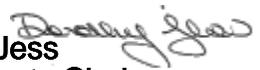


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Superior Court of California
County of Mendocino

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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MENDOCINO**

12 CITY OF FORT BRAGG, a California
13 municipal corporation

14 Plaintiff,

15 v.

16 MENDOCINO RAILWAY and DOES 1-10,
17 inclusive,

18 Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**DEFENDANT MENDOCINO RAILWAY'S
NOTICE OF MOTION AND MOTION TO
STRIKE PLAINTIFF CITY OF FORT
BRAGG'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Hearing Date: February 10, 2022

Hearing Time: 2:00 p.m.

Complaint Filed: October 28, 2021

1 **TO PLAINTIFF CITY OF FORT BRAGG AND ITS COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on February 10, 2022, at 2:00 p.m., or as soon thereafter as the
3 matter may be heard, in the Ten Mile Branch of the Mendocino County Superior Court, located at 700
4 South Franklin Street, Fort Bragg, CA 95437, Defendant MENDOCINO RAILWAY will, and hereby
5 does, move to strike the “injunctive relief” allegations, including the prayer for an injunction, made in the
6 Verified Complaint for Declaratory and Injunctive Relief (“Complaint”) of Plaintiff CITY OF FORT
7 BRAGG (“City”), as follows:

- 8 1. Page 1, line 21: “. . . and/or injunctive relief.”
- 9 2. Page 4, line 25: “. . . and/or Injunctive Relief.”
- 10 3. Page 4, line 26: “526.”
- 11 4. Page 5, lines 10-12: “. . . and Plaintiff City has the present right, obligation and need to exercise
12 such control, power, and authority for the public interest, benefit and safety.”
- 13 5. Page 5, paragraphs 18-21.
- 14 6. Page 6, Prayer ¶ 2.

15 Mendocino Railway’s motion is based on this Notice of Motion and Motion, the following
16 Memorandum of Points and Authorities, the accompanying Declarations of Paul Beard II and Mike Hart,
17 the accompanying Request for Judicial Notice, the pleadings and files in this case, and any other materials
18 or argument that may be presented prior to or at the hearing of this matter.

19
20 DATED: January 14, 2022.

FISHERBROYLES LLP

21
22 /s/ Paul Beard II

23

Attorneys for Defendant MENDOCINO RAILWAY

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I. INTRODUCTION

1 Defendant Mendocino Railway makes this Motion to Strike Plaintiff City of Fort Bragg's
2 Complaint in the alternative to its concurrently-filed Demurrer.

3
4 The Demurrer argues that Complaint should be dismissed in its entirety because the Court lacks
5 subject matter jurisdiction over it. The Complaint contains a single cause of action for a declaration that
6 Mendocino Railway—a public utility long-regulated as such by the California Public Utilities
7 Commission (“CPUC”)¹—has somehow lost its “public utility” status and is no longer subject to the
8 CPUC’s jurisdiction. As the Demurrer explains, the Complaint is asking the Court to unlawfully second-
9 guess and interfere with decisions and actions of the CPUC that have consistently affirmed the agency’s
10 jurisdiction over a well-established, public-utility railroad. *See, e.g.*, Pub. Util. Code § 1759.

11 If the Court sustains the Demurrer and dismisses the City’s action, then it need not decide this
12 Motion to Strike. But short of complete dismissal, the Court should strike the Complaint’s prayer for an
13 injunction on the grounds that injunctive relief is, among other things, “not supported by the allegations
14 of the complaint.”² Civ. Proc. Code § 431.10(b).

15 The Complaint demands a sweeping injunction compelling Mendocino Railway to submit to
16 “all” of the City’s “ordinances, regulations, . . . codes, jurisdiction and authority.” Complaint at 6:12-14,
17 6:15-18. The Complaint leaves no room for doubt that the City seeks to seize plenary regulatory control
18 over *all* of the railroad’s “property” and “operations” (*id.* at 5:25)—*operations that stretch far beyond*
19 *the City’s jurisdiction. Id.* at 1:23-25. But both state and federal law plainly bar the City’s attempt to
20 arrogate such vast power over a railroad.

