

1 PAUL J. BEARD II (State Bar No. 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 E-mail: paul.beard@fisherbroyles.com

8 Attorneys for Plaintiffs
9 MENDOCINO RAILWAY

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION**

MENDOCINO RAILWAY, a California
corporation,

Plaintiff

v.

JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
Commission; CITY OF FORT BRAGG, a
California municipal corporation; and DOES 1
through 20, inclusive,

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

INTRODUCTION

1
2 1. This case is about state and local authorities’ illegal efforts to impose land-use permitting
3 and preclearance requirements on a federal railroad’s land-use activities, in blatant violation of federal
4 preemption principles.

5 2. Plaintiff Mendocino Railway is a Class III, common-carrier railroad with facilities,
6 equipment and operations located partly in California’s coastal zone, including in the City of Fort Bragg.
7 Mendocino Railway has been and continues to be under the exclusive jurisdiction of the federal State
8 Transportation Board (“STB”), as mandated by the Interstate Commerce Commission Termination Act
9 (“ICCTA”), 49 U.S.C. § 10501(b). Consequently, Mendocino Railway’s rail-related work and operations
10 are not subject to state and local land-use permitting and preclearance regulation.

11 3. The California Coastal Commission (“Commission”)—a state agency that preclears land-
12 use projects in the coastal zone pursuant to state law—has demanded that Mendocino Railway apply for
13 a state land-use permit before performing any rail-related work on its railroad property located within the
14 coastal zone. As a federally regulated railroad with preemption rights, Mendocino Railway has refused to
15 submit to the Commission’s demands as to its rail-related activities. But the constant threat of enforcement
16 action by the Commission, including stop-work orders and prohibitively expensive penalties and fines,
17 for rail activities undertaken without that agency’s pre-approval has rendered Mendocino Railway unable
18 to proceed with its railroad projects as planned.

19 4. The City of Fort Bragg (“City”) has joined with the Commission in demanding that
20 Mendocino Railway submit to its plenary land-use authority over, and preclearance review of, rail-related
21 activities occurring within the City’s boundaries. The City has gone so far as to file a state-court action to
22 compel Mendocino Railway to apply for permits for any and all work on its railroad property and facilities
23 within City boundaries. As a federally regulated railroad with preemption rights, Mendocino Railway has
24 refused to submit to the City’s permit jurisdiction, as well.

25 5. This action seeks to resolve this ongoing controversy between Mendocino Railway on the
26 one hand, and state and local authorities on the other. To avoid the unlawful enforcement of federally-
27 preempted regulation, the concomitant disruption of its railroad operations and projects, and the
28 uncertainty generated by this dispute, Mendocino Railway seeks a declaration that the actions of the

1 Commission and the City to regulate Mendocino Railway’s operations, practices and facilities are
2 preempted under 49 U.S.C. §10501(b) and that Mendocino Railways activities are subject to the STB’s
3 exclusive jurisdiction. Therefore, Mendocino Railway has the right under the ICCTA to undertake any
4 and all rail-related activities within the coastal zone, including within the City’s boundaries, without
5 preclearance or approval from the Commission or the City.

6 **JURISDICTION AND VENUE**

7 6. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises under the laws of
8 the United States, and this Court has the power to grant the declaratory judgment requested herein under
9 Fed. R. Civ. P. 57 and 28 U.S.C. § 2201.

10 7. Under 28 U.S.C § 1391(b), venue is proper in the Northern District, where Defendants are
11 located and a substantial part of the events or omissions giving rise to Plaintiff’s claim occurred here.

12 **DIVISIONAL ASSIGNMENT**

13 8. Assignment of this case to the Eureka division is appropriate under L.R. 3-2, because all
14 actions, events or omissions giving rise to Plaintiff’s claim occurred in Mendocino County.

15 **PARTIES**

16 9. Mendocino Railway is a railroad corporation organized under the laws of the State of
17 California. It owns real property, rail facilities and rail equipment in various regions of the State, including
18 but not limited to the coastal zone and the City of Fort Bragg in Mendocino County. It is a Class III
19 railroad subject to the STB’s jurisdiction.

