordingly, this Court should
19 abstain in this matter, refuse jurisdiction, and dismiss the Complaint in its entirety.

20 Further, it is also appropriate for this Court to defer to the Mendocino County
21 Action under similar principles in *Colorado River Water Conservation District v. United*
22 *States*, 424 U.S. 800 (1976). Even when a case may not fall within one of the recognized
23 grounds for abstention, the United States Supreme Court recognized that "there are
24 principles unrelated to considerations of proper constitutional adjudication and regard for
25 federal-state relations which govern in situations involving the contemporaneous exercise
26 of concurrent jurisdictions, either by federal courts or by state and federal courts. These
27 principles rest on considerations of wise judicial administration, giving regard to
28 conservation of judicial resources and comprehensive disposition of litigation." *Colorado*

1 *River*, 424 U.S. at 817 (internal quotation omitted). Although noting that no one factor
2 was determinative, the Court listed several instances warranting deferral to state action,
3 including: the court first assuming jurisdiction over the property; the inconvenience of the
4 federal forum; the desirability of avoiding piecemeal litigation; and the order in which
5 jurisdiction was obtained by the concurrent forums. *Id.* at 818.

6 Further, the preemption Plaintiff claims does not appear nearly as broad as
7 Plaintiff would like. “Congress narrowly tailored the ICCTA pre-emption provision to
8 displace only regulation, i.e., those state laws that may reasonably be said to have the
9 effect of managing or governing rail transportation, while permitting the continued
10 application of laws having a more remote or incidental effect on rail transportation.”
11 *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 410 (5th Cir. 2010) (internal
12 quotations and changes omitted) (citing *Fla. E. Coast Ry. Co. v. City of W. Palm Beach*,
13 266 F.3d 1324, 1331 (11th Cir. 2001)). *Franks* distinguished *categorical* preemption,
14 which is what Plaintiff seeks herein, with *as applied* preemption, which cannot yet be
15 determined because the State court action has not yet proceeded. *See also, e.g., Emerson*
16 *v. Kan. City S. Ry. Co.*, 503 F.3d 1126, 1131-1132 (10th Cir. 2007) (regarding disposal of
17 “detritus or maintain[ance of] drainage ditch vegetation not preempted by ICCTA; also,
18 not nuisance due to water pooling from “railroad’s construction of an earthen berm,” as
19 not “directly relate[d]” to rail activities or federal economic regulation of railroads) (citing
20 *Rushing v. Kansas City So. Railway Co.*, 194 F. Supp. 2d 493 (S.D. Miss. 2001)). In point
21 of fact, “not all state and local regulations are preempted [by the ICCTA]; local bodies
22 retain certain police powers which protect public health and safety.” *Id.* at 1133-1134.
23 Most importantly, this is a *factual* issue. *Id.*

24 In this matter, the Mendocino County Action was filed long before this action.
25 The possibility of piecemeal litigation exists if both state and federal forums are
26 contemporaneously construing state law issues and/or federal defenses, which the State
27 court is equally able to determine. Thus, abstention is necessary and appropriate.
28

1 **C. THIS CASE IS NOT APPROPRIATE FOR DECLARATORY RELIEF AND**
 2 **THIS COURT SHOULD REFUSE SUCH RELIEF.**

3 Plaintiff seeks a declaration of its rights regarding federal preemption under 49
 4 U.S.C. § 10501(b), and bases its request on the Declaratory Relief Act in 28 U.S.C. §
 5 2201. As noted above, the Declaratory Relief Act creates a federal remedy and is not an
 6 independent basis for federal jurisdiction. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339
 7 U.S. 667, 671 (1950). As a result, declaratory relief is not available and this Court does
 8 not have subject matter jurisdiction over this case, but even assuming *arguendo* that it did,
 9 it may still deny such relief as improper.

