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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY,
Plaintiff,
v.
JACK AINSWORTH, et al.,
Defendants.

Case No. 22-cv-04597-JST

**ORDER GRANTING MOTIONS TO
DISMISS**

Re: ECF Nos. 15 & 16

Before the Court are Defendants Jack Ainsworth’s and the City of Fort Bragg’s motions to dismiss. ECF Nos. 15 & 16. The Court will grant the motions.

I. BACKGROUND

This case is the second in an ongoing controversy between the City of Fort Bragg (“City”) and the California Coastal Commission (“Commission”), on the one hand, and Mendocino Railway, on the other, over whether state and local laws apply to Mendocino Railway. In the first case, *City of Fort Bragg v. Mendocino Railway*, No. 21CV00850 (Cal. Super. Ct.) (“state court action”), the City and the Commission sued Mendocino Railway in the Superior Court of Mendocino County, primarily seeking a declaration that Defendant Mendocino Railway is subject to such laws and regulations. *See* ECF No. 15-1 at 6-11, 69-76.¹ The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. *Id.* at 6-11. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 (“Coastal Act”), Cal.

¹ The Commission’s request that the Court take judicial notice of filings from the state court action, ECF No. 15-1 at 1-2, is granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with
2 the Act’s permitting requirements. *Id.* at 69-76.

3 In the state court action, the City filed its complaint on October 28, 2021. ECF No. 15-1 at
4 11. Mendocino Railway demurred to the complaint on January 14, 2022, arguing, *inter alia*, that
5 the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10101 *et seq.*,
6 preempts the City’s claims. ECF No. 15-1 at 28-29. The court overruled the demurrer on April
7 28, 2022. *Id.* at 32-43. The court rejected Mendocino Railway’s federal preemption argument as
8 “overbroad” because “not all state and local regulations that affect railroads are preempted” by the
9 ITCCA. *Id.* at 41. Rather “the applicability of preemption” in this context “is necessarily a ‘fact
10 bound’ question.” *Id.* at 43. The court further concluded that because Mendocino Railway “is
11 simply a luxury sightseeing excursion service with no connection to interstate commerce,” “its
12 ‘railroad activities,’ for the purposes of federal preemption, are extremely limited.” *Id.* at 42.
13 Mendocino Railway filed its answer to the City’s complaint on June 24, 2022, asserting federal
14 preemption as an affirmative defense. *Id.* at 54. On September 8, 2022, the Commission moved
15 to intervene and filed a proposed complaint-in-intervention. *Id.* at 59-84. The complaint notes
16 that Mendocino Railway “contends that state and federal law preempts” the permitting
17 requirements of the Coastal Act, *id.* at 74, and, as part of the Commission’s prayer for relief, asks
18 the court to declare that the Coastal Act and the City’s local laws “are not preempted by any state
19 or federal law,” *id.* at 75.

20 Mendocino Railway removed the state court action to this Court on October 20, 2022. *See*
21 Notice of Removal, *City of Fort Bragg, et al. v. Mendocino Railway*, No. 22-cv-06317-JST (N.D.
22 Cal. Oct. 20, 2022), ECF No. 1. The notice of removal invokes this Court’s federal question
23 jurisdiction on the ground that the resolution of the City’s and the Commission’s claims requires
24 “a judicial determination of *federal questions* arising under ICCTA.” *Id.* at 2 (emphasis in
25 original). The City and Commission moved to remand the action to state court, and this Court
26 granted the motions. *See* Order Granting Motions to Remand, *City of Fort Bragg, et al. v.*
27 *Mendocino Railway*, No. 22-cv-06317-JST (N.D. Cal. May 11, 2023), ECF No. 33.

28 Mendocino Railway filed the instant complaint in this case on August 9, 2022, against the

1 City and Jack Ainsworth in his official capacity as Executive Director of the Commission. ECF
 2 No. 1. Mendocino Railway seeks a declaration that the ICCTA preempts state and local law and
 3 an injunction prohibiting the City and the Commission from “interfer[ing] with Mendocino
 4 Railway’s operation.” ECF No. 1 at 10. Ainsworth and the City filed motions to dismiss
 5 Mendocino Railway’s complaint. ECF Nos. 15 & 16. The Court took the motions under
 6 submission without a hearing on December 12, 2022.

