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6 MENDOCINO RAILWAY

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF MENDOCINO**

9 CITY OF FORT BRAGG, a California
10 municipal corporation

11 Plaintiff,

12 v.

13 MENDOCINO RAILWAY and DOES 1-10,
14 inclusive,

15 Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**DEFENDANT MENDOCINO
RAILWAY'S OPPOSITION TO THE
CALIFORNIA COASTAL
COMMISSION'S MOTION TO
INTERVENE**

Hearing Date: October 6, 2022
Hearing Time: 2:00 p.m.
Department: Ten Mile Branch

1 **I. INTRODUCTION**

2 The California Coastal Commission wants to intervene in this lawsuit filed by Plaintiff City of
3 Fort Bragg against Defendant Mendocino Railway. The City pleads one cause of action for a declaration
4 that the railroad is not a public utility. The City also seeks an injunction subjecting the railroad to the
5 City’s laws and authority on the purported basis that Mendocino Railway is not a public utility.

6 The Commission says it has a “strong interest” in the City’s case. It also says that the City
7 effectively cannot—and will not—defend its own laws and interests. According to the Commission, the
8 City has relinquished its land-use and enforcement authority to the Commission insofar as Mendocino
9 Railway is concerned. On all these grounds, the Commission demands to intervene in the City’s case
10 against Mendocino Railway.

11 But the Commission fails to satisfy the criteria for either mandatory or permissive intervention.
12 Its claim to mandatory intervention fails because it has no protectable interest in any “property” or
13 “transaction” that is the subject of this action. That is because the subject of this action consists of or
14 implicates neither property nor a particular transaction; the subject of this action is Mendocino
15 Railway’s status as a public utility. The Commission does not—and cannot—explain how it has a
16 protectable interest in the railroad’s status as a public utility. Mere “interest” in this case is not enough.

17 The Commission also may not permissively intervene because its participation would
18 dramatically expand the scope of the issues and claims in this case.

19 The Commission proposes two claims against Mendocino Railway. The first implicates a variety
20 of factual and legal questions under the Coastal Act and the federal Interstate Commerce Commission
21 Termination Act of 1995 (“ICCTA”), including whether Mendocino Railway is a federally regulated
22 railroad subject to the exclusive jurisdiction of the Surface Transportation Board (“STB”). Mendocino
23 Railway’s status as an STB-regulated railroad preempts state and local land-use permitting
24 requirements, which the Commission disputes.

25 The Commission’s second claim seeks fines, penalties, and an injunction against Mendocino
26 Railway, which would require it—against federal preemption law—to apply to the Commission for
27 land-use permits for rail-related activities on its rail property.

28 The Commission’s proposed claims go far beyond this case. The City makes no claim about the

1 Coastal Act. It makes no claim about Mendocino Railway’s status as an STB-regulated railroad under
 2 ICCTA. And it makes no “enforcement” claims for fines or penalties against Mendocino Railway. On
 3 these facts, the Commission is not entitled to permissive intervention.

4 If the Commission seeks to pursue its own expanded agenda against the railroad, it can do so by
 5 way of a separately filed action. But there is no basis for intervention in this relatively narrow action.
 6 The Commission’s motion should be denied.

7 **II. ARGUMENT**

8 **A. The Commission Fails To Meet the Criteria for Mandatory Intervention**

9 Intervention is mandatory when the nonparty “claims an interest relating to the property or
 10 transaction that is the subject of the action and that person is so situated that the disposition of the action
 11 may impair or impede that person’s ability to protect that interest, unless that person’s interest is
 12 adequately represented by one or more of the existing parties.” (Civ. Proc. Code § 387(d)(1)(B).) “In
 13 other words, to establish a right to mandatory intervention, the nonparty must: (1) show a protectable
 14 interest in the subject of the action, (2) demonstrate that the disposition of the action may impair or
 15 impede its ability to protect that interest; and (3) demonstrate that its interests are not adequately
 16 represented by the existing parties.” (*Carlsbad Police Officers Assn. v. City of Carlsbad* (2020) 49
 17 Cal.App.5th 135, 148 (internal citations and quotation marks omitted).) The Commission meets none of
 18 the criteria for mandatory intervention.

