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6 MENDOCINO RAILWAY

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MENDOCINO**

9 CITY OF FORT BRAGG, a California
10 municipal corporation

11 Plaintiff,

12 v.

13 MENDOCINO RAILWAY and DOES 1-10,
14 inclusive,

15 Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**REPLY BRIEF IN SUPPORT OF
DEFENDANT MENDOCINO RAILWAY'S
MOTION TO STRIKE**

Hearing Date: February 24, 2022

Hearing Time: 2:00 p.m.

Complaint Filed: October 28, 2021

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I. INTRODUCTION

1
2 Plaintiff City of Fort Bragg asks for a sweeping injunction against Defendant Mendocino
3 Railway that would compel it to “comply with *all* City ordinances, regulations, and lawfully adopted
4 codes, jurisdiction and authority, as applicable.” Complaint at 6:15-18 (emphasis added). Such an
5 injunction is not just overly broad; it is *limitless*. For that reason, the injunctive-relief allegations,
6 including the proposed injunction, are federally preempted under the Interstate Commerce Commission
7 Termination Act of 1995 (“ICCTA”).¹

8 The City’s primary argument is that ICCTA does not *absolutely* preempt local laws and
9 regulations. But the City has created a straw man. Mendocino Railway is not defending absolute federal
10 preemption of all local laws and regulations; rather, it is arguing that the City’s *limitless injunction*—
11 purporting to subject the railroad entirely and indiscriminately to the City’s laws, regulations, and
12 authority—is unsupportable as a matter of hornbook preemption law governing federally regulated
13 railroads. The injunction sought by the City would, for example, allow it to dictate to Mendocino
14 Railway where, when, and how it can transport persons and freight on its line—matters that are squarely
15 within the exclusive jurisdiction of the federal Surface Transportation Board (“STB”). *See, e.g.*, 49
16 U.S.C. § 10501(b).

17 Perhaps recognizing how far its injunctive-relief allegations go, the City argues, as a fallback,
18 that the Court can always pare it down at a later date. But Mendocino Railway’s Motion to Strike
19 addresses, as it must, the City’s allegations *as they are pled*. And such a motion will lie where, on the
20 face of the Complaint, any part of it is improper or not drawn in conformity with the law. Civ. Proc.
21 Code § 436. Allegations that are otherwise unlawfully pled—including a ludicrously broad request for
22 injunctive relief—cannot be saved by promises of future restraint and moderation.

23 Next, the City tries to cast doubt on Mendocino Railway’s status as a federally regulated railroad,
24 even after the City has been on record as saying that, “[a]s an established railroad, . . . whether or not the
25 Mendocino Railway is federally regulated has not been in question.” Declaration of Paul Beard in
26

27 ¹ The City focuses on federal preemption and does not explain why a limitless injunction over a public-
28 utility railroad would be consistent with *state* preemption principles, as discussed in the Motion to Strike
at pp. 10-12.

1 Support of Demurrer, Exh. C, p. 2. None of the City’s arguments or authorities change the fact that
2 Mendocino Railway is a federally regulated railroad under the exclusive jurisdiction of the STB.

3 Finally, the City urges the Court to grant it leave to amend its injunctive-relief allegations.
4 However, as with the demurrer, the City fails to meet its burden of showing what amendments it would
5 make or how they would cure the defects at issue. The City is not entitled to amend its Complaint absent
6 such a showing.

7 If the Court does not dismiss the City’s lawsuit, then at a minimum, it should strike the City’s
8 improper injunctive-relief allegations without leave to amend.

9 II. ARGUMENT

10 A. The City’s Proposed Injunction—Which Would Grant the City *Limitless* Regulatory Power 11 over Mendocino Railway—Is Federally Preempted

12 In both its opposition to the demurrer and its opposition to the motion to strike, the City argues
13 at great length that federal preemption is not absolute. But it is not on the basis of *absolute* ICCTA
14 preemption that Mendocino Railway seeks to strike the City’s injunctive-relief allegations, including its
15 request for an injunction. Rather, Mendocino Railway challenges the *absolute authority* inherent in the
16 City’s injunctive-relief allegations, which cannot be squared with even the most modest interpretation
17 of ICCTA preemption.

18 On the face of the Complaint, it is clear the City wants *complete* control over Mendocino
19 Railway. It has deliberately crafted the injunction it wants—one that subjects Mendocino Railway to
20 “*all* City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority, as applicable.”
21 Complaint at 6:15-18 (emphasis added). Not *some* laws and regulations. Not laws and regulations for
22 specific purposes. But *all* City laws and regulations—and, for good measure, *all* of the City’s
23 “jurisdiction and authority.” *Id.*

24 On its face, the proposed injunction is absurd and easily preempted by ICCTA. The Act states
25 that “[t]he jurisdiction of the [STB] over . . . transportation by rail carriers,” as well as “the construction,
26 acquisition, operation, abandonment, or discontinuance of spur, industrial, team switching, or side tracks,
27 or facilities . . . is *exclusive*.” 49 U.S.C. § 10501(b) (emphasis added). Any local “environmental
28 permitting or preclearance regulation that would have the effect of halting a private railroad project

1 pending environmental compliance would be categorically preempted.” *Friends of Eel River v. North*
2 *Coast R.R. Auth’y* (2017) 3 Cal.5th 677, 703. A court injunction requiring a railroad to submit to all of
3 a local government’s laws, regulations, authority, and jurisdiction would easily give that government the
4 authority over the railroad’s transportation, operations, and facilities, in violation ICCTA. Yet that is
5 *precisely* what the City demands: an unfettered license to interfere in any way, at any time, with
6 Mendocino Railway’s rail transportation, operations, and facilities.

