

1 Paul J. Beard II (SBN: 210563)  
2 **FISHERBROYLES LLP**  
3 4470 W. Sunset Blvd., Suite 93165  
4 Los Angeles, CA 90027  
5 Telephone: (818) 216-3988  
6 Facsimile: (213) 402-5034  
7 Email: paul.beard@fisherbroyles.com

8 Attorneys for Defendant  
9 MENDOCINO RAILWAY

ELECTRONICALLY FILED  
1/14/2022 4:18 PM  
Superior Court of California  
County of Mendocino

By:   
D. Jess  
Deputy Clerk

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  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEMURRER TO 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

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. INTRODUCTION** ..... 5

**II. LEGAL AND FACTUAL BACKGROUND**..... 6

    A. Legal Background..... 6

    B. Factual Background ..... 7

**III. STANDARD OF REVIEW**..... 11

**IV. ARGUMENT** ..... 11

    A. The Court Has No Jurisdiction Over the City’s Declaratory-Relief Claim ..... 12

    B. If Deemed a “Cause of Action,” The City’s Request for an Injunction Is Also Barred ..... 14

        1. *Injunctive Relief Is Barred by State Law*..... 14

        2. *Injunctive Relief Is Barred by Federal Law* ..... 15

**V. CONCLUSION** ..... 17

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

1

2

3 *Allen v. City of Sacramento*

4 (2015) 234 Cal.App.4th 41 .....6, 11, 14

5 *Anchor Lighting v. Southern California Edison Co.*

6 (2006) 142 Cal.App.4th 541 ..... 12-13

7 *B&P Dev. Corp. v. City of Saratoga*

8 (1986) 185 Cal.App.3d 949 .....11

9 *City of Anaheim v. Pacific Bell Telephone Co.*

10 (2004) 119 Cal.App.4th 838 .....7, 15

11 *City of Auburn v. United States*

12 (9th Cir. 1998) 154 F.3d 1025 .....16

13 *County of Del Norte v. City of Crescent City*

14 (1999) 71 Cal.App.4th 965 ..... 6, 11-12, 14

15 *Freeman v. San Diego Assn. of Realtors*

16 (1999) 77 Cal.App.4th 171 .....11

17 *Friends of Eel River v. North Coast R.R. Auth’y*

18 (2017) 3 Cal.5th 677 .....16

19 *In the Matter of the Application Calif. Western R.R., Inc.*

20 1998 Cal. PUC LEXIS 189 (Jan. 21, 1998).....8

21 *In the Matter of the Application Calif. Western R.R., Inc.*

22 1998 Cal. PUC LEXIS 384 (May 21, 1998).....8

23 *Johnson v. County of Los Angeles*

24 (1983) 143 Cal.App. 3d 298 .....11

25 *Moore v. Regents of Univ. of Calif.*

26 (1990) 51 Cal.3d 120 .....11

27 *Pacific Tel. & Tel. Co. v. Superior Court of San Francisco*

28 (1963) 60 Cal.2d 426 ..... 12-13

*People v. Western Air Lines, Inc.*

(1954) 42 Cal.2d 621 .....7

*Public Utilities Comm. v. Superior Court*

(2010) 181 Cal.App.4th 364 .....7

1	<i>San Diego Gas &amp; Elec. Co. v. Super. Ct.</i>	
2	(1996) 13 Cal.4th 893 .....	7, 12, 15
3	<i>Sutter Butte Canal Company Co. v. Railroad Comm.</i>	
4	(1927) 202 Cal. 179 .....	7
5	<i>Williams v. Southern Calif. Gas Co.</i>	
6	(2009) 176 Cal.App.4th 591 .....	11
7	<b><u>CONSTITUTIONAL PROVISIONS</u></b>	
8	Cal. Const. art. XII.....	6-7, 15
9	U.S. Const. art. VI, cl. 2.....	16
10	<b><u>STATUTES</u></b>	
11	49 U.S.C. § 10102(9).....	16
12	49 U.S.C. § 10501(b).....	15-16
13	Civ. Proc. Code § 430.10(a).....	11
14	Pub. Util. Code § 211.....	6-7
15	Pub. Util. Code § 216.....	6
16	Pub. Util. Code § 309.7.....	13
17	Pub. Util. Code § 315.....	13
18	Pub. Util. Code § 421.....	13
19	Pub. Util. Code § 701.....	7, 12
20	Pub. Util. Code § 761.....	13
21	Pub. Util. Code § 765.5.....	13
22	Pub. Util. Code § 768.....	7, 13, 15
23	Pub. Util. Code § 1759.....	5, 12, 14-15
24	Pub. Util. Code § 7661.....	13
25	Pub. Util. Code § 7662.....	13
26	Pub. Util. Code § 7665.2.....	13
27		
28		

