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

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

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

Dated: May 11, 2023

JON S. TIGAR
United States District Judge

United States District Court
Northern District of California