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CITY OF FORT BRAGG

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MENDOCINO

CITY OF FORT BRAGG, a California municipal corporation,

Plaintiff,

v.

MENDOCINO RAILWAY AND DOES 1–10, inclusive

Defendants.

Case No. 21CV00850

CITY OF FORT BRAGG'S OPPOSITION TO MOTION TO STRIKE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JUDGE: Hon. Clayton Brennan
DEPT.: Ten Mile

DATE: **February 24, 2022**
TIME: **2:00 p.m.**

Plaintiff, City of Fort Bragg ("City"), submits the following in Opposition to the Motion to Strike Complaint for Declaratory and Injunctive Relief ("Opposition") filed by Defendant Mendocino Railway ("MR"):

I. INTRODUCTION.

MR seeks to strike all references to "injunctive relief" in the Complaint, as well as the proper statutory grounds for such relief pursuant to California Code of Civil Procedure Section 526, and the City's prayer for injunctive relief. There are no valid grounds for such motion and it should be denied. The City's request for injunctive relief is proper, the scope of such requested relief is valid, and MR's vexatious motion should be disregarded, in MR's vain attempt to avoid any regulation whatsoever of its activities. For the reasons set forth in the City's Opposition to MR's Demurrer, MR is subject to local regulatory authority, and thus the Court also has sufficient equitable authority over the matters in the Complaint, and declaratory or injunctive relief are properly stated. MR's dream or vision does not warrant an abdication of valid health and safety or other City authority, and this Court may exercise its valid jurisdiction as to much matters. Thus, the motion must be denied.

II. STATEMENT OF FACTS.

MR operates the "Skunk Train" on round-trip services between Fort Bragg and Glen Blair Junction, and Willits and Northspur Junction. It provides no through-service, does not connect to interstate rail or other interstate connections, and it does not provide freight service. The CPUC has already determined that MR's provision of such passenger services is not a public utility. Similarly, the Federal Interstate Commerce Commission ("ICC"), predecessor to the Surface Transportation Board ("STB") determined, on facts nearly identical to those relating to the limited passenger services provided by MR, that there is no federal regulation of solely intrastate services. By the Complaint, the City seeks to enforce, as applicable, its local authority over building and safety and other permissible regulations on MR, but has been declined any such regulatory authority by MR. Thus, a valid dispute exists between the parties, which is within this Court's jurisdiction, and is not preempted. Further, the City has also validly sought injunctive relief, such as the Court may find necessary and appropriate to its equitable authority on the declaratory relief cause of action. The City's allegations as to injunctive relief are proper and not subject to being stricken at this early stage.

III. STANDARD OF REVIEW.

California Civil Procedure Code Section 436 permits a motion to "[s]trike out any irrelevant, false, or improper matter" in a complaint, or any part of a pleading that is not in "conformity with

the laws of this state, a court rule, or an order of the court." Such a motion must be made upon "grounds . . . [that] shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." Cal. Civ. Proc. Code § 437 (a). However, motions to strike are disfavored, and "use of the motion to strike should be cautious and sparing." *PH II, Inc. v. Superior Court*, 33 Cal. App. 4th 1680, 1683 (1995). Such motions should not be "a procedural 'line item veto' for the civil defendant." *Id.* In fact, pleadings are to be construed liberally with a view to substantial justice between the parties. Cal. Civ. Proc. Code § 452. "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." *Turman v. Turning Point of Cent. Cal., Inc.*, 191 Cal. App. 4th 53, 63 (2010). "In ruling on a motion to strike, courts do not read allegations in isolation." *Clauson v. Superior Court*, 67 Cal. App. 4th 1253, 1255 (1998). A court may

> strike the pleading only "upon terms it deems proper," (§ 436, subd. (b)), that is, upon such terms as are just. (§ 472a, subd. (d) ["When a motion to strike is granted pursuant to Section 436, the court may order that an amendment or amended pleading be filed upon terms it deems proper"] . . . . When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal. App. 3d 568, 575 [160 Cal. Rptr. 567] [improperly verified pleading; opportunity to cure should be given].)