## I. INTRODUCTION

1  
2 This case is about an extraordinary attempt by Plaintiff City of Fort Bragg (“City”) to have the  
3 Court terminate a well-established railroad’s legal status as a California public utility—long recognized  
4 and regulated as such by the California Public Utilities Commission (“CPUC”). The City’s attempt is  
5 doomed from the start because the Court has no subject matter jurisdiction to do the City’s bidding.  
6 California law unequivocally bars all Superior Court actions—like the City’s—that purport to second-  
7 guess or interfere with the CPUC’s ongoing jurisdiction over a railroad long deemed by that state agency  
8 to be a public utility.

9 As the City admits, Defendant Mendocino Railway “is currently listed as a class III railroad by  
10 the California Public Utilities Commission (CPUC)” and, “as such,” it “is subject to CPUC jurisdiction  
11 and has all legal rights of a public utility.” Complaint at 2:5-7. The CPUC has broad authority to assert  
12 jurisdiction over and regulate the State’s public utilities, including railroads like Mendocino Railway.  
13 But while the City has long trumpeted Mendocino Railway’s “public utility” status, the City now objects.

14 In a single cause of action for declaratory relief, the City asks the Court to nullify Mendocino  
15 Railway’s status as a CPUC-regulated public utility because the City thinks that the railroad no longer  
16 qualifies as such. If somehow successful in convincing the Court to terminate Mendocino Railway’s  
17 status—and, with it, the CPUC’s jurisdiction over it—the City hopes to also convince the Court to grant  
18 a sweeping injunction compelling Mendocino Railway to submit to “all” of the City’s “ordinances,  
19 regulations, . . . codes, jurisdiction and authority.” Complaint at 6:12-14, 6:15-18.

20 The objective of the City’s cause of action for declaratory relief is crystal clear: To substitute the  
21 City for the California Public Utilities Commission, and seize unfettered control over a state-regulated,  
22 public-utility railroad.

23 The City’s lawsuit fails as a matter of law. The CPUC has assumed jurisdiction over and  
24 regulated Mendocino Railway as a “*public utility*” for years. Complaint at 2:7 (emphasis added). A 1998  
25 decision of the CPUC unequivocally affirms jurisdiction over Mendocino Railway. This Superior Court  
26 action asks the Court to unlawfully second-guess that CPUC decision and directly interfere with the  
27 agency’s continuing jurisdiction over it. But the law clearly bars such Superior Court actions. *See, e.g.*,  
28 Pub. Util. Code § 1759 (precluding Superior Court actions that interfere with CPUC). The Court has no

1 subject matter jurisdiction to convert a CPUC-regulated public utility into a nonpublic utility and thereby  
2 strip a state agency of its decades-long regulatory authority over that entity. Since the City has no  
3 cognizable claim, it can obtain no relief—whether it be a declaration or an injunction.

4 The City may argue it has an independent cause of action for “injunctive relief” that somehow  
5 survives dismissal of its “declaratory relief” claim. But injunctive relief is a remedy, not a cause of  
6 action. And even if a request for an injunction constituted a cause of action, it would be barred. The  
7 City’s injunction purports to subject Mendocino Railway to “all” of the City’s laws, jurisdiction, and  
8 authority. Complaint at 6:15-18. Such an injunction would give the City unlimited control over a CPUC-  
9 regulated public utility in violation of California law. Further, as the City has conceded, Mendocino  
10 Railway is also a *federally* recognized railroad subject to the jurisdiction of the federal Surface  
11 Transportation Board. The unlimited control that the City seeks would therefore be federally preempted.

