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Attorneys for Defendant, CITY OF BLUE LAKE

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

OPPOSITION TO MOTION TO STRIKE DEMURRER TO FIRST AMENDED COMPLAINT

Filed concurrently with Declaration of Matthew Slentz

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

Assigned to Hon. Timothy Canning
Department 4

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

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I. Introduction and Summary of Argument

Plaintiff Erin McClure ("McClure") seeks to strike the City of Blue Lake's demurrer to her inverse condemnation complaint because its hearing was set 24 days beyond the 35-day period specified in California Rules of Court, rule 3.1320(d)[1]. But that same rule expressly permits a later hearing for good cause, and McClure identifies no prejudice from the existing setting. The City consulted McClure's counsel about scheduling before selecting the hearing date, received no indication of any scheduling objection, and provided notice nearly two months before the hearing. McClure waited a month to object, by which time the City could no longer advance the hearing within the 35-day period while preserving the ordinary briefing schedule.

The Court should find good cause to retain the noticed hearing date. The City timely filed its responsive pleading without requesting a continuance, selected a hearing date that accommodated counsel's existing commitments, and afforded McClure additional time to prepare her opposition. Alternatively, the Court should disregard the harmless scheduling irregularity under Code of Civil Procedure sections 436 and 475. Courts may consider even untimely demurrers when doing so does not affect the opposing party's substantial rights. Here, the asserted defect concerns only the hearing date. Striking the demurrer would remedy no prejudice and would postpone resolution of the pleading issues further. The motion should be denied.

II. Statement of Facts

McClure filed her original complaint on July 24, 2026. On August 19, 2026, counsel for the parties met and conferred regarding the Cities planned demurrer. (Declaration of Matthew C. Slentz ("Slentz Decl."), ¶ 2; Exh. 1.) That same day, McClure filed her operative First Amended Complaint ("FAC").

Counsel for the City contacted McClure's counsel again by email on September 16, 2026, outlining the grounds for the anticipated demurrer to the FAC. (Slentz Decl. ¶ 3; Exh. 2.) Counsel for both parties subsequently met and conferred by phone on September 17. (Slentz Decl. ¶ 3.) The City requested McClure identify any hearing dates for the demurrer "in the next few months"

[1] Unmarked references to "Rules" are to the California Rules of Court.

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that were better or worse, but McClure's counsel identified none. (Slentz Decl. ¶ 3; Exh. 2.) The City therefore set the hearing date on November 20, 2026, a date less than two months after filing that was most convenient for the impacted schedule of the City's counsel. (Slentz Decl. ¶¶ 4–5.) The City noticed the hearing date by email on September 22, 2026, the same day it filed the demurrer. (Slentz Decl. ¶ 4; Exh. 3.)

McClure did not tell the City she objected to the hearing date until Friday, October 23, 2026, a month later. On that date, McClure's counsel contacted the City's counsel to state McClure would file a motion to strike the demurrer because the hearing had not been set within 35 days under Rule 3.1320(d). (Slentz Decl. ¶ 6; Declaration of Allison Jackson, ¶¶ 5–8.) Had McClure informed the City she objected to the hearing date within the first few weeks after the motion was filed, the City could have sought to advance the hearing. But by the time McClure brought this issue to the City's attention, there was no chance to hold the hearing within 35 days — by October 27 — and still allow the parties to complete their briefing under Code of Civil Procedure section 1005. (Slentz Decl. ¶ 7; Exh. 4.)

III. Argument

A. The Court Should Find Good Cause To Proceed With the Hearing as Scheduled

McClure asks the Court to strike the City's demurrer because the hearing was set 59 days after the demurrer was filed. The Court should instead find good cause to order the demurrer be heard as already noticed and briefed. Rule 3.1320(d) states "[d]emurrers 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. For good cause shown, the court may order the hearing held on an earlier or later day on notice prescribed by the court." Whether there is good cause for a later hearing date is within the Court's discretion. (See *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716 ("*Lerma*").) The Court has discretion to hear a demurrer even when untimely filed. (*Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749 ("*Jackson*"); *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281 ("*McAllister*").)

Here, the City has been diligent in bringing its demurrer to the Court. (*See Cotton v.*

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StarCare Medical Group, Inc. (2010) 183 Cal.App.4th 437, 444; *Lerma, supra,* 120 Cal.App.4th at p. 718 ["This is not a case where a party has been dilatory in its efforts and the court needs to seize control of the situation and force the party to engage in diligent pursuit of litigation objectives."].) The City has requested no continuances in relation to filing its responsive pleadings, and the demurrer was set just 59 days after filing, only 24 days beyond the presumptive hearing date set out in Rule 3.1320(d). That date was chosen based on counsel's impacted calendar in October and November. (Slentz Decl. ¶ 5.) And, as noted *infra*, McClure did not inform the City she objected to the date until it was too late to advance the hearing, shows no prejudice, and likely benefitted from the setting. (See *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 399–400 [lack of prejudice factor in finding good cause].) The Court can, and should, find good cause to proceed and rule on the merits of the demurrer.

