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EXEMPT FROM FILING FEES
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY,

Plaintiff,

v.

JACK AINSWORTH, et al.,

Defendants.

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

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

DEFENDANT CITY OF FORT BRAGG'S REPLY TO OPPOSITION TO MOTION TO DISMISS

Action Filed: August 9, 2022

DATE: Dec. 22, 2022
TIME: 2:00 p.m.

Defendant City of Fort Bragg ("City") submits the following in reply to the Opposition to Motion to Dismiss filed by Plaintiff Mendocino Railway ("MR"):

JOINDER

City hereby joins in the arguments of, authorities relied upon, and/or evidence offered and given by Defendant Jack Ainsworth in his Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss in the above-captioned matter as though such arguments, authorities and/or evidence were its own and/or were stated in their entirety herein.

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REPLY

I. THIS COURT DOES NOT HAVE JURISDICTION OVER MR'S *DEFENSE* IN THE STATE COURT ACTION THAT CERTAIN PORTIONS OF THE ACTION *MAY* BE PREEMPTED BY FEDERAL LAW, THIS ACTION IS BASED MERELY ON THE STATE ACTION, AND THIS COURT MAY DECLINE TO EXERCISE DECLARATORY JUDGMENT.

MR misstates the State court action in order to bolster its claims that this Court has jurisdiction over its action. MR also claims that it is just like the plaintiff in *Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n.14 (1983). Neither claim is valid.

MR claims that it seeks protection from the City's "land-use regulation of its rail-related operations." (Opp. to City Motion to Dismiss, at 2-3.) However, what MR really seeks is to be free of the City's State action, altogether. And, MR repeatedly mischaracterizes the State action in order to avoid the fact that it seeks enforcement of various City and State regulations – even those to which MR expressly agrees that it is subject, namely *non*-rail related ones, as well as building code compliance, as opposed to pre-approval requirements, etc.

Perhaps more importantly, MR's claim to preemption simply does *not* exclude state and local authority over MR's activities or facilities within the City or State. And, its claims to preemption can properly be adjudicated in the State action, in that state courts have equal authority to evaluate federal preemption issues. *See, e.g., City of Girard v. Youngstown Belt Ry. Co.,* 979 N.E.2d 1273, 1280 (Ohio 2012) (citing *Wolf v. Cent. Oregon & Pacific RR., Inc.*, 230 Ore. App. 269, 216 P.3d 316 (2009) (the ICCTA did not preempt state jurisdiction over grade crossings); *Seattle v. Burlington N. RR. Co.*, 145 Wash.2d 661, 669, 41 P.3d 1169 (2002) (the ICCTA preempted regulations regarding signaling at railroad crossings); *In re Vermont Ry., 171 Vt.*, 496, 503, 769 A.2d 648 (2000) (the ICCTA did not preempt a city's zoning conditions for a railway's salt-shed facility)).

As to MR's claim that it can challenge the actions of local regulators, MR does not challenge the regulatory or enforcement *actions* of City or Coastal Commission officials, and it does not challenge a legislative *enactment*, i.e. a *regulation*, of City or the Coastal Commission. Instead,

MR filed its action specifically to challenge the City's *State court action* (to which the Coastal Commission has now been permitted intervention as a party). The City's State court action, in turn, seeks a factual determination of the scope of local authority, and MR has asserted a preemption *defense* to certain regulations or local authority that *may* be at issue in that matter. This situation is very much *unlike* the circumstances in *Shaw*, which involved a challenge to state *laws* based on preemption. MR does not seek a legal determination on a regulatory enactment, but a blanket declaration from this Court that the State court action is *wholly* barred. That is both an improper use of declaratory relief, as well as a gross expansion of the preemption protection that would even apply to MR, assuming *arguendo* any applies at all to MR or to the specific facilities and/or activities that may actually end up being at issue in the State action.

MR's other grounds for asserting that this Court has jurisdiction is by attempting to distinguish cases relied on by the City in its motion as merely involving "threatened" litigation. This is not a basis for distinction at all. The court in *Stillaguamish Tribe of Indians v. Washington*, 913 F.3d 1116, 1119 (9th Cir. 2019), rejected just such a claim. The tribe claimed that its sovereign immunity defense made its claim a federal question, but the court noted that "the possible existence of a tribal immunity defense did not convert Washington contract claims into federal questions, and there was no independent basis for original federal jurisdiction. It makes no difference that the Tribe asserted its defense in a declaratory judgment action rather than in a lawsuit brought by the state." *Id.* (changes and quotations omitted). Specifically distinguishing *Shaw*, the court explained that, if it found otherwise, a defendant could avoid "state common law action brought by a state official" by filing "a declaratory judgment based on a federal defense." *Stillaguamish*, at 1119.

In fact, MR's complaint is nothing more than a restatement of its defense in the State court action. And, for the same reasons that the removal of its State court action is barred, its complaint is also barred. Specifically, MR's mere "vague references to state rights that conflict with federal law are not sufficient." *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 2006 U.S. Dist. LEXIS 106531, at *11 (E.D. La. 2006) Notably, it is MR's burden to "prov[e] by a preponderance of the evidence that subject matter jurisdiction exists." *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008).

Further, MR recognizes that declination of declaratory judgment jurisdiction is not required, and the City has not so asserted. However, this Court may exercise its discretion in this instance to decline jurisdiction, and it should do so. MR seeks merely to avoid the State action and the legitimate local enforcement by the City and the Commission in the State action, by asserting vague, general preemption. Indeed, MR's claims of enforcement action against the City do relate only to *past* acts of the City or hypothetical pre-approval and land use requirements that the City may assert. MR's true claim in this matter relates to the City's State action against MR. Indeed, MR admits that both the Coastal Commission and the City have full and valid regulatory authority at least over MR's non-rail related facilities and/uses by Plaintiff, such that these local regulatory agencies, as well as the State court in the State action, *unquestionably* have *at least* some jurisdiction – by Plaintiff's own evaluation, over MR's facilities and operations, which are at issue in the State court action.

Further, MR asserts that it is not subject to State regulation over nuisance activities because the City has not asserted nuisance claims against it. (Opp., 5) However, violations of the City code are nuisances per se, and these include violations of building code requirements, to which MR is subject (notwithstanding any asserted exemption from pre-approval by building permits). Cal. Govt. Code §38771; *City of Corona v. Naulls*, 166 Cal. App. 4th 418, 424 (2008) (nuisance per se); *Beck Dev. Co. v. S. Pac. Transp. Co.*, 44 Cal. App. 4th 1160, 1207 (1996) (same); Cal. Health & Saf. Code § 17922 (cities adopt by reference state codes for building, plumbing, electrical, fire, etc.) As such, the declaratory relief sought by the City in the State action does include its enforcement of these provisions of local and State law, *as applicable* to MR, and as alleged in the State action.

II. ABSTENTION IS PROPER AND NECESSARY.

As set forth in the Ainsworth Reply, incorporated herein by reference, this Court must exercise its authority based on abstention in this instance. MR's primary claim is that abstention is improper now because MR has removed the State action to this Court. However, this presumes that such removal was proper – which it was not. Since such removal is still subject to challenge and remand, this is a specious ground for MR's opposition.

This Court must dismiss the action, in that MR merely seeks to interfere with the State action and avoid the consequences of enforcement of wholly State law claims against it, by bringing its defensive preemption claims in this action. This Court should refuse declaratory judgment and should dismiss based on abstention.

Dated: November 4, 2022

JONES MAYER

By:/s
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CITY OF FORT BRAGG