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9 MENDOCINO RAILWAY

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]

**REPLY BRIEF IN SUPPORT OF
DEFENDANT MENDOCINO RAILWAY'S
DEMURRER**

Hearing Date: February 24, 2022

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I. INTRODUCTION

1
2 Plaintiff City of Fort Bragg’s opposition to the demurrer consists of a hodgepodge of
3 contradictions and half-hearted efforts to salvage this lawsuit. Repeated assertions that it didn’t really
4 mean what it said in its Complaint, and that the Court can just grant it leave anyway to delete or contradict
5 harmful admissions contained therein, are sprinkled throughout the City’s brief. But neither
6 equivocations nor an amendment can cure the stubborn reality that the Superior Court has no jurisdiction
7 to interfere with or second-guess the California Public Utilities Commission’s ongoing jurisdiction over
8 a public utility like Defendant Mendocino Railway.

9 Let’s begin with the gross inconsistencies between the Complaint and what the City asserts in its
10 opposition brief.

11 In its Complaint, the City (correctly) alleges that the railroad “is subject to CPUC jurisdiction
12 and has all legal rights of a public utility.” Complaint at 2:5-7. But while the City admits that Mendocino
13 Railway is *currently* entitled to public-utility status, it now believes the railroad “is *no longer* entitled
14 to status as a public utility.” Complaint at 1:25-26 (emphasis added). Thus, in its prayer, the City makes
15 the extraordinary demand that the Court strip the railroad of its current public-utility status and issue a
16 “declaration that the Mendocino Railway is not subject to regulation [by the CPUC] as a public utility
17 because it does not qualify as a common carrier.” Complaint at 6:12-14 (Prayer). The City plainly admits
18 throughout its Complaint that Mendocino Railway *is* a CPUC-regulated public utility—and that it wants
19 this Court to eliminate the railroad’s public-utility status by way of a declaration. This, the Court has no
20 jurisdiction to do. Pub. Util. Code § 1759(a).

21 Confronted with the fatal consequences of its admissions, the City now tries to repudiate them
22 and reframe its challenge. Despite having admitted exactly the opposite in its Complaint, the City in its
23 opposition brief asserts—over a dozen times and often in italics, for good measure—that Mendocino
24 Railway actually “is *not* a public utility subject to the CPUC’s exclusive authority.” *Compare* Opp. at
25 10:3 (emphasis added) with Complaint at 2:5-7. And, concerning the declaration it seeks, the opposition
26 brief is internally inconsistent: On the one hand, the City acknowledges that it wants “this Court [to]
27 declare” that Mendocino Railway is “not a public utility.” Opp. at 9, ft.1. But on the very same page, the
28 City asserts that Mendocino Railway’s status as a public utility *vel non* is not something “the City wishes

1 for this Court to decide. *Id.* at 9:21-22. The City’s contorted interpretations and rewriting of its Complaint
2 do not save it from dismissal.

3 It is obvious that the City failed to think through the legal consequences of the Complaint’s
4 judicial admissions on this Court’s jurisdiction. And its opposition brief reflects serious regret over those
5 harmful admissions, which the City now realizes doom its lawsuit. Desperate to salvage its case, the City
6 alternatively argues it should be allowed to amend the Complaint to omit or outright contradict its judicial
7 admissions. Under the “sham pleading” doctrine, the Court is well within its discretion to deny the City
8 such a blatant abuse of process.

9 The City may not believe Mendocino Railway continues to be a public utility within the CPUC’s
10 jurisdiction. But that’s not a question for this Court. There is no getting around the basic fact that, on the
11 pled admissions, allegations, and prayer, this Court has no subject matter jurisdiction to entertain a
12 challenge to Mendocino Railway’s public-utility status—and, by extension, the CPUC’s continuing
13 jurisdiction over that railroad.

