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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MENDOCINO RAILWAY, Plaintiff, **v.** **JACK AINSWORTH, in his official capacity as Executive Director of the California Coastal Commission; CITY OF FORT BRAGG, a California municipal corporation; ,** Defendant.	4:22-cv-04597-JST **DEFENDANT JACK AINSWORTH'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** Date: December 22, 2022 Time: 2 p.m. Dept: Courtroom 6 Judge: Honorable Jon S. Tigar Trial Date: Not Set Action Filed: August 9, 2022

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INTRODUCTION

In its Opposition to Defendant Jack Ainsworth's Motion to Dismiss ("Opposition")[1], Plaintiff Mendocino Railway ("Plaintiff") contends that abstention under *Younger v. Harris*, 401 U.S. 37 (1971) is unavailable because (1) Plaintiff recently removed the underlying state court proceeding to federal court; (2) the City of Fort Bragg's ("City") and the California Coastal Commission's ("Coastal Commission") state action is not a criminal or quasi-criminal prosecution; and (3) that the Coastal Commission lacks a sufficient important state interest to justify abstention under *Younger*.

As discussed below, Plaintiff's arguments are without merit. First, the only relevant inquiry regarding whether a state proceeding is ongoing under *Younger* is whether it was ongoing when the federal complaint was filed, which there is no dispute was the case here. Second, the City's and Coastal Commission's state court action is akin to a nuisance abatement action, which is of the general class of civil enforcement proceedings that the Ninth Circuit has regularly held satisfy the "quasi-criminal" prong of the *Younger* analysis. And third, the City's and the Coastal Commission's interests in enforcing local and state laws and regulations, and the Commission's duty to protect the fragile coastal zone, are the sort of important state interests justifying Younger abstention, and Plaintiff's bare preemption claim does not overcome those strong and important interests. Therefore, Plaintiff's arguments fail and this case should be dismissed on the basis of *Younger* abstention.

I. THE STATE PROCEEDING WAS ONGOING AS OF THE FILING OF THE FEDERAL COMPLAINT AND WILL BE REMANDED

Regardless of its current status, the state proceeding was pending when Plaintiff filed this federal suit. That is all that is required to satisfy the first prong of the *Younger* abstention analysis. As the Ninth Circuit has repeatedly held, "the critical question is not whether the state proceedings are still 'ongoing' but whether 'the state proceedings were underway before initiation of the federal proceedings.'" *Wiener v. Cnty. of San Diego*, 23 F.3d 263, 266 (9th Cir. 1994)

[1] Defendant notes that Plaintiff's Request for Judicial Notice, filed along with its Opposition, was stamped filed on October 21, 2022, the day after the October 20, 2022 deadline in the Court's October 5, 2022 stipulated order enlarging time for briefing on this motion.

(quoting *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir. 1987)); see also *Richter v. Ausmus*, No. 19-CV-08300-WHO, 2021 WL 3112333, at *6 (N.D. Cal. July 22, 2021) (quoting the same "critical question" language from *Kitchens v. Bowen*); cf. *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) ("[T]he date for determining whether *Younger* applies is the date the federal action is filed."). In *Wiener*, by the time the Ninth Circuit considered the issue of *Younger* abstention, the state court proceeding had concluded and been dismissed, but that was of no import to the court's analysis. *See Weiner* at 266. This is in line with the Ninth Circuit's detailed analysis in *Beltran v. State of Cal.*, 871 F.2d 777 (9th Cir. 1988), where the court pronounced that "*Younger* abstention requires that the federal courts abstain when state court proceedings were ongoing at the time the federal action was filed." *Id.* at 782; see also *Tony Alamo Christian Ministries v. Selig*, 664 F.3d 1245, 1250 (8th Cir. 2012) ("For purposes of applying *Younger* abstention, the relevant time for determining if there are ongoing state proceedings is when the federal complaint is filed.").

If the opposite were true, and *Younger* abstention were so easily defeated by the filing of a bare notice of removal of the pending state proceeding, a defendant in an ongoing state proceeding might be tempted to file a second action in federal court and then file such a notice of removal (regardless of its merits) the day their opposition to a federal Motion to Dismiss is due, and then argue that the state matter is no longer "ongoing." This is exactly the type of forum-shopping and federal court interference with state proceedings that *Younger* abstention seeks to prevent.

