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5 Attorneys for Plaintiffs

7 **UNITED STATES DISTRICT COURT FOR THE**  
8 **EASTERN DISTRICT OF WASHINGTON**

9 TOWNSEND RANCH LLC, a Washington  
limited liability corporation; ESTATE OF  
10 DAVID TOWNSEND; EDWARD  
TOWNSEND; DANIEL TOWNSEND;  
11 WILLIAM TOWNSEND; NATHAN  
TOWNSEND; MALCOLM and KELLY  
TOWNSEND, husband and wife;  
12 TOWNSEND BROTHERS LLC, a  
Washington limited liability corporation;  
13 T3 RANCH LLC, a Washington limited  
liability corporation; and SWEDE W.  
ALBERT, an individual,

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA, acting  
by and through the DEPARTMENT OF  
17 INTERIOR and BUREAU OF INDIAN  
AFFAIRS,

18 Defendant.

No. 2:23-cv-00170-TOR

**PLAINTIFFS’ RESPONSE  
IN OPPOSITION TO  
UNITED STATES’ MOTION  
TO DISMISS PURSUANT  
TO RULES 12(b)(1) AND  
12(h)(3)**

19 Larger, more destructive wildfires have become the new normal, both in the  
20 Pacific Northwest and globally. These fires have had devastating impacts, from  
21 loss of human property and life, to the immediate and long-term impacts on  
22 delicate ecosystems and the environment. Accordingly, the responsibility to

1 prevent or mitigate such destructive wildfires should not be taken lightly. The  
2 environmental devastation of the wildfire in this case is a tragic example.

### 3 INTRODUCTION

4 Plaintiffs do not challenge Defendant’s basic statement of the law and  
5 acknowledge that in a factual challenge to subject matter jurisdiction, as Defendant  
6 is mounting here, the Court may consider evidence regarding jurisdiction and  
7 resolve factual disputes when appropriate. *Robinson v. United States*, 586 F.3d  
8 683, 685 (9<sup>th</sup> Cir. 2009). Moreover, Plaintiffs agree that they carry the burden of  
9 establishing subject matter jurisdiction by a preponderance of the evidence. *See*  
10 *San Diego Cnty. Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012,  
11 1029 (9<sup>th</sup> Cir. 2023). Finally, where, as in this case, subject matter jurisdiction is  
12 based upon so-called 638 contracts, this Court must first determine whether the  
13 alleged activity is covered by the relevant contract and then determine whether the  
14 challenged act falls within the tortfeasor’s scope of employment under state law.  
15 *Shirk v. United States*, 773 F.3d 999, 1006 (9<sup>th</sup> Cir. 2014).

16 “Although it is Plaintiff’s burden to establish jurisdiction in the face of a  
17 Rule 12(b)(1) challenge, it is Defendant’s obligation to launch a proper factual  
18 challenge to trigger Plaintiff’s burden under Rule 12(b)(1).” *Castillo v. Cartier*,  
19 Case No. 1:18-cv-01139-LJO-SAB, 2018 U.S. Dist. LEXIS 212143, \*5, 2018 WL  
20 6603864 (E.D. Cal. Dec. 17, 2018). “Such a challenge requires evidence —  
21 affidavits or other evidence — sufficient to challenge the factual assertions in the  
22 complaint.” *Id.*, 2018 U.S. Dist. LEXIS 212143, \*8. Moreover, resolution of

1 factual disputes is not appropriate if “the jurisdictional issue is inextricable from  
2 the merits of a case.” *Id.* (quoting *Kingman Reef Atoll Invs., L.L.C. v. United*  
3 *States*, 541 F.3d 1189, 1195 (9<sup>th</sup> Cir. 2008)); *see, e.g., Munger v. United States*  
4 *SSA*, Case No. C19-5571TSZ, 2020 U.S. Dist. LEXIS 218781, 2020 WL 6874792  
5 (W.D. Wash. Nov. 23, 2020) (it was improper on motion to dismiss trip and fall  
6 case under the Federal Tort Claims Act [“FTCA”] on ground of lack of subject  
7 matter jurisdiction for court to resolve whether the United States owned or that its  
8 employee placed the allegedly defective mat on which the plaintiff tripped,  
9 notwithstanding the terms of the Government’s lease with a private landlord). For  
10 the same reason, it would be inappropriate for this Court to determine whether the  
11 source of the damage to Plaintiffs’ property was the fire that originated at the old  
12 Omak Mill site, as alleged in the Second Amended Complaint (“SAC”) (ECF No.  
13 15 ¶ 1.1), or the Rodeo Trail Fire and/or the Cold Springs Fire described in the  
14 Background Facts section of Defendant’s motion to dismiss.