19 The Commission cannot establish that it “claims an interest relating to the property or transaction
 20 that is the subject of the action.” (Civ. Proc. Code § 387(d)(1)(B).) That is because the subject of the
 21 action neither is nor implicates “property” or any “transaction.” The City pleads just one cause of action,
 22 whereby it seeks a declaration that the railroad is not a public utility.¹ Complaint, ¶ 14. Thus, the subject
 23 of the action is Mendocino Railway’s legal status as a public utility. Mendocino Railway’s “public
 24 utility” status (or purported lack thereof) is neither “property” nor a “transaction” in which the

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 26 ¹ The City improperly pleads its single cause of action as one for “declaratory and/or injunctive relief.”
 27 Complaint at 4:25. Although section 1060 of the Code of Civil Procedure authorizes a cause of action
 28 for declaratory relief, the law does not authorize a “cause of action for injunctive relief.” An “injunction
 is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action.”
 (*County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.)

1 Commission can claim an “a protectable interest.” (*Carlsbad Police*, 49 Cal.App.4th at 148; *see also*
2 *Mylan Labs. v. Soon-Shiong* (1999) 76 Cal.App.4th 71, 78-79 (defining the “subject of the action” as the
3 “cause of action”).

4 The Commission does not even pretend to meet this first criterion. Unwittingly arguing for
5 *permissive* intervention, the Commission asserts that it “has a strong interest in the subject of this
6 litigation.” (Mot. at 5:2.) Later, the Commission claims “a strong interest in enforcing” and “defending”
7 “the LCP and the Coastal Act.” (*Id.* at 4:11-13.) An “interest” in a case is not legally sufficient for
8 mandatory intervention. The question is not whether the Commission has merely a “strong interest”
9 either “in the subject of this litigation” generally, or in “enforcing” and “defending” certain laws
10 specifically. Rather, the question is whether the Commission has a “protectable interest” *in the*
11 *“property” or “transaction”* that is the subject of this action. (*Carlsbad Police*, 49 Cal.App.4th at 148;
12 Civ. Proc. Code § 387(d)(1)(B).) Again, the subject of this action is the railroad’s “public utility” status,
13 not any “property” and not any “transaction.” Significantly, the Commission describes no such property
14 or transaction in which it believes it has a protectable interest.

15 The second and third criteria for mandatory intervention presuppose the existence of a
16 “protectable interest” in the property or transaction that is the subject of the action. (Civ. Proc. Code §
17 387(d)(1)(B).) If there is no such interest, the last two criteria cannot, by definition, be met. (*Id.*) Here,
18 the Commission fails to demonstrate that the disposition of this action will impair or impede its ability to
19 protect a *protectable* interest, because there *is* no such interest to speak of. Similarly, the Commission
20 cannot demonstrate that any *protectable* interest that it might possess lacks adequate representation by
21 the City—again, because there *is* no such interest.

22 Even if the Commission had a legally cognizable interest in subjecting Mendocino Railway to
23 “all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority,”² the
24 Commission doesn’t explain why *the City* cannot adequately defend that interest. The Commission
25 speculates that “the City may not achieve clarity as to its authority to require coastal development
26 permits from the Railway under its LCP and the Coastal Act.”³ Mot. at 5. But, by its own admission, the

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28 ² City Complaint, Prayer, ¶ 2 (pleading request for injunction).

