IN RE:

Andrew T. LeFever, Esq. Magisterial District Judge Magisterial District 02-2-04 2nd Judicial District Lancaster County

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ANSWER TO JUDICIAL CONDUCT BOARD COMPLAINT

NOW COMES Magisterial District Judge Andrew T. LeFever, Respondent herein, by and through his counsel, Robert A. Graci and Saxton & Stump, and files this Answer to the Judicial Conduct Board Complaint pursuant to Rule 413 of the Court of Judicial Discipline Rules of Procedure, C.J.D.R.P. No. 413, and, in support thereof, avers as follows:

FACTUAL ALLEGATIONS

1. Denied as conclusion of law and argument requiring no response. Moreover, Article V, § 18 of the Pennsylvania Constitution is a written document that speaks for itself. Any attempts to explain or characterize the contents of this provision are denied. By way of further answer, it is admitted that Article V, § 18 of the Pennsylvania Constitution grants to the Judicial Conduct Board (Board) the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court. To the extent that the averment in paragraph 1 of the Complaint states or suggests that there is probable cause to warrant the filing of formal charges against Judge LeFever, said averment is denied as a conclusion of fact and law and argument requiring no response.

2. Admitted.

3. Admitted.

4. Denied as stated. The Lancaster City Democratic Committee (LCDC) website contains written statements which speak for themselves. Any attempt to explain or characterize its contents is denied. It is admitted that the cited website contains the information quoted at paragraph 4 of the Complaint.

5. Denied as stated. The LCDC website contains written statements which speak for themselves. Any attempt to explain or characterize its contents is denied. It is admitted that the cited website contains the information quoted at paragraph 5 of the Complaint.

6. Denied as stated. It is admitted that on January 27, 2019, information was posted as described in paragraph 6 of the Complaint on a Facebook page titled "Andrew LeFever for Magisterial District Judge." The Facebook posting is a writing that speaks for itself. Any attempts to explain or characterize it are denied. It is admitted that the quoted passage in paragraph 6 is an accurate quote of the

material that was posted. The remainder of this paragraph is denied as conclusions of fact and law and argument requiring no response.

7. Denied as a conclusion of law and argument requiring no response. By way of further response, it is admitted that the "Application" section of the Rules Governing Standards of Conduct of Magisterial District Judges (RGSCMDJ) states that "Canon 4 (governing political and campaign activities) applies to all judicial candidates." *See*, RGSCMDJ, "*Application*," ¶ [4].

8. Denied as stated and as a conclusion of law and argument requiring no response. It is admitted that from January 27, 2019 until March 11, 2019, Mr. LeFever served as a Committee Person in the LCDC. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

9. Admitted in part and denied in part as stated and as a conclusion of law and argument requiring no response. It is admitted that the above described Facebook page was updated with posts concerning Mr. LeFever's campaign activities from January 27, 2019 through March 12, 2019. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

10. Admitted in part and denied in part as stated and as a conclusion of law and argument requiring no response. It is admitted that Mr. LeFever participated in a public LCDC meeting as a Committee Person for the City of

Lancaster's 5th Precinct in the 6th Ward to determine which judicial and nonjudicial candidates the LCDC would officially endorse for the 2019 municipal election. It is further admitted that he participated in the meeting to determine if the LCDC would endorse him for the position of Magisterial District Judge in Magisterial District 02-2-04. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

11. Admitted in part and denied in part. Judge LeFever has previously testified during a deposition taken by Board Counsel that he voted for the LCDC to endorse non-judicial candidates for the positions of School Director and Lancaster City Counsel. Upon further reflection, he is now not sure of the accuracy of that response. Accordingly, this averment is denied and strict proof thereof is demanded at time of trial. It is admitted that whatever actions he took at the February 11, 2019 LCDC meeting to endorse non-judicial candidates for public office were taken solely in his capacity as a Committee Person, as alleged.