15 Where a substantive issue of fact exists or where discovery is necessary in  
16 order to respond to a motion to dismiss for lack of subject matter jurisdiction, pre-  
17 motion discovery may be necessary:

18 When a party requests discovery to respond to a motion to  
19 dismiss on jurisdictional grounds, the court ordinarily should grant  
20 discovery "where pertinent facts bearing on the question of  
21 jurisdiction are controverted or where a more satisfactory showing of  
22 the facts is necessary." *Laub v. United States DOI*, 342 F.3d 1080,  
1093 (9th Cir. 2003) (quoting *Butcher's Union Local No. 498 v. SDC*  
*Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986)) (discussing discovery in  
the context of standing). On the other hand, "a refusal to grant  
discovery to establish jurisdiction is not an abuse of discretion when

1 'it is clear that further discovery would not demonstrate facts  
2 sufficient to constitute a basis for jurisdiction.'" *Id.* (quoting *Wells*  
3 *Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th  
4 Cir. 1977)).

5 "It is well-established that '[t]he burden is on the party seeking  
6 to conduct additional discovery to put forth sufficient facts to show  
7 that the evidence sought exists.'" *Gager v. United States*, 149 F.3d  
8 918, 922 (9th Cir. 1998) (quoting *Conkle v. Jeong*, 73 F.3d 909, 914  
9 (9th Cir. 1995)). However, a plaintiff seeking jurisdictional discovery  
10 need not "first make a prima facie showing that jurisdiction actually  
11 exists." *Hall v. United States*, No. 16-CV-02395-BAS-RBB, 2017  
12 U.S. Dist. LEXIS 120149, 2017 WL 3252240, at \*4 (S.D. Cal. July  
13 31, 2017) (quoting *NuboNau, Inc. v. NB Labs, Ltd.*, No. 10-cv-2631-  
14 LAB-BGS, 2011 U.S. Dist. LEXIS 125410, 2011 WL 5237566, at \*3  
15 (S.D. Cal. Oct. 31, 2011)). "Such a showing is necessary to survive a  
16 motion to dismiss, and '[i]t would . . . be counter intuitive to require  
17 a plaintiff, prior to conducting discovery, to meet the same burden  
18 that would be required in order to defeat a motion to dismiss.'" *NuboNau, Inc.*,  
19 2011 U.S. Dist. LEXIS 125410, 2011 WL 5237566, at  
20 \*3 (quoting *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D.  
21 670, 673 (S.D. Cal. 2001)).

22 *Does v. Trump*, 328 F. Supp. 3d 1185, 1196 (W.D. Wash. 2018).

Plaintiffs oppose the motion to dismiss for lack of subject matter jurisdiction because Defendant's evidence—which is just an attorney's declaration identifying documents and which does not include an affidavit of a single individual with personal knowledge of the 638 contracts upon which Plaintiffs base jurisdiction—is insufficient to raise a factual challenge to subject matter jurisdiction. To the extent the Court finds that Defendant's motion is sufficient, Plaintiffs request jurisdictional discovery in order to fully respond to Defendant's argument.

**ARGUMENT**

**I. THE 638 CONTRACTS ALLEGED IN THE SAC COVERED THE NEGLIGENCE ALLEGED IN THE SAC.**

**A. The Forest Management 638 Contract Covers The Negligent Failure To Maintain And Extinguish The Slash Pile On The Old Omak Mill Property.**

Defendant argues that the Forest Management 638 Contract, Contract V20AV00089 (ECF No. 27-8, Def's Ex. H), upon which Plaintiffs rely for subject matter jurisdiction (ECF No. 15 ¶¶ 4.14, 4.16-4.21) does not apply to the alleged negligence because that contract addresses forest management within the meaning of the National Indian Forest Resources Management Act of 1990, 25 U.S.C. § 3101 et seq. and its regulations, 25 C.F.R. Part 163. Defendant further argues that the SAC alleges a failure to manage a slash pile created from wood chips and other byproducts of a for-profit lumber mill (ECF No. 26 at p. 15). This argument misreads the SAC.