21 The injunction that the City seeks would oust the CPUC from its historic and present role as the
22 State authority with exclusive jurisdiction over Mendocino Railway. As alluded to above, state law does
23 not permit Superior Court actions that interfere with the CPUC’s ongoing regulatory authority over a

24 ¹ *See* Complaint at 2:56 (admitting that Mendocino Railway is currently a CPUC-regulated public
25 utility).

26 ² Injunctive relief “is an equitable remedy, not a cause of action.” *County of Del Norte v. City of Crescent*
27 *City* (1999) 71 Cal.App.4th 965, 973. Therefore, the City’s “injunctive relief” allegations are not subject
28 to demurrer, but they are subject to a motion to strike. Civ. Proc. Code § 436 (motion to strike lies to
strike any “irrelevant, false or improper matter inserted in any pleading”). If the Court believes the City’s
“injunctive relief” allegations can and should be treated as a cause of action, then they are subject to
demurrer—and dismissal—as argued in Part IV.B of the concurrently filed Demurrer.

1 public utility like Mendocino Railway. Pub. Util. Code § 1759. Further, there is no dispute that
2 Mendocino Railway is a *federally* recognized railroad subject to the jurisdiction of the federal Surface
3 Transportation Board. The unlimited regulatory control that the City seeks through an injunction is
4 federally preempted. 49 U.S.C. § 10501(b).

5 For these reasons, if the Court does not dismiss the City’s action in its entirety, it should strike
6 the City’s “injunctive relief” allegations, including its prayer for an injunction, without leave to amend.

7 **II. LEGAL AND FACTUAL BACKGROUND**

8 **A. Legal Background**

9 A “public utility” is defined, in relevant part, as “every common carrier . . . where the service is
10 performed for, or the commodity is delivered to, the public or any portion thereof.” Pub. Util. Code §
11 216(a)(1); *see also* Cal. Const. art. XII, § 3 (“[C]ommon carriers[] are public utilities.”). A “common
12 carrier” is, in turn, defined as “every person and corporation providing transportation for compensation
13 to or for the public or any portion thereof.” *Id.* § 211. A “common carrier” includes “[e]very railroad
14 corporation.” *Id.* § 211(a).

15 Formerly called the Railroad Commission, the CPUC has plenary jurisdiction to “supervise and
16 regulate” California public utilities, including railroads. Pub. Util. Code § 701; *see also Public Utilities*
17 *Comm. v. Superior Court* (2010) 181 Cal.App.4th 364, 368-69 (recounting history of CPUC and its
18 regulation of railroads). It “is a state agency of constitutional origin with far-reaching duties, functions
19 and powers.” *San Diego Gas & Elec. Co. v. Super. Ct.* (1996) 13 Cal.4th 893, 914-15 (internal quotes
20 and citations omitted); *see also* Cal. Const. art. XII (establishing the CPUC). The CPUC’s jurisdiction
21 includes an expansive police power to “require every public utility to construct, maintain, and operate
22 its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and
23 safeguard the health and safety of its employees, passengers, customers, and the public.” Pub. Util. Code
24 § 768; *see also Sutter Butte Canal Company Co. v. Railroad Comm.* (1927) 202 Cal.179, 184 (holding
25 that to the CPUC “has been committed the execution of this police power”—i.e., all power “necessary
26 for the protection of the public health, safety, morals and welfare”—“over public utilities in California”).
27 “In particular, the commission has comprehensive jurisdiction over questions of public health and safety
28 arising from utility operations.” *San Diego Gas & Electric Co.*, 13 Cal.4th at 924. In matters over which

1 the CPUC has jurisdiction, its jurisdiction is “exclusive.” *City of Anaheim v. Pacific Bell Telephone Co.*
2 (2004) 119 Cal.App.4th 838, 842 (citing Cal. Const. art. XII, § 8 (“A city ... may not regulate matters
3 over which the Legislature grants regulatory power to the [Public Utilities] Commission.”)).