14 The Court easily can—and should—sustain Mendocino Railway’s demurrer and dismiss the
15 lawsuit without leave to amend.¹

16 II. ARGUMENT

17 A. The Court Has No Jurisdiction Over the City’s Claim for Declaratory Relief

18 1. Mendocino Railway Is a CPUC-Regulated Public Utility, and a Declaration Purporting 19 To Extinguish That Legal Status Is Barred by the Public Utilities Code

20 The City’s cause of action for a declaration that Mendocino Railway is “no longer entitled to
21 status as a public utility” is categorically barred because the Court lacks subject matter jurisdiction.
22 Complaint at 1:25-26.

23 The law is not in dispute. Section 1759(a) of the Public Utilities Code provides that the Superior
24 Court “shall [not] have jurisdiction to review, reverse, correct, or annul any order or decision of the
25 commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere
26

27 ¹ If the Court dismisses this case without leave to amend, it need not rule on Mendocino Railway’s
28 concurrently-filed Motion to Strike, which surgically challenges the City’s injunctive-relief allegations
and prayer for an injunction.

1 with the commission in the performance of its official duties, as provided by law and the rules of court.”
2 Pub. Util. Code § 1759(a). “[O]nce assumed,” the CPUC’s jurisdiction “cannot be hampered or second-
3 guessed by a superior court action addressing the same issue.” *Anchor Lighting v. Southern California*
4 *Edison Co.* (2006) 142 Cal.App.4th 541, 548.

5 There is no genuine dispute that the CPUC *has* assumed—and continues to assume—jurisdiction
6 over Mendocino Railway, and that Mendocino Railway remains a CPUC-recognized and -regulated
7 public utility. The Court need look no further than the City’s admissions in its own Complaint:

- 8 • The Complaint admits that Mendocino Railway is, **at present**, a CPUC-regulated, public-
9 utility railroad with “all legal rights of a public utility.” Complaint at 2:5-7.
- 10 • The Complaint admits that its objective is a “declaration regarding the validity of the
11 Mendocino Railway’s status as a public utility”—an admission that the railroad is
12 currently a public utility. Complaint at 1:19-20.
- 13 • The Complaint alleges (falsely) that Mendocino Railway “is **no longer** entitled to status
14 [sic] as a public utility”—again, an admission that the railroad enjoys public-utility status.
15 Complaint at 1:25-26 (emphasis added).
- 16 • The Complaint asks the Court to declare that the railroad is “not subject to regulation [by
17 the CPUC] as a public utility”—once again, an admission that the railroad is currently
18 subject to regulation by the CPUC as a public utility. Complaint 6:12-13. Why would a
19 declaration be needed, if the railroad were not now a CPUC-regulated public utility with
20 “all legal rights of a public utility”? Complaint at 2:5-7.

21 These allegations in the Complaint constitute **judicial admissions** that Mendocino Railway is a
22 CPUC-regulated public utility, and that the entire point of the lawsuit is to countermand the CPUC’s
23 jurisdiction and strip the railroad of its “public utility” status. *Bucur v. Ahmad* (2016) 244 Cal.App.4th
24 175, 187 (“[A] judicial admission in a pleading is not merely evidence of a fact; it is a conclusive
25 concession of the truth of the matter”). Moreover, the fact that the railroad is a CPUC-regulated public
26 utility, recognized as such by the CPUC, is confirmed by the CPUC’s own acts and decisions:

- 27 • Two decisions of the CPUC—which have never been overruled or otherwise
28 questioned—unequivocally reflect the CPUC’s position that it has plenary jurisdiction

1 over the rail line’s safety *and* commuter-service operations. *In the Matter of the*
2 *Application* Calif. Western R.R., Inc., 1998 Cal. PUC LEXIS 189, **10-11 (Jan. 21,
3 1998) (expressly retaining jurisdiction over the entire rail line for safety and commuter-
4 fare purposes, though not over the line’s excursion fares); *see also In the Matter of the*
5 *Application of* Calif. Western R.R., Inc. 1998 Cal. PUC LEXIS 384 (May 21, 1998)
6 (reaffirming jurisdiction and noting that the rail line “transports passengers and freight”).²

7 As explained in detail below, that jurisdiction is grounded in the CPUC’s longstanding
8 view that Mendocino Railway is a public-utility railroad under California law.