7 **II. JURISDICTION**

8 The Court has jurisdiction under 28 U.S.C. § 1331.

9 **III. LEGAL STANDARD**

10 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a
 11 complaint must contain “a short and plain statement of the claim showing that the pleader is
 12 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal “is appropriate only where the complaint
 13 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
 14 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “[A] complaint
 15 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
 16 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 17 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual
 18 content that allows the court to draw the reasonable inference that the defendant is liable for the
 19 misconduct alleged.” *Id.* While this standard is not “akin to a ‘probability requirement’ . . . it asks
 20 for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*,
 21 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s
 22 liability, it ‘stops short of the line between possibility and plausibility of entitlement to
 23 relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). In determining whether a plaintiff has met the
 24 plausibility requirement, a court must “accept all factual allegations in the complaint as true and
 25 construe the pleadings in the light most favorable” to the plaintiff. *Knievel v. ESPN*, 393 F.3d
 26 1068, 1072 (9th Cir. 2005).

27 **IV. DISCUSSION**

28 The parties dispute, *inter alia*, whether a *Colorado River* stay or dismissal is appropriate in

1 this case. Before staying or dismissing a case under *Colorado River*, the Court must find that
 2 there are concurrent state and federal court proceedings involving the same matter. If the Court
 3 makes such a finding, it then weighs a “complex [set]” factors to determine whether “exceptional
 4 circumstances justify such a stay” or dismissal. *Intel Corp. v. Advanced Micro Devices*, 12 F.3d
 5 908, 912 (9th Cir. 1993). These factors include:

- 6 (1) which court first assumed jurisdiction over any property at stake;
 7 (2) the inconvenience of the federal forum; (3) the desire to avoid
 8 piecemeal litigation; (4) the order in which the forums obtained
 9 jurisdiction; (5) whether federal law or state law provides the rule of
 10 decision on the merits; (6) whether the state court proceedings can
 11 adequately protect the rights of the federal litigants; (7) the desire to
 12 avoid forum shopping; and (8) whether the state court proceedings
 13 will resolve all issues before the federal court.

14 *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017) (quoting *R.R. St. &*
 15 *Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011)). In balancing these factors, the
 16 Court must remain “mindful that ‘[a]ny doubt as to whether a factor exists should be resolved
 17 against a stay.’” *R.R. St.*, 656 F.3d at 979 (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d
 18 1364, 1369 (9th Cir. 1990)). However, “these factors are not a ‘mechanical checklist’; indeed,
 19 some may not have any applicability to a case.” *Seneca Ins. Co.*, 862 F.3d at 842 (quoting *Moses*
 20 *H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)). “Courts generally rely
 21 on the state of affairs at the time of the *Colorado River* analysis.” *R.R. St.*, 656 F.3d at 982.

22 The Court finds the predicate existence of concurrent state and federal court proceedings,
 23 as discussed above. The first factor is “irrelevant” because “the dispute does not involve a specific
 24 piece of property.” *R.R. Street*, 656 F.3d at 979. The second factor is neutral because the state
 25 proceedings are in the Mendocino County Superior Court in Fort Bragg, California, and the
 26 federal proceeding is in the Northern District of California in Oakland, California, which are
 27 approximately 150 miles apart. *Montanore Minerals Corp v. Bakie*, 867 F.3d 1160, 1167 (9th Cir.
 28 2017) (treating a distance of 200 miles as neutral); accord *Travelers Indem. Co. v. Madonna*, 912
 F.3d 1364, 1368 (9th Cir. 1990) (“Although 200 miles is a fair distance, it is not sufficiently great
 that this factor points toward abstention. The district court did not err in finding this factor
 ‘unhelpful.’”).

