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May 24, 2023

Via E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation
395 E Street, SW
Washington D.C. 20423-001

Dear Ms. Brown,

Enclosed is a comment and two recent federal court decisions for AB1305 (Sub No. 1).

This is to certify that all parties of record have been served by email today.

/s/ Bruce Silvey

Bruce Silvey
Humboldt Trails Council
PO Box 7164
Eureka, CA 95502

BEFORE THE SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No.1)

GREAT REDWOOD TRAIL AGENCY ADVERSE ABANDONMENT

COMMENT AND RECENT FEDERAL COURT DECISIONS

BY HUMBOLDT TRAILS COUNCIL

Dated: July 24, 2023

Humboldt Trails Council (HTC) respectfully submits two recent United States District Court decisions involving Mendocino Railway (MR) that HTC believes are relevant to the matters at issue in this proceeding. The decisions, City of Fort Bragg, Plaintiff, and California Coastal Commission, Intervenor-Plaintiff, v. Mendocino Railway, Defendant, Case Number 22-cv-06317-JST, and Mendocino Railway, Plaintiff v. Jack Ainsworth, et al., Defendants, Case number 22-cv-04597-JST, are attached. The decision in the first case was ordered May 11, 2023 and in the second case on May 12, 2023.

In the first case the City of Fort Bragg (City) and the California Coastal Commission (Commission) sued MR in the Superior Court of Mendocino County seeking a declaration that MR is subject to the laws and regulations of both agencies. MR demurred on January 14, 2022 claiming that the Interstate Commerce Commission Termination Act (ICCTA) preempts the City's claims.

The Superior Court rejected MR's preemption claim and concluded MR "is simply a luxury sightseeing excursion service with no connection to interstate commerce," "its 'railroad activities', for the purposes of federal preemption, are extremely limited."

MR removed the case to the United States District Court for a federal ruling related to the ICCTA questions. The City's and Commission's motions were granted and the case was remanded to the Superior Court of Mendocino County.

The second case, was filed against the City and Jack Ainsworth as Executive Director of the Commission on August 9, 2022, and sought an injunction against the City and Commission from interfering with MR's operation on the grounds that the ICCTA preempts state and local laws. The City and Ainsworth sought to have the case dismissed by the District Court and it was so ordered on May 12, 2023.

It is the perspective of HTC that MR is not now, nor can be in the future, involved in interstate commerce. There is the problem of their #1 Tunnel that has been closed since 2015. Then there is the problem that the rail corridor between Willits and Windsor, to get to an interstate rail network, was shut down in 1998 by the Federal Railroad Administration for major safety issues. Finally, there is the issue of not enough shippers left after 25 years to make the rebuilding of all this rail corridor remotely financially feasible.

What seems likely to us is that the primary reason MR wants to continue their STB status is to avoid costly regulations and utilize eminent domain proceedings to get the land they are interested in developing.

However, if they are allowed to maintain their STB status, it will make it impossible for the Great Redwood Trail Agency (GRTA) to rail-bank their corridor between Willits and Cloverdale. Without the rail-banking, the Great Redwood Trail between SF Bay and Humboldt Bay will be delayed many years or never completed. The economic impact to Humboldt County would be substantial.

Thank you for your attention to this matter and the future of the North Coast of California.

Sincerely,

/s/ Bruce Silvey for Humboldt Trails Council

CC: Parties of Record

Please add Humboldt Trails Council to the service list in this proceeding.

Our email address is brucesilvey@humtrails.org

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY OF FORT BRAGG,
Plaintiff,
CALIFORNIA COASTAL COMMISSION,
Intervenor-Plaintiff,
v.
MENDOCINO RAILWAY,
Defendant.

Case No. 22-cv-06317-JST

**ORDER GRANTING MOTIONS TO
REMAND**

Re: ECF Nos. 14 & 15

Before the Court are Plaintiff City of Fort Bragg's ("City") and Intervenor-Plaintiff California Coastal Commission's ("Commission") motions to remand. ECF Nos. 14 & 15. The Court will grant the motions.

I. BACKGROUND

This action concerns Defendant Mendocino Railway's alleged noncompliance with state and local laws and regulations. The City and Commission primarily seek a declaratory judgment that Defendant Mendocino Railway is subject to such laws and regulations. ECF No. 1-1 at 1, 8; ECF No. 1-3 at 1-2, 5-6. The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. ECF No. 1-1 at 5-7. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 ("Coastal Act"), Cal. Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with the Act's permitting requirements. ECF No. 1-3 at 6-7.