4 Further, the CPUC has the judicial power to determine in the first instance “that the status of [an
5 entity] is that of a public utility subject to regulation as contemplated by the Constitution of this state.”
6 *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 629-30. “That [the CPUC] . . . possesses judicial
7 powers”—such as the power to determine whether and how an entity should be regulated as a public
8 utility—“may not be questioned.” *Id.* at 630. “When its determinations within its jurisdiction have
9 become final they are conclusive in all collateral actions and proceedings.” *Id.*

10 **B. Factual Background**

11 Mendocino Railway is a railroad that has operated between the City of Fort Bragg and Willits,
12 in the County of Mendocino. Complaint at 2:19-20. The railroad owns real property in the City. *Id.* at
13 2:9-10.

14 As the Complaint admits, Mendocino Railway “is currently listed as a Class III railroad by the
15 California Public Utilities Commission.” Complaint at 2:5-6. The railroad therefore “is subject to CPUC
16 jurisdiction and has all legal rights of a public utility.” *Id.* at 2:6-7 (emphasis added). Consistent with
17 those admissions, the CPUC’s official website lists Mendocino Railway as a regulated railroad.
18 Declaration of Paul Beard II (“Beard Decl.”), Exh. A (CPUC webpage); Defendants’ Request for Judicial
19 Notice (“RJN”) at 2:6-17.

20 The Complaint cites to a January 21, 1998, decision of the CPUC regarding the railroad, which
21 also confirms the CPUC’s decades-long history of recognizing and regulating it as a public utility. *Id.*
22 2:2. There, at the request of the rail line’s prior owner, California Western Railroad (“CWRR”), the
23 CPUC agreed to deregulate fares for the railroad’s “excursion passenger service” only, which the CPUC
24 did not deem to be a “public utility” function. *In the Matter of the Application Calif. Western R.R., Inc.*
25 (“*In Re CWRR #1*”), 1998 Cal. PUC LEXIS 189, *11 (Jan. 21, 1998).³ But in the same decision, the
26 CPUC reaffirmed its jurisdiction over the safety of the entire rail line (including its excursion service),
27

28 ³ See Beard Decl., Exh. B, p. 4 (Jan. 21, 1998 CPUC Decision); RJN at 2:18-21.

1 as well as all aspects of the railroad’s commuter service:

2 “The Commission currently regulates the safety of the operation of all
3 services provided by CWRR. . . . The safety of the operation of all services,
4 including excursion passenger service, shall remain subject to regulation by
the Commission. This proceeding shall remain open to consider CWRR’s
request to reduce its commuter service.”

5 *Id.* at **10-11.⁴ Soon after the CPUC’s decision, the CPUC granted CWRR’s motion to withdraw its
6 request to reduce commuter service. *In the Matter of the Application of Calif. Western R.R., Inc.* 1998
7 Cal. PUC LEXIS 384 (May 21, 1998) (“*In Re CWRR #2*”) (noting that CWRR “transports passengers
8 and freight).⁵

9 Every decision of the CPUC has only *reaffirmed* its jurisdiction over the railroad as a public
10 utility.

11 The City concedes that, following the CPUC’s 1998 decision, Mendocino Railway “did or may
12 have had the capacity to carry freight and passengers from point-to-point.” Complaint at 3:1-3. But the
13 City claims that “no rail lines presently have any such capacity.”⁶ *Id.* The City alleges Mendocino
14 Railway operates only “sightseeing excursions.” *Id.* at 3:26. The City attributes the railroad’s alleged
15 loss of freight and passenger service to two events: (1) the 2013 “partial collapse of Tunnel No. 1, which
16 buried nearly 50 feet of its 1,200 feet of track under rocks and soil,” and (2) the 2016 re-closure of Tunnel
17 No. 1, purportedly following “damage from the 2015-16 El Niño.” *Id.* at 3:7-9, 3:16-17. Yet despite
18 those 2013 and 2016 tunnel closures, the City readily defended Mendocino Railway’s “public utility”
19 status *as late as August 2019*. Beard Decl., Exh. C (1/17/19 Letter from City) & Exh. D (8/1/19 City
20 Analysis); Declaration of Mike Hart, ¶ 2; RJN at 2:22—3:7.

21 In a January 17, 2019, letter from the City Attorney to the California Coastal Commission, the
22

23 ⁴ In its Complaint, the City grossly mischaracterizes the CPUC’s 1998 decision as somehow stripping
24 the railroad of its “public utility” status. Complaint ¶ 6. The City’s self-serving description in the
Complaint is belied by the decision itself, which expressly affirms the CPUC’s plenary jurisdiction over
the railroad, with the limited exception that it no longer regulates its excursion fares.