Vaccaro v. Kaiman, 63 Cal. App. 4th 761, 768 (1998). As with a demurrer, if there is a "reasonable possibility" amendment may cure the defect, "it is ordinarily an abuse of discretion to deny leave to amend [because it is] a drastic step which leads to complete termination of the pleader's action." *Id.*

IV. THE CITY PROPERLY SEEKS INJUNCTIVE RELIEF WITH A DECLARTORY RELIEF CAUSE OF ACTION, AND THE MOTION MUST BE DENIED.

The Court of Appeal has specifically recognized that "[i]njunctive relief may be granted in a declaratory relief action. The reason is: It is the duty of the court hearing an action for declaratory relief to make a complete determination of the controversy." *City of San Jose v. Department of Health Servs.*, 66 Cal. App. 4th 35, 46 (1998) (citations, changes and quotations omitted). In fact, in *City of San Jose*, the City sought a declaration of its right to regulate smoking not subject to State preemption, and since the court found that the "City's smoking ordinance [wa]s valid, . . . [an] injunction [wa]s the proper remedy to enjoin defendants from enforcing, within City's territorial limits, Department's smoking rules and regulations that conflict with City's smoking ordinance." *Id.* at 47. Similarly here,

if the Court finds – as it should based upon the City's Opposition to MR's Demurrer, filed concurrently herewith and incorporated herein by reference, that the Demurrer is improper and should be denied – then the Court will also be required to find validity to the City's assertion of injunctive relief relating to certain local regulatory authority alleged over MR. Like in *City of San Jose*, such injunctive relief is well within the Court's authority, as well as being necessary and proper, and in potential furtherance of the Court's declaration of rights as sought in the Complaint.

Thus, the City's seeking of injunctive relief is an entirely proper and appropriate assertion, and there are sufficient grounds for such allegations. There are no grounds for striking any matters from the Complaint relating to injunctive relief. *See James v. Hall*, 88 Cal. App. 528, 535 (1928) (noting injunctive relief can be "ancillary" to declaratory relief and "expressly provided for" within such claim); *Staley v. Board of Med. Exam'rs*, 109 Cal. App. 2d 1, 6 (1952) (quoting *Knox v. Wolfe*, 73 Cal. App. 2d 494, 505 (1946) ("declaratory and coercive or executory relief may be granted in the same action" "[f]uture rights may be determined" as part of Court's "jurisdiction of the equitable controversy") (internal citations omitted); *Holley v. Hunt*, 13 Cal. App. 2d 335, 337 (1936) (proper for both declaratory and injunctive relief, as appropriate); *Hollenbeck Lodge (486) I.O.O.F. v. Wilshire Blvd. Temple*, 175 Cal. App. 2d 469, 476 (1959) ("declaratory and coercive relief may be granted in the same action") (equity court has "coextensive" authority to determine rights and "enforce its decrees").

It seems that there are two bases for MR's claim that injunctive relief is improper. First, MR simply states, without support, that somehow the City's request for injunctive relief is simply "'not supported by the allegations of the complaint.'" (Motion to Strike, at p. 4, lns. 13-14.) This statement is merely conclusory and contrary to law, as set forth above. In fact, the City has sufficiently alleged the relief requested, and MR does not show otherwise. As noted above in *City of San Jose*, injunctive relief is properly granted as to matters violating local law. In addition, injunctive relief is properly stated simply in terms of violations of local regulations, including building and safety codes. *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 70 (1983) (public harm may be "presum[ed]" from "statutory violation"). Indeed, the City has alleged MR has violated valid City building and safety regulations, and has refused to permit City inspections as to such regulations, or to comply with such regulations, as well as other violations of valid local regulations applicable to MR, and subject to

proof. (Complaint, ¶¶ 12-13, 15-16.) (*See also*, Opposition to Demurrer, p. 13.) In accordance with such alleged violations, which are presumed to constitute irreparable injury, the City has also alleged these and other violations to be shown by proof, which have caused, and continue to cause: irreparable injury; are a public nuisance; are a "substantial risk to the health, safety and welfare of the public"; and for which "[n]o other adequate remedy exists." (Complaint, ¶¶ 17-21.) These constitute sufficient allegations, especially when "each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." *C.A. v. William S. Hart Union High School Dist.*, 53 Cal. 4th 861, 872 (2012). A complaint "'must be liberally construed, with a view to substantial justice between the parties.'" *Chazen v. Centennial Bank*, 61 Cal. App. 4th 532, 542 (1998). "The . . .Supreme Court . . . held that 'a plaintiff is required only to set forth the *essential facts* . . . with reasonable precision and with particularity *sufficient to acquaint* a defendant with the nature, source and extent" of the claims. *Ludgate Ins. Co. v. Lockheed Martin Corp.*, 82 Cal. App. 4th 592, 608 (2000) (italics added) (cite omitted).

