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**Exempt from Filing Fees
Government Code § 6103**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HUMBOLDT**

ERIN MCCLURE, Trustee of The Richard V.
McClure Testamentary Trust,

Plaintiff,

v.

CITY OF BLUE LAKE, and DOES 1 through
25, inclusive,

Defendants.

Case No. CV2601646

**DEFENDANT CITY OF BLUE LAKE'S
NOTICE OF DEMURRER AND
DEMURRER TO FIRST AMENDED
COMPLAINT OF PLAINTIFF ERIN
MCCLURE; MEMORANDUM OF
POINTS AND AUTHORITIES**

*Filed concurrently with Request for
Judicial Notice; Declarations of Matthew
Slentz*

Judge: Hon. Timothy Canning
Date: November 20, 2026
Time: 10:30 am

Assigned to Hon. Timothy Canning
Department 4

Action Filed: July 24, 2026
Trial Date: Not Set.

1 **TO PLAINTIFF AND HER COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on November 20, 2026, at 10:30 a.m., or as soon
3 thereafter as counsel may be heard, in Department 4 of the above-captioned Court, at 825 5th
4 Street, Eureka, CA 95501, Defendant City of Blue Lake ("City") will and hereby does demur to
5 the First Amended Complaint filed by Plaintiff Erin McClure, Trustee of the Richard V. McClure
6 Testamentary Trust, under Code of Civil Procedure section 430.10.

7 The City demurs to the Complaint and its First Cause of Action under Code of Civil
8 Procedure section 430.10, subdivision (e) because the Complaint does not state facts sufficient to
9 constitute a cause of action against the City.

10 The demurrer is based on this Notice, the attached Demurrer, the attached Memorandum of
11 Points and Authorities, the concurrently filed Request for Judicial Notice and Declarations of
12 Matthew Slentz, the records of this case, and such argument and evidence as the City may present
13 at or before the hearing.

14 DATED: September 21, 2026

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

Matthew Slentz

MICHAEL G. COLANTUONO
MATTHEW C. SLENTZ
Attorneys for Defendant, CITY OF BLUE LAKE

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1 **DEMURRER**

2 Under Code of Civil Procedure section 430.10, et seq., Defendant City of Blue Lake
3 (“City”) demurs to the First Amended Complaint (“FAC”) filed by Plaintiff Erin McClure on these
4 grounds:

5 **DEMURRER TO FIRST AMENDED COMPLAINT**

6 The FAC fails to state sufficient facts to constitute a cause of action. (Code Civ. Proc.,
7 § 430.10, subd. (e).)

8 **DEMURRER TO FIRST CAUSE OF ACTION**

9 The First Cause of Action fails to state sufficient facts to constitute a cause of action.
10 (Code Civ. Proc., § 430.10, subd. (e).)

11 WHEREFORE, the City prays that:

- 12 1. The Demurrer be sustained without leave to amend;
13 2. The Court enter an order dismissing the action;
14 3. The City be awarded the costs of this action; and
15 4. The Court grant such other and further relief as the Court may deem proper.

16 DATED: September 21, 2026

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

17
18 *Matthew Slentz*

19 _____
20 MICHAEL G. COLANTUONO
21 MATTHEW C. SLENTZ
22 Attorneys for Defendant, CITY OF BLUE LAKE
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I. Introduction and Summary of Argument

Plaintiff Erin McClure (“McClure”) sues the City of Blue Lake (“City”) for inverse condemnation, alleging the City has unlawfully occupied a portion of her property with a municipal water tank since July 2026. But the facts alleged in McClure’s First Amended Complaint (“FAC”) show the City has a lawful right to remain on the property until April 2027.

The City originally leased the property for 50 years beginning in 1912, and the parties later extended that lease for another 50 years through April 2012. After the lease expired, the City remained in possession and McClure alleges she and her predecessor continued accepting the rent required by the lease. McClure asserts she finally withdrew her consent to the City’s continued occupancy in July 2026.

Those allegations establish a year-to-year periodic tenancy under Civil Code section 1945. Because the original lease was for more than one year, the resulting tenancy renewed annually, most recently in April 2026. McClure could not terminate that tenancy before the expiration of its current term in April 2027. Her allegation that the parties negotiated for a new agreement does not change that result, particularly where the FAC expressly alleges that new agreement never became binding.