7 Indeed, the Complaint gives clues as to how the City would start wielding its limitless injunction
8 against the Mendocino Railway. In the Complaint, the City cites examples of where it has unsuccessfully
9 tried to inspect and permit—to effectively *pre-clear*—Mendocino Railway’s roundhouse and storage
10 shed, which are rail-related facilities and equipment. Complaint ¶ 12. But, as noted above, environmental
11 and land-use compliance requirements with respect to railroad facilities and equipment are categorically
12 preempted by ICCTA. 49 U.S.C. § 10501(b) (STB has “exclusive” jurisdiction over rail “facilities”); *id.*
13 § 10102(9) (STB’s exclusive jurisdiction reaches “property” or “equipment . . . related to the movement
14 of passengers or property, or both, by rail”). Of course, the City has set its eyes on much more than a
15 roundhouse and storage shed; armed with a limitless injunction, the City admits it would relentlessly
16 pursue “other activities or [alleged] violations not detailed in the Complaint.”² Opp. to Demurrer at 18:7-
17 11. ICCTA does not countenance local authorities with roving regulatory powers over railroads.

18 **B. The Motion to Strike Properly Targets the Injunctive-Relief Allegations As Pled—Not As**
19 **They Might Be Limited or Tailored in the Future**

20 Throughout much of its brief, the City seems to backtrack on the injunction it requests in the
21 Complaint. The City now claims it’s not *really* asking for a limitless injunction subjecting Mendocino
22 Railway to all of the City’s laws, regulations, and jurisdiction—a demand it must acknowledge goes
23 beyond what ICCTA permits. Rather, the City says it’s merely asking for an injunction subjecting the
24 railroad to “applicable,” “not preempted,” and “must be followed” laws and regulation. Opp. to Mot. to
25

26 ² In its opposition to the Motion to Strike, the City improperly alleges that Mendocino Railway’s has
27 refused to grant a county department access to its railroad facilities for an inspection. Opp. to Demurrer
28 at 18:11-14. Apart from being inadmissible hearing, those allegations are extraneous material intended
to unduly prejudice Mendocino Railway and should be disregarded. Evid. Code § 1200 (hearsay is
inadmissible).

1 Strike at 6:10-11. Of course, that is *not* what the City’s prayer for an injunction states. Complaint at 6:15-
2 18.

3 The City alternatively argues that the proposed injunction should survive Mendocino Railway’s
4 motion because “the Court may issue a more limited injunctive order in the end” that is “tailored to the
5 Court’s legal and factual findings.” Complaint at 21:13-16.

6 The City is trying to create a moving target for the Motion to Strike, but the law is clear: “The
7 grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of
8 which the court is required to take judicial notice.” Civ. Proc. Code § 437(a). Mendocino Railway targets
9 the injunctive-relief allegations on their face and as pled. The City cites to no authority allowing the
10 Court to overrule Mendocino Railway’s objection to the proposed injunction, as pled, on the basis of a
11 promise or speculation that the injunction will be “more limited” or more narrowly “tailored” in the
12 future. Opp. to Demurrer at 21:12-16.

13 C. **As the City Has Publicly Conceded, Mendocino Railway Is a Federally Regulated Railroad**

14 In a sudden about-face, the City now claims that Mendocino Railway is not a federally regulated
15 railroad. This, after the City has publicly recognized—as late as 2019—that “whether or not the
16 Mendocino Railway is federally regulated has not been in question.” Beard Decl., Exh. C at 2. The City
17 doesn’t explain this troubling contradiction, which casts doubt on the sincerity of the City’s litigation-
18 inspired assertion. Regardless, none of the City’s arguments or authorities change the fact that
19 Mendocino Railway is a federally regulated railroad.

20 First, the City seems to suggest that intrastate railroads, like Mendocino Railway, are not
21 federally regulated. Opp. to Demurrer at 18:27-28. That is not true. The STB has exclusive jurisdiction
22 over intrastate rail carriers, like Mendocino Railway, that are “part of the interstate rail network.” 49
23 U.S.C. § 10501(a)(1)-(2); see also *Mendocino Railway—Acquisition Exemption—Assets of The*
24 *California Western Railroad*, Finance Docket No. 34465 (Apr. 9, 2004) (STB asserting jurisdiction to
25 approve sale of the railroad to Mendocino Railway).³ Especially after ICCTA’s enactment in 1995, the
26 fact that a railroad operates entirely in one State—without more—is insufficient to remove it from the
27

28 ³ Available at the STB’s official site: <https://bit.ly/3oRidlt>.

