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ERIN MCCLURE

SUPERIOR COURT OF CALIFORNIA

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.

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Case No. CV2601646

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE DEFENDANT CITY OF BLUE LAKE'S DEMURRER TO FIRST AMENDED COMPLAINT OF PLAINTIFF ERIN MCCLURE; DECLARATION OF ALLISON JACKSON

Date: November 20, 2026
Time: 10:30 a.m.
Dept: 4

I. INTRODUCTION.

Plaintiff seeks enforcement of rule 3.1320 as against Defendant. Defendant filed what Plaintiff believes is a significantly deficient demurrer even after counsel met and conferred and Plaintiff explained that case law did not support Defendants' demurrer and that the proper course was to resolve the conflict instead of driving up costs unnecessarily. Defendant then ignored the case law, filed the demurrer, and ignored Rule 3.1320 by setting the hearing well outside of the required hearing date of no later than 35 days. In fact, Defendant, without good cause or leave of court, noticed the date at almost double that allowed. As such, this court must strike the demurrer for failure to comply with the mandatory dates.

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II. LAW AND ARGUMENT.

A demurrer is a "pleading" subject to a motion to strike, and a court may strike all or part of it if it was not drawn or filed in conformity with California law, a court rule—including applicable requirements of California Rule of Court 3.1320. The demurring party must serve and file with the demurrer a notice of hearing specifying a hearing date in accordance with Cal. Code Civ. Proc. §1005 and, the hearing must be set no more than 35 days after filing, or on the court's first available date thereafter, although the court may set an earlier or later date for good cause and on prescribed notice. Cal. Rules of Court, Rule 3.1320.

Because Cal. Code Civ. Proc. §436 permits a court to strike all or part of a pleading not drawn or filed in conformity with a court rule, noncompliance with an applicable requirement provides a statutory basis to seek an order striking the demurrer or the nonconforming portion. Cal. Code Civ. Proc. §436. Cal. Code Civ. Proc. §436 states that the court may grant that relief on a Cal. Code Civ. Proc. §435 motion, or at any time in its discretion and on terms it deems proper. Cal. Code Civ. Proc. §436.

Defendant City of Blue Lake filed and served its demurrer on September 22, 2026, with the hearing noticed for November 20, 2026. California Rules of Court, Rule 3.1320 requires that demurrers "must be set for hearing not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter." Cal. Rules of Court, Rule 3.1320. The 35th day following September 22 is October 26. Based on the September 22 filing date, Defendant could easily have properly noticed its demurrer to be heard within Rule 3.1320's 35-day deadline on either October 19, October 23, or October 26, which dates were all available on the court's regular Law and Motion calendar when Defendant filed its demurrer. Nevertheless, Defendant noticed the hearing on its demurrer on November 20, 59 days after it filed its demurrer and 24 days beyond Rule 3.1320's 35-day deadline.

Defendant did not seek leave of court to establish good cause for failure to adhere to Rule 3.1320 and set the demurrer hearing properly. There were plenty of dates

available within the time frame required by Rule 3.1320. The court clerk did not set the hearing date, Defendant did. Defendant simply ignored the rules and noticed the demurrer for when it was convenient for Defendant and not for the court, nor opposing counsel. Therefore, in order to enforce the mandatory provisions of Rule 3.1320, Plaintiff respectfully requests that this court strike the demurrer.

III. CONCLUSION.

Plaintiff asks this court to enforce the provisions of Rule 3.1320 by striking the improper demurrer. Defendant simply ignored Rule 3.1320 and set the hearing well over the 35-day maximum. There was no request by Defendant for leave of court to evade Rule 3.1320. There is and was no good cause to ignore Rule 3.1320. If the court does not strike the improper demurrer, then Rule 3.1320 is rendered meaningless.