1 The third factor – the desire to avoid piecemeal litigation – is a “substantial factor in the
2 *Colorado River* analysis.” *Seneca Ins. Co.*, 862 F.3d at 835. “Piecemeal litigation occurs when
3 different tribunals consider the same issue, thereby duplicating efforts and possibly reaching
4 inconsistent results.” *Id.* (quoting *Am. Int’l Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*,
5 843 F.2d 1253, 1258 (9th Cir. 1988)). “[T]here must be exceptional circumstances present that
6 demonstrate that piecemeal litigation would be particularly problematic.” *Id.* Such exceptional
7 circumstances are present here, as the issue of federal preemption under the ICCTA is squarely
8 before the state court. As discussed above, in overruling Mendocino Railway’s demurrer, the state
9 court rejected Mendocino Railway’s federal preemption argument as overbroad and deferred
10 resolution of the issue to a later juncture. ECF No. 15-1 at 42-43. Federal preemption is the sole
11 issue raised in Mendocino Railway’s complaint in this action, and for the Court to adjudicate that
12 claim would necessarily duplicate the state court’s efforts and risk the possibility of this Court and
13 the state court reaching different results. Because “[p]ermitting this suit to continue would
14 undeniably result in piecemeal litigation,” the third factors “weighs significantly against
15 jurisdiction.” *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989); *R.R. St.*, 656 F.3d at 966.

16 The fourth factor requires the Court to assess “the order in which the forums gained
17 jurisdiction,” considering “the realities of the case at hand’ ‘in a pragmatic, flexible manner.’”
18 *Montanore Minerals Corp.*, 867 F.3d at 1168 (first quoting *Moses H. Cone*, 460 U.S. at 21; and
19 then quoting *Am. Int’l Underwriters*, 843 F.2d at 1257). The Court “consider[s] not only the
20 order, but also the relative progress of the state and federal proceedings.” *Id.* Mendocino Railway
21 filed its complaint in this case on August 9, 2022, which is nearly two years after the state court
22 action commenced on October 28, 2021. Additionally, the state court action is largely past the
23 pleading stage, as the Court overruled Mendocino Railway’s demurrer to the City’s complaint,
24 Mendocino Railway filed its answer to the complaint on June 24, 2022, and trial was scheduled to
25 begin on June 21, 2023. ECF No. 15-1 at 102. Because the state forum gained jurisdiction first,
26 and because the state court action has progressed further than the federal court action, the fourth
27 factor weighs in favor of dismissal.

28 The fifth factor requires the Court to “consider ‘whether federal law or state law provides

1 the rule of decision on the merits.” *Seneca Ins. Co.*, 862 F.3d at 844 (quoting *R.R. St.*, 656 F.3d
2 at 978). “The ‘presence of federal-law issues must always be a major consideration weighing
3 against surrender’ of jurisdiction, but ‘the presence of state-law issues may weigh in favor of that
4 surrender’ only ‘in some rare circumstances.’” *Id.* (quoting *Cone Mem’l Hosp.*, 460 U.S. at 26).
5 Federal law supplies the rule of decision on the merits of Mendocino Railway’s complaint. The
6 text of the ICCTA determines whether Mendocino Railway falls within the statute’s ambit so as to
7 trigger the statute’s preemptive effect, *see* 49 U.S.C. §§ 10102, 10501(b), and federal preemption
8 law determines the extent to which the ICCTA preempts the state and local laws that substantiate
9 the challenged actions of the City and the Commission, *see BNSF Ry. Co. v. Cal. Dep’t of Tax and*
10 *Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018) (“The ICCTA ‘preempts all state laws that may
11 reasonably be said to have the effect of managing or governing rail transportation, while
12 permitting the continued application of laws having a more remote or incidental effect on rail
13 transportation. What matters is the degree to which the challenged regulation burdens rail
14 transportation[.]’” (alteration in original) (quoting *Ass’n of Am. R.Rs. v. South Coast Air Quality*
15 *Mgmt. Dist.*, 622 F.3d 1094, 1097-98 (9th Cir. 2010)). Accordingly, this factor weighs against
16 dismissal.

