

1 ROB BONTA
 Attorney General of California
 2 DAVID G. ALDERSON
 Supervising Deputy Attorney General
 3 PATRICK TUCK
 Deputy Attorney General
 4 State Bar No. 305718
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 879-1006
 Fax: (510) 622-2270
 7 E-mail: Patrick.Tuck@doj.ca.gov
Attorneys for Intervenor
 8 *California Coastal Commission*

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 **CITY OF FORT BRAGG,**

14 Plaintiff,

15 v.

17 **MENDOCINO RAILWAY,**

18 Defendant,

19 **CALIFORNIA COASTAL COMMISSION,**

20 Intervenor.
 21
 22
 23
 24
 25
 26
 27
 28

Case No. 4:22-cv-06317-JST

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 CALIFORNIA COASTAL
 COMMISSION'S MOTION TO
 REMAND ACTION TO STATE COURT**

Date: February 2, 2023
 Time: 2 p.m.
 Dept: Courtroom 6
 Judge: The Hon. Jon S. Tigar
 Trial Date: Not Set
 Action Filed: October 28, 2021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
Introduction.....	1
Background.....	1
I. The Initial Dispute Between the City of Fort Bragg and Mendocino Railway	1
II. Intervention by the California Coastal Commission	3
Argument	5
I. Defendant’s Notice of Removal was not Timely Filed and is Therefore Defective.....	5
II. The Coastal Commission’s Complaint in Intervention Does not Establish Federal Question Jurisdiction Justifying Removal.....	8
III. The Court Should Decline to Assert Jurisdiction Pursuant to Younger Abstention Principles.	10
A. The State Proceeding was Ongoing as of the Filing of the Notice of Removal.....	11
B. This Proceeding is a Quasi-Criminal Enforcement Action.	11
C. This Proceeding Implicates an Important State Interest.....	13
D. This Proceeding Allows Litigants to Raise Federal Challenges.	16
E. If This Action Remains in Federal Court, it Will Have the Practical Effect of Enjoining the State Proceeding.	16
F. No Exception to Younger Applies.....	17
Conclusion	17

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Abrego Abrego v. Dow Chemical Co.
443 F.3d 676 (9th Cir. 2006) 5

Ackerberg v. Citicorp USA, Inc.
887 F. Supp. 2d 934 (N.D. Cal. 2012) 5

*Avco Corp. v. Aero Lodge No. 735, Int’l Ass’n of Machinists & Aerospace
Workers*
376 F.2d 337 (6th Cir. 1967) 6

Baffert v. California Horse Racing Bd.
332 F.3d 613 (9th Cir. 2003) 14

Cantrell v. Great Republic Ins. Co.
873 F.2d 1249 (9th Cir. 1989) 6

Castagnola v. Cnty. of Sonoma
No. 19-CV-08290-JSC, 2020 WL 1940804 (N.D. Cal. Apr. 22, 2020) 12, 14

Caterpillar Inc. v. Williams
482 U.S. 386 (1987) 8

Chi-Fu Hsueh v. Bankers Life & Cas. Co.
421 F. Supp. 3d 937 (S.D. Cal. 2019) 7

Citizens for Free Speech, LLC v. Cnty. of Alameda
953 F.3d 655 (9th Cir. 2020) 16, 17

*Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S.
California*
463 U.S. 1 (1983) 6

Friends of the Eel River v. N. Coast R.R. Auth.
3 Cal. 5th 677 (2017) 16

Gilbertson v. Albright
381 F.3d 965 (9th Cir. 2004) (en banc) 10, 17

Herrera v. City of Palmdale
918 F.3d 1037 (9th Cir. 2019) 13

Huffman v. Pursue, Ltd.
420 U.S. 592 (1975) 13, 17

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Kitchens v. Bowen</i>	
4	825 F.2d 1337 (9th Cir. 1987).....	11
5	<i>Mendocino Railway v. Jack Ainsworth, et al.</i>	
6	(Case No. 4:22-cv-04597-JST).....	1
7	<i>Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n</i>	
8	457 U.S. 423 (1982).....	13
9	<i>Miofsky v. Superior Ct. of State of Cal., In & For Sacramento Cnty.</i>	
10	703 F.2d 332 (9th Cir. 1983).....	14
11	<i>Negrete v. City of Oakland</i>	
12	46 F.4th 811 (9th Cir. 2022).....	9
13	<i>New Orleans Pub. Serv., Inc. v. Council of City of New Orleans</i>	
14	491 U.S. 350 (1989).....	14, 15
15	<i>Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc.</i>	
16	477 U.S. 619 (1986).....	16
17	<i>People v. Burlington N. Santa Fe R.R.</i>	
18	209 Cal. App. 4th 1513 (2012).....	16
19	<i>Potrero Hills Landfill, Inc. v. Cnty. of Solano</i>	
20	657 F.3d 876 (9th Cir. 2011).....	14
21	<i>Quackenbush v. Allstate Ins. Co.</i>	
22	517 U.S. 706 (1996).....	10
23	<i>ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund</i>	
24	754 F.3d 754 (9th Cir. 2014).....	10, 11, 13, 16
25	<i>Richter v. Ausmus</i>	
26	No. 19-CV-08300-WHO, 2021 WL 3112333 (N.D. Cal. July 22, 2021)	11
27	<i>San Remo Hotel v. City & Cnty. of San Francisco</i>	
28	145 F.3d 1095 (9th Cir. 1998).....	14
	<i>Sprint Commc’ns, Inc. v. Jacobs</i>	
	571 U.S. 69 (2013).....	13
	<i>Town of Atherton v. California High-Speed Rail Auth.</i>	
	228 Cal. App. 4th 314 (2014).....	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page

