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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,

ROB BONTA  
Attorney General of California  
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.*<sup>1</sup> 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 <sup>1</sup> 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 **LEGAL STANDARD**

2 The Ninth Circuit “ha[s] not squarely held whether abstention is properly raised under Rule  
3 12(b)(6), Rule 12(b)(1), both, or neither.” *Courthouse News Service v. Planet*, 750 F.3d 776, 779  
4 n.2 (9th Cir. 2014). As such, the Coastal Commission has filed this motion pursuant to both Rule  
5 of Civil Procedure 12(b)(1) and 12(b)(6).

6 Under Rule 12(b)(1), a party may move to dismiss a complaint on the basis that there is no  
7 subject matter jurisdiction. In such situations, the party asserting jurisdiction has the burden of  
8 proving it exists. *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). A Rule 12(b)(1)  
9 challenge to subject matter jurisdiction may be “facial” or “factual.” *Safe Air for Everyone v.*  
10 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack challenges the sufficiency of the  
11 jurisdictional allegations in the complaint, whereas in resolving a factual attack the court “need  
12 not presume the truthfulness of the plaintiff’s allegations.” *Id.*

13 Under Federal Rule of Civil Procedure 12(b)(6), a complaint should be dismissed if it fails  
14 to state a claim upon which relief can be granted. “To survive a motion to dismiss, a complaint  
15 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
16 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A “threadbare  
17 recital[] of the elements of a cause of action, supported by mere conclusory statements, do[es] not  
18 suffice.” *Id.* In ruling on a motion to dismiss under Rule 12(b)(6), the court may consider  
19 documents referenced in a complaint as well as matters subject to judicial notice. *United States v.*  
20 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

21 **ARGUMENT**

22 In light of the state proceeding in Mendocino County in which both Plaintiff’s state and  
23 federal preemption arguments will inherently be addressed and decided, *Younger* abstention  
24 applies and this federal case should be dismissed.

25 A federal court ordinarily has “a strict duty to exercise the jurisdiction that is conferred . . .  
26 by Congress.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). At the same time, the  
27 Supreme Court has recognized that “federal courts may decline to exercise their jurisdiction in  
28 otherwise ‘exceptional circumstances,’ where denying a federal forum would clearly serve an

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

14 Respectfully submitted,

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

19 /s/ Patrick Tuck

20 PATRICK TUCK  
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