12 The Court should sustain Mendocino Railway’s demurrer and dismiss the Complaint in its  
13 entirety without leave to amend.

## 14 II. LEGAL AND FACTUAL BACKGROUND

### 15 A. Legal Background

16 The only cause of action in this lawsuit is a claim for declaratory relief, which purports to  
17 challenge Mendocino Railway’s status as a public utility under California law.<sup>1</sup> This demurrer does not  
18 turn on whether Mendocino Railway continues to qualify as a public utility, because the Court lacks  
19 jurisdiction to decide the question in the first place. Nevertheless, for context, it is helpful to understand  
20 how public utilities are defined and regulated in California.

21 A “public utility” is defined, in relevant part, as “every common carrier . . . where the service is  
22 performed for, or the commodity is delivered to, the public or any portion thereof.” Pub. Util. Code §  
23 216(a)(1); *see also* Cal. Const. art. XII, § 3 (“[C]ommon carriers[] are public utilities.”). A “common  
24 carrier” is, in turn, defined as “every person and corporation providing transportation for compensation  
25

---

26 <sup>1</sup> As explained in the “Standard of Review” section, while the City titles its only cause of action as a  
27 “Cause of Action” for “Declaratory and/or Injunctive Relief,” there is no such thing as a cause of action  
28 for injunctive relief. Injunctive relief is a remedy, not a cause of action. *County of Del Norte v. City of  
Crescent City* (1999) 71 Cal.App.4th 965, 973; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41,  
65.

1 to or for the public or any portion thereof.” *Id.* § 211. A “common carrier” includes “[e]very railroad  
2 corporation.” *Id.* § 211(a).

3 Formerly called the Railroad Commission, the CPUC has plenary jurisdiction to “supervise and  
4 regulate” California public utilities, including railroads. Pub. Util. Code § 701; *see also Public Utilities*  
5 *Comm. v. Superior Court* (2010) 181 Cal.App.4th 364, 368-69 (recounting history of CPUC and its  
6 regulation of railroads). It “is a state agency of constitutional origin with far-reaching duties, functions  
7 and powers.” *San Diego Gas & Elec. Co. v. Super. Ct.* (1996) 13 Cal.4th 893, 914-15 (internal quotes  
8 and citations omitted); *see also* Cal. Const. art. XII (establishing the CPUC). The CPUC’s jurisdiction  
9 includes an expansive police power to “require every public utility to construct, maintain, and operate  
10 its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and  
11 safeguard the health and safety of its employees, passengers, customers, and the public.” Pub. Util. Code  
12 § 768; *see also Sutter Butte Canal Company Co. v. Railroad Comm.* (1927) 202 Cal.179, 184 (holding  
13 that to the CPUC “has been committed the execution of this police power”—i.e., all power “necessary  
14 for the protection of the public health, safety, morals and welfare”—“over public utilities in California”).  
15 “In particular, the commission has comprehensive jurisdiction over questions of public health and safety  
16 arising from utility operations.” *San Diego Gas & Electric Co.*, 13 Cal.4th at 924. In matters over which  
17 the CPUC has jurisdiction, its jurisdiction is “exclusive.” *City of Anaheim v. Pacific Bell Telephone Co.*  
18 (2004) 119 Cal.App.4th 838, 842 (citing Cal. Const. art. XII, § 8 (“A city ... may not regulate matters  
19 over which the Legislature grants regulatory power to the [Public Utilities] Commission.”)).

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

26 **B. Factual Background**

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

1 2:9-10.