Valles v. Ivy Hill Corp.
410 F.3d 1071 (9th Cir. 2005)..... 9

Wayne v. DHL Worldwide Express
294 F.3d 1179 (9th Cir. 2002)..... 9

Wiener v. Cnty. of San Diego
23 F.3d 263 (9th Cir. 1994)..... 11

Younger v. Harris
401 U.S. 37 (1971).....*passim*

STATUTES

United States Code, Title 28

§ 1446..... 8

§ 1446(b)(1)..... 5, 6

§ 1446(b)(3)..... 7, 8

§ 1447(c)..... 1, 8

California Civil Procedure Code

§ 1094.5 16

California Coastal Act Public Resources Code

§ 30000-30900..... 3

§ 30330..... 3

§ 30334(b)..... 3

§ 30500..... 3

§ 30519..... 3

§ 30600..... 3

§ 30600(d)..... 3

§ 30810..... 3

COURT RULES

Federal Rules of Civil Procedure

Rule 6(a) 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendant Mendocino Railway (“Defendant”)¹ improperly removed this case from the
 4 Superior Court of the State of California for the County of Mendocino. Accordingly, Intervenor
 5 California Coastal Commission (“Coastal Commission”) moves this Court for an order remanding
 6 the action in its entirety back to state court. Defendant’s removal is groundless and this case
 7 should be remanded for three separate and independent reasons. First, Defendant’s removal is
 8 time-barred, as Defendant failed to timely remove the case when it first ascertained it would be
 9 removable. Second, there is no federal question jurisdiction justifying removal, as Defendant
 10 relies on its federal preemption defense as the basis for such removal. And third, in the interests
 11 of not interfering with state court proceedings, this matter should be remanded on *Younger v.*
 12 *Harris* abstention grounds.

13 This motion is timely filed and noticed within 30 days of the filing of Defendant’s Notice of
 14 Removal pursuant to 28 U.S.C. section 1447(c) and Federal Rule of Civil Procedure Rule 6(a).

15 **BACKGROUND**

16 **I. THE INITIAL DISPUTE BETWEEN THE CITY OF FORT BRAGG AND MENDOCINO**
 17 **RAILWAY**

18 More than a year ago, on October 28, 2021, Plaintiff City of Fort Bragg (“City”) filed a
 19 Verified Complaint for Declaratory and Injunctive Relief (“Verified Complaint”) against
 20 Defendant in Mendocino County Superior Court. In its Verified Complaint, the City seeks a
 21 declaratory judgment that Defendant is not a public utility under California law, so as to foreclose
 22 the argument that Defendant’s purported regulation by the California Public Utilities Commission
 23 preempts the City’s local laws and regulation of Defendant’s activities on its property within the
 24 City. *See* Defendant’s Notice of Removal (“Removal Notice”), Exhibit 1 (Doc. No. 1-1) ¶ 15,
 25 Prayer for Relief ¶ 1. The City additionally, or in the alternative, seeks injunctive relief requiring

26 _____
 27 ¹ Note, Mendocino Railway is the sole Plaintiff in the related case also assigned to this
 28 Court titled *Mendocino Railway v. Jack Ainsworth, et al.* (Case No. 4:22-cv-04597-JST) and is
 identified as such in the pending Motions to Dismiss, but here, Mendocino Railway is the sole
 Defendant, and will be identified as such throughout this Motion and supporting documents.

1 Defendant to comply with the City’s codes, regulations, jurisdiction, and authority that are
2 applicable to Defendant’s activities in the City going forward. Removal Notice, Exh. 1 ¶ 19,
3 Prayer for Relief, ¶ 2. The filing of the Verified Complaint by the City was the culmination of an
4 ongoing dispute with Defendant regarding Defendant’s failure to seek permits for work it was
5 undertaking on its property within the City limits. *See* Removal Notice, Exh. 1 ¶¶ 12, 13, 15, 16
6 (describing Defendant’s refusal to comply with the City’s local laws and regulations while
7 continuing to modify buildings and conduct other unpermitted activities on its property within the
8 City). A number of times during this dispute, Defendant has asserted that regulation by the City is
9 preempted by both state and federal law, stating that “the City has no authority over a railroad”
10 and Defendant is “outside the City’s jurisdictional boundaries and thus not subject to a permit.”
11 Removal Notice, Exh. 1 ¶ 12.

12 In response to the City’s Verified Complaint, on January 14, 2022, Defendant filed a
13 demurrer, in which it argued, in part, that the injunctive relief sought by the City “is federally
14 preempted.” *See* Intervenor’s Request for Judicial Notice (“RJN”), filed herewith, Exhibit A, at
15 15-16. The Mendocino County Superior Court overruled Defendant’s demurrer on April 28,
16 2022, explaining that Defendant’s argument amounted to saying that the Superior Court’s
17 jurisdiction over the case is also federally preempted. RJN, Exh. B, at 10. However, in its ruling,
18 the Superior Court found that Defendant’s “preemption argument is overbroad” and Defendant
19 “fails to recognize that not all state and local regulations that affect railroads are preempted.” *Id.*
20 Further, the Superior Court held that “from a regulatory standpoint, [Defendant] Mendocino
21 Railway is simply a luxury sightseeing excursion service with no connection to interstate
22 commerce,” so its activities, “for the purposes of federal preemption, are extremely limited.” *Id.*
23 at 10-11.

