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CITIZENS FOR A BETTER EUREKA

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

CITIZENS FOR A BETTER EUREKA,

Petitioner and Plaintiff,

vs.

CITY OF EUREKA, CITY OF EUREKA
CITY COUNCIL, and DOES 1 to 10,
inclusive,

Respondents and Defendants.

Case No.: **CV 2300565**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ATTORNEYS' FEES**

CEQA Action

[Public Resources Code, §§ 21000, et seq.; Cal.
Code of Civil Procedure, §§ 525, 1060, 1085
and/or 1094.5]

FAX FILE

Petitioner and Plaintiff CITIZENS FOR A BETTER EUREKA (“Petitioner”) hereby petitions the Court for a writ of mandate against respondents and defendants CITY OF EUREKA (“City”) and the CITY OF EUREKA CITY COUNCIL (“City Council”) (collectively, “Respondents”), and by this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and for Attorneys’ Fees (“Verified Petition”) alleges as follows:

INTRODUCTION AND SUMMARY

1. This is a public interest citizen suit to enforce the California Environmental Quality Act, Public Resources Code (“PRC”) Section 21000 et seq. (“CEQA”).

2. CEQA is California's preeminent environmental law. It requires all public agencies to examine the potential adverse impacts of their actions before taking them. It is designed to protect California's environmental resources from uninformed and agency actions.

3. CEQA requires Respondents to fully examine the impacts of its actions and to carefully consider alternatives and mitigation measures that would reduce those impacts. CEQA prohibits public agencies from approving a project as proposed “if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects” of the project. (PRC § 21002.)

4. Petitioner challenges Respondents’ unlawful actions taken on or about October 18, 2022, including Respondents’ adoption of the 2019-2027 Housing Element Amendment and the 2019-2027 Housing Element Technical Appendix Amendment (collectively, the “Project”), and an associated Addendum to the City of Eureka 2040 General Plan Environmental Impact Report (“Addendum”).

5. According to the Addendum, the Project entails changes to the list of City-owned properties to be redeveloped into deed-restricted affordable housing units, which had been previously approved by the City Council as part of the City's 2040 General Plan Housing Element. Specifically, the Project removed seven City-owned sites from this list: 3rd and E Parking Lot, 4th and G Parking Lot, 5th and H Parking Lot, Cooper Gulch, City Hall Parking Lot, Caltrans Surplus, and Sheriff's Wood Lot. The Project also added nine City-owned sites to the list: Sunset Heights #1 (1200 West Harris), Sunset Heights #2 (between Harris and Henderson), Sunset Heights #3

(between Harris and Henderson), Sunset Heights #4 (south of Henderson), 3rd and G Parking Lot, 3rd and H Parking Lot, and three vacant lots (First and C to First and F Street).

6. At least seven of the City-owned properties, if redeveloped as proposed, would eliminate some or all of the public parking currently available on those properties. The City's decision to approve the Project is based, at least in part, on a parking availability study that utilized data collected in August 2021, during the COVID-19 pandemic, when local businesses were fully closed or open for only limited hours, and an increased number of office workers were working remotely, and which as consequence shows underutilization of on-street and off-street parking.

7. The proposed redevelopment of City-owned properties, particularly properties currently dedicated to parking uses, would have significant secondary environmental impacts, including traffic-related impacts, air quality related impacts, and public safety impacts. Although largely outside the scope of this litigation, the City's proposal would also have significant adverse economic impacts to local businesses. These concerns and others were articulated to the City during community meetings, including meetings held in 2021 and 2022, concerning the City's redevelopment plans for three City-owned properties.

8. Petitioners and other commenters presented substantial evidence that the Project may cause a number of significant environmental impacts at the October 10, 2022 hearing held by the City Planning Commission, and at the October 18, 2022 City Council hearing. Potentially significant impacts relate to traffic, air quality, and public safety.

9. By not preparing a supplemental or subsequent environmental impact report ("EIR") before approving the Project, Respondents violated CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, §§ 15000 *et seq.* ("CEQA Guidelines")).

10. Through this Verified Petition Petitioners seek to compel the City to properly analyze, disclose, and mitigate the potential significant adverse environmental impacts associated with the Project.