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

8 The Complaint cites to a January 21, 1998, decision of the CPUC regarding the railroad, which  
9 also confirms the CPUC’s decades-long history of recognizing and regulating it as a public utility. *Id.*  
10 2:2. There, at the request of the rail line’s prior owner, California Western Railroad (“CWRR”), the  
11 CPUC agreed to deregulate fares for the railroad’s “excursion passenger service” only, which the CPUC  
12 did not deem to be a “public utility” function. *In the Matter of the Application Calif. Western R.R., Inc.*  
13 (“*In Re CWRR #1*”), 1998 Cal. PUC LEXIS 189, \*11 (Jan. 21, 1998).<sup>2</sup> But in the same decision, the  
14 CPUC reaffirmed its jurisdiction over the safety of the entire rail line (including its excursion service),  
15 as well as all aspects of the railroad’s commuter service:

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

19 *Id.* at \*\*10-11.<sup>3</sup> Soon after the CPUC’s decision, the CPUC granted CWRR’s motion to withdraw its  
20 request to reduce commuter service. *In the Matter of the Application of Calif. Western R.R., Inc.* 1998  
21 Cal. PUC LEXIS 384 (May 21, 1998) (“*In Re CWRR #2*”) (noting that CWRR “transports passengers  
22 and freight”).<sup>4</sup>

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

25 \_\_\_\_\_  
26 <sup>2</sup> See Beard Decl., Exh. B, p. 4 (Jan. 21, 1998 CPUC Decision); RJN at 2:18-21.

27 <sup>3</sup> In its Complaint, the City grossly mischaracterizes the CPUC’s 1998 decision as somehow stripping  
28 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.

<sup>4</sup> See Beard Decl. Exh. E (May 21, 1998 CPUC Decision); RJN at 3:9-12.

1 The City concedes that, following the CPUC’s 1998 decision, Mendocino Railway “did or may  
2 have had the capacity to carry freight and passengers from point-to-point.” Complaint at 3:1-3. But the  
3 City claims that “no rail lines presently have any such capacity.”<sup>5</sup> *Id.* The City alleges Mendocino  
4 Railway operates only “sightseeing excursions.” *Id.* at 3:26. The City attributes the railroad’s alleged  
5 loss of freight and passenger service to two events: (1) the 2013 “partial collapse of Tunnel No. 1, which  
6 buried nearly 50 feet of its 1,200 feet of track under rocks and soil,” and (2) the 2016 re-closure of Tunnel  
7 No. 1, purportedly following “damage from the 2015-16 El Niño.” *Id.* at 3:7-9, 3:16-17. Yet despite  
8 those 2013 and 2016 tunnel closures, the City readily defended Mendocino Railway’s “public utility”  
9 status *as late as August 2019*. Beard Decl., Exh. C (1/17/19 Letter from City) & Exh. D (8/1/19 City  
10 Analysis); Declaration of Mike Hart, ¶ 2; RJN at 2:22—3:7.

11 In a January 17, 2019, letter from the City Attorney to the California Coastal Commission, the  
12 City defended Mendocino Railway’s right, *as a public utility*, to proceed with a land purchase without  
13 having to first obtain a state land-use permit. *This defense came after the 2013 and 2016 tunnel closures*  
14 *that interrupted the railroad’s full freight and passenger service*. As the City explained in its letter, the  
15 CPUC has “recognized the Mendocino Railway as a regulated public utility” with the right to proceed  
16 with the transaction without a permit. Beard Decl., Exh. C, p. 2. The City also admitted that “[a]s an  
17 established railroad, the question of whether or not the Mendocino Railway is *federally* regulated has  
18 not been in question.” *Id.* (emphasis added).

19 Similarly, in an August 1, 2019, letter, the City supported Mendocino Railway’s application for  
20 a U.S. Department of Transportation grant to repair Tunnel No. 1, and thereby “restore freight and  
21 passenger operations over Mendocino Railway’s entire 40-mile rail line” (“the Project”). Beard Decl.,  
22 Exh. D, p. 2. *Again, the letter came years after the tunnel closures that the City claims disqualified*  
23 *Mendocino Railway of its “public utility” status*. In its letter, the City touted Mendocino Railway’s long  
24 history of providing, not just excursions, but freight and general passenger service as well—service that,

25 \_\_\_\_\_  
26 <sup>5</sup> 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  
28 law. But said allegations are legally irrelevant for purposes of this demurrer. As explained in the  
Argument, *infra*, even if those allegations were true (which they are not), the Superior Court has no  
subject matter jurisdiction to adjudicate whether the CPUC should continue to recognize and regulate a  
railroad as a public utility.