Plaintiff spends considerable time in its Opposition citing to cases where a state proceeding had been removed and potential *Younger* abstention was analyzed by the federal court. However, that time spent in the Opposition is for naught, as all of the cited cases are easily distinguishable from the matter at hand because they all involved a single state proceeding that was removed to federal court,[2] not a situation where a state proceeding is ongoing and then the defendant in that

[2] See cases cited in Plaintiff's Opposition at page 3, line 12 – page 4, line 1. All involved a single removed action except for *Ankenbrandt v. Richards*, 504 U.S. 698 (1992). *Ankenbrandt* is nevertheless inapposite as well because that case involved a single action which was first filed in federal court, and thus, at no time was there ever a state proceeding that was pending or ongoing, in contrast to the instant case. See *id.* at 691-92.

state proceeding files a second, separate federal suit, as is the case here. The cases cited by Plaintiff were evaluating *Younger* abstention's ongoing state proceeding factor as to the single removed action and were not considering (and could not have considered) the existence of another state proceeding that was ongoing at the time the federal action was filed, which, as discussed above, is the only inquiry necessary under *Younger* and its progeny.

The case at bar is more akin to *Huffman v. Pursue*, 420 U.S. 592 (1975), where the original complaint was filed in state court, the trial court rendered judgment, and then the defendant filed a complaint in federal court. *Id.* at 598. The Supreme Court found that, for purposes of *Younger* abstention as to the complaint in federal court, the state court proceeding was ongoing because the plaintiff could have appealed. *Id.* at 608. Similarly here, the state proceeding was ongoing at the time that Plaintiff filed its federal complaint, and it is of no import what occurred with the state proceeding after that date for purposes of *Younger* abstention as to the federal complaint. Plaintiff cannot sidestep *Younger* abstention by attempting (improperly) to remove the parallel state action to federal court when it is undisputed that "the state proceedings were underway before the initiation of the federal proceedings." *Kitchens*, 825 F.2d at 1341.

Moreover, Plaintiff's removal of the state court proceeding is time-barred and also subject to *Younger* abstention, as will be discussed in detail in Defendant's forthcoming motion for remand. As such, Defendant contends that the state court proceeding should be remanded to continue in state court, thus further quashing Plaintiff's argument that the state court proceeding is not ongoing. To briefly explain why Plaintiff's removal is time-barred, the City filed its complaint against Plaintiff in state court over a year ago, on October 28, 2021. See Request for Judicial Notice ("RJN"), filed with Jack Ainsworth's Motion to Dismiss, Exhibit A. In response, Plaintiff filed a demurrer on January 14, 2022, in which it argued, in part, that the City's requested relief was preempted under federal law. RJN, Exh. B. After denial of Plaintiff's demurrer on April 28, 2022, Plaintiff filed an answer to the City's complaint on June 24, 2022, in which it again asserted a federal preemption argument as its fourth affirmative defense. RJN, Exhs. C and E. As provided in section 1446, subdivision (b) of Title 28 of the United States Code, governing the timeline for filing a notice of removal, "[t]he notice of removal of a civil action or

proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b). Plaintiff first asserted its federal preemption argument, upon which this federal action and its attempted removal of the state proceeding are based, in January 2022. Even assuming arguendo that the court's ruling on demurrer may have been the initial pleading setting forth the claim for removal jurisdiction, that ruling was issued more than six months ago, yet Plaintiff chose to answer the City's complaint and assert a federal preemption defense, instead of attempting to remove the case.[3] At any time in the last year, Plaintiff could have sought to remove the state proceeding to federal court under its complete federal preemption theory, yet it failed to do so until it believed it would be advantageous for its opposition to Jack Ainsworth's and the City's motions to dismiss. This is improper, time-barred, and should result in the removed case being remanded to state court.