In fact, as MR admits, injunctive relief is not a separate cause of action. Thus, the City's injunctive relief stands or falls with its declaratory relief claim. And, if the Court denies MR's Demurrer, then it must also deny the Motion to Strike. The Court of Appeal has recognized that "[a] permanent injunction is merely a remedy for a proven cause of action. It may not be issued if the underlying cause of action is not established." *City of So. Pasadena v. Department of Transp.,* 29 Cal. App. 4th 1280, 1293 (1994) (internal quotations omitted). The converse is also true; if there is a valid claim, a party may obtain derivative injunctive relief. A party "must prove (1) . . . the wrongful act sought to be enjoined and (2) the grounds for equitable relief, such as, inadequacy of the remedy at law." *Id.*

As to the substantive issues, there is no basis for this Court to find State or Federal law preempts local regulatory authority, for the reasons stated in the City's Opposition to the Demurrer, filed concurrently herewith and incorporated herein by reference.(*See* City's Opposition to Demurrer, Parts IV and VI.) In summary, the CPUC has determined MR does not engage in passenger services regulated as a public utility; it does not engage in transportation, and is not a common carrier under State law. Thus, there is no CPUC plenary regulatory authority preempting City health and safety and other valid local regulations. Further, federal regulatory agencies have determined purely intrastate excursion passenger services like MR's, or as to MR's own services, are not subject to

federal authority. Even if MR currently had freight services, or could in the future, merely ancillary freight services have also been held insufficient to support federal regulatory authority. The City thus retains local regulatory authority not conflicting with State authority and not interfering with interstate commerce. The City's declaratory and injunctive relief claims thus survive demurrer.

Second, MR's other ground for challenging injunctive relief – that it is too broad as to "all" City laws and regulations is also invalid. (Motion to Strike, at p. 10, lns. 27-28.) MR ignores the scope of relief sought in the City's Prayer: "For a stay, temporary restraining order, preliminary injunction, and permanent injunction commanding the [MR] to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority, *as applicable*." (Complaint, p. 6, lns. 15-18 (italics added).) The City seeks injunctive relief only to the extent its regulations apply, are not preempted, and must be followed by MR. Indeed MR's reading of the Complaint is non-sensical. No one is subject to *all* City regulations, ordinances, or laws – only those that apply to it or its actions/activities, and only as to violations thereto. This is precisely what the City requests.

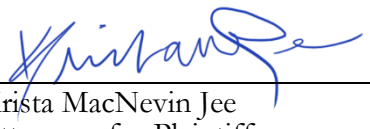
MR's Motion to Strike thus seeks an unreasonable exaggerated reading of the Complaint, not as a whole or in context as required. Further, the Motion is premature attempt, since a prayer is often subject to modification and "may be amended to conform to the proofs at the trial." *Hoffman v. Pac. Coast Constr. Co.*, 37 Cal. App. 125, 132 (1918). Regardless of the scope of the City's *request* for injunctive relief, the Court may ultimately grant only some portion of the requested relief, and that fact does not warrant striking the requested relief altogether. If that were the case, no injunctive relief could ever be stated, because a court may often only allow part of relief that is sought. Also, even assuming *arguendo* the Court adopted such an outrageous view, the City must be able to amend.

V. CONCLUSION.

For all the foregoing reasons, the Motion to Strike must be denied. The substance of the requested injunctive relief is proper on the underlying merits, just the same as the primary declaratory relief, for all the reasons stated, and incorporated herein, in the City's Opposition to the Demurrer, filed concurrently herewith. Injunctive relief is also properly sought as to all "applicable regulations" of the City, and this is subject to proof. Injunctive relief has been sufficiently alleged. Assuming *arguendo* any deficiencies, amendment must be allowed.

Dated: February 8, 2022

JONES MAYER

By: 

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CITY OF FORT BRAGG

Fort Bragg v. Mendocino Railway
Case No. 21CV00850

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF ORANGE) ss.

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, Ca 92835. On February 9, 2022, I served the foregoing document(s) described as **CITY OF FORT BRAGG'S OPPOSITION TO MOTION TO STRIKE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,** on each interested party **listed below**/on the attached service list.

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XX (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s) listed above to the e-mail address(es) of the person(s) set forth above. The transmission was reported as complete and without error. See Rules of Court, Rule 2.251.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 9, 2022 at Fullerton, California.

WENDY A. GARDEA