B. McClure Fails To Show Prejudice.

Even without the City's good cause to hold the hearing on November 20, 2026, McClure shows no prejudice. Her motion to strike and declaration merely note the procedural irregularity, and McClure does not argue she was negatively affected by the later hearing date. But "[t]he court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties." (Code Civ. Proc., § 475.) Thus, absent prejudice, the Court must disregard a minor procedural irregularity such as this one. (*McAllister, supra,* 147 Cal.App.4th at p. 283 [noting trial court bound under Code Civ. Proc. § 475 to ignore defect in filing of demurrer]; *Jackson, supra,* 192 Cal.App.4th at p. 750 [same].)

Indeed, the delayed hearing was likely beneficial to McClure, who was given substantially longer to prepare her opposition. (See *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1208–1209 [continuance afforded over 80 days to respond, satisfying 75-day summary judgment notice requirement without prejudice]; *Ari Law, P.C. v. Autonation.com, Inc.* (2026) 122 Cal.App.5th 898, 912 fn. 7 ["there appears to be no harm in giving the nonmoving parties more time"].) Code of Civil Procedure, section 1005, subdivision (b) only requires a plaintiff be given seven court days to prepare a motion opposition. (Code Civ. Proc. § 1005, subd. (b) [motion papers must be filed by

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16 court days before hearing, and opposition papers 9 court days before hearing].) And even if the hearing had been set on October 27, 2026, 35 days after filing, McClure's opposition would have been due on October 14, just three weeks after the City filed. Instead, McClure had until November 6 to file for the November 20 hearing, gaining 45 days to prepare her opposition.

The Court should reject McClure's attempts here to capitalize on a minor procedural irregularity. Our courts have warned against allowing parties to benefit by staying silent regarding errors that could have easily been corrected or avoided. (Cf. *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 285, citing *People v. Stowell* (2003) 31 Cal.4th 1107, 1114 [explaining doctrine of forfeiture on appeal].) McClure had a ready remedy — promptly object to the hearing date and ask the City to seek an earlier time within the 35 days. Or even file an ex parte application with the Court to advance the hearing. Instead, she waited until the City could not cure the issue and then moved to strike. For this reason, too, the motion should be denied.

C. The Court Has Discretion on Motions to Strike

Finally, the Court may simply deny the motion. Code of Civil Procedure section 436 provides:

> The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper … Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

But " '[t]here is no absolute right to have a pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where, as here, the late filing was a mere irregularity [citation]; the granting or denial of the motion is a matter which lies within the discretion of the court.' " (*McAllister, supra,* 147 Cal.App.4th at pp. 281–282.) "The trial court may exercise this discretion so long as its action does 'not affect the substantial rights of the parties.'" (*Id.* at p. 282.) And the Court "may, in furtherance of justice, and on any terms as may be proper … enlarge the time for answer or demurrer." (Code Civ. Proc., § 473.)

Neither Code of Civil Procedure section 436 nor Rule 3.1320 requires the Court to strike the City's demurrer. And no case supports striking a demurrer or otherwise declining to hear it on

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the merits as the correct remedy for a late-set hearing. The Court should deny the motion.

IV. Conclusion

The City respectfully requests that the Court deny McClure's motion to strike and find good cause under Rule 3.1320(d) to hear the demurrer on November 20, 2026, as noticed. Similarly, because the hearing date affects no substantial right and has caused no demonstrated prejudice, the Court should disregard the scheduling irregularity under Code of Civil Procedure section 475 and consider the demurrer on its merits.

DATED: November 6, 2026

COLANTUONO, HIGHSMITH & WHATLEY, PC

Matthew Slentz

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

COLANTUONO, HIGHSMITH & WHATLEY, PC
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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 November 6, 2026, I served true copies of the following document(s) described as **OPPOSITION TO MOTION TO STRIKE DEMURRER TO FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

Allison G. Jackson
Harland Law Firm LLP
212 G Street, Suite 201
Eureka, CA 95501
T: (707) 444-9281
F: (707) 445-2961
ajackson@harlandlaw.com

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 November 6, 2026, at Grass Valley, California.