The City had a lawful right to occupy the property when McClure purported to withdraw her permission in July 2026. Because lawful government occupancy cannot constitute a taking, McClure cannot state a claim for inverse condemnation. The Court should sustain the City’s Demurrer.

II. Statement of Facts¹

Erin McClure alleges she is the Trustee of the Richard V. McClure Testamentary Trust, which owns real property at 571 Blue Lake Blvd. in Blue Lake, California (APNs 312-131-037-

¹ The following facts drawn from the FAC are offered only for purposes of this demurrer. The City does not admit the truth of the allegations in the FAC and reserves the right to contest them. (*Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291 [“A demurrer ‘makes no binding judicial admissions.... But provisionally, and solely for the purpose of testing the question of law raised ..., all material, issuable facts properly pleaded in the complaint are admitted....’ “[.]”])

1 000, 312-131-045-000, 312-131-046-000, and 312-190-010-000) (the “Property”). (FAC, ¶¶ 1, 2.)
2 The City leased a portion of the Property for 50 years beginning in 1912 for use as a municipal
3 water tank site. (FAC, ¶ 10; Request for Judicial Notice (“RJN”), Exh. 1.) That lease was then
4 extended an additional 50 years, and expired in April 2012. (FAC, ¶ 14; RJN, Exh. 2.) When the
5 lease expired, the rent due under the lease was “\$50 every six months and free water.” (FAC,
6 ¶ 11.)

7 The FAC explains that after the lease expired, McClure and her predecessor began
8 negotiating with the City for a new lease. (FAC, ¶¶ 14–17.) “McClure continued to take the City’s
9 \$50 payment and gave permission for the city to maintain the tank during the negotiation period of
10 14 years (from 2012 through July of 2026.)” (FAC, ¶ 17; see also ¶ 15.) The FAC then alleges the
11 City and McClure reached a tentative new agreement in April 2026, but “on June 12, 2026,
12 Defendant sent a letter prior to the close of escrow on the easement agreement, that Defendant
13 would be terminating the agreement **prior to it becoming binding on the parties.**” (FAC, ¶¶ 18–
14 19 [emphasis added].) The FAC asserts “[u]pon the City officially terminating the agreement, in
15 July of 2026, the McClure trust then rescinded its prior permission for the City to maintain the
16 tank on the Subject Property by permission during the negotiation process.” (FAC, ¶ 21.) McClure
17 now sues for inverse condemnation, alleging the City’s “refusal to remove the tank after the July
18 2026 termination of the agreement has damaged Plaintiff from that date forward.” (FAC, ¶ 28.)

19 **III. Argument**

20 **A. Standard of Review**

21 Standards on demurrer are familiar and can be briefly stated. Courts sustain demurrers to
22 complaints that do not allege facts sufficient to constitute a cause of action. (Code Civ. Proc.,
23 § 430.10, subd. (e).) A demurrer tests the legal sufficiency of a complaint, accepting as true all
24 facts properly pled or subject to judicial notice. (*Writers Guild of America, West, Inc. v. City of Los*
25 *Angeles* (2000) 77 Cal.App.4th 475, 477.) However, a court does not “assume the truth of
26 contentions, deductions, or conclusions of fact or law.” (*Ellenberger v. Espinosa* (1994) 30
27 Cal.App.4th 943, 947.) A court must disregard “conclusions of law and allegations contrary to
28

1 judicially noticed facts.” (*Planning & Conservation League v. Castaic Lake Water Agency* (2010)
2 180 Cal.App.4th 210, 225–226.)

3 “[T]he plaintiff must show the complaint alleges facts sufficient to establish every element
4 of each cause of action. If the complaint fails to plead, or if the defendant negates, any essential
5 element of a particular cause of action” the Court should sustain a demurrer. (*Rakestraw v.*
6 *California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43.) And, if a complaint does not state a
7 cause of action and the plaintiff cannot show a reasonable possibility of curing that defect by
8 amendment, a court should sustain the demurrer without leave to amend. (*Flying Dutchman Park,*
9 *Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1134.)