20 10. Defendant Jack Ainsworth is the Executive Director of the California Coastal Commission,
21 is charged with the day-to-day enforcement of the California Coastal Act, and is sued in his official
22 capacity. Under the Coastal Act, development on land in the coastal zone generally requires a land-use
23 permit (known as a “Coastal Development Permit” or “CDP”). The Executive Director has the authority
24 to, among other things, directly issue disruptive cease-and-desist orders to stop work he believes has been
25 performed without a CDP. Pub. Res. Code § 30809. He also has the authority to pursue other enforcement
26 orders against landowners, including severe penalties, through recommendations made to the Commission
27 at a public hearing. *See, e.g.*, Pub. Res. Code §§ 30811 (authorizing issuing of restoration orders requiring
28 landowner to restore property to condition before allegedly unlawful development occurred), 30821.3

1 (authorizing penalties of up to \$11,500 *per day* per violation for any Coastal Act violation, including
2 development without a CDP). Through his staff, the Executive Director has made clear its view that
3 Mendocino Railway’s rail-related projects in the coastal zone require a CDP, and that *past* rail-related
4 work in the coastal zone required a CDP, rendering Mendocino Railway a violator that is exposed to
5 enforcement action and penalties.

6 11. Defendant City of Fort Bragg is a municipal corporation organized and existing under and
7 by virtue of the laws of the State of California. Except where preempted, the City has a general police
8 power to regulate land use within its jurisdiction. Under the Coastal Act, it has been delegated the authority
9 under state law to preclear and permit development within the City. The City wrongly contends that
10 Mendocino Railway requires its pre-approval, including via a CDP, for land-use activities occurring on
11 property within its jurisdiction.

12 GENERAL ALLEGATIONS

13 A. Legal Background

14 12. The STB has “exclusive” jurisdiction over (1) “transportation by rail carriers” and (2) “the
15 construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching,
16 or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.”
17 49 U.S.C. § 10501(b). The ICCTA defines “transportation” broadly to include “(A) a locomotive, car,
18 vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any
19 kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an
20 agreement concerning use; and (B) services related to that movement, including receipt, delivery,
21 elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of
22 passengers and property.” *Id.* § 10102(9); *see also Or. Coast Scenic R.R., LLC v. Or. Dep’t of State Lands*,
23 841 F.3d 1069, 1072 (9th Cir. 2016).

24 13. The STB’s exclusive jurisdiction over a railroad means that state and local permitting and
25 preclearance regulation of a railroad’s activities are broadly preempted. U.S. Const. art. VI, cl. 2 (Supreme
26 Clause); 49 U.S.C. § 10501(b) (ICCTA “preempt[s] the remedies provided under Federal or State law”);
27 *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (The ICCTA’s preemptive scope
28 is “broad.”); *Friends of Eel River v. North Coast R.R.*, 399 P.2d 37, 60 (Cal. 2017) (holding that “state

1 environmental permitting or preclearance regulation that would have the effect of halting a private railroad
2 project pending environmental compliance would be categorically preempted”); *North San Diego County*
3 *Transit Dev. Bd.—Petition for Declaratory Order*, 2002 WL 1924265 (STB 2002) (holding that the
4 Coastal Act was preempted by ICCTA as applied to rail projects); *Padgett v. STB*, 804 F.3d 103, 105 (1st
5 Cir. 2015) (ICCTA preempts state law governing “regulation of rail transportation”). “Under the ICCTA,
6 the [STB] has jurisdiction over “transportation by rail carrier,” and “[w]here the [STB] has such
7 jurisdiction, it is exclusive. Whether or not the [STB] is exercising its regulatory authority over the
8 transportation, state and local laws governing such permitting are generally preempted.” *Del Grosso v.*
9 *STB*, 804 F.3d 110, 113-14 (1st Cir. 2015).