25 ⁵ See Beard Decl. Exh. E (May 21, 1998 CPUC Decision); RJN at 3:9-12.

26 ⁶ Mendocino Railway disputes any and all allegations that cast doubt on the railroad’s uninterrupted and
27 continued status as a “public utility” under state law and as a federally recognized railroad under federal
law. But said allegations are legally irrelevant for purposes of this motion. As explained in the Argument,
infra, even if those allegations were true (which they are not), the Superior Court has no subject matter
28 jurisdiction to enter an injunction interfering with the CPUC’s ongoing jurisdiction over Mendocino
Railway.

1 City defended Mendocino Railway’s right, *as a public utility*, to proceed with a land purchase without
2 having to first obtain a state land-use permit. *This defense came after the 2013 and 2016 tunnel closures*
3 *that interrupted the railroad’s full freight and passenger service*. As the City explained in its letter, the
4 CPUC has “recognized the Mendocino Railway as a regulated public utility” with the right to proceed
5 with the transaction without a permit. Beard Decl., Exh. C, p. 2. The City also admitted that “[a]s an
6 established railroad, the question of whether or not the Mendocino Railway is *federally* regulated has
7 not been in question.” *Id.* (emphasis added).

8 Similarly, in an August 1, 2019, letter, the City supported Mendocino Railway’s application for
9 a U.S. Department of Transportation grant to repair Tunnel No. 1, and thereby “restore freight and
10 passenger operations over Mendocino Railway’s entire 40-mile rail line” (“the Project”). Beard Decl.,
11 Exh. D, p. 2. *Again, the letter came years after the tunnel closures that the City claims disqualified*
12 *Mendocino Railway of its “public utility” status*. In its letter, the City touted Mendocino Railway’s long
13 history of providing, not just excursions, but freight and general passenger service as well—service that,
14 as the City acknowledged in the letter, Mendocino Railway was ready, willing, and able to fully restore
15 upon the collapsed tunnel’s reopening:

16 The Project would **renew** freight services, increase passenger offerings, and
17 improve railroad safety and operations. . . . Mendocino Railway has a
18 storied legacy of transporting freight and passengers and being the
19 economic engine for the rural areas of Fort Bragg and greater Mendocino
20 County. Various industries are eagerly awaiting **reopening** of Mendocino
21 Railway’s Line for freight services. . . . Additionally, it is anticipated that
22 the **reopening** of the approximately 40-mile rail Line for passenger services
23 should generate 25,000 or more passenger trips to be taken over the Line.

24 Beard Decl., Exh. D, pp. 2-3 (emphasis added).

25 Interestingly, the Complaint alleges no new facts or circumstances since the City’s admissions
26 in August 2019 that would cast the slightest doubt on Mendocino Railway’s status as a public utility.

27 Nevertheless, the City now complains that Mendocino Railway has previously invoked its right
28 as a CPUC-regulated public utility to rebuff City attempts to impose plenary control over the railroad
and its facilities. As examples, the Complaint cites City efforts, in 2017 and 2019, to regulate the use

1 Mendocino Railway “is currently listed as a class III railroad by the California Public Utilities
2 Commission,” “is subject to CPUC jurisdiction,” and “has all legal rights of a public utility. Complaint
3 at 2:3-7. That fact is confirmed by the CPUC’s official list that includes Mendocino Railway among
4 “regulated California railroads.” Beard Decl., Exh. A (“CPUC regulates *all* railroads in California.”
5 (emphasis added)). Further, it is confirmed in a final decision of the CPUC, in which the CPUC expressly
6 affirmed continuing jurisdiction and regulatory authority over the railroad. Beard Decl., Exh. B, p. 5
7 (“The safety of the operation of all services, including excursion passenger service, shall remain subject
8 to regulation by the Commission.”). The CPUC unequivocally has “assumed jurisdiction over a public
9 utility [i.e., Mendocino Railway] for the purpose of administering the law applicable to the activities of
10 the utility.” *Pacific Tel. & Tel. Co.*, 60 Cal.2d at 430. Consequently, the CPUC’s “regulation and control
11 of said utility” is “exclusive” (*id.*), and “that jurisdiction . . . cannot be hampered or second-guessed by
12 a superior court action.” *Anchor Lighting*, 142 Cal.App.4th at 548.⁸