- 9 • The CPUC currently identifies Mendocino Railway as a “regulated California railroad.”
10 *See* Beard Decl., Exh. A. With narrow industry-specific exceptions not applicable here,
11 the **Public Utilities** Commission is in the business of regulating **public utilities**.³ Thus,
12 Mendocino Railway is listed as a regulated “railroad” precisely because the CPUC deems
13 it to be a public utility under California law. Pub. Util. Code § 229 (defining “railroad”
14 to be any “railway” that is “owned, controlled, operated, or managed for public use in the
15 transportation of persons or property”); *id.* § 211 (defining a railroad that provides
16 “transportation for compensation to or for the public or any portion thereof” to be a
17 “common carrier”); *id.* § 216 (defining a “public utility” to be any “common carrier”).
18 The CPUC has no other legal basis for assuming jurisdiction over Mendocino Railway—
19 or any other “railroad”—and the City points to none.

20 In sum, the CPUC has assumed jurisdiction over Mendocino Railway because the CPUC has
21 determined it is a public utility. That assumed jurisdiction “cannot be hampered or second-guessed by a
22 superior court action” like the City’s lawsuit, which seeks to eliminate Mendocino Railway’s “public
23 utility” status—the *very basis of the CPUC’s jurisdiction over it*. *Anchor Lighting*, 142 Cal.App.4th at
24 548. Further, as described above, the CPUC has rendered decisions affirming its jurisdiction over
25 Mendocino Railway. The Superior Court has no jurisdiction to “review, reverse, correct, or annul” such

26 _____
27 ² These CPUC decisions are at Exhibits B and E to the Declaration of Paul Beard in Support of Demurrer.

28 ³ Cal. Const., art. XII, §§ 1–6 (vesting the CPUC with the constitutional authority to regulate the State’s public utilities); Pub. Util. Code § 701 (“The commission may supervise and regulate every public utility in the State . . .”).

1 decisions by declaring that Mendocino Railway is no longer a public utility subject to the CPUC’s
2 exclusive jurisdiction. Pub. Util. Code § 1759(a). If Mendocino Railway is not a public utility, then the
3 CPUC has no jurisdiction over it, and the CPUC can no longer perform its official duties with respect to
4 it. Thus, the judicial determination requested by the City would “enjoin, restrain,” and “interfere” with
5 the CPUC’s performance of the agency’s official duties. *Id.*

6 **2. None of the City’s Arguments Against Dismissal Has Merit**

7 **a. The CPUC Has Not Only Affirmed, But Also Reaffirmed Its Jurisdiction Over**

8 **Mendocino Railway**

9 The City’s various arguments against dismissal of its claim can be easily dispatched. The City’s
10 primary argument is that the CPUC is not a public utility because the CPUC purportedly has determined
11 it is not. Consequently, the City reasons, the Superior Court is being asked to “enforce” a CPUC
12 “finding”—not to interfere with or second-guess the CPUC’s jurisdiction. *See, e.g.*, Opp. at 9-10. The
13 argument borders on the frivolous.

14 First, the City’s new assertion that Mendocino Railway is not a public utility, acknowledged and
15 regulated as such by the CPUC, flies in the face of numerous judicial admissions in the Complaint that
16 it is. *Bucur*, 244 Cal.App.4th at 187. Absent a showing of “mistake or inadvertence” in drafting those
17 admissions—a showing that the City has not made—the City is bound by the admissions. *Hearn Pacific*
18 *Corp. v. Second Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117, 132. Indeed, the myriad and
19 deliberate ways in which the admissions manifest themselves throughout the Complaint show that the
20 City knew what it was saying, though likely unaware of the fatal effect of those admissions on this
21 Court’s jurisdiction. Complaint at 1:19-20, 1:25-26, 2:5-7, 6:12-13.