17 The sixth factor “looks to whether the state court might be unable to enforce federal
18 rights.” *Seneca Ins. Co.*, 862 F.3d at 845. This factor weighs in favor of dismissal “[w]hen it is
19 clear that ‘the state court has authority to address the rights and remedies at issue.’” *Montanore*
20 *Minerals Corp.*, 867 F.3d at 1169 (quoting *R.R. St.*, 656 F.3d at 981). Here, “[t]here is no doubt
21 that California state courts have the authority” to determine the preemptive effect, if any, of the
22 ICCTA on the City’s and the Commission’s regulatory authority over Mendocino Railway. *Id.*
23 Not only do state courts have the authority to determine the preemptive effect of federal law, but
24 those determinations are often entitled to preclusive effect as well. *Cf. Readylink Healthcare, Inc.*
25 *v. State Compensation Ins. Fund*, 754 F.3d 754, 761-62 (9th Cir. 2014). And Mendocino Railway
26 does not “claim that the state court would . . . lack the power to enter any orders to protect its
27 rights.” *Montanore Minerals Corp.*, 867 F.3d at 1169. The sixth factor weighs in favor of
28 dismissal.

1 The seventh factor requires the Court to “consider whether either party sought more
2 favorable rules in its choice of forum of pursued suit in a new forum after facing setbacks in the
3 original proceeding.” *Seneca Ins. Co.*, 862 F.3d at 846. Following the state court’s overruling of
4 the demurrer in the state court action, Mendocino Railway filed a petition for writ review in the
5 California Court of Appeal, which the Court of Appeal denied. ECF No. 15-1 at 47-48. The
6 California Supreme Court denied Mendocino Railway’s petition for review of the Court of
7 Appeal’s denial on June 10, 2022. *Id.* at 100. Mendocino Railway then filed the instant complaint
8 on August 9, 2022, asserting a claim premised entirely on the argument rejected on demurrer by
9 the state court. Subsequently, in the state court action, Mendocino Railway moved to disqualify
10 the presiding judge, Judge Clayton L. Brennan, who had overruled Mendocino Railway’s
11 demurrer. ECF No. 15-1 at 101-102. After Judge Brennan denied the motion on September 14,
12 2022, *id.*, the Commission moved to intervene on October 6, 2022, *id.*, and Mendocino Railway
13 removed that action to federal court on October 20, 2022 – nearly two years after the action had
14 commenced. Mendocino Railway’s notice of removal cited the federal preemption issue in the
15 Commission’s complaint as the basis for federal question jurisdiction. But Mendocino Railway
16 was already aware of – and indeed had made – the very same argument in its demurrer to the
17 City’s complaint, and that argument now serves as the sole basis for the claims in this case. The
18 only “reasonably infer[ence]” from this litigation conduct, considered as a whole, is that
19 Mendocino Railway “has become dissatisfied with the state court and now seeks a new forum.”
20 *Montanore Minerals Corp.*, 867 F.3d at 1160; *Nakash*, 882 F.2d at 1411. Accordingly, this factor
21 weighs in favor of dismissal.

22 The eighth factor requires the Court to consider “whether the state court proceeding
23 sufficiently parallels the federal proceeding” in order “to ensure ‘comprehensive disposition of
24 litigation.’” *R.R. St.*, 656 F.3d 656 F.3d at 982 (quoting *Colo. River*, 424 U.S. at 817). “[E]xact
25 parallelism” is not required; rather, “it is sufficient if the proceedings are ‘substantially similar.’”
26 *Montanore Minerals Corp.*, 867 F.3d at 1170 (quoting *Nakash*, 882 F.2d at 1416). Courts are to
27 be “particularly reluctant to find that the actions are not parallel when the federal action is but a
28 ‘spin-off’ of more comprehensive state litigation.” *Nakash*, 882 F.2d at 1416. Mendocino

1 Railway has asserted ICCTA preemption as a defense in the state action, so there the state court
2 must resolve that issue in the course of adjudicating the City’s and the Commission’s claims
3 against Mendocino Railway. Because that issue is the sole issue in this case, it is difficult for the
4 Court to conceptualize this action as anything but a spinoff of the state court action. Accordingly,
5 the Court concludes that the state court proceeding sufficiently parallels the federal court
6 proceeding. The eighth factor thus weighs in favor of dismissal.