Furthermore, the Coastal Commission's recent intervention into the pending state case did not meaningfully alter the claims first asserted by the City over a year ago and which are central to the state proceeding. The Coastal Commission's complaint in intervention simply seeks the same general relief as the City, confirmation of its authority to enforce state laws against Plaintiff regarding its activities on its property, and assessment of penalties and exemplary damages against Plaintiff for its past violations of those same laws. Finally, and for the same reasons set forth in Jack Ainsworth's Motion to Dismiss and as will be further discussed in the Coastal Commission's forthcoming motion to remand, the removed federal case is also subject to remand pursuant to Younger abstention.

In sum, the state court proceeding was ongoing at the time Plaintiff filed its federal complaint; the removal of the state proceeding was improper and should be remanded; and thus, the first prong of the *Younger* abstention analysis is satisfied.

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[3] In fact, Plaintiff appears to argue in its Opposition that the "central and threshold issues" of the City's state court action are "federal," and yet it still failed to notice a removal of that action to federal court until nearly a year after it was filed. Opp. at 15. Such notice is time-barred.

II. THE COASTAL COMMISSION'S AND CITY'S ACTIONS ARE CIVIL ENFORCEMENT PROCEEDINGS SUBJECT TO *YOUNGER*

Plaintiff seeks to reframe what are unequivocal civil enforcement proceedings by the City and the Coastal Commission as solely disputes over regulatory authority. While that may be Plaintiff's focus, this straw man argument misses the forest for the trees. The simple fact is that all of the City's efforts here were precipitated by the fact that the City observed activities by Plaintiff on its property within the City that likely violated the City's local laws and regulations. As a prelude to its responsive enforcement action, the City initiated investigations into those illegal activities, but it was prevented from following through on those investigations and from issuing citations against Plaintiff by Plaintiff's unfounded claims of broad state and federal preemption. RJN, Exh. A, at ¶¶ 12, 13, 15. The City was then forced to file a civil state court suit to affirm its jurisdiction and authority in order to be able to proceed with enforcing those local laws and regulations against Plaintiff. *Id.* at ¶¶ 15, 16. At its core, the City's action is a civil enforcement action, and if permitted to continue its investigation, could result in formal citations and abatement actions by the City against Plaintiff.

The Coastal Commission, also having observed Plaintiff's activities in the City and within the coastal zone, likely in violation of the Coastal Act, and after the City requested that the Commission assume primary enforcement authority as to Plaintiff, issued a Notice of Violation to Plaintiff, describing the violations taking place and ordering Plaintiff to cease all unpermitted development on its property. RJN, Exh. F at 79-83. After Plaintiff failed to seek necessary permits from the City or the Coastal Commission, and continued with its illegal activities on its property in the coastal zone, the Coastal Commission filed a motion to intervene in the City's suit, which was recently granted. In the state court proceeding, along with a resolution of Plaintiff's purported preemption arguments, the Coastal Commission seeks civil penalties and exemplary damages to sanction Plaintiff and deter any further violations of the Coastal Act. See RJN, Exh. F at 76. In a recent case in this Court, the filing of a civil enforcement action in state court, seeking abatement, injunctive relief, and civil penalties related to state land use laws (similar to the Coastal Commission's complaint in intervention here), was found to fall within the

scope of *Younger* abstention. *Castagnola v. Cnty. of Sonoma*, No. 19-CV-08290-JSC, 2020 WL 1940804, at *4 (N.D. Cal. Apr. 22, 2020) ("Plaintiff was notified of these violations and the County has filed a civil enforcement action seeking abatement, injunctive relief, and civil penalties. Therefore, consistent with *Herrera*, the state civil enforcement proceeding here falls within *Younger's* scope." (internal citation omitted)).

Plaintiff relies heavily on a recent case involving an insurance conservatorship when discussing the general factors necessary for *Younger* abstention, *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579 (9th Cir. 2022), but that case's analysis has little bearing on the applicability of *Younger* to the City's and Coastal Commission's actions against Plaintiff here. In fact, in the concurring opinion in *Applied Underwriters* (mistakenly labelled as "dissenting" in Plaintiff's Opposition), Judge Nguyen questioned why the majority concluded that "the conservatorship lacks the requisite 'punitive character' and 'sanctions' to qualify as a civil enforcement proceeding." *Applied Underwriters* at 601. Citing to *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) and *Herrera v. City of Palmdale*, 918 F.3d 1037 (9th Cir. 2019), Judge Nguyen explained that "a state proceeding can still be subject to *Younger* even if its purpose is to rehabilitate, to deter, or to protect the public" and "proceedings geared towards 'protection,' 'prevention,' and even rehabilitation can have the requisite punitive character." *Id.*