24 After the Superior Court overruled Defendant’s demurrer on April 28, 2022, Defendant
25 filed an Answer to the City’s Verified Complaint on June 24, 2022. RJN, Exh. C. In its Answer,
26 Defendant again asserted that the City’s environmental and land use permitting requirements
27 were, with respect to Defendant’s activities, broadly preempted under both state and federal law,
28

1 and in its fourth affirmative defense, that “[t]he declaratory and injunctive relief sought by [the
2 City] are barred by state and federal preemption.” RJN, Exh. C, at 4-5.

3 **II. INTERVENTION BY THE CALIFORNIA COASTAL COMMISSION**

4 Intervenor California Coastal Commission (“Coastal Commission”) is a state agency
5 created by the California Coastal Act (“Coastal Act”) Cal. Pub. Res. Code § 30000-30900 (West
6 2022). The Coastal Commission has the authority and responsibility, pursuant to California
7 Public Resources Code section 30330, to take any action necessary to carry out the provisions of
8 the Coastal Act, including the filing of lawsuits. *See id.* at § 30334(b). The Coastal Commission is
9 charged with administering the Coastal Act and its policies, including a permitting system for any
10 proposed development in the “coastal zone.” *Id.* at § 30600. The Coastal Commission is the
11 original permitting authority, but local governments with territory within the coastal zone are
12 required to develop Local Coastal Programs (LCPs) to implement the Coastal Act. Once the
13 Coastal Commission certifies the local government’s LCP, the local government reviews
14 development applications for consistency with the LCP and issues permits for development in the
15 coastal zone. *See id.* at §§ 30600(d), 30500, and 30519. The Coastal Commission nonetheless
16 may take action to enforce any requirements of a certified LCP, particularly when the local
17 government requests that the Coastal Commission do so. *See id.* at § 30810.

18 The Coastal Commission has certified the City’s LCP, and the Coastal Commission
19 contends that a number of Defendant’s ongoing and planned land use activities, including those
20 described in the City’s Verified Complaint, such as replacement of the roundhouse, lie within the
21 coastal zone of the City. *See* Coastal Commission’s Complaint in Intervention, (Doc. No. 9), filed
22 November 7, 2022 (“Complaint in Intervention”) ¶¶ 4-6. Thus, the Coastal Commission contends
23 that Defendant’s development activities in the coastal zone are subject to the permitting
24 requirements in the City’s LCP. Complaint in Intervention ¶ 4. Because the Coastal Commission
25 further believes that Defendant has undertaken development activities in the coastal zone without
26 applying for or obtaining a coastal development permit from the City, Defendant is in violation of
27 the City’s LCP and the Coastal Act, and is subject to an enforcement action. Complaint in
28 Intervention ¶¶ 4, 16-24. In July 2022, the City requested that the Coastal Commission assume

1 primary responsibility for enforcing Defendant’s violations of the Coastal Act and the City’s LCP
2 with respect to Defendant’s activities in the coastal zone. Complaint in Intervention ¶ 5. The
3 Coastal Commission agreed to do so, and subsequently issued a Notice of Violation to Defendant
4 on August 10, 2022, describing and notifying Defendant of its violations. *Id.*

5 On September 8, 2022, the Coastal Commission filed a motion seeking leave to intervene in
6 this matter, and included a proposed Complaint in Intervention with its motion. Much like the
7 City’s Verified Complaint, the Coastal Commission’s Complaint in Intervention seeks a
8 declaration that Defendant’s development activities in the coastal zone of the City are subject to
9 the Coastal Act and the City’s LCP. Complaint in Intervention, Prayer for Relief ¶ 1. Anticipating
10 Defendant’s oft-stated defense, the Coastal Commission’s Complaint in Intervention further seeks
11 a declaration that the Coastal Commission’s and City’s regulation of Defendant’s development
12 activities, and the public agencies’ enforcement of those requirements, are not preempted under
13 state or federal law. Complaint in Intervention, Prayer for Relief ¶ 2. Finally, the Coastal
14 Commission seeks civil penalties related to Defendant’s violations of the Coastal Act, exemplary
15 damages, and an injunction ordering Defendant to cease all actions constituting unpermitted
16 development in the coastal zone of the City and ordering Defendant to apply for coastal
17 development permits pursuant to the City’s LCP for such actions. Complaint in Intervention,
18 Prayer for Relief ¶¶ 3-5.

19 On October 20, 2022, the Mendocino County Superior Court granted the Coastal
20 Commission leave to intervene, finding that the Coastal Commission’s intervention “will not
21 substantially enlarge the issues in the litigation” as Defendant “has already alleged defenses
22 involving both state and federal pre-emption.” Removal Notice, Exh. 2, at 4. The Superior Court
23 went on to state that, regardless of whether the Coastal Commission intervenes or not, “any
24 factual disputes related to those issues will still need to be addressed by the court.” *Id.* That same
25 day, Defendant filed its Notice of Removal in state and federal court, basing the removal solely
26 on potential federal question jurisdiction and alleging, incredulously, that Defendant first
27 ascertained that the case was removable upon the Court’s order permitting leave for the Coastal
28 Commission to Intervene. Removal Notice ¶ 10. The Notice of Removal makes no mention of the

1 multiple times in which Defendant raised its federal preemption argument over the past year, or
2 its failure to seek to remove the City’s state case until now, many months after the filing and
3 denial of its demurrer and subsequent filing of its Answer in the state case. On October 27, 2022,
4 as ordered by the Mendocino County Superior Court, the Coastal Commission filed and served its
5 Complaint in Intervention in state court and, out of an abundance of caution, on November 7,
6 2022, filed and served the same Complaint in Intervention in this matter in federal court. Removal
7 Notice, Exh. 2, at 4.