DATED: October 23, 2026

Respectfully submitted,

HARLAND LAW FIRM LLP

Allison G. Jackson
Attorneys for Plaintiff ERIN MCCLURE, Trustee of The Richard V. McClure Testamentary Trust

DECLARATION OF ALLISON JACKSON

1. I am the attorney of record for Plaintiff in the above mentioned matter.
2. Defense counsel and I met and conferred regarding their demurrer. I explained to counsel that his basis was incorrect as the statute he provided only stated that silently continuing to accept rent creates a rebuttable presumption that the original terms continued, but that case law provided that when the parties are actively negotiating a new lease/new terms, that is clear evidence that the presumption was rebutted.
3. Defendant filed the demurrer anyway ignoring the case law.
4. Defendant then noticed the hearing well after the 35-day maximum. In fact, the

noticed date was almost double that allowed by Rules of Court.

5. On October 23, 2026, first thing in the morning, I sent an email to opposing counsel asking to orally meet and confer about this anytime during the morning.

6. On October 23, 2026, after I emailed counsel, I called his direct line and left a message on his voice-mail, citing the rule he violated and asking that he meet and confer telephonically some time that morning as I would be filing a motion to strike.

7. At 11:20 a.m on October 23, I again emailed defense counsel and left message with him on his direct line. I even called the main line for his firm and was told he only worked remotely.

8. At 11:40 a.m. on October 23 Defense counsel Slentz returned my call to meet and confer about the motion to strike. He told me he disagreed that the demurrer had to be set within 35 days per Rules of Court. I informed him that the 35 day maximum setting is set forth in Rule 3.1320 (c), (d) and (e). He then said that he was unaware of the 35-day maximum setting and that his office set it per the date given to him by the court clerk in Humboldt. When I told him that he set the date and not the court he said he would look into it.

9. I told counsel that I would file the motion no later than Monday and suggested that he look at the Rules of Court and that, if he still disagreed, to provide me with a legal basis or withdraw the demurrer.

10. On Sunday, October 25th at approximately 2 pm, I received an email from opposing counsel announcing that he had good cause to have set the motion outside the 35 day limit, but not articulating why.

I declare under penalty of perjury the above facts which are made by my notes regarding the events and by my own personal knowledge. This declaration was executed in Eureka, California on October 26, 2026.

Allison Jackson

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Humboldt, over the age of 18 years, and not a party to this action. My business address is 212 G Street, Suite 201, Eureka, California, 95501-0420. My electronic service address is pheagerty@harlandlaw.com.

On this date, I served the following on the interested party(ies) listed below:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE DEFENDANT CITY OF BLUE LAKE'S DEMURRER TO FIRST AMENDED COMPLAINT OF PLAINTIFF ERIN MCCLURE; DECLARATION OF ALLISON JACKSON

☐ **(By Mail)** I placed a copy of each document in an envelope for each addressee, sealed the envelope and, with postage thereon fully prepaid, placed each envelope for deposit with the U.S. Postal Service at Eureka, California.

☐ **(By Overnight Delivery)** I placed a copy of each document in an overnight delivery package for each addressee, sealed each envelope and, with delivery fees fully provided for, placed each package for deposit in a box regularly maintained by the overnight delivery service at Eureka, California.

☐ **(By Personal Service)** I personally delivered, or caused to be personally delivered, a copy of each document to the party(ies) and at the addresses set forth below.

☐ **(By Personal Service- Facsimile)** Pursuant to stipulation of counsel, or pursuant to C.C.P. § 1005(c), I caused each document to be transmitted to each addressee at the facsimile number set forth below. Confirmation of receipt at each addressee's facsimile machine was made by sender's facsimile machine.

☒ **(By Email or Electronic Transmission)** Pursuant to a Court order, agreement of the parties, or C.C.P. § 1010.6, I caused each document to be sent to each addressee at the email address set forth below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

I am readily familiar with this firm's practice for processing items for mailing or overnight delivery; each item shall be deposited with the U.S. Postal Service or with an overnight delivery service this same day in the ordinary course of business.

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

Dated: October 26, 2026

Paul Heagerty

Attorneys for Defendant City of Blue Lake	
Ryan T. Plotz The Mitchell Law Firm LLP P.O. Box 1008 Eureka CA 95502-1008 rplotz@mitchelllawfirm.com	Michael G. Colantuono Matthew C. Slentz Colantuono, Highsmith & Whatley PC 420 Sierra College Drive, Suite 140 Grass Valley CA 95945-5091 mcolantuono@chwlaw.us mslentz@chwlaw.com