10 14. The ICCTA “shields railroad operations that are subject to the [STB’s] jurisdiction from
11 the application of many state and local laws, including local zoning and permitting laws and laws that
12 have the effect of managing or governing rail transportation.” *City of Alexandria, VA – Pet. for Decl.*
13 *Order*, STB Fin. Docket No. 35157, 2009 STB LEXIS 3, n.2 (Feb. 17, 2009). Courts and the STB have
14 long recognized that the ICCTA categorically preempts “any form of state or local permitting or
15 preclearance that, by its nature could be used to deny a railroad the ability to conduct some part of its
16 operations or proceed with activities that the [STB] has authorized.” *CSX Transp., Inc., STB Fin. Docket*
17 *No. 34662*, 2005 WL 1024490, at *2 (STB May 3, 2005). These categories of state and local regulation
18 constitute “per se unreasonable interference with interstate commerce.” *Id.* at *3.

19 15. Courts have applied this principle to find that rail carriers need not comply with state or
20 local permitting required as a condition of construction and operation. *See, e.g., Padgett*, 804 F.3d at 106-
21 07 (state and local zoning and permitting regulation preempted); *Norfolk S. Ry. Co. v. City of Alexandria*,
22 608 F.3d 150, 160 (4th Cir. 2010) (though city’s ordinance and permit requirements enhance public safety,
23 they unreasonably burden rail transportation); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 642-
24 43 (2nd Cir. 2005) (state pre-construction permit process is preempted as it unduly interferes with
25 interstate commerce and unduly delays construction of railroad facilities); *City of Auburn*, 154 F.3d at
26 1029-31 (local environmental regulation of railroad preempted by ICCTA).

27 16. Similarly, the ICCTA preempts local noise ordinances and even nuisance suits by nearby
28 residents to the extent they would prevent, manage, or regulate rail operations. *See, e.g., Pace v. CSX*

1 *Transportation, Inc.*, 613 F.3d 1066 (11th Cir. 2010) (ICCTA preempts private nuisance suit claiming
2 operation of side track caused noise and smoke making land virtually unusable); *Delaware v. STB*, 859
3 F.3d 16, 21 (D.C. Cir. 2017) (state law prohibiting locomotives from idling to reduce noise is categorically
4 preempted as directly regulating rail transportation); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444
5 (5th Cir. 2001) (ICCTA unambiguously preempted state negligence claim); *Kiser v. CSX Real Prop.*, 2008
6 U.S. Dist. LEXIS 90676 (M.D. Fla. Nov. 7, 2008) (ICCTA preempts nuisance claims against intermodal
7 rail operation); *Norfolk S. Ry. Co. v. City of Maple Heights*, 2003 U.S. Dist. LEXIS 28282, * 9 - *15 (N.D.
8 Ohio, May 14, 2003) (ICCTA preempts application of local noise ordinance to intermodal rail facility);
9 *Cannon v. CSX Transp., Inc.*, 2005 Ohio App. LEXIS 77, *P 21 - *P 25 (Ohio App. 2005) (homeowner
10 nuisance suit for noise and vibration preempted). The ICCTA was enacted with the purpose of expanding
11 federal jurisdiction and preemption of railroad regulation. *Or. Coast*, 841 F.3d at 1072.

12 **B. History and Operations of Mendocino Railway**

13 17. The railroad at issue, which Mendocino Railway has owned and operated since 2004, has
14 a long and storied history in California. The railroad was built in 1885 to haul felled redwood trees from
15 the surrounding forest to a lumber mill on the coast of what is now known as the City of Fort Bragg. In
16 addition to hauling lumber and finished products to and from the mill, the railroad delivered mail on behalf
17 of the U.S. Postal Service, provided transportation services to loggers and tourist passengers, and provided
18 passenger transportation between Fort Bragg and the railroad's eastern terminus in Willits, California, to
19 and from which passengers arrived and departed via coach.

20 18. The mill closed in 2002, ending the need for the railroad to haul timber and finished
21 products to and from the mill, though the opportunity still existed to ship other commodities. Though the
22 railroad at that point became primarily a passenger train, including for excursions colloquially referred to
23 as the "Skunk Train," the railroad was and continues to be a federally licensed railroad subject to the
24 STB's jurisdiction. As a common carrier railroad, it publishes tariffs for shipping freight for local on-line
25 customers.