The SAC alleges that the fire started in one or more burn piles of forest and timber scrap at the old Omak Mill *site* (ECF No. 15 ¶ 1.1), which is owned by Colville Tribal Federal Corporation (“CTFC”), an arm of the Confederated Tribes of the Colville Reservation (“Confederated Tribes”) (ECF No. ¶¶ 2.14, 2.16, 2.17). The SAC also alleges that CTFC operates as an arm of the Confederated Tribes and manages the Tribes’s gaming and wood products enterprises. (ECF No. 15 ¶ 2.16.) However, nowhere in the SAC is it alleged that CTFC operates a wood products enterprise or any other sort of manufacturing operation at the old mill site.

1 Nor is the SAC's use of the word "slash" indicative of manufacturing. The SAC  
2 itself defines "slash" as forest and timber scrap (ECF No. 15 ¶ 1.1), not wood chips  
3 and other byproducts of manufacturing as Defendant claims. Plaintiffs'  
4 construction of this term is a commonly-accepted definition. *See, e.g., Merriam-*  
5 *Webster Dictionary*, <https://www.merriam-webster.com/dictionary/slash> (last  
6 visited Apr. 11, 2024) ("3 a : an open tract in a forest strewn with debris (as from  
7 logging) b : the debris in such a tract."); *Dictionary.com*,  
8 <https://www.dictionary.com/browse/slash> (last visited Apr. 11, 2024) ("13. (in  
9 forest land) a. an open area strewn with debris of trees from felling or from wind  
10 or fire. B. the debris itself."); *The Free Dictionary.com*,  
11 <https://www.thefreedictionary.com/slash> (last visited Apr. 11, 2024) ("3. a.  
12 Branches and other residue left on a forest floor after the cutting of timber.").  
13 Defendant has submitted no evidence supporting its assertion that the slash pile  
14 was made up of byproducts from a manufacturing process (ECF No. 26 at p. 15),  
15 rather than the forest and timber scrap alleged in the SAC (ECF No. 15 ¶ 1.1).

16 More importantly, Defendant has submitted no evidence that CTFC or the  
17 Confederated Tribes operated a wood products operation at the time of the fire or  
18 that it does so at present. In fact, during the more than 22 years that the old Omak  
19 Mill site has been in Tribe hands, it operated as a sawmill for only about two years,  
20 and that was almost a decade ago. Defendant has produced a November 19, 2001  
21 asset agreement showing that the Colville Tribe Enterprise Corporation ("CTEC")  
22 purchased the bankrupt estate of Quality Veneer and Lumber, Inc., including real

1 property and equipment. (ECF No. 27-5.) However, news sources<sup>1</sup> have reported  
2 that CTFC, to whom the Confederated Tribes transferred the property in 2013 after  
3 CTEC transferred it to the Confederated Tribes in 2012 (ECF No. 27-6), only  
4 operated a mill on the site from late 2013 until early 2017, at the latest. Justus  
5 Caudell, "Auction Will Liquidate Plywood and Veneer Mill," *Tribal Tribune*,  
6 April 20, 2018, [https://www.tribaltribune.com/news/article\\_e4e16e10-44a5-11e8-  
7 99cb-b3c02c8c9721.html](https://www.tribaltribune.com/news/article_e4e16e10-44a5-11e8-99cb-b3c02c8c9721.html) (last visited Apr. 26, 2024); "Omak Mill to Remain  
8 Open," Feb. 15, 2016, Okanogan Country Radio, [http://www.komw.net/news/  
9 local-news/omak-mill-remain-open/](http://www.komw.net/news/local-news/omak-mill-remain-open/) (last visited Apr. 26, 2024); Mike McLean,  
10 "Reopened Omak Mill Hits Its Stride," *Spokane Journal of Business*, May 21,  
11 2015, [https://www.spokanejournal.com/articles/5415-reopened-omak-mill-hits-  
12 its-stride](https://www.spokanejournal.com/articles/5415-reopened-omak-mill-hits-its-stride) (last visited Apr.15, 2024); "Omak Mill Closure to Leave 175 People  
13 Without Work," *The Spokesman-Review*, Dec. 15, 2015,  
14 [https://www.spokesman.com/stories/2015/dec/15/omak-mill-closure-to-leave-  
15 175-people-without-work/](https://www.spokesman.com/stories/2015/dec/15/omak-mill-closure-to-leave-175-people-without-work/) (last visited Apr. 16, 2024). More recent news reports  
16 suggest that at least part of the old Omak Mill site is dedicated to a new health care  
17 facility to be operated as a joint venture between the Confederated Tribes and  
18 Defendant and intended to replace an ineffective Indian Health Services clinic.  
19 Sonny Sellars, "Ground Blessing Ceremony Held for New Omak Clinic (Tribal  
20 Tribune Oct 19, 2023, Updated Jan 10, 2024), [https://www.tribaltribune.com/  
21 news/article\\_39822b3c-afec-11ee-9540-8fae905fa729.html](https://www.tribaltribune.com/news/article_39822b3c-afec-11ee-9540-8fae905fa729.html) (last visited Apr. 15,