10 **B. The Legal Right To Possess Property Defeats an Inverse**
11 **Condemnation Claim**

12 Article 1, section 19 of the California Constitution provides for just compensation when
13 property is taken or damaged for a public use. (See, e.g., *Shehyn v. Ventura County Public Works*
14 *Agency* (2025) 108 Cal.App.5th 1254, 1258–1259.) “ ‘The paradigmatic taking requiring just
15 compensation is a direct government appropriation or physical invasion of private property’—a
16 categorical taking.” (*Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175,
17 1193.) Here, McClure alleges a physical taking, asserting the City has appropriated a portion of
18 her Property for a water tank without paying just compensation. (FAC, ¶¶ 10, 21–33.)

19 However, there is no “taking” where government already has the right to occupy the land.
20 (*Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 889; see also *Cobb v. City of*
21 *Stockton* (2011) 192 Cal.App.4th 65, 73 [“a cause of action for inverse condemnation did not
22 accrue until the City no longer had a right to occupy plaintiff’s property.”]) Similarly, a person
23 who contracts for the public use of their land cannot thereafter allege a taking for reasonably
24 foreseeable damage to their property. (*Reinking v. County of Orange* (1970) 9 Cal.App.3d 1024,
25 1030; *Lourence v. West Side Irr. Dist.* (1965) 233 Cal.App.2d 532, 536; accord *Vandevere v. Lloyd*
26 (9th Cir. 2011) 644 F.3d 957, 967 [“a person may agree contractually, in advance, to accept
27 without compensation what otherwise would be a compensable taking under the Fifth
28 Amendment.”])

1 The facts pled in the FAC establish a valid periodic tenancy through April 2027. Thus,
2 there was no taking of McClure's Property in July 2026. (Accord *U.S. v. Bedford Associates* (2d
3 Cir. 1981) 657 F.2d 1300, 1318 ["because the lease was valid, the government did not effect a
4 taking through its occupancy"].)

5 **C. The FAC Pleads a Valid Tenancy Until April 2027**

6 Assuming the truth of the facts alleged in the FAC, McClure pleads the existence of an
7 extant, year-to-year tenancy that makes the City's occupation lawful until April 2027, foreclosing
8 any inverse condemnation claim. Civil Code section 1945 states:

9 If a lessee of real property remains in possession thereof after the expiration of the
10 hiring, and the lessor accepts rent from him, the parties are presumed to have renewed
11 the hiring on the same terms and for the same time, not exceeding one month when
12 the rent is payable monthly, nor in any case one year.

13 Under these circumstances, section 1945 creates the presumption of a periodic tenancy on
14 the same essential terms as the expired lease:

15 When a lease expires but the tenant remains in possession, the "relationship" of the
16 landlord and tenant "changes." [Citation.] The "lessor-lessee relationship" based on
17 "'privity of contract' " ends, and a new "landlord"-tenant relationship based on "
18 'privity of estate' " springs into being by the operation of law. [Citations.] This new
19 "hold-over" tenancy is "presumed" to continue "[under] the same terms" contained
20 in the now-expired lease "except [as those terms] may have been ... modified" by the
21 landlord and tenant. [Citations.] (*Smyth v. Berman* (2019) 31 Cal.App.5th 183, 192.)

22 Here, the parties' original lease was for 50 years. (RJN, Exhs. 1 & 2.) After the lease
23 expired in April 2012, McClure alleges she continued to accept the same rent from the City and
24 permitted its continued occupancy. (FAC, ¶¶ 14, 15, 17.) "[B]y accepting this rent, [McClure]
25 impliedly consented to a holdover tenancy by [the City]." (*Baca v. Kuang* (2025) 107 Cal.App.5th
26 1292, 1299.) Further, "[a] tenancy from year to year is created where a tenant holds over after the
27 expiration of a former lease for one or more years and pays rent, nothing being said between the
28 parties, no agreement as to the time he shall hold being made." (*Miller v. Stults* (1956) 143

1 Cal.App.2d 592, 599.) Thus, the City’s year-long tenancy renewed each April.

2 Although McClure could inform the City she was terminating the City’s tenancy, that
3 termination would only become effective at the end of the term implied by law. (Civ. Code,
4 § 1946, subd. (a); *Aaker v. Smith* (1948) 87 Cal.App.2d 36, 42–43 [explaining implied year-to-year
5 tenancy could not be ended early by notice under section 1946].) The FAC alleges McClure told
6 the City she was withdrawing her consent in July 2026, and accepted rent until that point. (FAC,
7 ¶¶ 15, 17, 21–22.) The FAC pleads facts showing the City retains lawful possession of the
8 Property until April 2027. (See FAC, ¶¶ 14, 15, 17.)