22 Second, the *premise* of the City’s new assertion is false. The CPUC has never determined that
23 Mendocino Railway is not a public utility. The City cites to the 1998 decision of the CPUC deregulating
24 *excursion fares* charged by Mendocino Railway’s *predecessor*, on the ground that excursions are not a
25 public-utility “function[.]” 1998 Cal. PUC LEXIS 189, *3, *8. But that is a far cry from declaring that
26 the railroad as an entity is not a public utility. Quite the contrary, as reflected in its decisions, the CPUC
27 retained jurisdiction over the safety of the railroad’s entire operations (including excursions), as well as
28 the railroad’s commuter-passenger service. *Id.* at *3, *11. ***There is nothing in any of the CPUC’s***

1 *decision that remotely suggests it abandoned public-utility jurisdiction over the railroad now owned*
2 *and operated by Mendocino Railway.*

3 Consequently, the declaration that the City requests would not “enforce” any CPUC finding or
4 “further” any CPUC policy. *See, e.g.,* Opp. at 10. To repeat, the City seeks “a declaration that the
5 Mendocino Railway is not subject to regulation [by the CPUC] as a public utility.” The CPUC has
6 *assumed* jurisdiction over the CPUC as a public utility, so that a declaration purporting to strip
7 Mendocino Railway of its “public utility” status and thereby remove it from the CPUC’s jurisdiction
8 would only interfere with and hamper the CPUC’s authority.

9 **b. The CPUC Has Assumed Jurisdiction Over Mendocino Railway As a Public Utility**

10 The City concedes that the CPUC has jurisdiction over Mendocino Railway, but not as a *public*
11 *utility*. The City asserts, without relevant authority, that the CPUC regulates railroads whether or not
12 they are public utilities. Opp. at 11-13. As an example, it cites to the CPUC’s collaboration with the
13 Federal Railroad Administration (“FRA”) to ensure railroad safety. Opp. at 11-12. But the City
14 misunderstands the legal framework governing the CPUC’s regulation of railroads, including for rail
15 safety.

16 Under the Public Utilities Code,⁴ all “railroads” are “public utilities.” The Code defines
17 “railroad” as a “railway” operated “for public use in the transportation of persons or property.” Pub. Util.
18 Code § 229. The Code, in turn, labels a “railroad” meeting that definition as a “common carrier.” *Id.* §
19 211. A “common carrier” is a kind of “public utility.” *Id.* § 216. Thus, if an entity is a “railroad,” it is a
20 public utility under state law. And, when the CPUC assumes jurisdiction over and regulates a
21 “railroad”—like Mendocino Railway—it is regulating a *public utility*. Beard Decl., Exh. A (listing
22 “regulated railroads”).

23 That the CPUC regulates for railroad safety in cooperation with the Federal Railroad
24 Administration does not alter this conclusion. For a state agency like the CPUC to partner with the FRA,
25 the agency must have “jurisdiction under State law to participate in investigative and surveillance
26 activities concerning Federal railroad safety laws and regulations,” as well as “the safety practices of the
27

28 ⁴ All references herein to the “Code” are to the Public Utilities Code.

1 facilities, equipment, rolling stock, and operations of railroads in that State.” 49 C.F.R. §§ 212.103(a)-
2 (b), 212.105(e). Of course, the Code confers plenary regulatory authority on the CPUC to ensure the
3 safety of “railroads” in the State; on that statutory basis, the CPUC is able to and does collaborate with
4 the FRA. For example, section 309.7 of the Public Utilities Codes states:

5 The division of the commission responsible for railroad safety shall be responsible for
6 inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and
7 operations of *railroads* and public mass transit guideways, and for enforcing state and
8 federal laws, regulations, orders, and directives relating to transportation of persons or
9 commodities, or both, of any nature or description by rail.