While the Ninth Circuit's dispute over the nature of insurance conservatorships appears murky, not so with nuisance abatement actions, which are much more akin to the City's and Coastal Commission's claims in state court here. Specifically, in the context of the Coastal Commission's enforcement of environmental laws, "[c]ontemporary environmental legislation represents an exercise by government of this traditional power to regulate activities in the nature of nuisances. . . . Current legislation for environmental and ecological protection constitutes but a sensitizing of and refinement of nuisance law." *CEEED v. California Coastal Zone Conservation Com.*, 43 Cal. App. 3d 306, 318–19 (Ct. App. 1974) (predecessor to California Coastal Act constitutes a codification of common law of nuisance) (internal citations omitted).

In 2020, the Ninth Circuit in *Citizens for Free Speech, LLC v. Cnty. of Alameda*, 953 F.3d 655 (9th Cir. 2020) reviewed and affirmed this Court's dismissal of a federal complaint stemming

from a local land use dispute as a qualifying action under *Younger* abstention. The case arose when Alameda County determined that *Citizens for Free Speech* had erected billboards in violation of the County's local zoning laws and began an abatement proceeding against *Citizens* for the removal of the billboards. See *Citizens for Free Speech* at 657. Just as Plaintiff has done so here, *Citizens* responded by filing a federal complaint against the County in an attempt to "bar[] the County from enforcing its ordinances." *Id.* However, both Judge Saundra Brown Armstrong of the Northern District, (who raised *Younger* abstention *sua sponte*[4]), and the Ninth Circuit on appeal found that "all the elements required for *Younger* abstention are present" and dismissed the federal action. *Id.* Citing to *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975) and *Herrera, supra*, 918 F.3d 1037 in support of its determination that the County's ongoing abatement proceedings satisfied "the 'quasi-criminal enforcement' element" of *Younger*, the Ninth Circuit found that *Citizens'* federal complaint was properly dismissed under *Younger*. *Id.* The court in *Citizens* also found that the Supreme Court has recognized that such proceedings are "civil enforcement proceedings initiated by the state 'to sanction the federal plaintiff . . . for some wrongful act,'" *Id.* (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79–80 (2013)).

In *Citizens*, the County had only just begun abatement proceedings when the federal complaint was filed and was subsequently dismissed on *Younger* grounds. *Id.* at 657. This is in contrast to the instant matter, where the City had observed and raised Plaintiff's multiple violations of local law with Plaintiff over the course of a few years and even red-tagged unpermitted work by Plaintiff before filing its lawsuit in state court. RJN, Exh. A at ¶¶ 12, 13, 15. It was not until well after the City filed that state court complaint, seeking to enforce its local laws and abate the dangerous conditions on Plaintiff's property, that Plaintiff filed this federal action. If the abatement proceedings in *Citizens* that had just been initiated were sufficient "quasi-criminal enforcement" proceedings initiated "to sanction the federal plaintiff," there is no reason why the City's actions and state court complaint here should not also be found to constitute ongoing state proceedings requiring abstention under *Younger*. *Citizens, supra*, at 657.

[4] See *Citizens for Free Speech, LLC v. Cnty. of Alameda*, 338 F. Supp. 3d 995, 1002-1004 (N.D. Cal. 2018), *aff'd,* 953 F.3d 655 (9th Cir. 2020).