Sarah E. Romig

COLANTUONO, HIGHSMITH & WHATLEY, PC
420 SIERRA COLLEGE DRIVE, SUITE 140
GRASS VALLEY, CALIFORNIA 95945-5091

MICHAEL G. COLANTUONO, State Bar No. 143551
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MATTHEW C. SLENTZ, State Bar No. 285143
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Telephone: (530) 432-7357
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Attorneys for Defendant, CITY OF BLUE LAKE

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

DECLARATION OF MATTHEW C. SLENTZ IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE DEMURRER TO FIRST AMENDED COMPLAINT

Filed concurrently with Opposition to Motion to Strike

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

Assigned to Hon. Timothy Canning
Department 4

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

COLANTUONO, HIGHSMITH & WHATLEY, PC
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DECLARATION OF MATTHEW C. SLENTZ

I, Matthew C. Slentz, declare:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am Senior Counsel at Colantuono, Highsmith & Whatley, PC, attorneys of record for Defendant, CITY OF BLUE LAKE. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. On August 18, 2026, I emailed Allison Jackson, counsel for Plaintiff Erin McClure, outlining the grounds for the City's proposed demurrer to the original Complaint. A true and correct copy of the August 18 email is attached hereto as **Exhibit 1**. Jackson and I subsequently met and conferred by phone on August 19, shortly before the City was served with a copy of the First Amended Complaint ("FAC").

3. On September 16, 2026, I emailed Jackson outlining the grounds for the City's proposed demurrer to the FAC. In that email, I stated "let me know if there are any dates in the next few months that are particularly good/bad for a hearing?" A true and correct copy of the September 16 email is attached hereto as **Exhibit 2**. Jackson and I subsequently met and conferred by phone on September 17. At no point did Jackson identify good or bad dates for a demurrer hearing.

4. The City filed and served its demurrer to the FAC on September 22, 2026. A true and correct copy of the City's September 22 service email to Jackson is attached hereto as **Exhibit 3.** I was primarily responsible for the filing, and failed to recognize that California Rules of Court, rule 3.1320(d) either required the hearing be scheduled by October 27, 2026, assuming such a hearing date was available, or that the Court find good cause to order the hearing later. It has been my experience over the last several years that few counties have such early dates available, even where the movant, as opposed to the clerk's office, selects the hearing date.

5. I chose the November 20, 2026 date because it was relatively soon after filing, and worked with my busy calendar in October and November 2026. Other matters for which I am primarily responsible with significant obligations during that period included: two federal civil rights cases with major discovery deadlines; briefing and hearing on a Rule 12 motion in a

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separate federal civil rights case; three eminent domain matters where complaints and motions for prejudgment possession needed to be written and filed; seven juvenile court matters requiring briefing on petitions to access juvenile records; the merits briefing in a California Public Records Act case; preparing mediation briefs for two mediations; briefing and hearing on another demurrer in an inverse condemnation case; and significant ongoing discovery in several other inverse condemnation cases in California Superior Court.

6. Neither Jackson nor anyone representing McClure contacted me or the City to object to the hearing date until the morning of October 23, 2026, when Jackson called me three times and sent me an email stating we needed to meet and confer that day. I called Jackson at my first available opportunity that morning while driving to a hearing, but had not yet listened to the voicemail messages she left, and was unaware of why we were meeting and conferring when we started the conversation. Jackson informed me she intended to move to strike the City's demurrer under Rule 3.1320(d), and explained the grounds. At the time I did not remember the exact reason the November 20 date had been chosen, and assumed it had been picked by the clerk's office, but told Jackson I was driving and would need to review our records.

7. On October 25, 2026, I sent Jackson an email, explaining the City's position that there was good cause to hold the hearing as scheduled, that striking the demurrer was not the appropriate remedy, and that we intended to assert waiver and a lack of prejudice. I also explained that the City would have sought to advance the hearing date, had this issue been brought to our attention sooner. A true and correct copy of the October 25 email is attached hereto as **Exhibit 4**.

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

Executed on this 6th day of November, 2026, at Seal Beach, California.

Matthew Slentz

Matthew C. Slentz

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420 SIERRA COLLEGE DRIVE, SUITE 140
GRASS VALLEY, CALIFORNIA 95945-5091

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 November 6, 2026, I served true copies of the following document(s) described as **DECLARATION OF MATTHEW C. SLENTZ IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE DEMURRER TO FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

Allison G. Jackson
Harland Law Firm LLP
212 G Street, Suite 201
Eureka, CA 95501
T: (707) 444-9281
F: (707) 445-2961
ajackson@harlandlaw.com

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 November 6, 2026, at Grass Valley, California.