26 19. By 2003, the then-owner of the railroad, California Western Railroad ("CWR"), fell on
27 hard times and declared bankruptcy. Following fierce bidding from a number of interested parties who
28 recognized the railroad's continued value to the community, Mendocino Railway in 2004 purchased

1 CWR's railroad assets out of bankruptcy, with the intent of fully restoring its passenger and freight
2 operations. Because the sale involved a federally regulated, Class III railroad, the sale was overseen by
3 the STB, which authorized Mendocino Railway's acquisition of the CWR pursuant to 49 C.F.R. § 1150.31.
4 69 Fed. Reg. 18999 (April 9, 2004) (Notice of Acquisition Exemption).

5 20. The Mendocino Railway line runs 40 miles, from its main station in Fort Bragg to its
6 eastern depot in Willits ("Willits Depot"). Mendocino Railway's Fort Bragg station is fully developed as
7 a rail facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry
8 shed for storage of railroad equipment. Since acquiring the line in 2004 and up through the present,
9 Mendocino Railway has operated tourist and non-tourist passenger services and freight services.

10 21. Approximately 77 acres of the land adjacent to the main rail station in Fort Bragg were
11 previously used for more than a century to conduct and support freight and passenger operations. After 15
12 years of discussions, in 2019, Mendocino Railway acquired those 77 acres from Georgia-Pacific LLC
13 ("GP") in order to further Mendocino Railway's efforts to fully restore freight and passenger services.
14 Subsequently, the railroad acquired another approximately 220 acres from GP at the mill site, another 70
15 acres of pudding Creek, and 14 acres from another entity (Harvest Market). The total acres of the former
16 mill site acquired totals approximately 300.

17 22. Mendocino Railway connects to the State-owned Northwestern Pacific Railroad ("NWP")
18 line, which connects Mendocino Railway to the rest of the national rail system. While the segment
19 connected to Mendocino Railway has been temporarily embargoed pending track repairs, that NWP
20 segment has not been abandoned and remains a part of the national rail system.

21 23. In furtherance of its freight operations, Mendocino Railway has pursued and continues to
22 pursue a variety of much-needed rail-related activities on its property and facilities located in the coastal
23 zone. These activities have included, without limitation: improvements to side tracks; repair and
24 maintenance work on its rail station and engine house; clean-up work in and around a dry shed and
25 elsewhere on railroad property; improvements to the dry shed in order to provide space for the storage of
26 rail cars and other railroad equipment, such as tires for steam locomotives, railcar axles, and other parts
27 and components for steam and diesel locomotives; a lot-line adjustment related to the railroad's
28 acquisition of historically rail-related property from GP; and development of the recently acquired acreage

1 for rail-related uses. The railroad has not obtained a CDP from either the Commission or the City—and
2 does not intend to do so—because any such preclearance review is and would be categorically preempted.

3 24. Mendocino Railway has always been and remains a Class III, common-carrier railroad
4 subject to the STB’s jurisdiction. While the NWP section connecting to the Mendocino Railway line is
5 currently out of service, the NWP’s line has never been abandoned and service is expected to be restored.

6 **C. The City and Coastal Commission Denial of Mendocino Railway’s Status as a Federal Railroad**

7 25. Until recently, the City has acknowledged Mendocino Railway’s status as a common-
8 carrier railroad within the exclusive jurisdiction of the STB. But after Mendocino Railway’s latest
9 purchase of some 300 acres from GP—property that City a had initially considered purchasing but then
10 seemingly lost interest in—the City changed its tune. Starting in 2021, the City sought to excuse its
11 decision not to purchase the property by waging a relentless campaign to make it appear as if Mendocino
12 Railway had stolen the opportunity from the City, while also attacking Mendocino Railway’s status as a
13 federally (and state) regulated railroad, so the City could dictate how Mendocino Railway could use the
14 property. In so doing, the City hoped to avoid public criticism for its decisions and effectively gaining
15 development control over the acquired property without having had to purchase it.

16 26. On October 28, 2021, the City filed a lawsuit against Mendocino Railway in Mendocino
17 County Superior Court. Among other things, the lawsuit seeks an injunction “commanding the Mendocino
18 Railway to comply with *all* City ordinances, regulations, and lawfully adopted codes, jurisdiction and
19 authority,” including the authority to pre-clear and approve work on railroad facilities through the City’s
20 land-use permitting processes

21 27. Similarly, for the last several years, the Commission has made clear its view that
22 Mendocino Railway is not part of the interstate rail network subject to STB jurisdiction, and is therefore
23 not entitled to federal preemption of the Commission’s oversight. The Commission contends that, in order
24 to be lawful, all prior and future rail-related work on Mendocino Railway’s property and facilities must
25 be approved by the Commission under its general authority to review and permit land-use activities in the
26 coastal zone.