It its Opposition, Plaintiff appears to ask this Court to engage in a detailed fact-specific inquiry into the City's and Coastal Commission's motivations for bringing the state court action against Plaintiff to determine if it satisfies *Younger*. However, no such inquiry is necessary. As discussed by the Ninth Circuit in *Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732 (9th Cir. 2020), "[w]hat matters for *Younger* abstention is whether the state proceeding falls within the general class of quasi-criminal enforcement actions—not whether the proceeding satisfies specific factual criteria." *Id.* at 737, cert. denied, 210 L. Ed. 2d 929 (2021). Finding that the civil penalties and punitive damages sought by the State of Hawaii in that case lent support to the conclusion that the action fits within the "quasi-criminal" actions warranting *Younger* abstention, and that the sort of "case-specific inquiry" urged by Plaintiff in that case, (and in the instant matter), "finds no support in precedent," the Ninth Circuit refused to look narrowly at the State's interest in the outcome of a particular case. *Id.* at 737-38. None of the additional cases cited by Plaintiff in its Opposition ostensibly as examples of non-qualifying civil enforcement proceedings under *Younger* involved a *Younger* abstention analysis at all or the specific penalties and damages sought by the Coastal Commission here and are therefore irrelevant to this inquiry.[5] Because those cases also did not involve an evaluation of the "general class" of proceedings that might fall under *Younger*, they are inapplicable to the Court's analysis of that requirement. See Opposition at page 6, line 5 – page 9, line 4. The Coastal Commission's "ultimate aim," "primary objective," and the specific nature of the relief sought by the Coastal Commission are not relevant inquiries under the second Younger prong. The only relevant inquiry is "whether the state proceeding falls within the general class of quasi-criminal enforcement actions" to which *Younger* applies. *Bristol-Myers Squibb* at 737. Accepting Plaintiff's "invitation to scrutinize the particular facts of a state

[5] The inapposite cases first cited by Plaintiff in this section of its Opposition are: *Ojavan Invs., Inc. v. California Coastal Com.*, 54 Cal. App. 4th 373 (1997) (unconstitutional forfeiture); *Kizer v. Cnty. of San Mateo*, 53 Cal. 3d 139 (1991), *as modified* (Mar. 28, 1991) (penalties and damages under Long-Term Health Act); *City & Cnty. of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1315 (2000) (housing code penalties, but acknowledging that they may have "a punitive or deterrent aspect"); *Hale v. Morgan*, 22 Cal. 3d 388 (1978) (due process regarding utility service penalties); *Lent v. California Coastal Com.*, 62 Cal. App. 5th 812 (2021) (constitutionality of public access penalties); *People v. Toomey*, 157 Cal. App. 3d 1 (Ct. App. 1984) (unfair competition and false advertising); *In re Alva*, 33 Cal. 4th 254 (2004) (sex offender registry); and *Humanitarian L. Project v. U.S. Treasury Dep't*, 578 F.3d 1133 (9th Cir. 2009) (due process for terrorism civil penalties).

civil enforcement action would offend the principles of comity at the heart of the *Younger* doctrine." *Id.* Just as this Court and the Ninth Circuit have found in the context of nuisance abatement cases, the City's and Coastal Commission's state proceeding, seeking to enforce their local and state laws, particularly in the context of Plaintiff's use of its property, are of the same general class of quasi-criminal civil enforcement proceedings subject to *Younger*.

III. PROTECTION FROM UNRESTRAINED DEVELOPMENT OF THE COASTAL ZONE IS AN OVERRIDING STATE INTEREST

Again in its Opposition, Plaintiff fails to recognize the import of the City's and Coastal Commission's state court actions. Just as the City seeks to enforce its local laws and regulations against Plaintiff and its actions on its property within the City, the Coastal Commission has intervened in the state court proceeding in order to enforce the requirements and prohibitions of the Coastal Act as they apply to Plaintiff's development of its property in the coastal zone. The relevant question under the third element of the Younger analysis is whether "the state proceedings . . . implicate an important state interest." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) (emphasis added). Plaintiff's statement that "the federal proceeding does not implicate an important state interest to justify *Younger* abstention" is a misreading of the applicable requirement under *Younger*. Opposition, at 19, lines 10-11. It does not matter if the federal proceeding implicates an important state interest, just whether the parallel state proceeding does so. Here, the Coastal Commission's and the City's interests in enforcing the Coastal Act and the City's local laws are their fundamental interests. As the Ninth Circuit has explained:

> The *Younger* doctrine recognizes that a state's ability to enforce its laws 'against socially harmful conduct that the State believes in good faith to be punishable under its laws and Constitution' is a 'basic state function' with which federal courts should not interfere. Where the state is in an enforcement posture in the state proceedings, the 'important state interest' requirement is easily satisfied, as the state's vital interest in carrying out its executive functions is presumptively at stake.