1 as the City readily acknowledged in the letter, Mendocino Railway was ready, willing, and able to fully  
2 restore upon the collapsed tunnel’s reopening:

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

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

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

14           Nevertheless, the City now complains that Mendocino Railway has previously invoked its right  
15 as a CPUC-regulated public utility to rebuff City attempts to impose plenary control over the railroad  
16 and its facilities. As examples, the Complaint cites City efforts, in 2017 and 2019, to regulate the use  
17 and repair of a roundhouse<sup>6</sup> and storage shed located on Mendocino Railway’s land. Complaint at 4:1-  
18 8. The Complaint also cites a more recent example from August 2021, when the City allegedly demanded  
19 that Mendocino Railway obtain a “special event” permit for an unspecified late-night event. *Id.* at 4:8-  
20 10. In each instance, claims the City, Mendocino Railway declined to subject itself to local inspections  
21 and permit requirements because of its “public utility” status. *Id.* at 4:-1-12. Curiously, the City in the  
22 first two instances attempted to assert regulatory authority over the railroad at a time when the City did  
23 not dispute—and even vigorously *defended*—Mendocino Railway’s status as a public utility exempt  
24 from just such local regulation.

25           The City has had a sudden change of heart regarding Mendocino Railway’s “public utility” status.  
26 In a single cause of action, the City purports to seek “declaratory and/or injunctive relief” to the effect  
27 that (1) “Mendocino Railway is not subject to regulation [by the CPUC] as a public utility” and (2)  
28 Mendocino Railway must “comply with all City ordinances, regulations, and lawfully adopted codes,  
jurisdiction and authority.” Complaint at 4:27-28, 6:12-18. Mendocino Railway brings this demurrer on

<sup>6</sup> A “roundhouse” is defined as a “a circular building for housing and repairing locomotives.” *See* Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/roundhouse>.

1 the grounds that the Court lacks subject matter jurisdiction to adjudicate the City’s claim and grant the  
2 relief it seeks.

### 3 **III. STANDARD OF REVIEW**

4 A defendant may object to a complaint by demurrer when the court lacks subject matter  
5 jurisdiction. Code of Civ. Proc. § 430.10(a). A general demurrer serves to test the sufficiency of the  
6 complaint as a matter of law. *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 306. While  
7 courts “assume the truth of all material facts properly pleaded in the complaint” (*B&P Dev. Corp. v. City*  
8 *of Saratoga* (1986) 185 Cal.App.3d 949, 953), they “do not . . . assume the truth of contentions,  
9 deductions, or conclusions of fact or law” contained in the complaint (*Moore v. Regents of Univ. of Calif.*  
10 (1990) 51 Cal.3d 120, 125). Moreover, courts must “disregard allegations that are contrary to law or to  
11 facts that may be judicially noticed.” *Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th  
12 171, 178). “In cases when the pleading conflicts with facts judicially noticed, . . . the theory is that the  
13 pleader should not be allowed to bypass a demurrer by suppressing facts that the court will judicially  
14 notice.” *Williams v. Southern California Gas Co.* (2009) 176 Cal.App.4th 591.

15 The City alleges a cause of action for “declaratory and/or injunctive relief.” Complaint at 4:25.  
16 Although section 1060 of the Code of Civil Procedure authorizes a cause of action for declaratory relief,  
17 the law does not authorize a “cause of action for injunctive relief.” An “injunction is an equitable remedy,  
18 not a cause of action, and thus it is attendant to an underlying cause of action.” *County of Del Norte*, 71  
19 Cal.App.4th at 973. “A cause of action must exist before a court may grant a request for injunctive  
20 relief.” *Allen*, 234 Cal.App.4th at 65. Thus, if the City’s declaratory-relief claim falls, its request for an  
21 injunction falls with it.