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PARTIES

11. Petitioner CITIZENS FOR A BETTER EUREKA (“CBE”) is an unincorporated, volunteer community organization that works to protect and enhance the quality of life in and economic vitality of the City of Eureka. CBE members offer input into local land use and planning decisions and economic decisions affecting the City, and have participated in the City’s various actions regarding parking, affordable housing, and downtown revitalization. CBE members include, but are not limited to, Dan Marchett, Andy Cleveland, Cindy Olsen, Shane Blackwell, Michelle Constantine, John Fullerton, Sondra Kirtley, Chuck Ellsworth, Laura Bringhurst, Jorge Bravo, Holly Blackwood, Ben Smith, Anthony Mantova, Mike Munson, Jim Morrison, Marion Brady, Roger Miller, Connie Miller, Nancy Flemming, Susan Santsche, Chris Lehto, Rebecca Blanc, Christopher Larsen, Jennifer Rudick, Nina Chadwich, Frank Jager, Steve Cunningham, Lacy Cunningham, Ray Conti, Rod Anderson, and Security National Properties Servicing Company, LLC (“SN”), which is part of a larger family of entities of which 200 are employed in downtown Eureka, making SN one of the largest employers in the City and the broader region. CBE members include local business owners, financial professionals, lawyers, medical professionals, former members of the City Council, and former City Mayors. CBE was duly authorized to and does bring this action in a representative capacity on behalf of its members and in the public interest.

12. Respondent CITY OF EUREKA (“City”) is, and at all times herein mentioned was, a political and geographic subdivision of the State of California. The City is, and at all relevant times was, responsible for administering and carrying out its laws and all applicable federal and state laws. The City is the “lead agency” for purposes of Public Resources Code Section 21067, with principal responsibility for conducting environmental review of the Project.

13. Respondent CITY OF EUREKA CITY COUNCIL (“City Council”) is, and at all times herein mentioned was, the duly elected legislative body of Respondent City. As the decision-making body for the Project, the City was charged with ensuring compliance with CEQA in connection with reviewing and approving the Project. On or about October 18, 2022, the City Council adopted Resolution No. 2022-58 approving the Project and adopting the Addendum.

Respondent did not thereafter file a notice of determination.

14. Petitioners are unaware of the true names and capacities of Respondents DOES 1 through 10, and sues such respondents by fictitious names. On information and belief, the fictitiously named respondents are also responsible for the actions described in this Verified Petition. When the true identities and capacities of these respondents have been determined, Petitioners will amend this Petition to insert such identities and capacities. Each of the unnamed respondents is the agent and/or employee of Respondents, and each performed acts on which this action is based within the course and scope of such respondent's agency and/or employment.

15. Hereafter, Respondents City, City Council, and DOES 1 through 10, inclusive, are referred to collectively as "Respondents".

JURISDICTION AND VENUE

16. Respondents have taken final agency actions by approving the Project and adopting the Addendum. Respondents had a duty to comply with CEQA prior to exercising their discretion to approve the Project.

17. This Court has jurisdiction over the matters alleged in this Verified Petition pursuant to Code of Civil Procedure ("CCP") Sections 526 (injunctive relief), 527 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5 (administrative mandate), and Public Resources Code Sections 21168 and/or 21168.5 (judicial review under CEQA).

18. The Court has jurisdiction to issue declaratory and injunctive relief pursuant to Code of Civil Procedure Sections 1060 and 525 *et seq.*, respectively.

19. Venue for this action properly lies in the Superior Court for the State of California in and for the County of Humboldt pursuant to CCP Sections 393(b), 394, and 395. Respondents and the Project are located within the County of Humboldt. The environmental impacts from the Project that are the subject of this lawsuit would occur in Humboldt County, and the Project would affect the interests of County residents and City residents, including Petitioner, and its members, their employees, and their customers.

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1 **STANDING AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 20. Pursuant to CCP 367, Petitioner CBE has standing to sue if any of its members
3 would otherwise have standing to sue on their own behalf; the interests CBE seeks to protect in
4 this lawsuit are germane to its purposes; and neither the claim asserted nor the relief requested
5 requires participation of its individual members in the lawsuit.

6 21. Petitioner has standing to assert the claims alleged in this Verified Petition because
7 Petitioner's members are beneficially interested in this matter. Petitioners would be detrimentally
8 affected by the Project to the extent that the Project contributes to significant traffic impacts, air
9 quality impacts, and public safety impacts that impair Petitioners' ability to attract and retain
10 customers and qualified employees, increased costs for employee health insurance and security,
11 decreased customer traffic, and to otherwise continue operating as a going concern within the City.
12 CBE member SN also is beneficially interested in the matter as the owner of property adjacent to
13 City-owned property (a public parking lot at 5th and D streets) that is proposed for redevelopment
14 under the Project. Because Petitioner SN's employees currently utilize that property for parking,
15 the Project will have a direct and substantial impact on Petitioner and its employees. Further, the
16 interests CBE seeks to protect in this lawsuit, relating to traffic impacts, air quality, and public
17 safety particularly in the City core, are germane to the organization's objectives to improve quality
18 of life in the City and the City's economic vitality. Lastly, the claims asserted in this Verified
19 Petition do not require participation by individual CBE members.