1 STB’s jurisdiction. *See, e.g., Or. Coast Scenic R.R., LLC v. Or. Dep’t of State Lands*, 841 F.3d 1069,
2 1075 (9th Cir. 2016) (“The [Surface Transportation] Board has also emphasized that the ICCTA actually
3 expanded the Board’s jurisdiction to ensure that transportation between places in the same state would
4 be within the Board’s jurisdiction as long as that transportation was related to interstate commerce.”
5 (internal citation and quotation marks omitted)).

6 Second, none of the decisional authorities the City cites disproves that Mendocino Railway is a
7 federally regulated railroad.

8 The City cites to three agency decisions and one federal court opinion from the late 1980s and
9 early 1990s—before Congress enacted ICCTA in 1995. *Opp. to Demurrer* at 19. Two of the agency
10 decisions (rendered by STB’s predecessor, the Interstate Commerce Commission) *support* the view that
11 the railroad now owned by Mendocino Railway was within the ICC’s exclusive jurisdiction. *Mendocino*
12 *Coast Railway, Inc. Discontinuance of Train Service in Mendocino County, CA*, 1986 ICC LEXIS 188,
13 Finance Docket No. 30820 (Aug. 15, 1986) and *Mendocino Coast Railway, Inc. Discontinuance of Train*
14 *Service in Mendocino County, CA*, 1986 ICC LEXIS 72, Finance Docket No. 30820 (Nov. 12, 1986).

15 The third agency decision, which the City heavily relies on, contains a pre-ICCTA analysis of
16 how to determine whether an intrastate railroad is subject to federal jurisdiction. *Napa Valley Wine Train,*
17 *Inc. Petition for Declaratory Order*, 7 I.C.C.2d 954, Finance Docket No. 31156 (July 18, 1991). Its
18 analysis is of limited value, given the subsequent passage of ICCTA. ICCTA “expanded” the STB’s
19 jurisdiction to ensure intrastate railroads that are part of the interstate rail network would be subject to
20 federal oversight. *Or. Coast Scenic R.R.*, 841 F.3d at 1075.

21 The D.C. Circuit’s decision in *Illinois Commerce Comm’n v. ICC*, 879 F.2d 917 (D.C. Cir. 1989),
22 is also of limited value, given its analysis turns on pre-ICCTA law. Illinois Commerce dealt with a
23 federal scheme whereby states had the jurisdiction to regulate railroad tracks and facilities within their
24 borders. That scheme made way for greater STB jurisdiction under ICCTA. 49 U.S.C. § 10501(b)(1),
25 (2).

26 Finally, the City cites a 2006 decision of the federal Railroad Retirement Board. B.C.D. 06-42
27 (Sept. 28, 2006); *see also* *Opp. to Demurrer* at 20:7 (providing hyperlink to decision). There, the
28 Retirement Board opined, with little analysis, that Mendocino Railway didn’t operate in interstate

1 commerce. It did so for the purpose of determining whether Mendocino Railway qualified as an
 2 “employer” under the Railroad Retirement Act and Railroad Unemployment Act.

3 At most, the Court may take judicial notice of the fact that the Retirement Board *believed* that
 4 Mendocino Railway did not operate in interstate commerce, but the Court cannot accept the truth of that
 5 belief. *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th
 6 583, 600 (“[A] court generally may not take judicial notice of the truth of facts asserted within
 7 documents.”). Further, the Retirement Board’s opinion about Mendocino Railway’s status as a federal
 8 railroad in 2006, rendered for the narrow purpose of determining its “employer” status, has no bearing
 9 whatsoever on (1) whether Mendocino Railway is in fact a part of the interstate rail network, or (2)
 10 whether the *Surface Transportation Board* acknowledges and regulates Mendocino Railway as such
 11 under ICCTA. The Retirement Board’s decision also comes years before the City publicly declared that
 12 Mendocino Railway’s status as “an established railroad” that is “federally regulated” is not “in question.”
 13 Beard Decl., Exh. C, p. 2.

14 **D. The City Is Not Entitled to Leave To Amend**

15 “The plaintiff bears the burden of proving an amendment could cure the defect.” *T.H. v. Novartis*
 16 *Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162. Here, the City has not borne its burden. Its brief does
 17 not explain what amendments it would make or how such amendments would cure the defect in its
 18 Complaint—i.e., that a broad injunction purporting to subject Mendocino Railway to all manner of local
 19 laws and regulations is federally preempted. As a result, the City should not be permitted to amend its
 20 Complaint.

21 **III. CONCLUSION**

22 For the foregoing reasons, if the Court does not dismiss the case in its entirety, then it should
 23 strike the Complaint’s injunctive-relief allegations, including its prayer for an injunction, without leave
 24 to amend.

25
 26 DATED: February 16, 2022

/s/ Paul Beard II

27 _____
 Attorneys for Defendant MENDOCINO RAILWAY