8 **ARGUMENT**

9 “The removing party bears the burden of demonstrating that removal was proper. The
10 removal statutes are strictly construed, and doubts about the propriety of removal are resolved in
11 favor of remand.” *Ackerberg v. Citicorp USA, Inc.*, 887 F. Supp. 2d 934, 937 (N.D. Cal. 2012)
12 (citing *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 685, 690 (9th Cir. 2006) (internal
13 citations omitted)).

14 **I. DEFENDANT’S NOTICE OF REMOVAL WAS NOT TIMELY FILED AND IS THEREFORE** 15 **DEFECTIVE.**

16 Defendant’s removal of the state court proceeding is time-barred. As provided in section
17 1446, subdivision (b)(1) of Title 28 of the United States Code, which governs the timing for filing
18 a notice of removal, “[t]he notice of removal of a civil action or proceeding shall be filed within
19 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial
20 pleading setting forth the claim for relief upon which such action or proceeding is based.” 28
21 U.S.C. § 1446(b)(1) (West 2022). The initial pleading in this matter is the underlying Verified
22 Complaint filed by the City of Fort Bragg over a year ago, on October 28, 2021. Removal Notice,
23 Exh. 1. While Defendant’s Notice of Removal acknowledges that the City alleged only a state law
24 cause of action, in its demurrer to that same Verified Complaint, filed in January, Defendant
25 raised the very defense that it now asserts is the basis for this removal, stating that “[t]he authority
26 [commanding Defendant to comply with all City laws and regulations, as applicable] that the City
27 seeks by way of an injunction is federally preempted.” *See* Removal Notice ¶ 2. *See also* RJN,
28 Exh. A, at 16.

1 In its demurrer, Defendant appears to make a “complete preemption” argument in the vein
2 of *Avco Corp. v. Aero Lodge No. 735, Int’l Ass’n of Machinists & Aerospace Workers*, 376 F.2d
3 337 (6th Cir. 1967), *aff’d*, 390 U.S. 557 (1968) (“*Avco*”). In *Franchise Tax Bd. of State of Cal. v.*
4 *Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1 (1983), the Supreme Court explained,
5 “*Avco* stands for the proposition that if a federal cause of action completely preempts a state
6 cause of action any complaint that comes within the scope of the federal cause of action
7 necessarily ‘arises under’ federal law.” *Id.* at 23-24. While, at various times during this dispute,
8 including in portions of its demurrer, Defendant seems to limit its preemption argument to just its
9 “rail-related activities,” Defendant never defines that term nor provides an example of where the
10 City’s jurisdiction might not be preempted. RJN, Exh A, at 16. Rather, Defendant blithely asserts
11 in its demurrer that the federal Surface Transportation Board’s “exclusive jurisdiction over a
12 federally recognized railroad means that state and local regulatory and permitting requirements
13 are broadly preempted.” *Id.* Defendant may think federal law governs its operations and
14 completely preempts local regulation of its activities but, as the Superior Court opined in its order
15 overruling Defendant’s demurrer, as a “sightseeing excursion service with no connection to
16 interstate commerce,” its “‘railroad activities’ . . . are extremely limited.” RJN, Exh B, at 11. If
17 Defendant believed that such complete preemption applied to the City’s single state law cause of
18 action, Defendant was compelled to notice the removal of the case within 30 days of being served
19 with the City’s Verified Complaint in October 2021. *See Cantrell v. Great Republic Ins. Co.*, 873
20 F.2d 1249, 1256 (9th Cir. 1989) (Defendants’ filing of pleadings in response to original complaint
21 that implicated federal question jurisdiction “lost their opportunity to remove the case when they
22 failed to file a petition for removal within thirty days of the filing of the original complaint.”) By
23 not timely removing the City’s Verified Complaint, while making what amounts to a complete
24 preemption argument, Defendant lost its ability to remove this action pursuant to 28 U.S.C. §
25 1446(b)(1).

26 Even assuming arguendo that the City’s Verified Complaint was not removable, a notice of
27 removal may also “be filed within 30 days after receipt by the defendant, through service or
28 otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first

1 be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).
2 As discussed in the Background section above, nearly seven months ago, on April 28, 2022, the
3 Superior Court issued an order overruling Defendant’s demurrer that specifically addressed its
4 federal preemption argument. RJN, Exh B. Again, upon service of that order, Defendant could
5 have sought to remove the case under section 1446(b)(3), but it did not, choosing instead to file
6 an Answer on June 24, 2022, again containing an affirmative federal preemption defense. RJN,
7 Exh C. Months later, once Defendant discovered that the Coastal Commission might intervene in
8 the state case, and knowing that it had missed its multiple potential opportunities to remove the
9 City’s case to federal court, Defendant attempted an end run around removal by filing a separate
10 federal complaint for declaratory relief. *See* RJN, Exh D. In its new federal complaint, Defendant
11 named the City and the Executive Director of the Coastal Commission as defendants, and sought
12 to prosecute its federal preemption claims in that action, in a clear attempt to shop for its
13 preferred forum, and because it had failed to timely remove the City’s Verified Complaint when it
14 first ascertained that the case might be removable. *Id.*