³ The Commission also speculates that, without intervention, *the Commission* will not “achieve clarity

1 Commission and the City have the same objective—namely, to force Mendocino Railway to submit to
2 their permitting authority. Where a nonparty and party share an objective, the adequacy of the latter’s
3 representation is presumed. (*Wolfsen Land & Cattle Co. v. Pacific Coast Federation of Fishermen’s*
4 *Associations* (Fed. Cir. 2012) 695 F.3d 1310, 1316 (“If an applicant for intervention and an existing
5 party share the same ultimate objective, a presumption of adequacy of representation arises.”); *accord*,
6 *Freedom from Religion Foundation, Inc. v. Geithner* (9th Cir. 2011) 644 F.3d 836, 841.)⁴

7 Further, “[t]here is a general presumption that a government entity”—like the City in this case—
8 “is an adequate representative.” (*Benjamin ex rel. Yock v. Department of Public Welfare of Pennsylvania*
9 (3d Cir. 2012) 701 F.3d 938, 958.) “Such presumption can be rebutted only by a compelling showing to
10 the contrary.” (*Freedom from Religion Foundation, Inc. v. Geithner*, 644 F.3d at 841.) “A difference of
11 opinion concerning litigation strategy . . . does not overcome the presumption of adequate
12 representation.” (*F.T.C. v. Johnson* (8th Cir. 2015) 800 F.3d 448, 452; *accord*, *League of United Latin*
13 *American Citizens v. Wilson* (9th Cir. 1997) 131 F.3d 1297, 1306.) Here, the Commission has utterly
14 failed to make any showing, let alone a compelling one, that would overcome the presumption that the
15 City (a government entity) can represent the shared interests.

16 Finally, the Commission claims it has far more expertise than the City in enforcement of the
17 Coastal Act. Mot. at 5. That may be true, but it’s irrelevant. The Coastal Act is a state statute that
18 governs the Coastal Commission. The City doesn’t enforce the Coastal Act; it enforces its Local Coastal
19 Program (“LCP”)—a law that *it* authored. (Pub. Res. Code § 30500(c) (“The precise content of each
20 local coastal program shall be determined *by the local government* . . . in full consultation with the
21 commission and with full public participation.” (emphasis added)).) And the injunctive relief that the
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23 regarding its ability to enforce its current Notice of Violation against the Railway, as well as its ability
24 to support the City in enforcing the applicable provisions of the LCP.” Opp. at 5. Whatever the merits
25 of such speculation, it says nothing about the relevant inquiry associated with the second criterion: Can
26 the City adequately represent the Commission’s purported (and legally non-cognizable) interest in
27 subjecting Mendocino Railway to certain laws?

28 ⁴ Section 387 addressing intervention in state court was modeled after and is “virtually identical” to
Federal Rule of Civil Procedure 24, which governs intervention in federal court. As such, state courts
have held that section 387 was intended to have the same meaning, force and effect of Rule 24 and have
relied on federal caselaw to interpret the statute. (*Ziani Homeowners Assn. v. Brookfield Ziani LLC*
(2015) 243 Cal.App.4th 274, 280; *Hodge v. Kirkpatrick Dev., Inc.* (2005) 130 Cal.App.4th 540, 556.)

1 City seeks in this case is to force Mendocino Railway to submit to its LCP and other local laws, not the
2 Coastal Act. Thus, the Commission’s relative experience enforcing a state statute not implicated by this
3 lawsuit says absolutely nothing about the City’s ability to adequately protect their shared interest in
4 enforcing the LCP.

5 In sum, the Commission is not entitled to mandatory intervention. A “strong” interest in this
6 action or in enforcement of particular laws is legally insufficient to justify mandatory intervention.

7 **B. The Commission Fails To Meet the Criteria for Permissive Intervention**

8 A nonparty may permissively intervene in a case “if the person has an interest in the matter in
9 litigation, or in the success of either of the parties, or an interest against both.” (Civ. Proc. Code §
10 387(d)(2)). “Permissive intervention is appropriate if: ‘(1) the proper procedures have been followed; (2)
11 the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the
12 issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties
13 presently in the action.’” (*Carlsbad Police Officers*, 9 Cal.App.5th at 148.) “The requirement of a direct
14 and immediate interest means that the interest must be of such a direct and immediate nature that the
15 moving party will either gain or lose by the direct legal operation and effect of the judgment.” (*City and*
16 *County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037 (internal quotation
17 marks omitted).)