8 Pub. Util. Code § 309.7(a) (emphasis added).

9 Similarly, in Chapter 4 of the Code—appropriately entitled “Regulation of *Public Utilities*”—
10 the CPUC is charged with “tak[ing] all appropriate action necessary to ensure the safe operation of
11 railroads in this state.” *Id.* § 765.5 (emphasis added). Again, “railroads”—as used and defined in the
12 Code—are “public utilities.” Thus, when the CPUC regulates for railroad safety, either alone or in
13 cooperation with the FR, it is regulating the railroad *as a public utility*. And, when the CPUC expressly
14 affirmed railroad-safety jurisdiction over all operations of the Mendocino Railway line, it did so on the
15 basis of the railroad’s status as a public utility subject to the agency’s jurisdiction. Beard Decl., Exh. B
16 at *9.

17 Citing section 216(a)(1) of the Code, the City observes that the Code’s definition of “public
18 utility” specifically identifies a number of corporations—such as toll, water, sewer system, telephone,
19 and other corporations—but not “railroad corporation.” Opp. at 13:7-10. The City overlooks the fact that
20 section 216(a)(1) identifies—*as the first kind of public utility*—“every common carrier,” which by
21 definition includes “[e]very railroad corporation.” Pub. Util. Code § 211(a). Railroads are public utilities.

22 The City also contends that Mendocino Railway no longer qualifies as a “common carrier” for
23 sundry reasons (with which Mendocino Railway disagrees); therefore, the Court should declare it a “non-
24 public utility.” Opp. at 13:12-16. But again, because the CPUC already has assumed jurisdiction over
25 Mendocino Railway *as a public utility*—and affirmed and reaffirmed its regulatory authority over that
26 public-utility railroad—the dispute over whether Mendocino Railway continues to be a public utility
27 subject to the CPUC’s jurisdiction is not a dispute over which the Superior Court has jurisdiction. Pub.
28 Util. Code § 1759(a).

1 The City also finds no support in *City of St. Helena v. Pub. Util. Comm'n* (2004) 119 Cal.App.4th
2 793. There, the City of St. Helena successfully challenged the Napa Valley Wine Train's status as a
3 public utility subject to the CPUC's jurisdiction. *Id.* at 803. The Court of Appeal did not say, as the City
4 claims, that "the CPUC could retain certain authority over non-public utility trains." *Opp.* at 12:27. Nor
5 did the Court of Appeal hold that "the CPUC could retain certain authority over trains" that are not public
6 utilities. *Opp.* at 13:2-4. To the contrary, the Court of Appeal declined to decide that issue. *City of St.*
7 *Helena*, 119 Cal.App.4th at 801 n.4.

8 It is worth noting that the CPUC has honored the *City of St. Helena* decision. It does not list Napa
9 Valley Wine Train as a CPUC-regulated railroad. Beard Decl., Exh. A. If *City of St. Helena* stood for
10 the proposition that the CPUC has jurisdiction over non-public utility railroads (a contradiction in terms),
11 then why would the CPUC disavow jurisdiction over the Wine Train as a regulated railroad? The City
12 has no answer.

13 **c. The Court Does Not Need "Fact Development" To Conclude Section 1759 Bars**
14 **Jurisdiction Over This Action**

15 The City argues a demurrer is improper because further "fact development" is needed to
16 determine the scope of the CPUC's regulatory authority over Mendocino Railway, and whether or how
17 the City's Superior Court action or the requested injunction thwarts that authority. *Opp.* at 10:24—11:9.
18 The City's argument is without merit.

19 First, the demurrer does not turn on the scope of the CPUC's authority or the nature of the alleged
20 violations that the City claims Mendocino Railway committed. The demurrer turns on a more
21 fundamental question: Can the Court declare that Mendocino Railway should no longer be subject to
22 regulation by the CPUC as a public utility? Complaint at 6:12-14. This is a strictly legal question
23 concerning the Court's jurisdiction under section 1759(a) of the Code, which is resolved without
24 recourse to further facts about the scope of the CPUC's authority or the violations alleged in the
25 Complaint.