Potrero Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876, 883–84 (9th Cir. 2011) (quoting *Miofsky v. Superior Ct. of State of Cal., In & For Sacramento Cnty.*, 703 F.2d 332, 336 (9th Cir. 1983)).

Further, "[t]he importance of the interest is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *Baffert v. California Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir. 2003) (citing *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989)).

In the state court proceeding, the City and the Coastal Commission are in an enforcement posture against Plaintiff, seeking to confirm their authority to enforce local and state laws and impose penalties and seek damages against Plaintiff for its violations of those laws. For the Coastal Commission, the overriding interest is in enforcing the Coastal Act against Plaintiff's potentially unrestrained development, so as to protect the state's fragile coastal zone. As the Ninth Circuit unequivocally stated in San Remo Hotel, "[w]e have held that strong, local, i.e., municipal, interests in land-use regulation qualify as important 'state' interests for purposes of *Younger* abstention." *San Remo Hotel v. City & Cnty. of San Francisco*, 145 F.3d 1095, 1104 (9th Cir. 1998); see also *Castagnola v. Cnty. of Sonoma*, No. 19-CV-08290-JSC, 2020 WL 1940804, at *4 (N.D. Cal. Apr. 22, 2020) (state complaint asserting violations of local laws "implicates important state interests in enforcing building, zoning, and nuisance laws" under *Younger*).

The Coastal Commission's first cause of action in its complaint in intervention, which was just filed and served on Plaintiff, recognizes that Plaintiff has asserted defenses related to state and federal preemption in response to the City's multiple attempts to enforce its local laws and regulations (including in both its demurrer and answer in the state proceeding), as well as in response to the Coastal Commission's attempts to enforce the Coastal Act against Plaintiff. See RJN, Exh. F at 71, ¶ 4, and 74, ¶ 13. However, while a determination of the merits, or lack thereof, of Plaintiff's preemption arguments will need to be addressed in the state proceeding, the general allegations in the Coastal Commission's complaint in intervention, which are incorporated in both of its causes of action, describe in detail the threat that Plaintiff poses to the coastal zone, Plaintiff's violations of the Coastal Act that have already occurred and are likely ongoing, and the need to enforce the Coastal Act and prevent further violations by Plaintiff, which were the root causes for the Coastal Commission's intervention. See RJN, Exh. F, at 71-73, ¶¶ 4-6, 8. Further, by seeking civil penalties, injunctive relief, and exemplary damages against

Plaintiff for its violations of the Coastal Act in its second cause of action, the Coastal Commission seeks to both sanction and deter Plaintiff from engaging in such actions. See RJN, Exh. F, at 76, ¶¶ 3-5. The complaint in intervention and its myriad allegations of violations by Plaintiff demonstrate that the Coastal Commission is in an enforcement posture against Plaintiff and its interests in maintaining its authority to enforce the Coastal Act are important.

Moreover, as the Supreme Court has explained, "when we inquire into the substantiality of the State's interest in its proceedings we do not look narrowly to its interest in the outcome of the particular case—which could arguably be offset by a substantial federal interest in the opposite outcome. Rather, what we look to is the importance of the generic proceedings to the State." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989). As discussed above and in the Coastal Commission's Motion to Dismiss, preserving the fragile coastal zone is of utmost importance to the State of California, and the Coastal Commission's enforcement mechanisms in the Coastal Act and in local agencies' local coastal programs are the key proceedings the Commission seeks to preserve by intervening in the City's state court action. The Court need not inquire into how that case may impact Plaintiff specifically to determine that the Coastal Commission's interest is important enough to satisfy this requirement for *Younger* abstention.