22 <sup>1</sup> News articles cited herein are attached as Exhibits to the Declaration of Richard C. Eymann filed in support hereof.

1 2024); “Nine Years in the Making, Colville Tribes Break Ground on Desperately-  
2 Needed Healthcare Clinic in Omak” (Source One Oct. 19, 2023),  
3 [https://www.yoursourceone.com/columbia\\_basin/nine-years-in-the-making-](https://www.yoursourceone.com/columbia_basin/nine-years-in-the-making-colville-tribes-break-ground-on-desperately-needed-healthcare-clinic-in/article_aa053dac-6ef3-11ee-a2e3-afab69bfl14.html)  
4 [colville-tribes-break-ground-on-desperately-needed-healthcare-clinic-](https://www.yoursourceone.com/columbia_basin/nine-years-in-the-making-colville-tribes-break-ground-on-desperately-needed-healthcare-clinic-in/article_aa053dac-6ef3-11ee-a2e3-afab69bfl14.html)  
5 [in/article\\_aa053dac-6ef3-11ee-a2e3-afab69bfl14.html](https://www.yoursourceone.com/columbia_basin/nine-years-in-the-making-colville-tribes-break-ground-on-desperately-needed-healthcare-clinic-in/article_aa053dac-6ef3-11ee-a2e3-afab69bfl14.html) (last visited Apr. 15,  
6 2024). This sounds very much like a 638 contract, *see* 25 U.S.C. §§ 5322(b)  
7 (authorizing Secretary of Health and Human Services to make grants to tribal  
8 organizations for development, construction, operation, provision, or maintenance  
9 of health care facilities) and 5321(d) (providing that tribal organizations carrying  
10 out a health care services contract pursuant to § 5322 are deemed part of the Public  
11 Health Service); *see also Cherokee Nation v. Leavitt*, 543 U.S. 631, 634 (2005)  
12 (“The Indian Self-Determination and Education Assistance Act (Act), 88 Stat  
13 2203, as amended, 25 U.S.C. § 450 et seq. (2000 ed. and Supp. II), authorizes the  
14 Government and Indian tribes to enter into contracts in which the tribes promise to  
15 supply federally funded services, for example tribal health services, that a  
16 Government agency would otherwise provide.”), which was contemplated even at  
17 the time of the fire, begging the question whether the site was trust land owned by  
18 the Confederated Tribes at the time of the fire. Indeed, Defendant concedes that  
19 “[u]ntil the events at issue in this case, the site was a lumber mill that manufactured  
20 plywood and wood veneer products,” and that “[t]he mill *historically* sourced  
21 timber from around the northwest, including from forest lands on the Colville  
22 Reservation.” (ECF No. 26 at p. 7, ll. 16-19) (emphasis added). While Defendant



1 suggests throughout its motion that the slash pile fire arose out of the  
2 manufacturing process, it never affirmatively states that the CTFC or the  
3 Confederated Tribes were engaged in manufacturing at the time of the fire.