7 In sum, only the fifth factor weighs against dismissal, and the remaining factors weigh in
8 favor of dismissal. Therefore, “[o]n balance, the *Colorado River* factors strongly counsel in favor
9 of” dismissal. *Montanore Minerals Corp.*, 867 F.3d at 1170.

10 The Court recognizes that the Ninth Circuit “‘generally require[s] a stay rather than
11 dismissal’ under *Colorado River*.” *Montanore Minerals Corp.*, 867 F.3d at 1171. The general
12 rule ensures “that the federal forum will remain open if for some unexpected reason the state
13 forum turn[s] out to be inadequate.” *Id.* at 886 (quoting *Attwood v. Mendocino Coast Dist.*
14 *Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989)). That purpose is not served here because the
15 adjudication of the state court action will necessarily resolve the sole issue in this case and the
16 state court proceedings can undoubtedly protect Mendocino Railway’s rights.² And although the
17 Ninth Circuit has not delineated the circumstances warranting dismissal rather than a stay, its
18 framing of the rule as general necessarily contemplates exceptions. Indeed, *Colorado River* itself
19 involved dismissal of a federal action. *See Colo. River*, 424 U.S. at 821; *accord Arizona v. San*
20 *Carlos Apache Tribe of Ariz.*, 463 U.S. 545 (1983); *cf. Exxon Mobil Corp. v. Saudi Basic Indus.*
21 *Corp.*, 544 U.S. 280, 282 (2006). Thus, to the extent that there are exceptions to the general rule,
22 the strength of the factors and the degree to which their balance tips sharply in Defendants’ favor
23 demonstrate “the clearest of justifications . . . warrant[ing] dismissal.”³ *Colo. River*, 424 U.S. at
24

25 ² Additionally, the state court’s decision on the issue would likely be entitled to preclusive effect.
26 *Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d at 761-62.

27 ³ Although the fact that federal law supplies the rule of decision weighs against dismissal, that
28 weight is substantially lessened because “state courts have inherent authority, and are thus
presumptively competent, to adjudicate claims arising under the laws of the United States.” *Tafflin*
v. Levitt, 493 U.S. 455, 458 (1990); *accord Yellowbear v. Atty. Gen. of Wyoming*, 380 F. App’x
740, 741 (10th Cir. 2010) (Gorsuch, J.) (Under our federal system, . . . there is nothing inherently

1 819. Accordingly, the Court will dismiss the case.

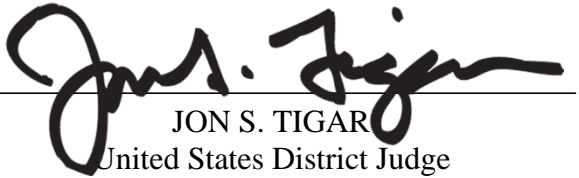
2 **CONCLUSION**

3 For the foregoing reasons, Defendants’ motions are granted, and this case is dismissed.

4 The Clerk shall enter judgment and close the file.

5 **IT IS SO ORDERED.**

6 Dated: May 12, 2023

7 
8 JON S. TIGAR
United States District Judge

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United States District Court
Northern District of California

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27 suspect about state courts deciding questions of federal law. . . . Indeed, the Supremacy Clause
28 contemplates that state courts *will* decide questions of federal law”). The balance would
differ if, for example, the eighth factor weighed against a stay or dismissal. *Cf. United States v.*
State Water Res. Control Bd., 988 F.3d 1194, 1203 (9th Cir. 2021) (explaining that “doubt” as to
“whether the state proceedings will resolve the federal action” is “a significant countervailing
consideration that’ can be ‘dispositive.’” (quoting *Intel Corp.*, 12 F.3d at 913)).