Plaintiff's multiple citations to and reliance on federal cases involving tribal law do not negate or in any way alter the existence of the Coastal Commission's important interests in enforcing the Coastal Act and the City's important interests in enforcing its local laws and regulations. Further, those cases are distinguishable when applied to this element of the *Younger* abstention analysis. Both the *Sycuan* and *Fort Belknap* cases involved a state seeking to criminally prosecute Indians violating state laws on tribal lands, and while the courts in both cases recognized the state would have a legitimate interest in enforcing those laws if not for federal regulations that expressly retained jurisdiction for such prosecutions by the United States, the federal courts determined that they could not abstain from those cases when the federal regulations made it clear that the state had no jurisdiction to pursue those criminal convictions. See *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 541 (9th Cir. 1994) (as amended on

denial of reh'g (Apr. 28, 1995)); *Fort Belknap Indian Cmty. of Fort Belknap Indian Rsrv. v. Mazurek*, 43 F.3d 428, 432 (9th Cir. 1994). Similarly, *Winnebago Tribe of Nebraska v. Stovall*, 341 F.3d 1202 (10th Cir. 2003) involved another criminal prosecution by a state upon an Indian corporation and its members, invoking tribal immunity questions. *Id.* at 1205. The Tenth Circuit in *Winnebago* explained that the district court was forced to deny *Younger* abstention because "not all aspects of the issues could be properly heard" in the state criminal proceedings and that any ongoing state criminal proceeding "would no longer be just a factor in the analysis, it would end the analysis." *Id.* Not so in the case at bar. First, the City's and Coastal Commission's state actions are not criminal prosecutions but civil enforcement proceedings, and therefore, the issues that might be raised in federal court can certainly be raised in the state court as well. Second, the Coastal Commission contends that the preemption argument raised by Plaintiff is meritless, especially in contrast to the longstanding exclusive and complete jurisdiction of tribal sovereignty and thus, Plaintiff's unsupported preemption claim cannot defeat an otherwise valid *Younger* abstention argument on its face. And finally, because the state proceeding will consider and determine both the merits, or lack thereof, of Plaintiff's preemption arguments, as well as assess the City's and Coastal Commission's authority over past and future illegal conduct by Plaintiff, it cannot be said that the ongoing state proceeding would prevent analysis of these preemption questions and issues, or in any way swallow the preemption analysis that would occur in this federal action.

Further, "[a] claim of preemption will only defeat *Younger* abstention when preemption is 'readily apparent.'" *S. California Gas Co. v. Cnty. of Los Angeles, California*, No. CV 17-5140 DSF (JCX), 2017 WL 8793753, at *7 (C.D. Cal. Dec. 4, 2017) (quoting *Woodfeathers, Inc. v. Washington Cnty., Or.*, 180 F.3d 1017, 1021 (9th Cir. 1999)) (internal citations omitted). The Ninth Circuit has held "'preemption to be readily apparent where the Supreme Court had previously decided the issue; where the state law fell under the express preemption clause of [ERISA]; and where the federal regulatory jurisdiction of the employees in a bargaining unit had previously been determined.'" *Id.* As the Eleventh Circuit explained, "only the clearest of federal preemption claims would require a federal court to hear a preemption claim when there are

underlying state court proceedings and when that claim can be raised in the state forum." *Hughes v. Att'y Gen. of Fla.*, 377 F.3d 1258, 1265 (11th Cir. 2004). Here, preemption of all state and local laws in favor of Plaintiff is not readily apparent, and Plaintiff is not precluded from raising its federal preemption claim in the state court proceeding. In fact, the state court is well-equipped to analyze and decide that claim. *See* the California Supreme Court's *Friends of the Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th 677, 690 (2017) ("We conclude that the ICCTA is not so broadly preemptive.").

Here, the City's and Coastal Commission's interests in enforcing their local and state laws in the face of Plaintiff's broad preemption claims are substantial and important, and the claimed preemption is not sufficiently "readily apparent" to overcome the City's and Commission's interests in having their local and state law claims heard in the ongoing state proceeding.

CONCLUSION

In this federal suit, Plaintiff Mendocino Railway seeks declaratory and injunctive relief in a blatant attempt to interfere with the ongoing state court action, initiated by the City more than a year ago. As this Court recently explained, "[u]nder *Younger*, federal courts should abstain from granting injunctive or declaratory relief that would interfere with a pending state court case." *Ward v. Palmer*, No. 21-CV-00530-JST, 2022 WL 2905067, at *2 (N.D. Cal. July 22, 2022).

For all of the reasons set forth above and in his Motion to Dismiss, Defendant Jack Ainsworth, in his official capacity as Executive Director of the California Coastal Commission, respectfully requests that this Court dismiss Plaintiff's Complaint in its entirety.

Dated: November 3, 2022

Respectfully submitted,

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