12. Admitted. Mr. LeFever's vote in this regard was cast in his capacity as a Committee Person, as alleged. By way of further response, pursuant to Rule 4.2(B)(2), a judicial candidate may "speak on behalf of his or her candidacy through any medium" RGSCMDJ, Rule 4.2(B)(2). According to *OxfordDictionaries*, to "endorse" means to "declare one's public support of." If a candidate for magisterial district judge may "publicly *endorse* or speak on behalf

of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly *endorse* or speak on behalf of candidates for any other elective judicial office appearing on the same ballot" as allowed by Rule 4.2(B)(3), RGSCMDJ, Rule 4.2(B(3) (emphasis added), such a candidate may certainly speak on behalf of or in support of himself or herself through the medium of an endorsement.

13. Admitted in part and denied in part as stated and as a conclusion of law and argument requiring no response. It is admitted that, after a unanimous vote, Mr. LeFever received the endorsement of the LCDC for the position of Magisterial District Judge in Magisterial District 02-2-04. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

14. Admitted in part and denied in part as stated and as conclusions of law and argument requiring no response. It is admitted that on February 11, 2019, Mr. LeFever established his campaign committee, "LANCASTER FOR LEFEVER." That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

15. Admitted.

16. Admitted in part and denied in part as stated and as conclusions of law and argument requiring no response. It is admitted that, prior to the establishment

of his campaign committee on February 11, 2019, Mr. LeFever made expenditures for his campaign from January 5, 2019 through March 11, 2019, that the campaign committee, "LANCASTER FOR LEFEVER," made expenditures for Mr. LeFever's campaign after it was formed on February 11, 2019, and until March 11, 2019, and that those expenditures by Mr. LeFever and his campaign committee are reflected on the campaign finance report filed by or on behalf of the campaign committee on or about May 6, 2019. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

17. Admitted in part and denied in part as stated and as conclusions of law and argument requiring no response. It is admitted that on February 23, 2019, Mr. LeFever received the endorsement of the Lancaster County Democratic Committee for the position of Magisterial District Judge in Magisterial District 02-2-04. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

18. Admitted in part and denied in part as stated and as conclusions of law and argument requiring no response. It is admitted that Mr. LeFever and his circulators began soliciting electors in the City of Lancaster's 6th Ward for placement of their signatures on Mr. LeFever's Republican and Democratic nominating petitions of the position of Magisterial District Judge in Magisterial District 02-2-04 on February 23, 2019. That Mr. LeFever was then a "candidate" is

denied as a conclusion of law and argument requiring no response. By way of further response, the act of circulating nominating petitions does not necessarily make one a candidate. See In re Nomination Petition of Leonard, 167 A.3d 300, 2017 Pa. Commw. Unpub. LEXIS 536, 5 (Pa. Cmwlth. 2017) (single-judge opinion which, pursuant to Pa.R.A.P. 126(c)(2), is cited as persuasive) (rejecting petition objecting to nominating petitions of candidate for magisterial district judge who was a committee person when she circulated her nominating petitions observing "[o]bjectors misstate the law when they assert that an individual circulating nominating petitions is a 'judicial candidate' under Rule 4.1(A)(1) who may not hold an office;" citing, inter alia, Mayer v Hemphill, 190 A.2d 444 (Pa. 1963), and McMenamin v. Tartaglione, 590 A.2d 802, 810 (Pa. Cmwlth. 1991), for the proposition that a person might never obtain sufficient signatures and might never file the circulated petitions and rejecting view of objectors to petitions that circulator was a "judicial candidate" while only circulating petitions).

19. Admitted in part and denied in part as stated and as conclusions of fact and law and argument requiring no response. It is admitted that Mr. LeFever and his circulators obtained signatures on his nominating petitions from electors located in the City of Lancaster's 6th Ward during the period from February 23, 2019 through March 11, 2019. That Mr. LeFever was then a "candidate" is denied as a conclusion of fact and law and argument requiring no response. By way of

further response paragraph 18 is incorporated herein by reference as though set forth in full.