18 The Court should deny the Commission permissive intervention because the Commission’s
19 intervention would substantially enlarge the issues in this litigation. As it stands now, the City’s single
20 cause of action is relatively straightforward: It seeks a declaration that Mendocino Railway is not a
21 public utility. Based on that declaration, the City purports to seek an injunction forcing Mendocino
22 Railway to submit to the City’s land-use authority.

23 The Commission proposes far broader claims. It proposes *two* causes of action. The first cause of
24 action would be for a declaration that “the Coastal Act and the City’s LCP apply to” all activities by
25 Mendocino Railway constituting “development.” Proposed Complaint of Coastal Commission, Prayer, ¶
26 1. The first cause of action also would seek a declaration that “the Coastal Act and the City’s LCP” as
27 applied to Mendocino Railway are not “preempted by any state or federal law,” including ICCTA. *Id.* ¶
28 2. Thus, in its first claim alone, the Commission would inject new statutes and issues (i.e., the Coastal

1 Act and ICCTA) not present in the City case. It would also inject new factual disputes surrounding
 2 Mendocino Railway’s operation as a federally regulated railroad within the exclusive jurisdiction of the
 3 STB.

4 Moreover, the Coastal Commission’s second cause of action pursues Mendocino Railway for
 5 alleged “unpermitted” development on its rail property. Proposed Complaint of Coastal Commission, ¶¶
 6 16-24. In that claim, the Commission would try to recover civil penalties and exemplary damages
 7 against Mendocino Railway. *Id.*, Prayer, ¶ 3. The Commission also would try to obtain an injunction
 8 requiring the railroad to cease its rail-related activities and obtain certain land-use permits (contrary to
 9 federal preemption law). Again, this second claim goes far beyond the City’s challenge, which is limited
 10 to (a) Mendocino Railway’s “public utility” status, and (b) efforts to require the railroad to submit to the
 11 City’s permitting authority.

12 Finally, Mendocino Railway’s opposition outweighs the Commission’s “reasons” for
 13 intervening. The Commission claims that “the rights of all parties can only be adequately addressed with
 14 the Commission’s involvement in this action.” Mot. at 7. But that is simply false. The parties’ rights can
 15 be adequately addressed through an independent lawsuit filed by the Coastal Commission.

16 **III. CONCLUSION**

17 For the foregoing reasons, the Commission’s motion to intervene should be denied.

18 DATED: September 22, 2022

/s/ Paul Beard II

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 Attorneys for Defendant MENDOCINO RAILWAY

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PROOF OF SERVICE

I, Paul Beard II, declare:

My business address is: FisherBroyles LLP, 4470 W. Sunset Blvd., Suite 93165, Los Angeles, CA 90027. I am over the age of 18 and not a party to this action.

On September 22, 2022, I served **PLAINTIFF MENDOCINO RAILWAY’S OPPOSITION TO THE CALIFORNIA COASTAL COMMISSION’S MOTION TO INTERVENE** on the following counsel:

Krista MacNevin Jee
Email: kmj@jones-mayer.com
Counsel for Plaintiff City of Fort Bragg
(in *City of Fort Bragg v. Mendocino Railway*)

Patrick Tuck
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Counsel for Proposed Intervenor California Coastal Commission
(in *City of Fort Bragg v. Mendocino Railway*).

BY ELECTRONIC TRANSMISSION—ONE LEGAL. When electronically filing the pleading with One Legal, I simultaneously opted for electronic service of the same on the above-named counsel.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 22, 2022 /s/ Paul Beard II

Paul Beard II