The City filed its complaint in the Superior Court of Mendocino County on October 28,

2021. ECF No. 1-1 at 9. Mendocino Railway demurred to the complaint on January 14, 2022, arguing, *inter alia*, that the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10101 *et seq.*, preempts the City’s claims. ECF No. 14-2 at 18-20.¹ The court overruled the demurrer on April 28, 2022. ECF No. 14-2 at 22-33. The court rejected Mendocino Railway’s federal preemption argument as “overbroad” because “not all state and local regulations that affect railroads are preempted” by the ICCTA. *Id.* at 32. Rather “the applicability of preemption” in this context “is necessarily a ‘fact bound’ question.” *Id.* at 33. The court further concluded that because Mendocino Railway “is simply a luxury sightseeing excursion service with no connection to interstate commerce,” “its ‘railroad activities’, for the purposes of federal preemption, are extremely limited.” *Id.* at 32. Mendocino Railway filed its answer to the City’s complaint on June 24, 2022, asserting federal preemption as an affirmative defense. *Id.* at 41. On September 8, 2022, the Commission moved to intervene and filed a proposed complaint-in-intervention. *Id.* at 59-82. The complaint notes that Mendocino Railway “contends that state and federal law preempts” the permitting requirements of the Coastal Act, *id.* at 72, and, as part of the Commission’s prayer for relief, asks the court to declare that the Coastal Act and the City’s local laws “are not preempted by any state or federal law,” *id.* at 73.

Mendocino Railway removed the case to this Court on October 20, 2022. ECF No. 1. The notice of removal invokes this Court’s federal question jurisdiction on the ground that the resolution of the City’s and the Commission’s claims requires “a judicial determination of *federal questions* arising under ICCTA.” *Id.* at 2 (emphasis in original). The City and the Commission filed the instant motions on November 21, 2022. ECF Nos. 14 & 15. The Court took the motions under submission without a hearing on January 23, 2023. ECF No. 25.

II. LEGAL STANDARD

“A defendant may remove an action to federal court based on federal question jurisdiction or diversity jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)

¹ The Commission’s requests that the Court take judicial notice of filings from state and federal court dockets in this and related cases, ECF No. 14-2; ECF No. 18-1, are granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

(citing 28 U.S.C. § 1441). “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). It is “presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.* “[A]ny doubt about the right of removal requires resolution in favor of remand,” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009); accord *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam).

III. DISCUSSION

The City and the Commission argue that (1) Mendocino Railway’s removal of this case was untimely, (2) federal preemption is an insufficient basis for removal, and (3) principles of abstention under *Younger v. Harris*, 401 U.S. 37 (1971) require remand. The Court first considers the second argument and finds it dispositive

For purposes of federal question jurisdiction, “[t]he general rule, referred to as the well-pleaded complaint rule,’ is that a civil action arises under federal law for purposes of [28 U.S.C.] § 1331 when a federal question appears on the face of the complaint.” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). “Because federal jurisdiction ‘depends solely on the plaintiff’s claims for relief and not on anticipated defenses to those claims,’ . . . ‘a case may *not* be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only question truly at issue” *Id.* at 903-904 (first quoting *ARCO Env’t Remediation, LLC v. Dep’t of Health & Env’t Quality of Mont.*, 213 F.3d 1108, 1113 (9th Cir. 2000); and then quoting *Caterpillar*, 482 U.S. at 393 (emphasis in original)).

There are two exceptions to the well-pleaded complaint rule, both of which are relevant here. First, the artful-pleading doctrine “‘allows removal when federal law completely preempts a plaintiff’s state-law claim,’ . . . meaning that ‘the pre-emptive force of the statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *Id.* at 905 (first quoting *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998); and then quoting *Caterpillar*, 482 U.S. at 393). “To have

1 this effect, a federal statute must ‘provide[] the exclusive cause of action for the claim asserted and
2 also set forth procedures and remedies governing that cause of action.’” *Id.* (alteration in original)
3 (quoting *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003)). “The Supreme Court has
4 identified only three statutes that meet this criteria:” (1) Section 301 of the Labor Management
5 Relations Act, 9 U.S.C. § 185; (2) Section 502(a) of the Employee Retirement Income Security
6 Act of 1974, 29 U.S.C. § 1132(a); and (3) Sections 85 and 86 of the National Bank Act, 12 U.S.C.
7 §§ 85 & 86. *Id.* at 905-906.

8 Second, there is a “‘small category’ of state-law claims that arise under federal law for
9 purposes of [Section] 1331 ‘because federal law is a necessary element of the . . . claim for
10 relief.’” *Id.* at 904 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699
11 (2006)). This exception applies where “a federal issue is ‘(1) necessarily raised, (2) actually
12 disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the
13 federal-state balance approved by Congress.’” *Id.* (quoting *Gunn v. Minton*, 568 U.S. 251, 258
14 (2013)). “All four requirements must be met for federal jurisdiction to be proper.” *Id.* at 904-905.

15 Because Mendocino Railway’s notice of removal is grounded in the references to federal
16 preemption in the Commission’s complaint-in-intervention, federal question jurisdiction lies only
17 if either of the two exceptions to the well-pleaded complaint rule applies. Mendocino Railway
18 invokes both exceptions, arguing that the “ICCTA’s preemptive force is extraordinary” and citing
19 numerous cases in support. ECF No. 16 at 16.