15 In sum, Defendant had multiple opportunities to attempt to remove the City’s underlying
16 complaint and state law action to federal court based on its alleged “exclusive jurisdiction” and
17 complete preemption arguments, yet it failed to do so. Defendant’s statement that it “first
18 ascertained that the state case was removable” upon the Superior Court’s recent order permitting
19 the Coastal Commission to intervene ignores the history of this case, including the multiple times
20 that Defendant has already asserted its federal preemption argument and claimed that the City’s
21 state law action is governed by that argument. Further, considering the fact that Defendant filed
22 its Notice of Removal the exact same day that the Superior Court granted the Coastal
23 Commission’s intervention, Defendant’s argument that it was upon that order that Defendant first
24 ascertained the action was removable strains credibility. Defendant failed to timely remove this
25 case after being served with the City’s Verified Complaint, the Superior Court’s order overruling
26 its demurrer, or any other paper “from which it may first be ascertained that the case is one which
27 is or has become removable.” *See Chi-Fu Hsueh v. Bankers Life & Cas. Co.*, 421 F. Supp. 3d
28 937, 944 (S.D. Cal. 2019) (Defendants cannot ignore papers that provide sufficient notice of

1 removability under section 1446(b)(3)). Thus, Defendant’s Notice of Removal is defective under
2 28 U.S.C. § 1446, and this case should be remanded pursuant to 28 U.S.C. § 1447(c).

3 **II. THE COASTAL COMMISSION’S COMPLAINT IN INTERVENTION DOES NOT**
4 **ESTABLISH FEDERAL QUESTION JURISDICTION JUSTIFYING REMOVAL.**

5 The Coastal Commission’s recent intervention into the pending state case did not
6 meaningfully alter the claims first asserted by the City over a year ago and which are central to
7 this action first filed in state court. The Coastal Commission’s Complaint in Intervention seeks
8 the same general relief as the City, *i.e.*, confirmation of its authority to enforce applicable state
9 and local laws and regulations against Defendant regarding Defendant’s activities on its property.
10 *See* Complaint in Intervention ¶¶ 11-15. The Coastal Commission also seeks an assessment of
11 penalties and exemplary damages against Defendant related to its past violations of those same
12 laws. *See id.* ¶¶ 17-24. Specifically, the Coastal Commission seeks a declaration that “the Coastal
13 Act and the City’s LCP apply to [Defendant’s] actions in the coastal zone of the City that
14 constitute development.” Complaint in Intervention, Prayer for Relief ¶ 1. Further, it seeks a
15 declaration that “the application of the Coastal Act and the City’s LCP to [Defendant’s] actions in
16 the coastal zone of the City that constitute development under the Coastal Act and the City’s LCP
17 are not preempted by any state or federal law.” Complaint in Intervention, Prayer for Relief ¶ 2.
18 The Coastal Commission also requests civil penalties, injunctive relief, and exemplary damages
19 related to Defendant’s violations of the Coastal Act. Complaint in Intervention, Prayer for Relief
20 ¶¶ 3-5.

21 The Coastal Commission’s reference to potential federal law preemption in its Complaint in
22 Intervention is simply an acknowledgment of Defendant’s frequently-repeated defense, found in
23 both its demurrer and Answer, as well as in communications with the City and the Coastal
24 Commission, over the course of this dispute. As the Supreme Court has held, “it is now settled
25 law that a case may *not* be removed to federal court on the basis of a federal defense, including
26 the defense of pre-emption, even if the defense is anticipated in the plaintiff’s complaint, and
27 even if both parties concede that the federal defense is the only question truly at issue.”
28 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). Here, the Coastal Commission anticipated

1 that Defendant would again make its federal preemption argument in response to the Coastal
2 Commission's Complaint in Intervention, and thus, included a reference to it in its pleading.

3 At root, this litigation began with a dispute over the application of the City's local laws and
4 regulations as they apply to Defendant, and, with the Coastal Commission's intervention, now
5 include the Commission's overlapping and related state law claims. As the Mendocino County
6 Superior Court stated in its order granting leave for the Coastal Commission to intervene,
7 Defendant "has already alleged defenses involving both state and federal pre-emption" and
8 regardless of whether the Coastal Commission intervenes or not, "any factual disputes related to
9 those issues will still need to be addressed by the court." Removal Notice, Exh. 2, at 4. Therefore,
10 the Coastal Commission's intervention and its anticipatory reference to Defendant's alleged
11 preemption under federal law in the Complaint in Intervention do not confer the federal question
12 jurisdiction upon which Defendant relies in removing this case to federal court. See *Negrete v.*
13 *City of Oakland*, 46 F.4th 811, 819 (9th Cir. 2022) ("a federal issue raised in anticipation of a
14 defense is not sufficient to establish federal question jurisdiction"). Because this court does not
15 have federal question jurisdiction and Defendant's removal was premised solely on its
16 preemption defense, anticipated in the Coastal Commission's Complaint in Intervention, this
17 matter and all of its causes of action should be remanded to Mendocino County Superior Court.
18 As held in the Ninth Circuit's recent *Negrete* case, a case initiated in state court may not be
19 removed on the basis of a federal defense, "even if, as here, the state-law complaint explicitly
20 seeks declaratory relief with respect to the anticipated federal defense." *Negrete*, 46 F.4th at 817.
21 Such is the case with the Coastal Commission's Complaint in Intervention and therefore, it cannot
22 form the basis for removal by Defendant. See also *Valles v. Ivy Hill Corp.*, 410 F.3d 1071, 1075
23 (9th Cir. 2005) ("A federal law defense to a state-law claim does not confer jurisdiction on a
24 federal court, even if the defense is that of federal preemption and is anticipated in the plaintiff's
25 complaint."). Because this Court lacks jurisdiction, this case must be remanded back to state
26 court. See *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1185 (9th Cir. 2002) (finding that a
27 federal preemption defense does not provide a basis for federal question jurisdiction and therefore
28 the case was remanded).