4 Furthermore, the tax records for the last few years produced by Defendant  
5 show that CTFC has been taxed for the real property only, not for improvements.  
6 (ECF No. 27-6 and ECF No. 27-7.) Defendant has pointed to absolutely no  
7 evidence supporting its suggestion that the Confederated Tribes sold lumber to  
8 CTFC, which CTFC then converted into finished lumber products to be sold at a  
9 profit (ECF No. 26 at p. 17). Defendant's evidence falls short of establishing that  
10 CFTC is engaged in "the production of finished lumber products" as argued in its  
11 motion. (ECF No. 26 at p. 15, ll. 15-16.) Thus, any argument that activity at the  
12 old Omak Mill site falls outside the definition of "Timber Sale Administration"  
13 that is found in the Scope of Work covered by the Forest Management 638 Contract  
14 (ECF No. 27-8 at pp. 31-32) on the ground that the Confederated Tribes's  
15 contractual duties end once timber has been harvested and sold (ECF No. 26 at p.  
16 16) must fail because there is no evidence that there was post-harvest timber that  
17 had been sold at the former mill site.

18 In addition to Timber Sale Administration, the Scope of Work relevant to  
19 the contract includes Forestry, Forest Administration, Forest Management  
20 Planning, Forest Development, Forest Protection, and Woodlands Management.  
21 The Confederated Tribes' responsibilities in these areas is far broader than  
22 overseeing forested land. For example, Forest Administration includes "timber

1 sale accounting,” “coordination and consultation with the Tribes[’s] forest  
2 enterprises in all aspects of tim[b]er management and primary/secondary  
3 manufacturing,” and “provide oversight of the Cooperative Fire Management  
4 Program.” (ECF No. 27-8 at p. 31.) Forest Protection includes taking “corrective  
5 action to forest stands impacted by wildfire, . . . [which] may include prevention,  
6 suppression or rehabilitation as needed to address concerns/issues.” (ECF 27-8 at  
7 p. 32.) The regulations that Defendant contend govern the Forest Management  
8 638 Contract, 25 C.F.R. Part 163, list protection against wildfire as an element of  
9 forest management. *See* 25 C.F.R. § 163.1(d) (forest management includes  
10 “Protection against losses from wildfire, including acquisition and maintenance of  
11 fire fighting equipment and fire detection systems, construction of fire breaks,  
12 hazard reduction, prescribed burning, and the development of cooperative wildfire  
13 management agreements.”).

14 Missing from the Defendant’s evidence is an explanation by someone with  
15 personal knowledge of how the site of the old Omak Mill was being managed at  
16 the time of the fire. Defendant has produced evidence that the property was  
17 purchased for use as a sawmill, but newspaper articles indicate that the property  
18 was used as a mill for only a couple of years after purchase and that it had not been  
19 used as a manufacturing site for several years before the fire. Newspaper reports  
20 also demonstrate the current intended use of the property as the site of a health  
21 clinic under a 638 contract. Under these circumstances, management of the site  
22 came within the scope of the Forest Management Contract.

1           However, if the Court were to find that Plaintiffs' evidence is not sufficient  
2 to establish jurisdiction, then the Court should grant Plaintiffs an opportunity to  
3 conduct jurisdictional discovery in order to respond to the motion to dismiss. As  
4 stated previously, it is not necessary that Plaintiff's evidence make out a prima  
5 facie case that the site was included within the Forest Management 638 contract at  
6 the time of the fire, as long as Plaintiffs can show that further discovery can resolve  
7 the overriding question of what use was being made of the property at the time of  
8 the fire so that it can be determined whether the activity fell under the Forest  
9 Management 638 contract. *See Does v. Trump*, 328 F. Supp. 3d at 1196. Plaintiffs  
10 have met that requirement.

11           **B. The Fire Protection 638 Contract Covers The Negligent Failure To**  
12           **Maintain And Extinguish The Slash Pile On The Old Omak Mill**  
13           **Property.**

14           Defendant argues that the Fire Protection 638 contract does not apply to the  
15 fire that is the subject of the SAC because (1) the Scope of Work under the contract  
16 is limited to fire protection within the Town of Nespelem, the Agency Campus and  
17 surrounding areas, which is 35 miles from the site of the old Omak Mill property  
18 and (2) the Omak Mill site is not tribal lands, but is private property held in fee  
19 simple by CTFC. (ECF No. 26 at p. 20.) According to Defendant, Okanogan  
20 County Fire Protection District No. 3—and not Defendant—was responsible for  
21 fire protection of the property. (ECH No. 26 at 21.)