9 McClure may assert that section 1945 creates only a rebuttable presumption of a new,
10 periodic tenancy. But where an evidentiary presumption otherwise forecloses an action, it is
11 incumbent on the plaintiff to plead the rebutting facts. (*Berg & Berg Enterprises, LLC v. Boyle*
12 (2009) 178 Cal.App.4th 1020, 1045–1046.) The rebuttable presumption under section 1945 may
13 be overcome by facts “demonstrat[ing] the parties did not agree to continue the expired lease on
14 the same terms.” (*Ashirwad, LLC v. Bradbury* (2026) 118 Cal.App.5th 803, 812.) For example,
15 that the “parties began operating under a new agreement.” (*Aviel v. Ng* (2008) 161 Cal.App.4th
16 809, 820.)

17 Section 1945 presumes that through the outward expressions of paying and accepting
18 “rent,” the parties have agreed to continue their lease on the same terms. [Citation.]
19 A defendant can overcome this presumption by demonstrating that despite the
20 implication of agreement to continue on the same terms, the parties’ objective acts
21 demonstrate they did not mutually agree to continue the lease. (*Ashirwad, supra*, 118
22 Cal.App.5th at p. 809.)

23 The FAC pleads no objective acts suggesting the City and McClure failed to agree to
24 continue the lease before it renewed in April 2026. Rather, McClure pleads she continued to accept
25 rent payments from the City for over a decade, and did not purport to terminate the City’s right to
26 occupy the Property until July 2026, after the 2026-2027 year-to-year tenancy had started. (FAC,
27 ¶¶ 14, 15, 17.) And although the FAC alleges the City and McClure attempted to reach a new
28 agreement, it also pleads that new agreement never became effective. (FAC, ¶ 19.)

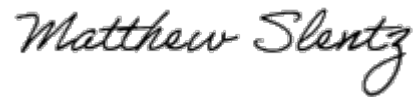
No case the City is aware of has found a tenancy at will where the landowner continued to accept rent from the tenant. (See *Borden v. Stiles* (2023) 92 Cal.App.5th 337, 348 [“ ‘A permissive occupation of real estate, where no rent is reserved or paid and no time agreed on to limit the occupation, is a tenancy at will.’ ‘[.]’ Nor a tenancy at sufferance. (See *Peter Kiewit Sons’ Co. v. Richmond Redevelopment Agency* (1986) 178 Cal.App.3d 435, 445 [lessee that holds over after lease expires, without owner’s consent, is a “tenant at sufferance” whose possession is wrongful].) Rather, by accepting rent from the tenant after the lease expires, the landowner “ ‘accepts the tenant’s possession as rightful and the tenancy is converted into a periodic one.’ “ (*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 740.)

IV. Conclusion

McClure’s own allegations establish a valid year-to-year tenancy and the City’s lawful right to occupy the Property through April 2027. The City’s continued occupancy therefore cannot constitute a taking. The Court should sustain the City’s Demurrer.

DATED: September 21, 2026

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



MICHAEL G. COLANTUONO
MATTHEW C. SLENTZ
Attorneys for Defendant, CITY OF BLUE LAKE

PROOF OF SERVICE

Erin McClure vs. City of Blue Lake
Humboldt Superior Court Case No. CV2601646

STATE OF CALIFORNIA, COUNTY OF NEVADA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Nevada, State of California. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, CA 95945-5091.

On September 22, 2026, I served true copies of the following document(s) described as **DEFENDANT CITY OF BLUE LAKE'S NOTICE OF DEMURRER AND DEMURRER TO FIRST AMENDED COMPLAINT OF PLAINTIFF ERIN MCCLURE; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

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Attorneys for Plaintiff, Erin McClure

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address sromig@chwlaw.us to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 22, 2026, at Grass Valley, California.



Sarah E. Romig