20 22. Petitioner and its members have an independent beneficial interest in Respondents
21 performing their public duties and in the faithful execution of the law by public officers.

22 23. Prior to Respondents' decision to approve the Project, Petitioner's members
23 actively participated in the administrative process and objected to the Project.

24 24. Petitioner has performed any and all conditions precedent to filing the instant action
25 and have exhausted available administrative remedies to the extent possible and required by law.
26 Respondents' actions are final and no further administrative appeal procedures are provided by
27 state or local law. Petitioner and other members of the public presented orally and/or in writing
28 their specific objections to the Project during the administrative process.

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ARBITRARY AND CAPRICIOUS ACTIONS

34. Petitioner brings this action on the basis, among others, of Government Code Section 800, and other applicable laws, which entitles petitioners to attorneys’ fees in actions such as this to overturn agency decisions that are arbitrary and capricious.

PRIVATE ATTORNEY GENERAL DOCTRINE

35. Petitioner brings this action as private attorneys general pursuant to Code of Civil Procedure Section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public interest.

36. Issuance of the relief requested in this Verified Petition will (1) confer a significant benefit on the general public by requiring Respondents to carry out their duties under CEQA before approving the Project, and will (2) result in the enforcement of important rights affecting the public interest by ensuring the Project is subject to adequate review under CEQA and its significant impacts mitigated to the extent possible.

37. The necessary and financial burden of enforcement are such as to make an award of attorneys’ fees appropriate in this case.

38. Pursuant to Code of Civil Procedure Section 388, Petitioner will serve a copy of this Verified Petition on the California Attorney General to give notice that Petitioners brought this lawsuit as a private attorney general under Code of Civil Procedure Section 1021.5.

GENERAL ALLEGATIONS

39. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law within the meaning of CCP Section 1086 in that, unless this Court issues its writ of mandate setting aside Respondents’ approval of the Project, and ordering Respondents to comply with CEQA, the environmental interests of Petitioner and the public that are protected by CEQA will be substantially and irreparably harmed. No monetary damages or other legal remedy could adequately compensate Petitioner for the harm to its beneficial interests and to the environment, occasioned by Respondents’ unlawful conduct.

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1 40. Petitioner is entitled to declaratory relief under CCP Section 1060 because an actual
2 controversy exists between Petitioner and Respondents. Petitioner contends that Respondent has
3 acted in violation of applicable laws and must therefore vacate and set aside its approval of the
4 Project. Petitioner is informed and believes that Respondents dispute this contention. A judicial
5 resolution of this controversy is therefore necessary and appropriate.

6 41. Petitioner is also entitled to injunctive relief under CCP Section 526 because
7 Respondents' approval of the Project threatens irreparable environmental harm. Unless enjoined,
8 Respondents will implement the Project despite its lack of compliance with CEQA, causing undue
9 and unnecessary environmental degradation. Petitioner and the public would thereby suffer
10 irreparable harm due to Respondents' failure to take the required steps to adequately protect the
11 environment. Injunctive relief is thus warranted under CCP Section 525 *et seq.* and PRC Section
12 21168.9 to prevent irreparable harm to the environment.

13 **LEGAL BACKGROUND**

14 42. CEQA is California's primary statutory mandate for environmental protection. It
15 applies to all state and local agencies, and requires them to "first identify the [significant]
16 environmental effects of projects, and then to mitigate those adverse effects through the imposition
17 of feasible mitigation measures or through the selection of feasible alternatives." (*Sierra Club v.*
18 *State Board of Forestry* (1994) 7 Cal.4th 1215, 1233.) Its most important substantive imperative
19 requires "public agencies to deny approval of a project with significant adverse effects when
20 feasible alternatives or feasible mitigation measures can substantially lessen such effects." (*Sierra*
21 *Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.)

22 43. CEQA's mandate for detailed environmental review "ensures that members of the
23 [governmental decision-making body] will fully consider the information necessary to render
24 decisions that intelligently take into account the environmental consequences" of their proposed
25 action. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133;
26 PRC §§ 21080.5(d)(2)(D), 21091(d)(2); CEQA Guidelines § 15088.) The CEQA process thus
27 "protects not only the environment but also informed self-government." (*Citizens of Goleta Valley*
28 *v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

44. California “public agencies” must comply with CEQA when they approve discretionary projects. (PRC § 21080(a).)

45. The Authority is a “public agency” as defined in CEQA. (PRC § 21063.)

46. When an EIR has been prepared for a project, CEQA Guidelines section 15162 directs that a Subsequent Environmental Impact Report (“SEIR”) be prepared where “[s]ubstantial changes are proposed in the project,” “[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken,” or “[n]ew information of substantial importance” shows a change in the project’s effects, mitigation measures, or alternatives, such that new significant environmental effects or a substantial increase in the severity of previously identified significant effects, are now shown.