### 22 **IV. ARGUMENT**

23 The Court lacks subject matter jurisdiction over the City’s declaratory-relief action, which seeks  
24 to eliminate Mendocino Railway’s status as a CPUC-regulated public utility and substitute the City for  
25 the CPUC as the railroad’s regulatory overseer. As explained in detail below, entertaining this action  
26 directly undermines the CPUC’s already-assumed jurisdiction and regulatory authority over Mendocino  
27 Railway, which the CPUC has long recognized as a public utility. The requested injunction also seeks  
28 local authority over an admittedly CPUC-regulated utility and federally recognized railroad, even though

1 such local authority is preempted. For these reasons, and as explained in detail below, the Complaint  
2 must be dismissed with prejudice.

3 **A. The Court Has No Jurisdiction Over the City’s Declaratory-Relief Claim**

4 The Public Utilities Code “vests the commission with broad authority to supervise and regulate  
5 every public utility in the State and grants the commission numerous specific powers for the purpose.”  
6 *San Diego Gas*, 13 Cal.4th at 915 (quoting Pub. Util. Code § 701) (internal quotation marks omitted).  
7 To protect the CPUC’s broad mandate and limit judicial interference with the CPUC’s work, the  
8 Legislature enacted section 1759 of the Public Utilities Code. Subsection (a) of that statute states:

9 No court of this state, except the Supreme Court and the court of appeal,  
10 to the extent specified in this article, shall have jurisdiction to review,  
11 reverse, correct, or annul any order or decision of the commission or to  
12 suspend or delay the execution or operation thereof, or to enjoin, restrain,  
or interfere with the commission in the performance of its official duties,  
as provided by law and the rules of court.

13 Pub. Util. Code § 1759(a) (emphasis added).

14 “By its plain language, section 1759 deprives the superior court of jurisdiction to entertain an  
15 action that could undermine the CPUC’s authority.” *Anchor Lighting v. Southern California Edison Co.*  
16 (2006) 142 Cal.App.4th 541, 548. Thus, apart from the limited review procedures in section 1759 of the  
17 Public Utilities Code, “no other court has jurisdiction either to review or suspend the commission’s  
18 decisions or to enjoin or otherwise interfere with the commission’s performance of its duties.” *San Diego*  
19 *Gas*, 13 Cal.4th at 916. Further, “after the commission has assumed jurisdiction over a public utility for  
20 the purpose of administering the law applicable to the activities of the utility, the commission has  
21 exclusive jurisdiction over the regulation and control of said utility.” *Pacific Tel. & Tel. Co. v. Superior*  
22 *Court of San Francisco* (1963) 60 Cal.2d 426, 430. “The CPUC has exclusive jurisdiction over the  
23 regulation and control of utilities and that jurisdiction, once assumed, cannot be hampered or second-  
24 guessed by a superior court action addressing the same issue.” *Anchor Lighting*, 142 Cal.App.4th at 548.

25 Again, the sole cause of action in this case is for declaratory relief. “Injunctive relief” is “not a  
26 cause of action.” *County of Del Norte*, 71 Cal.App.4th at 973. With respect to the declaratory relief  
27 claim, the City seeks a “judicial declaration regarding the validity of the Mendocino Railway’s status as  
28 a public utility.” Complaint 1:19-21. Specifically, the City demands “a declaration that the Mendocino

1 Railway is not subject to regulation [by the CPUC] as a public utility.” *Id.* at 6:12-14. There can be no  
2 serious question that this Court lacks subject matter jurisdiction to issue a declaration to that effect,  
3 because it would eliminate Mendocino Railway’s status as a public utility, long recognized as such by  
4 the CPUC, and thereby remove the railroad from the CPUC’s jurisdiction.