20 The Court agrees that the scope of preemption under the ICCTA is broad. Indeed, the
21 Ninth Circuit has recognized that the ICCTA “expressly preempts ‘a wide range of state and local
22 regulation of rail activity,” and that “[i]t is difficult to imagine a broader statement of Congress’s
23 intent to preempt state regulatory authority over railroad operations.” *Swinomish Indian Tribal*
24 *Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1152 (9th Cir. 2020) (emphasis omitted) (first quoting
25 *Ass’n of Am. R.Rs. v. South Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1096-97 (9th Cir.
26 2010); and then quoting *City of Auburn v. United States*, 154 F.3d 1025, 1030 (9th Cir. 1998)).
27 Notwithstanding these generalizations, however, the Ninth Circuit has held that “[t]he ICCTA
28 does not ‘preempt state or local laws if they are laws of general applicability that do not

unreasonably interfere with interstate commerce.” *BNSF Ry. Co. v. Cal. Dep’t of Tax and Fee Admin.*, 904 F.3d 755, 760 (quoting *Ass’n of Am. R.Rs.*, 622 F.3d 1094 at 1097). Instead, the statute “preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation. What matters is the degree to which the challenged regulation burdens rail transportation[.]” *Id.* at 760-61 (alteration in original) (quoting *Ass’n of Am. R.Rs.*, 662 F.3d at 1097-98). As a result, this “system preserves,” for example, “a role for state and local agencies in the environmental regulation of railroads.” *Ass’n of Am. R.Rs.*, 662 F.3d at 1098.

Neither exception to the well-pleaded complaint rule applies here. As to the artful-pleading doctrine, Mendocino Railway “do[es] not attempt to show that the ICCTA ‘provide[s] the exclusive cause of action for the claim[s] asserted.’” *Friends of Del Mar Bluffs v. North County Transit Dist.*, No. 3:22-CV-503-RSH-BGS, 2022 WL 17085607, at *7 (quoting *Beneficial*, 539 U.S. at 8); accord *Californians for Alternatives to Toxics v. N. Coast R.R. Auth.*, No. C-11-4102, 2012 WL 1610756, at *9 (N.D. Cal. May 8, 2012). Because the ICCTA does not preempt state or local laws of general applicability that do not unreasonably interfere with interstate commerce, the Court cannot conclude that “Congress intended to preempt ‘every state law cause of action’ within the scope of the [ICCTA].” *City of Oakland*, 969 F.3d at 907 (quoting *In re NOS Commc’ns*, MDL No. 1357, 495 F.3d 1052, 1059 (9th Cir. 2017)). The Ninth Circuit’s delineation of the boundaries of ICCTA preemption demonstrates that such preemption is not “so extraordinary” as to be considered complete. *Id.* at 905 (quoting *Caterpillar*, 482 U.S. at 393). The artful-pleading doctrine thus does not apply.

As to the second exception, the Ninth Circuit has held that “a federal issue is not substantial if it is ‘fact-bound and situation-specific.’” *Id.* at 905 (quoting *Empire Healthchoice*, 547 U.S. at 700). The Ninth Circuit’s ICCTA preemption inquiry is necessarily fact-bound and situation-specific because it requires courts to assess “the degree to which the challenged [law] burdens rail transportation” in a given case. *BNSF Ry. Co.*, 904 F.3d at 760. The assessment of that degree will invariably turn on the application of the challenged law to the facts of a specific

1 case. Equally fact-bound and situation-specific is the question of whether the ICCTA and its
2 preemption provision apply at all, which turns on whether Mendocino Railway is, in fact, engaged
3 in interstate commerce – an issue the parties dispute in their briefing on the instant motions. The
4 state court reached the same conclusion in overruling Mendocino Railway’s demurrer. *See* ECF
5 No. 14-2 at 22-33. The second exception thus does not apply.

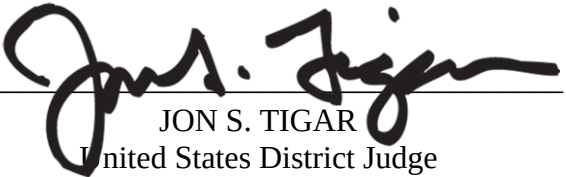
6 Because neither exception to the well-pleaded complaint rule applies, the Court lacks
7 federal question jurisdiction over the claims asserted in this case.

8 **CONCLUSION**

9 For the foregoing reasons, the City’s and Commission’s motions are granted. This case is
10 remanded to the Superior Court of Mendocino County.

11 **IT IS SO ORDERED.**

12 Dated: May 11, 2023

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14 JON S. TIGAR
15 United States District Judge
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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

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

II. JURISDICTION

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

III. LEGAL STANDARD

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

IV. DISCUSSION

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

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

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

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

26 ³ Although the fact that federal law supplies the rule of decision weighs against dismissal, that
27 weight is substantially lessened because "state courts have inherent authority, and are thus
28 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

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)).