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FIRST CLAIM
For Declaratory Judgment
(By Plaintiff Against All Defendants)

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3 28. Plaintiff incorporates herein by reference each and every allegation contained in the
4 preceding paragraphs of this Complaint as though fully set forth herein.

5 29. A justiciable controversy exists as to whether Mendocino Railway's freight rail-related
6 activities on its property and facilities, including without limitation, its efforts to improve side tracks;
7 repair and maintenance work on its rail station and engine house; construction of an extension of the
8 southern side of its engine house which is intended to cover existing passenger coaches and freight cars,
9 require a CDP permit or are otherwise within the STB's exclusive jurisdiction, such that the ICCTA
10 preempts the efforts of the City and the Commission to require Mendocino Railway to obtain state and
11 local land-use permits and other preclearance.

12 30. Mendocino Railway is a federally regulated common carrier that is a part of the interstate
13 rail network under the STB's exclusive jurisdiction, and that the ICCTA therefore preempts state and local
14 land-use permitting authority over its rail-related operations, property, and facilities.

15 31. Defendants assert that Mendocino Railway is not subject to the STB's exclusive
16 jurisdiction, and is subject to their plenary land-use permitting and preclearance authority for all rail-
17 related activities undertaken within the coastal zone, including the City's boundaries. Therefore, there is
18 a dispute over Mendocino Railway's rights and privileges under the ICCTA, giving rise to a case or
19 controversy over which this Court has jurisdiction.

20 32. Mendocino Railway seeks a declaration that the actions of the Commission and the City to
21 regulate Mendocino Railway's operations, practices and facilities are preempted under 49 U.S.C.
22 §10501(b) and that Mendocino Railways activities are subject to the STB's exclusive jurisdiction.

23 33. Mendocino Railway does not intend to apply for a CDP from either the Commission or the
24 City for rail-related work on its property and facilities in the coastal zone, on the grounds that such
25 preclearance is categorically preempted. Defendants have made clear they believe that, absent their
26 authorization, Mendocino Railway's rail-related work is unlawful, creating a cloud of uncertainty over the
27 railroad's operations and the real and imminent risk of enforcement action against it. Defendants have a
28 well-established history of pursuing alleged violators of the CDP requirement through such enforcement

1 actions as cease-and-desist orders, restoration orders, and penalty order.

2 34. Mendocino Railway has no adequate remedy at law and will suffer irreparable harm if this
3 controversy persists unresolved, and its rights and obligations are not established by declaratory judgment.
4 Without declaratory relief, Mendocino Railway will remain under the constant and imminent threat of
5 federally-preempted regulation, the complete disruption of its rail operations and rail-related development,
6 and the sheer uncertainty created by this controversy.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Mendocino Railway requests relief as follows:

9 1. A declaratory judgment that the actions of the Commission and the City to regulate
10 Mendocino Railway's operations, practices and facilities are preempted under 49 U.S.C. §10501(b) and
11 that Mendocino Railway's activities are subject to the STB's exclusive jurisdiction. Therefore Mendocino
12 Railway has the right under the ICCTA to undertake any and all rail-related activities within the coastal
13 zone, including within the City's boundaries without preclearance or approval from the Commission or
14 the City.

15 2. An injunction prohibiting Defendants from taking any action that would materially
16 interfere with Mendocino Railway's operation of its railroad as a federally regulated common carrier,
17 including by imposing and enforcing any land-use permitting or other preclearance requirement as the
18 pre-condition of any rail-related development on Mendocino Railway's property or facilities;

19 3. Costs of suit; and

20 4. Such additional relief as may be provided by law or the Court may deem just and proper.

21 DATED: August 9, 2022

FISHERBROYLES LLP

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23 s/ Paul Beard II

24 _____
25 Attorneys for Plaintiff MENDOCINO RAILWAY
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