1 **III. THE COURT SHOULD DECLINE TO ASSERT JURISDICTION PURSUANT TO *YOUNGER***
2 **ABSTENTION PRINCIPLES.**

3 Even if this Court finds that Defendant's removal was timely and the Coastal Commission's
4 Complaint in Intervention conferred sufficient federal question jurisdiction, this Court should
5 decline to assert that jurisdiction pursuant to the abstention principles set forth in *Younger v.*
6 *Harris*, 401 U.S. 37 (1971), and remand the case back to Mendocino County Superior Court.

7 A federal court ordinarily has "a strict duty to exercise the jurisdiction that is conferred . . .
8 by Congress." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). At the same time, the
9 Supreme Court has recognized that "federal courts may decline to exercise their jurisdiction in
10 otherwise 'exceptional circumstances,' where denying a federal forum would clearly serve an
11 important countervailing interest." *Id.* (citation omitted). One such situation is when hearing a
12 case "would interfere . . . with certain types of state civil proceedings." *Id.* In such situations,
13 abstaining from jurisdiction "preserve[s] respect for state functions" and avoids "'unduly
14 interfer[ing] with the legitimate activities of the States.'" *Gilbertson v. Albright*, 381 F.3d 965,
15 970-971 (9th Cir. 2004) (en banc) (quoting *Younger v. Harris*, 401 U.S. 37, 43-45 (1971)). This
16 type of abstention is known as *Younger* abstention.

17 In civil cases, the Ninth Circuit has articulated four elements to determine if *Younger*
18 abstention is appropriate, namely "when the state proceedings: (1) are ongoing, (2) are quasi-
19 criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of
20 its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal
21 challenges." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir.
22 2014). "If these 'threshold elements' are met, we then consider whether the federal action would
23 have the practical effect of enjoining the state proceedings and whether an exception
24 to *Younger* applies." *Id.* "The critical date for purposes of deciding whether abstention principles
25 apply is the date the federal action is filed." *Gilbertson v. Albright*, 381 F.3d 965, 969, n. 4 (9th
26 Cir. 2004).

27 All four elements were met here as of the time of Defendant's filing of its Notice of
28 Removal.

1 **A. The State Proceeding was Ongoing as of the Filing of the Notice of**
2 **Removal.**

3 As to the first element, the City filed and served its Verified Complaint against Defendant
4 in Mendocino County Superior Court more than a year ago, on October 28, 2021, and that case
5 would be ongoing, but for Defendant’s improper filing of the Notice of Removal on October 20,
6 2022. The Superior Court also granted the Coastal Commission leave to intervene in this matter
7 on October 20, 2022, and the Coastal Commission filed and served its Complaint in Intervention
8 on Defendant in state and federal court on October 27, 2022, and November 7, 2022, respectively.
9 *See* Removal Notice, Exh. 2, and Complaint in Intervention. Regardless of its current status, the
10 state proceeding was pending when Defendant filed its defective Notice of Removal. That is all
11 that is required to satisfy the first prong of the *Younger* abstention analysis. As the Ninth Circuit
12 has repeatedly held, “the critical question is not whether the state proceedings are still ‘ongoing’
13 but whether ‘the state proceedings were underway before initiation of the federal proceedings.’”
14 *Wiener v. Cnty. of San Diego*, 23 F.3d 263, 266 (9th Cir. 1994) (quoting *Kitchens v. Bowen*, 825
15 F.2d 1337, 1341 (9th Cir. 1987)); see also *Richter v. Ausmus*, No. 19-CV-08300-WHO, 2021 WL
16 3112333, at *6 (N.D. Cal. July 22, 2021) (quoting the same “critical question” language from
17 *Kitchens v. Bowen*); cf. *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759
18 (9th Cir. 2014) (“[T]he date for determining whether *Younger* applies is the date the federal
19 action is filed.”). Here, the state proceeding was ongoing at the time of removal and will continue
20 in the state court if it is properly remanded, satisfying the first *Younger* factor.