5 The City’s own allegations are fatal the City’s challenge. As the City admits, Mendocino Railway  
6 “is currently listed as a class III railroad by the California Public Utilities Commission,” “is subject to  
7 CPUC jurisdiction,” and “has all legal rights of a public utility.” Complaint at 2:3-7. That fact is  
8 confirmed by the CPUC’s official list that includes Mendocino Railway among “regulated California  
9 railroads.” Beard Decl., Exh. A (“CPUC regulates *all* railroads in California.” (emphasis added)).  
10 Further, it is confirmed in a final decisions of the CPUC, in which the CPUC expressly affirmed  
11 continuing jurisdiction and regulatory authority over the railroad. *In Re CWRR #1*, 1998 Cal. PUC  
12 LEXIS 189, \*11 Beard Decl., Exh. B, p. 5 (“The safety of the operation of all services, including  
13 excursion passenger service, shall remain subject to regulation by the Commission.”). “When [the  
14 CPUC’s] determinations within its jurisdiction have become final they are conclusive in all collateral  
15 actions and proceedings.” *Western Air Lines, Inc.*, 42 Cal.2d at 629-30. As the Complaint concedes, the  
16 CPUC has “assumed jurisdiction over a public utility [i.e., Mendocino Railway] for the purpose of  
17 administering the law applicable to the activities of the utility.” *Pacific Tel. & Tel. Co.*, 60 Cal.2d at 430.  
18 Consequently, the CPUC’s “regulation and control of said utility” is “exclusive” (*id.*), and “that  
19 jurisdiction . . . cannot be hampered or second-guessed by a superior court action.” *Anchor Lighting*, 142  
20 Cal.App.4th at 548.<sup>7</sup>

21 Yet the City’s declaratory-relief action does just that. It second-guesses the CPUC’s clear  
22 determination that Mendocino Railway is a public utility and tries to eliminate that agency’s long-  
23 established jurisdiction over it. Since the CPUC’s jurisdiction over Mendocino Railway is based on its  
24 being a public-utility railroad, and no other legal basis for the CPUC’s jurisdiction over that railroad  
25 exists, a Superior Court judgment divesting Mendocino Railway of its “public utility” status would divest  
26

27 <sup>7</sup> 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 the CPUC of its jurisdiction over the railroad. If Mendocino Railway is no longer a public utility by  
2 declaration of the Court, then contrary to CPUC’s decisions and actions over the years, the railroad is no  
3 longer subject to regulation by the CPUC. It is difficult to imagine a clearer interference with the CPUC’s  
4 authority and a clearer violation of section 1759 of the Public Utilities Code.

5 In sum, the City is barred from obtaining a declaration nullifying Mendocino Railway’s status as  
6 a CPUC-regulated public utility. Because the City has no valid cause of action, its request for an  
7 injunction compelling Mendocino Railway to submit to its total and unfettered regulatory authority is  
8 also precluded. *Allen*, 234 Cal.App.4th at 65 (“A cause of action must exist before a court may grant a  
9 request for injunctive relief.”).

10 **B. If Deemed a “Cause of Action,” The City’s Request for an Injunction Is Also Barred**

11 Because the City has no cognizable claim, *all* the relief it requests—including its demand for an  
12 injunction—is categorically precluded. As explained above, an injunction “is an equitable remedy, not  
13 a cause of action” that is subject to demurrer; without a valid cause of action, there can be no injunctive  
14 relief. *County of Del Norte*, 71 Cal.App.4th at 973. As a result, the Court need not separately consider  
15 the viability of the City’s request for an injunction.<sup>8</sup>

16 However, if the Court decides to treat the request for injunction as a “cause of action” subject to  
17 demurrer, then the Court should also dismiss it under both state and federal law.

18 **1. Injunctive Relief Is Barred by State Law**

19 The City wants an injunction “commanding the Mendocino Railway to comply with all City  
20 ordinances, regulations, and lawfully adopted codes, jurisdiction and authority.” Complaint at 6:15-18.  
21 The City makes clear it wants full regulatory control over all railroad “property” and “operations.” *Id.* at  
22 5:25-26. The Court lacks jurisdiction to grant such a sweeping injunction for the same reason it lacks  
23 jurisdiction to nullify, through a declaration, Mendocino Railway’s “public utility” status: The injunction  
24 would substitute the City for the CPUC, and thereby undermine the CPUC’s ongoing jurisdiction over  
25 and regulation of the railroad. *Id.* at 2:4-7 (Mendocino Railway “is subject to CPUC jurisdiction”); Pub.