20. Admitted in part and denied in part as stated and as conclusions of law and argument requiring no response. It is admitted that Mr. LeFever appeared at a campaign event at Molly's Pub and Carry Out March 6, 2019. It is further admitted that other persons seeking nominations for non-judicial public office attended the campaign event at Molly's Pub and Carry Out on that date. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response. By way of further response, a judicial candidate may engage in political activity consistent with the independence, integrity, and impartiality of the judiciary such as: (a) publicly speaking on behalf of, or publicly opposing or speaking in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorsing or speaking on behalf of candidates for any other elective judicial office appearing on the same ballot as the magisterial district judge candidate, see RGSCMDJ, Rule 4.2(B)(3); (b) attending or purchasing tickets for dinners or other events sponsored by a political organization or a candidate for non-judicial public office, see RGSCMDJ, Rule 4.2(B)(4); (c) seeking, accepting, or using endorsements from any person or organization, including a political organization or political party, see RGSCMDJ, Rule 4.2(B)(5); (d) contributing to a political organization, including a political

party or candidate for non-judicial public office, *see* RGSCMDJ, Rule 4.2(B)(6); and (e) identifying himself or herself as a member or candidate of a political organization or party, *see* RGSCMDJ, Rule 4.2(B)(7).

21. Admitted in part and denied in part as stated and as a conclusion of law and argument requiring no response. It is admitted that Mr. LeFever participated in a public LCDC meeting as a Committee Person for the City of Lancaster's 5th Precinct in the 6th Ward, as alleged. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

22. Admitted in part and denied in part as stated and as a conclusion of law and argument requiring no response. It is admitted that at the end of the meeting of the LCDC held on March 11, 2019, Mr. LeFever resigned his position as a Committee Person on the LCDC via letter provided to LCDC Chair Diane Topakian. That Mr. LeFever was then a "candidate" is denied as a conclusion of law and argument requiring no response.

- 23. Admitted.
- 24. Admitted.
- 25. Admitted.
- 26. Admitted.

CHARGES

Count 1 – Violation of Canon 4, Rule 4.1(A)(1)

27. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, paragraphs 4 through 26 are incorporated herein by reference as though set forth in full.

28. Denied as stated. Canon 4, Rule 4.1(A)(1) is a writing which speaks for itself. It is admitted that the rule is accurately quoted.

29. Denied as stated. The "Terminology" section of the RGSCMDJ is s writing which speaks for itself. It is admitted that the definition of "judicial candidate" as set forth in the Terminology section of the RGSCMDJ is accurately quoted.

30. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, the decisional law of the Commonwealth Court interpreting and applying the proscriptions of Rule 4.1(A)(1) of the RGSCMDJ in election cases was properly applied by then-Lancaster County Court of Common Pleas President Judge Reinaker when deciding and denying a ballot challenge to Judge LeFever's candidacy in March of 2019 shortly after he resigned his position as a LCDC Committee Person and, thereafter, filed his nomination petitions and Judge

LeFever properly relied on the extant law when deciding when he had to resign as a committee person before becoming a candidate for Magisterial District Judge in order to comply with the applicable RGSCMDJ. See In re Denick, 729 A.2d 168 (Pa. Cmwlth. 1999) (striking nominating petition of candidate for magisterial district judge for violation of predecessor of Rule 4.1(A)(1) where candidate resigned position of political party committee person only after filing nominating petitions for magisterial district judge). See also In re Nomination Petition of Leonard, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017) (single-judge opinion which, pursuant to Pa.R.A.P. 126(c)(2), is cited as persuasive) (refusing to strike name from ballot because person was not a candidate when she circulated nominating petitions for magisterial district judge; resigned as party committee person before filing her nominating petitions; and did not violate Rule 4.1(A)(1) of the RGSCMDJ); Tarpey v. Mosesso, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlth. 2015) (single-judge opinion which, pursuant to Pa.R.A.P. 126(c)(2), is cited as persuasive) (striking name from ballot because candidate resigned party committee person position only after filing nominating petitions in violation of Rule 4.1(A)(1)of the RGSCMDJ and 25 P.S. § 2937 of the Election Code; following *Denick*); and Hanratty v. Litman, 2015 Pa. Comms. LEXIS 958 (Pa. Cmwlth. 2015) (singlejudge opinion which, pursuant to Pa.R.A.P. 126(c)(2), is cited as persuasive) (same). These last three cases specifically refer to Rule 4.1(A)(1) of the