13 The City’s injunction would substitute the City for the CPUC. It would second-guess the CPUC’s
14 decision that Mendocino Railway is a public utility subject to its jurisdiction and regulatory authority.
15 And it would hamper the CPUC’s ability, as the state agency with exclusive authority over public-utility
16 railroads, to oversee and regulate Mendocino Railway. If, as the City’s injunction would require,
17 Mendocino Railway were forced to submit to the City’s plenary jurisdiction, and all of its regulatory and
18 permitting requirements, the CPUC’s plenary jurisdiction and regulatory authority over the railroad
19 would be completely displaced. Section 1759’s prohibition on Superior Court actions purporting to
20 second-guess or interfere with the CPUC’s rights and duties vis-à-vis a regulated public utility bars
21 injunctive relief.

22 Also, the City’s injunction would be preempted by the California Constitution’s mandate that
23 “[a] city . . . may not regulate matters over which the Legislature grants regulatory power to the [CPUC].”
24 Cal. Const. art. XII, § 8. “[T]he commission has comprehensive jurisdiction over questions of public
25 health and safety arising from utility operations.” *San Diego Gas*, 13 Cal.4th at 924. For example, the
26

27 ⁸ The CPUC amply regulates public-utility railroads like Mendocino Railway under numerous
28 provisions of the Public Utilities Code, including without limitation: Public Utilities Code sections
309.7, 315, 421, 761, 765.5, 768, 7661, 7662, and 7665.2.

1 CPUC has the broad and exclusive power to “require every public utility to construct, maintain, and
 2 operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote
 3 and safeguard the health and safety of its employees, passengers, customers, and the public.” Pub. Util.
 4 Code § 768; *City of Anaheim*, 119 Cal.App.4th at 842 (CPUC jurisdiction is “exclusive”). In its 1998
 5 decision, the CPUC invoked that same broad authority over the railroad. Beard Decl., Exh. B, p. 5. Yet
 6 an injunction purporting to give the City unfettered regulatory authority over a CPUC-regulated public
 7 utility, including its operations and rail facilities, would unlawfully encroach upon the CPUC’s exclusive
 8 jurisdiction under the state constitution.

9 **B. Injunctive Relief Is Barred by Federal Law**

10 Independent of its status as a public utility under California law, the City does not dispute that
 11 Mendocino Railway is a *federally* recognized railroad. Beard Decl., Exh. C, p. 2 (City declaring that
 12 “[a]s an established railroad, the question of whether or not the Mendocino Railway is federally regulated
 13 has not been in question”). Mendocino Railway’s status as a federally recognized railroad carries with it
 14 federally protected prerogatives that the City’s broad injunction would extinguish.

15 To be a federally recognized railroad is to be regulated by the federal Surface Transportation
 16 Board (“STB” or “Board”) under the Interstate Commerce Commission Termination Act (“ICCTA”).
 17 That law gives plenary and exclusive power to the STB to regulate federally recognized railroads:

18 “The jurisdiction of the Board over—

19 (1) transportation by rail carriers, and the remedies provided in this
 20 part [49 USCS §§ 10101 et seq.] with respect to rates,
 21 classifications, rules (including car service, interchange, and other
 22 operating rules), practices, routes, services, and facilities of such
 23 carriers; and

24 (2) the construction, acquisition, operation, abandonment, or
 25 discontinuance of spur, industrial, team, switching, or side tracks, or
 26 facilities, even if the tracks are located, or intended to be located,
 27 entirely in one State,

28 is *exclusive*. Except as otherwise provided in this part [49 USCS §§ 10101
 et seq.], the remedies provided under this part [49 USCS §§ 10101 et seq.]
 with respect to regulation of rail transportation are *exclusive* and preempt
 the remedies provided under Federal or State law.”

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

The STB’s exclusive jurisdiction over a federally recognized railroad means that state and local

