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ANTHONY P. SCHOENBERG  
aschoenberg@fbm.com  
D 415.954.4963

April 16, 2014

*Via Messenger*

Clerk of the Court  
United States Court of Appeals  
For the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

Re: Fyock v. City of Sunnyvale, No. 14-15408 (9th Cir.)

Dear Sir or Madam:

Appellees the City of Sunnyvale, et al., in the above-captioned matter write to notify the Court that Appellants have incorrectly stated in their Notice of Non-Opposition to Appellants' Motion to Stay Appeal ("Notice") (Dkt. 13), filed yesterday, that Appellees do not oppose Appellants' Motion to Stay Appeal. In fact, Appellees do oppose Appellants' Motion to Stay Appeal and intend to file an opposition on April 17, 2014, the day on which the opposition comes due.

In the Notice, Appellants assert that the City did not timely file an opposition to the Motion to Stay Appeal. (*See* Dkt. 14; Barvir Decl. at ¶ 2). Appellants' assertion is incorrect. On April 4, 2014, Appellants filed their Motion to Stay Appeal, and served Appellees via the Appellate ECF system. Under the applicable rules, Appellees' opposition is due 10 days after service of the motion, plus an additional 3 days because the motion was served by the Appellate ECF system, for a total of 13 days. *See* FRAP 27 ("The response must be filed within 10 days after service of the motion"); FRAP 26(c) ("When a party may or must act within a specified time after service, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service."); Ninth Circuit Rule 26-2 ("The 3-day service allowance provided by FRAP 26(c) applies to documents served by the Appellate ECF system pursuant to Circuit Rule 25-5"). Accordingly, Appellees' opposition to the Motion to Stay Appeal is not due until tomorrow, April 17, 2014, and Appellees plan to file their opposition at that time.

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Appellees promptly notified Appellants of their mistake after receiving the Notice, and requested that they withdraw it. Appellants agreed this morning to file a notice of errata and a corrected version of their filing that does not refer to any non-opposition by Appellees, but Appellees have not yet received any notice of such filing. Accordingly, Appellees submit this letter to notify the Court of the situation and to ensure that the Court is aware that an opposition will be filed tomorrow.

Sincerely,

*Anthony Schoenberg*  
RLW

Anthony P. Schoenberg

APS:ks

cc: All Counsel (via e-mail)  
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