22           Defendant's contention that Fire Protection District No. 3 was responsible  
for Fire Protection at the old Omak Mill site is disputed by the affidavit of Plaintiff

1 Edward Townsend, which states that the Mt. Tolman Fire Center actually took over  
2 the Rodeo Trail fire and was responsible for protecting against subsequent  
3 rekindles of the fire, including at the old Omak Mill site. On information and  
4 belief, the Mt. Tolman Fire Center is operated pursuant to a 638 contract.  
5 Jurisdictional discovery is necessary to obtain a copy of the contract and to review  
6 it.

7 **II. AN EMPLOYEE WAS ACTING WITHIN THE SCOPE OF THEIR**  
8 **EMPLOYMENT WHILE CARRYING OUT THE 638 CONTRACTS.**

9 Plaintiffs have not yet identified a specific employee or employees who  
10 was/were responsible for the preventing the slash pile for becoming an out-of-  
11 control wildfire that spread to and damaged Plaintiffs' property. However, the  
12 Forest Management contract plainly charged Defendant with providing oversight  
13 of the Cooperative Fire Management Program. (ECF No. 27-8 at p. 31) and taking  
14 "corrective action to forest stands impacted by wildfire," including prevention,  
15 suppression and/or rehabilitation (ECF 27-8 at p. 32). Clearly these  
16 responsibilities fell to particular individuals who can be identified through  
17 jurisdictional discovery.

18 Defendant contends that any named individuals would be CTFC employees,  
19 not agents or employees of the Confederated Tribes. However, because it is far  
20 from clear the old Omak Mill site was operating as a for-profit venture at the time  
21 of the fire, it is equally unclear that any person responsible for preventing or  
22 fighting the fire within the meaning of the Forest Management contract would be

1 solely an employee of a private entity. At this point, Plaintiffs are able to identify  
2 Brett Black, Forest Products Chief Operation Officer of CRFC and Tribe member  
3 as a person responsible for the old Omak Mill site. In addition, as indicated in the  
4 Declaration of Plaintiff Edward Townsend, Ike Cawston, Sr., the Mt. Tolman Fire  
5 Center Fire Management Officer who is now retired, agreed to take control of the  
6 Rodeo Trail fire and to release all other fire districts and was responsible for  
7 protecting against subsequent rekindles of the fire, including at the old Omak Mill  
8 site.

9 **CONCLUSION**

10 For the foregoing reasons, the Court should deny Defendant's motion to  
11 dismiss and should allow Plaintiffs to conduct jurisdictional discovery into whether  
12 the operations at the old Omak Mill site fall within the identified Forest  
13 Management 638 contract or some other forest management contract and/or the  
14 Fire Protection 638 contract or some other fire protection contract and the names  
15 of individuals responsible for ensuring that the fire protection aspects of any such  
16 contract are carried out.

17 DATED this 30th day of April, 2024

18 Respectfully submitted,

19 **EYMANN ALLISON JONES, P.S.**

20 *s/ Richard C. Eymann*  
21 Richard C. Eymann, WSBA #7470

22 ***Attorneys for Plaintiffs***

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2024, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

- Derek T Taylor [derek.taylor@usdoj.gov](mailto:derek.taylor@usdoj.gov), [CaseView.ECF@usdoj.gov](mailto:CaseView.ECF@usdoj.gov), [denise.darnell@usdoj.gov](mailto:denise.darnell@usdoj.gov), [mary.f.buhl@usdoj.gov](mailto:mary.f.buhl@usdoj.gov), [nancy.kidwell@usdoj.gov](mailto:nancy.kidwell@usdoj.gov), [USAWAE.DtaylorECF@usdoj.gov](mailto:USAWAE.DtaylorECF@usdoj.gov)
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*s/ Richard C. Eymann*  
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RICHARD C. EYMANN, WSBA #7470

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