26  
27 <sup>8</sup> If the Court overrules this demurrer, then it should strike the City’s “injunctive relief” allegations  
28 including the prayer for an injunction, as requested in Mendocino Railway’s concurrently filed Motion  
to Strike.

1 Util. Code § 1759 (barring Superior Court actions to “enjoin, restrain, or interfere with the commission  
2 in the performance of its official duties,” which include regulating public-utility railroads).

3 Also, the injunction requested by the City flies in the face of the California Constitution’s  
4 mandate that “[a] city . . . may not regulate matters over which the Legislature grants regulatory power  
5 to the [CPUC].” Cal. Const. art. XII, § 8. “[T]he commission has comprehensive jurisdiction over  
6 questions of public health and safety arising from utility operations.” *San Diego Gas & Electric Co.*, 13  
7 Cal.4th at 924. For example, the CPUC has the broad and exclusive power to “require every public utility  
8 to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in  
9 a manner so as to promote and safeguard the health and safety of its employees, passengers, customers,  
10 and the public.” Pub. Util. Code § 768; *City of Anaheim*, 119 Cal.App.4th at 842 (CPUC jurisdiction is  
11 “exclusive”). In its 1998 decision, the CPUC invoked that same broad authority over the railroad. *In Re*  
12 *CWRR #1*, 1998 Cal. PUC LEXIS 189, \*11; Beard Decl., Exh. B, p. 5. Yet an injunction purporting to  
13 give the City unfettered regulatory authority over a CPUC-regulated public utility, including its  
14 operations and rail facilities, would unlawfully encroach upon the CPUC’s exclusive jurisdiction.

## 15 2. Injunctive Relief Is Barred by Federal Law

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

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

24 “The jurisdiction of the Board over—

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

28 (2) the construction, acquisition, operation, abandonment, or

1                    discontinuance of spur, industrial, team, switching, or side tracks, or  
 2                    facilities, even if the tracks are located, or intended to be located,  
                       entirely in one State,

3                    is *exclusive*. Except as otherwise provided in this part [49 USCS §§ 10101  
 4                    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.”

5 49 U.S.C. § 10501(b) (emphasis added).

6                    The STB’s exclusive jurisdiction over a federally recognized railroad means that state and local  
 7 regulatory and permitting requirements are broadly preempted. U.S. Const. art. VI, cl. 2 (Supremacy  
 8 Clause); 49 U.S.C. § 10501(b); *City of Auburn v. United States* (9th Cir. 1998) 154 F.3d 1025, 1030-31  
 9 (The ICCTA’s preemptive scope is “broad.”); *Friends of Eel River v. North Coast R.R. Auth’y* (2017) 3  
 10 Cal.5th 677, 703 (holding that “state environmental permitting or preclearance regulation that would  
 11 have the effect of halting a private railroad project pending environmental compliance would be  
 12 categorically preempted”).

13                    The injunction sought in this case would grant the City *unlimited* power over a federally  
 14 recognized railroad. The injunction would require Mendocino Railway to submit to “*all*” local laws and  
 15 regulations, as well as to the total “jurisdiction and authority” of the City. Complaint at 6:15-18  
 16 (emphasis added). With such vast power, the City could force Mendocino Railway to halt or delay rail-  
 17 related activities pending compliance with local permitting and other preclearance requirements. Indeed,  
 18 the Complaint itself cites examples of the City purporting to exercise authority to inspect and permit  
 19 certain of Mendocino Railway’s rail-related facilities (i.e., its roundhouse and storage shed). Complaint  
 20 ¶ 12; *see also* 49 U.S.C. § 10501(b) (STB has exclusive jurisdiction over rail “facilities”); *id.* § 10102(9)  
 21 (STB’s exclusive jurisdiction reaches “property” or “equipment ... related to the movement of  
 22 passengers or property, or both, by rail,” including “services related to that movement”). The City’s  
 23 injunction, which would confer on it plenary regulatory authority over Mendocino Railway’s operations  
 24 and facilities, would violate 49 U.S.C. section 10501(b). The authority that the City seeks by way of an  
 25 injunction is federally preempted.

26 //

27 ///

28