26 Second, to the extent the City believes the propriety of its proposed injunction requires more fact
27 development, that issue is not implicated by Mendocino Railway's demurrer. As explained in the next
28 Part II.B, *infra*, the City concedes there is no "cause of action for an injunction," so that the demurrer's

1 only target is the cause of action for declaratory relief. If the City’s sole cause of action—which attacks
2 Mendocino Railway’s status as a CPUC-regulated public utility—fails, the City will be precluded from
3 any and all relief, including an injunction. That is because “[a] cause of action must exist before a court
4 may grant a request for injunctive relief.” *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65.
5 Thus, to resolve this demurrer, no further fact development is necessary.

6 **B. The City Admits It Has No Cause of Action for an “Injunction”**

7 The City concedes that the “complaint does not state any separate cause of action for injunctive
8 relief,” so that the only cause of action in this lawsuit is one for declaratory relief. Opp. at 14-21-23.
9 Since a demurrer attacks only causes of action, and given the City’s concession, this Reply Brief
10 addresses only the viability of the City’s claim for “a declaration that Mendocino Railway is not subject
11 to regulation [by the CPUC] as a public utility.” Complaint at 6:12-14.

12 The City’s arguments in support of its injunctive-relief allegations are addressed in Mendocino
13 Railway’s Reply Brief in Support of its Motion to Strike, filed concurrently herewith.

14 **C. Amendment of the Complaint Would Be a Sham**

15 The City argues it should be granted leave to amend its Complaint. Almost the entirety of its
16 “Standard of Review on Demurrer” is dedicated to convincing the Court that, if the Court has any doubts
17 about the viability of its claim, it should allow amendment. *See, e.g.*, Opp. at 8-9. If ever there were
18 grounds to deny leave to amend, it’s here.

19 “The plaintiff bears the burden of proving an amendment could cure the defect.” *T.H. v. Novartis*
20 *Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162. Further, in considering whether leave to amend is
21 appropriate, courts “guard against sham pleadings” to “prevent an abuse of process.” *Deveny v. Entropin*
22 *Inc.* (2006) 139 Cal.App.4th 408, 426. Importantly, the Court should “deny leave to amend when the
23 proposed amendment omits or contradicts harmful facts pleaded in a prior pleading unless a showing is
24 made of mistake or other sufficient excuse for changing the facts.” *Sanai v. Saltz* (2009) 170 Cal.App.4th
25 746, 768. “Absent such a showing, the proposed pleading may be treated as a sham.” *Id.*

26 Here, the City has not borne its burden of proving an amendment could cure the Complaint’s
27 defects. With respect to its cause of action (for declaratory relief), the City seeks leave to “amend” its
28 admissions that Mendocino Railway is currently a public utility that is recognized and regulated as such

1 by the CPUC. Opp. at 9 n.1. It doesn't say how it would amend or how such an amendment would cure
2 the fatal defect that such admissions have produced. But one thing is clear from the City's brief:
3 Amendment would involve either omitting or contradicting those harmful admissions. Having failed to
4 argue mistake or inadvertence in drafting those admissions, the resulting amended complaint would be
5 a sham, which the Court should not authorize.

6 **III. CONCLUSION**

7 As the City admits throughout its Complaint, Mendocino Railway is currently a public utility
8 acknowledged and regulated as such by the CPUC. This Superior Court action is intended to—and, if
9 successful, would—hamper the CPUC's jurisdiction over Mendocino Railway, so that the City can make
10 itself the regulatory overseer of the railroad's operations. The Court simply has no jurisdiction to
11 entertain the City's challenge, let alone grant "a declaration that Mendocino Railway is not subject to
12 regulation [by the CPUC] as a public utility." Moreover, the City's proposed amendment to the
13 Complaint, whose purpose would be to omit or contradict the harmful judicial admissions contained in
14 the original pleading, would be a sham that the Court should not countenance.

15 For all these reasons, the City's lawsuit should be dismissed without leave to amend.

16
17 DATED: February 16, 2022

/s/ Paul Beard II

18

Attorneys for Defendant MENDOCINO RAILWAY