10 Federal courts are empowered to abstain from requests for declaratory relief when
 11 there is a pending state court action involving the same issues and parties. *Wilton v. Seven*
 12 *Falls Co.*, 515 U.S. 277, 287-289 (1995); *Government Employees Ins. Co. v. Dizol*, 133
 13 F.3d 1220, 1225 (9th Cir. 1998) (federal courts should generally decline to here “reactive
 14 declaratory actions”). In fact, the superior court’s ruling on the demurrer merely found
 15 that Plaintiff’s preemption argument was overly broad, not that federal preemption did not
 16 apply to the broad set of “railroad activities” included under 49 U.S.C. § 10501(b). *See*
 17 *City’s RJN*, Exhibit B. Indeed, the superior court concluded that “the applicability of
 18 preemption is necessarily a ‘fact-bound question,’ not suitable to resolution by demurrer.”
 19 *Id.* Thus, the question of preemption could not be answered in the abstract, or until the
 20 parties have been afforded the opportunity to more fully litigate the underlying issues
 21 pending in the superior court relating to local jurisdiction. As the superior court properly
 22 determined, Mendocino Railway’s preemption argument

23 fails to account for the fact that Mendocino Railway’s is not involved in
 24 any interstate rail operations. As discussed above, from a regulatory
 25 standpoint, Mendocino Railway is simply a luxury sightseeing excursion
 26 service with no connection to interstate commerce. As a result, its ‘railroad
 27 activities’, for purposes of federal preemption, are extremely limited. [¶]
 28 Not all state and local regulations that affect railroads are preempted. State
 and local regulation is permissible where it does not interfere with interstate
 rail operations.

1 *Id.* Consequently, this Court should not entertain declaratory relief while a parallel state
 2 action is pending. In particular, the state court has not yet decided any substantive
 3 matters, including the scope and applicability of the very federal preemption Plaintiff
 4 seeks to enforce in this Court, in such overbroad and abstract manner.

5 Further, declaratory relief is inappropriate to adjudicate past conduct. *See, e.g.,*
 6 *American Civil Liberties Union v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 53
 7 (1st Cir. 2013) (“With limited exceptions, ... issuance of a declaratory judgment deeming
 8 past conduct illegal is ... not permissible as it would be merely advisory.”); *Gruntal &*
 9 *Co. v. Steinberg*, 837 F. Supp. 85, 89 (D.N.J. 1993) (declaratory relief inappropriate solely
 10 to adjudicate past conduct). Thus, to the extent Plaintiff seeks a declaration from this
 11 Court as to past acts of the City that have been completed, declaratory relief is improper.

12 Injunctive relief is also inappropriate for similar reasons. “A court of the United
 13 States may not grant an injunction to stay proceedings in a State court except as expressly
 14 authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect
 15 or effectuate its judgments.” *Younger*, 401 U.S. at 40. *See also, Steffel v. Thompson*,
 16 415 U.S. 452, 460-61 (1974) (“the intrusive effect of declaratory relief will result in
 17 precisely the same interference with and disruption of state proceedings that the long-
 18 standing policy limiting injunctions was designed to avoid”) (internal quotations omitted).

19 For all of these reasons, this Court should refrain from exercising jurisdiction for
 20 either declaratory or injunctive relief, assuming *arguendo* that such claims were even
 21 proper in the first instance.

22 **V. CONCLUSION.**

23 Mendocino Railway has not stated any valid federal cause of action, and thus this
 24 Court has no subject matter jurisdiction over this matter and, absent subject matter
 25 jurisdiction. This action should be dismissed. In addition, principles of comity require
 26 that the state court, in which the City’s Mendocino County Action is already pending, be
 27 given an opportunity to resolve questions relating to the scope of its own jurisdiction and
 28 the applicability and scope of claimed federal preemption by Plaintiff. The City must be

1 permitted the opportunity for its action, which precedes this one, to proceed, and that the
2 state court that has already exercised jurisdiction be permitted to resolve questions
3 regarding the validity and scope of the City's local authority, which may have no
4 implications as to federal law or federal preemption, or which can properly be determined
5 by the state court. For these reasons, Mendocino Railway's misguided attempt to obtain
6 an alternate forum to avoid valid State court authority, and in essence to enjoin its exercise
7 of jurisdiction at all, should be rejected and this case should be dismissed in its entirety.

8 Dated: September 22, 2022

JONES MAYER

9
10 By: s/Krista MacNevin Jee
11 Krista MacNevin Jee
12 Attorneys for Defendant,
13 CITY OF FORT BRAGG
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DECLARATION OF SERVICE BY ELECTRONIC MAIL

Case Name: **City of Fort Bragg v. Mendocino Railway**
No.: **Superior Court of California, County of Mendocino, Case No. 21CV00850**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On October 6, 2023, I served the attached **INTERVENOR CALIFORNIA COASTAL COMMISSION'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITION TO DEFENDANT'S MOTION FOR STAY; DECLARATION OF PATRICK TUCK** by transmitting a true copy via electronic mail addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 6, 2023, at Oakland, California.

Teri Dueñas

Declarant

Signature