21 **B. This Proceeding is a Quasi-Criminal Enforcement Action.**

22 This action also meets the second requirement, as it is a quasi-criminal enforcement action
23 whereby the City and the Coastal Commission are seeking confirmation of their authority to
24 regulate Defendant’s activities within their jurisdictions and to enforce the City’s LCP and the
25 Coastal Act with regard to those activities. All of the City’s actions here were precipitated by the
26 fact that the City observed activities by Defendant on its property within the City that likely
27 violated the City’s local laws and regulations. The City’s Verified Complaint explains in detail
28 the efforts the City has undertaken in its attempts to enforce its land use, code enforcement, and

1 permitting regulations upon Defendant. Removal Notice, Exh. 1 ¶¶ 12, 13, 15. The City’s
2 Verified Complaint further describes the multiple occasions when Defendant has refused to
3 comply with its local laws and regulations, resulting in the City initiating investigations into those
4 illegal activities, but the City was ultimately prevented from following through on those
5 investigations and from issuing citations against Defendant by Defendant’s unfounded claims of
6 broad state and federal preemption. *Id.* ¶¶ 12, 13, 15, 16. The City was then forced to file a civil
7 state court suit seeking to affirm its jurisdiction and authority and to be able to proceed with
8 enforcing those local laws and regulations against Defendant. *Id.* ¶¶ 15, 16, & Prayer ¶¶ 1-2. At
9 its core, the City’s action is a civil enforcement action, and if permitted to continue its
10 investigation, could result in formal citations and abatement actions by the City against
11 Defendant.

12 The Coastal Commission, also having observed Defendant’s activities in the City and
13 within the coastal zone, likely in violation of the Coastal Act, and after the City requested that the
14 Commission assume primary enforcement authority as to Defendant, issued a Notice of Violation
15 to Defendant, describing the violations taking place and ordering Defendant to cease all
16 unpermitted development on its property. Complaint in Intervention ¶ 5, *see also* RJN, Exh. E, at
17 21-24. After Defendant failed to seek necessary permits from the City or the Coastal
18 Commission, and continued with its illegal activities on its property in the coastal zone, the
19 Coastal Commission filed a motion to intervene in the City’s suit, which was granted on October
20 20, 2022. *See* Removal Notice, Exh. 2, and RJN, Exh. E. In this action, along with a resolution of
21 Defendant’s purported preemption arguments, the Coastal Commission seeks civil penalties and
22 exemplary damages to sanction Defendant and deter any further violations of the Coastal Act.
23 *See* Complaint in Intervention, Prayer for Relief ¶¶ 3-5. In a recent case in this Court, the filing of
24 a civil enforcement action in state court, seeking abatement, injunctive relief, and civil penalties
25 related to state land use laws (similar to the Coastal Commission’s Complaint in Intervention
26 here), was found to fall within the scope of *Younger* abstention. *See Castagnola v. Cnty. of*
27 *Sonoma*, No. 19-CV-08290-JSC, 2020 WL 1940804, at *4 (N.D. Cal. Apr. 22, 2020) (“Plaintiff
28 was notified of these violations and the County has filed a civil enforcement action seeking

1 abatement, injunctive relief, and civil penalties. Therefore, consistent with *Herrera*, the state civil
2 enforcement proceeding here falls within *Younger's* scope.” (internal citation omitted)).

3 In sum, this action is “akin to a criminal prosecution” and was “initiated to sanction
4 [Defendant], *i.e.*, the party challenging the state action, for [its] wrongful act.” *Sprint Commc'ns,*
5 *Inc. v. Jacobs*, 571 U.S. 69, 79 (2013) (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604
6 (1975)) (also citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432
7 (1982)). Because the City’s Verified Complaint and the Coastal Commission’s intervention in this
8 case have been initiated to enforce local and state laws against Defendant, this proceeding is “a
9 civil enforcement proceeding within the scope of the *Younger* doctrine,” meeting the second
10 requirement that the state proceeding constitutes a quasi-criminal enforcement action. *Herrera v.*
11 *City of Palmdale*, 918 F.3d 1037, 1045 (9th Cir. 2019).

12 **C. This Proceeding Implicates an Important State Interest.**

13 The third *Younger* requirement is also met, as this proceeding implicates an important state
14 interest. Defendant has asserted in its overruled demurrer and verified Answer that local and state
15 regulation of its activities are preempted under state and federal law. The corollary to this
16 assertion is that Defendant is claiming that it is permitted to undertake whatever activities and
17 alterations to its property in the coastal zone it would like, particularly if it believes those
18 activities are “rail-related,” without any oversight or regulation by the Coastal Commission or the
19 City. A ruling allowing such unrestricted and unpermitted activities by Defendant threatens
20 vulnerable coastal resources and would significantly hinder the Coastal Commission’s ability to
21 protect the coast, in contravention of the Coastal Act, as well as the City’s LCP and local
22 ordinances.

23 Just as the City seeks to enforce its local laws and regulations against Defendant and its
24 actions on its property within the City, the Coastal Commission has intervened in this proceeding
25 in order to enforce the requirements and prohibitions of the Coastal Act as they apply to
26 Defendant’s development of its property in the coastal zone. The relevant question under the third
27 element of the *Younger* analysis is whether “the state proceedings . . . implicate an important state
28 interest.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014)

1 (emphasis added). Here, the Coastal Commission’s and the City’s interests in enforcing the
2 Coastal Act and the City’s local laws are their fundamental interests. As the Ninth Circuit has
3 explained:

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

10 *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 883–84 (9th Cir. 2011)
11 (quoting *Miofsky v. Superior Ct. of State of Cal., In & For Sacramento Cnty.*, 703 F.2d 332, 336
12 (9th Cir. 1983)).