Sarah E. Romig

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GRASS VALLEY, CALIFORNIA 95945-5091

Exhibit 1

From: Matthew C. Slentz
To: "ajackson@harlandlaw.com"
Subject: McClure v. Blue Lake (CV2601646)- Meet and Confer Regarding Demurrer
Date: Tuesday, August 18, 2026 10:55:43 AM

Good Morning Counsel,

I'm representing the City of Blue Lake in this inverse condemnation case. The City is currently planning to challenge the complaint on these grounds:

Statute of limitations. The Complaint alleges the taking began 12 years ago with the expiration of a lease for the water tank. The statute of limitations for taking of property is 5 years. (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1483.)
Injunctive relief unavailable. The only cause of action here is inverse condemnation, where the only remedy is just compensation. (*Housley v. City of Poway* (1993) 20 Cal.App.4th 801, 807; *San Diego Gas & Electric Co. v. Superior Court (Covalt)* (1996) 13 Cal.4th 893, 939–940.) The request in Paragraph 34(d) for an "order that Defendant remove its tank from Plaintiffs property" is not an available remedy.
Uncertainty. Paragraph 34(e) seeks unspecified "other consequential damages flowing from the taking or damaging." The Complaint alleges no damaging of the property, and it is unclear what these other consequential damages might be.

Do you have some time this week for a phone call to discuss?

-Matt

Matthew C. Slentz
Senior Counsel
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7545 Irvine Center Drive, Suite 200 | Irvine, CA 92618
Main 949-545-9051 | **Direct** 949-545-9148 | **Fax** 213-542-5710
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Exhibit 2

Matthew C. Slentz

From: Matthew C. Slentz
Sent: Wednesday, September 16, 2026 3:00 PM
To: 'Allison Jackson'
Cc: 'pheagerty@harlandlaw.com'
Subject: RE: McClure v. Blue Lake (CV2601646)- Tank Access

Good Afternoon Allison,

I wanted to follow up on my email below regarding site access. If it makes more sense to hop on a call, let me know?

I'm also writing to meet and confer regarding the City's planned demurrer to the First Amended Complaint. The FAC alleges the lease expired in April 2012, the McClure Trust continued to accept rent payments under the terms of the lease for the next 14 years, and the McClure Trust rescinded its permission for the City to continue using the tank site in July 2026. Civil Code section 1945 provides:

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

The term of the lease was 50 years, meaning the FAC pleads facts demonstrating the City has a valid holdover tenancy until April 2027, notwithstanding the McClure Trust's claimed revocation. Because the FAC shows the City is rightfully in possession of the property at this time, the McClure Trust cannot maintain an inverse condemnation claim. (See *Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 889 [no taking where public entity had right to possession of premises]; *Cobb v. City of Stockton* (2011) 192 Cal.App.4th 65, 73 ["a cause of action for inverse condemnation did not accrue until the City no longer had a right to occupy plaintiff's property."]; accord *Vandevere v. Lloyd* (9th Cir. 2011) 644 F.3d 957, 967 ["a person may agree contractually, in advance, to accept without compensation what otherwise would be a compensable taking under the Fifth Amendment."]; *U.S. v. Bedford Associates* (2d Cir. 1981) 657 F.2d 1300, 1318 ("because the lease was valid, the government did not effect a taking through its occupancy of the building").)

Happy to set up a time to discuss more if you think it would be beneficial. Otherwise, let me know if there are any dates in the next few months that are particularly good/bad for a hearing?

-Matt

Matthew C. Slentz
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Main 949-545-9051 | **Direct** 949-545-9148 | **Fax** 213-542-5710
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Exhibit 3

Matthew C. Slentz

From: Sarah E. Romig
Sent: Tuesday, September 22, 2026 4:12 PM
To: ajackson@harlandlaw.com
Cc: Michael Colantuono; Matthew C. Slentz
Subject: Erin McClure vs. City of Blue Lake
Attachments: 2026-09-22 Demurrer to FAC.pdf; 2026-09-22 Declaration of Demurring Party Regarding Meet and Confer.pdf; 2026-09-22 RJN iso Demurrer to FAC.pdf

Good afternoon,

Please see the attached documents that were submitted to the Court for filing today.

Thank you,

Sarah E. Romig
Legal Assistant/Paralegal
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Exhibit 4

Matthew C. Slentz

From: Matthew C. Slentz
Sent: Sunday, October 25, 2026 2:04 PM
To: 'Allison Jackson'
Subject: RE: meet and confer

Afternoon Allison,

Thanks for reaching out on Friday. We believe there is good cause for the Court to allow the hearing to go forward as scheduled. Cal. Rules of Court, Rule 3.1320(d); *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281. We have not been able to find any appellate case law that approved striking the demurrer as the proper remedy in this situation, and we would assert waiver and lack of prejudice. We would have sought to advance the hearing date if this issue had been flagged for us sooner.

-Matt

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From: Allison Jackson <ajackson@harlandlaw.com>
Sent: Friday, October 23, 2026 8:46 AM
To: Matthew C. Slentz <mslentz@chwlaw.us>
Subject: meet and confer

Matthew:

I have a 10 am appointment, but we need to meet and confer today. Please tell me when to call.

Allison G. Jackson

Harland Law Firm LLP

212 G Street, Suite 201

Eureka, California 95501-0420

Telephone: 707.444.9281

Facsimile: 707.445.2961

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