47. An addendum to an EIR is only allowed where changes are necessary but none of the conditions requiring preparation of an SEIR are met. (CEQA Guidelines § 15164(a).) If there are any “new significant environmental effects or a substantial increase in the severity of previously identified significant effects,” an SEIR— rather than an addendum – must be prepared. (CEQA Guidelines §§ 15162(a), 15164(a).) Similarly, if there are mitigation measures or alternatives “previously found not to be feasible [that] would in fact be feasible” or that are “considerably different . . . [and] would substantially reduce one or more significant effects,” an SEIR must be prepared. (*Id.*)

FIRST CAUSE OF ACTION

Violation of CEQA

(CCP § 1094.5, PRC § 21000 *et seq.*, CEQA Guidelines, 14 CCR § 15000 *et seq.*)

48. Petitioner incorporates by reference each and every allegation set forth above.

49. Petitioner brings this First Cause of Action for violations of CEQA pursuant to PRC Sections 21168 and 21168.5 on the grounds that Respondents committed a prejudicial abuse of discretion by failing to proceed in the manner required by law in approving the Project based on a legally inadequate Addendum.

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1 50. The purpose of an addendum is to provide agencies and the public with information
2 about changes to a proposed project that will cause any “new significant environmental effects or
3 a substantial increase in the severity of previously identified significant effects,” or result in
4 changes to the feasibility of any mitigation measures or alternatives, whether or not they were
5 previously considered. (CEQA Guidelines §§ 15162(a), 15164(a).) An addendum is not
6 appropriate where, as here, “[s]ubstantial changes are proposed in the project,” “[s]ubstantial
7 changes occur with respect to the circumstances under which the project is undertaken,” or “[n]ew
8 information of substantial importance” shows a change in the project’s effects, mitigation
9 measures, or alternatives such that new significant environmental effects or a substantial increase
10 in the severity of previously identified significant effects are now shown. (Guidelines § 15162(a).)

11 51. Substantial evidence in the record shows that the Project will result in significant
12 traffic impacts. For example, the Project, by eliminating public parking spaces, will contribute to
13 traffic congestion during peak traffic periods on roadway segments within downtown Eureka that
14 will decrease the Level of Service (“LOS”) from LOS C to LOS D on those roadway segments.
15 The Addendum failed to analyze this impact, and the City failed to adopt feasible mitigation
16 measures.

17 52. Substantial evidence in the record shows that by eliminating public parking spaces,
18 the Project will conflict with City policies, including Transportation Demand Management
19 policies, encouraging employment in the central core of the City. Moreover, the City’s conclusions
20 regarding impacts to parking availability are based in part on a parking study that was performed
21 in 2021, when COVID-related quarantine measures will still in place and many businesses in the
22 City core were closed. Elimination of public parking spaces will potentially displace significant
23 employers to outside of the City core, resulting in secondary traffic impacts. The Addendum failed
24 to analyze this impact, and the City failed to adopt feasible mitigation measures.

25 53. The Project will result in significant air quality impacts as a result of increased
26 traffic congestion in the City core. Traffic-related emissions will violate applicable air quality
27 standards and expose sensitive receptors to substantial pollutant concentrations. The Addendum
28 failed to analyze this impact, and the City failed to adopt feasible mitigation measures.

54. By eliminating public parking in close proximity to employers and places of business, the Project will cause substantial adverse effects indirectly on persons particularly in the City core by exposing such persons to unsafe conditions, including risk of violent crime, associated with traveling longer distances to and from parked vehicles. The Addendum failed to analyze this impact, and the City failed to adopt feasible mitigation measures.

SECOND CAUSE OF ACTION

**Writ of Mandate, Declaratory and Injunctive Relief
(CCP § 1085 and 1094.5)**

55. Petitioner incorporates by reference each and every allegation set forth above.

56. Respondents proceeded in excess of their jurisdiction and abused their discretion in purporting to approve the Project and certify the Addendum thereon, because such approvals violate CCP sections 1085 and 1094.5 in the following respects, among others:

- a. such approvals were not granted in accordance with the procedures required by law;
- b. such approvals were not based on the findings required by law; and
- c. such approvals were not based on, or were contrary to, the evidence in the record before Respondents.