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

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

29 The Coastal Commission’s first cause of action in its Complaint in Intervention recognizes
30 that Defendant has asserted defenses related to state and federal preemption in response to the

1 City's multiple attempts to enforce its local laws and regulations (including in both its demurrer
2 and Answer in this proceeding), as well as in response to the Coastal Commission's attempts to
3 enforce the Coastal Act against Defendant. *See* Complaint in Intervention, ¶¶ 4, 13, Prayer for
4 Relief ¶ 2. However, while a determination of the merits, or lack thereof, of Defendant's
5 preemption arguments will need to be addressed in this proceeding, the general allegations in the
6 Coastal Commission's Complaint in Intervention, which are incorporated in both of its causes of
7 action, describe in detail the threat that Defendant poses to the coastal zone, Defendant's
8 violations of the Coastal Act that have already occurred and are likely ongoing, and the need to
9 enforce the Coastal Act and prevent further violations by Defendant, which were the root causes
10 for the Coastal Commission's intervention. *See* Complaint in Intervention ¶¶ 4-6, 8. Further, by
11 seeking civil penalties, injunctive relief, and exemplary damages against Defendant for its
12 violations of the Coastal Act in its second cause of action, the Coastal Commission seeks to both
13 sanction and deter Defendant from engaging in such illegal actions. *See* Complaint in
14 Intervention, Prayer for Relief ¶¶ 3-5. The Complaint in Intervention and its myriad allegations of
15 violations by Defendant demonstrate that the Coastal Commission is in an enforcement posture
16 against Defendant and its interests in maintaining its authority to enforce the Coastal Act are
17 important.

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

1 Therefore, this proceeding involves and implicates important state interests, satisfying the
2 third *Younger* requirement.

3 **D. This Proceeding Allows Litigants to Raise Federal Challenges.**

4 As to the fourth and final *Younger* requirement, the consideration and ruling by the
5 Superior Court on Defendant’s demurrer, which raised a federal preemption challenge, and the
6 fact that Defendant asserted its affirmative defense of federal preemption in its Answer, (as
7 discussed above), demonstrate that Defendant has already raised, and the litigants will continue to
8 be able to raise, federal challenges in this proceeding, even upon remand back to state court.
9 Moreover, on multiple occasions in the past decade California state courts have evaluated and
10 ruled on claims of federal preemption by railroad operators, and in each case, the parties were
11 able to raise federal challenges. *See, e.g., Town of Atherton v. California High-Speed Rail Auth.*,
12 228 Cal. App. 4th 314, 327-34 (2014); *Friends of the Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th
13 677, 704-11, 740 (2017); *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1528-31
14 (2012). There is no reason to believe such would not be the case in this action after remand to
15 state court. Further, “under California law, a litigant may seek judicial review of an adverse
16 decision and, in doing so, may raise federal claims.” *Citizens for Free Speech, LLC v. Cnty. of*
17 *Alameda*, 953 F.3d 655, 657 (9th Cir. 2020) (citing Cal. Civ. Proc. Code § 1094.5 and *Ohio Civil*
18 *Rights Comm’n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 629 (1986)). Therefore, the fourth
19 and final *Younger* requirement is met.

20 **E. If This Action Remains in Federal Court, it Will Have the Practical Effect**
21 **of Enjoining the State Proceeding.**

22 As discussed above, the four threshold *Younger* factors are satisfied here. As to the question
23 of “whether the federal action would have the practical effect of enjoining the state proceedings,”
24 if this federal action is not remanded, the state proceedings, (including any non-judicial
25 enforcement actions by the City or the Coastal Commission), cannot move forward while this
26 case is pending and the Court is considering Defendant’s preemption argument. *ReadyLink*
27 *Healthcare*, 754 F.3d at 759. Therefore, all related state proceedings will be enjoined if the
28 federal court does not remand this action.

1 **F. No Exception to *Younger* Applies.**

2 Finally, no exception to the *Younger* principles apply to this proceeding. The Ninth Circuit
 3 discussed potential exceptions to *Younger* abstention in *Gilbertson v. Albright*, 381 F.3d 965 (9th
 4 Cir. 2004). In *Gilbertson*, the court explained that some examples of exceptions to *Younger*
 5 include where the state proceeding is “motivated by a desire to harass or is conducted in bad
 6 faith” or where there are flagrant violations of express constitutional prohibitions by the state or
 7 local actor. *Id.* at 983 (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975)). *See also Citizens*
 8 *for Free Speech*, 953 F.3d at 657–58.

9 Here, there is no evidence that the City or the Coastal Commission is acting in bad faith or
 10 trying to harass Defendant in seeking a determination regarding their local and state land-use
 11 authority and Defendant’s purported preemption arguments, and no violations of constitutional
 12 prohibitions are implicated. Defendant has refused to comply with local and state laws and is now
 13 subject to enforcement for those violations. That was the impetus for the City’s lawsuit and the
 14 Coastal Commission’s intervention, and thus, no exception to *Younger* applies.

15 In light of the foregoing, all of the requirements for *Younger* abstention are met, and this
 16 Court should decline to exercise its jurisdiction over this action and remand it in its entirety to the
 17 Mendocino County Superior Court for further proceedings.

18 **CONCLUSION**

19 For all the foregoing reasons, the Coastal Commission respectfully requests the court to
 20 remand this matter in its entirety to the Superior Court of California for the County of
 21 Mendocino.

22 Dated: November 21, 2022

Respectfully submitted,

23 ROB BONTA
 Attorney General of California
 24 DAVID G. ALDERSON
 Supervising Deputy Attorney General
 25 *s/ Patrick Tuck*

26 PATRICK TUCK
 Deputy Attorney General
 27 *Attorneys for Intervenor*
California Coastal Commission

28 OK2022303294 / 91564658.docx