57. Respondents failed to proceed in the manner required by law by violating CEQA as alleged hereinabove.

58. Respondents' actions in approving the Project without complying with the procedures required by CCP sections 1085 and 1094.5 exceeded Respondents' jurisdiction and constitute a prejudicial abuse of discretion, and therefore are invalid and must be set aside.

WHEREFORE, Petitioner prays for judgment as follows:

PRAYER FOR RELIEF

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside the Project on the ground that its approval violated CEQA;

2. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA and the CEQA Guidelines with respect to the Project and any other action as required by Public Resources Code Section 21168.9;

1 3. For a temporary stay, temporary restraining order, and preliminary and permanent
2 injunctions restraining Respondents and their agents and employees, and all others acting in
3 concert with them or on their behalf, from taking any action to implement, fund, or construct any
4 portion or aspect of the Project, pending full compliance with the requirements of CEQA;

5 4. For an order requiring Respondents to rescind their approval of the Project and all
6 actions related thereto, as provided by CCP Section 860 *et seq.*;

7 5. For an order from the Court declaring that Respondents' actions in approving the
8 Project and adopting the Addendum violated CEQA, and that those actions are invalid and of no
9 force or effect;

10 6. For an award of Petitioners' attorneys' fees under CCP Section 1021.5,
11 Government Code Section 800, and other applicable authority;

12 7. For an award of Petitioners' costs of suit incurred in this proceeding under CCP
13 Section 1032, and other applicable authority; and

14 8. Such other and further relief as the Court deems just and proper.

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17 DATED: April 6, 2023

EVERVIEW LTD.

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20 Bradley Johnson, Esq.
21 *Attorneys for Petitioner and Plaintiff*
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VERIFICATION

I am an employee of Security National Properties Servicing Company, LLC ("SN"), which is a member of Petitioner CITIZENS FOR A BETTER EUREKA ("CBE"). I am authorized by SN to make this verification on its behalf, and I am authorized by the members of CBE to make this verification for and on behalf of CBE. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and for Attorneys' Fees. I am informed and believe and, based on such information and belief, allege that the matters stated in it are true and correct.

Executed at Eureka, California, on this 6th day of April, 2023.

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



Allison Holland

Exhibit A



Everview Ltd.

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April 4, 2023

VIA EMAIL TO: PPOWELL@EUREKACA.GOV
CITYATTORNEY@EUREKACA.GOV

AND VIA U.S. MAIL

Pam Powell
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City of Eureka
531 K Street
Eureka, CA 95501

Autumn Luna, Esq.
City Attorney
City of Eureka
531 K Street
Eureka, CA 95501

Re: NOTICE OF INTENT TO FILE CEQA PETITION

PLEASE TAKE NOTICE, under Public Resources Code Section 21167.5, that petitioner CITIZENS FOR A BETTER EUREKA intends to file a petition under the provisions of the California Environmental Quality Act against respondent City of Eureka and City of Eureka City Council (collectively, "City"), challenging the City's October 18, 2022 approval of the 2019-2027 Housing Element Amendment and Housing Element Technical Appendix Amendment, and adoption of an associated addendum to the 2040 General Plan Environmental Impact Report.

A copy of the petition to be filed by petitioner is attached to this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bradley B. Johnson".

Bradley B. Johnson, Esq.
Everview Ltd.
Attorney for Petitioner Citizens for a Better Eureka



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EUREKA, CA. 95501
7022 1670 0001 2684 2462

7022 1670 0001 2684 2462

Exhibit B

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CITIZENS FOR A BETTER EUREKA,

Petitioner and Plaintiff,

vs.

CITY OF EUREKA, CITY OF EUREKA
CITY COUNCIL, and DOES 1 to 10,
inclusive,

Respondents and Defendants.

Case No.:

**NOTICE OF PETITIONER'S ELECTION
TO PREPARE THE ADMINISTRATIVE
RECORD OF DECISION**

[Public Resources Code, § 21167.6(e)]

1 **TO RESPONDENTS AND DEFENDANTS:**

2 NOTICE IS HEREBY GIVEN that, pursuant to subdivision (b)(2) of section 21167.6 of
3 the California Public Resources Code, Petitioner and Plaintiff CITIZENS FOR A BETTER
4 EUREKA (“Petitioner”) hereby elects to prepare the administrative record pertinent to this
5 proceeding.

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7 DATED: April 6, 2023

EVERVIEW LTD.

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10 _____
Bradley Johnson, Esq.

11 *Attorneys for Petitioner and Plaintiff*
12 CITIZENS FOR A BETTER EUREKA
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