RGSCMDJ and the definition of "political organization" found in the "Terminology" section of the RGSCMDJ, but none of them refer to the definition of "judicial candidate" found in the same section and each concluded that a member of a political committee seeking the office of magisterial district was a candidate after filing nominating petitions and not at any earlier time that may be derived from the definition of "judicial candidate" as found in the RGSCMDJ. See In re Nomination Petition of Leonard, 2017 Pa. Commw. Unpub. LEXIS 536 at 4 and 6 (Pa. Cmwlth. 2017); Tarpey v. Mosesso, 2015 Pa. Commw. LEXIS 959 at 8 (Pa. Cmwlth. 2015); and Hanratty v. Litman, 2015 Pa. Comms. LEXIS 958 at 8-9 (Pa. Cmwlth. 2015). Furthermore, given the reasonableness of his interpretation of the requirements of the RGSCMDJ in light of this decisional law specifically dealing with members of political party committees who become candidates for Magisterial District Judge, the actions of Judge LeFever early in the election year in which he became a candidate for Magisterial District Judge are *di minimis* and do not form the basis of any misconduct charge or warrant any sanction by this Honorable Court. See RGSCMDJ, Preamble ¶ [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions").

31. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further

response, regarding the circulation of nominating petitions, paragraphs 18 and 19 are incorporated herein by reference as though set forth in full.

32. Denied as stated. Rules 4.2, 4.3 and 4.4 are writings which speak for themselves. It is admitted that judicial candidates may not hold office in a political organization. *See* RGSCMDJ Rule 4.1(A)(1).

33. Denied as stated. The "Terminology" section of the RGSCMDJ is s writing which speaks for itself. It is admitted that the definition of "political organization" as set forth in the Terminology section of the RGSCMDJ is accurately quoted.

34. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraph 30 is incorporated herein by reference as though set forth in full.

Count 2 – Violation of Canon 4, Rule 4.1(A)(3)

35. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, paragraphs 4 through 26 are incorporated herein by reference as though set forth in full.

36. Denied as stated. Rule 4.1(A)(3) is a writing which speaks for itself. It is admitted that the rule is accurately quoted.

37. Admitted in part and denied in part as stated and as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraph 11 is incorporated herein by reference as though set forth in full. It is admitted that whatever actions that Judge LeFever took at the LCDC meeting of February 11, 2019 to endorse candidates for non-judicial public office were taken solely as a Committee Member of the LCDC. Furthermore, assuming *arguendo* that then-LCDC Committee Person LeFever voted to endorse candidates for the non-judicial public offices of School Director and City Counsel, those actions of took place at one meeting early in the election year in which he became a candidate for Magisterial District Judge, are *di minimis*, and do not form the basis of any misconduct charge or warrant any sanction by this Honorable Court. *See* RGSCMDJ, Preamble ¶ [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions").

38. Denied as stated. Rules 4.2, 4.3 and 4.4 of the RGSCMDJ are writings that speak for themselves. It is admitted that judicial candidates may not endorse candidates for non-judicial public office. *See* RGSCMDJ, Rule 4.1(A)(3).

39. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, paragraph 11 is incorporated herein by reference as though set forth in full. It is admitted that whatever actions that Judge LeFever took at the LCDC

meeting of February 11, 2019 to endorse candidates for non-judicial public office were taken solely as a Committee Member of the LCDC. Furthermore, assuming *arguendo* that then-LCDC Committee Person LeFever voted to endorse candidates for the non-judicial public offices of School Director and City Counsel, those actions of took place at one meeting early in the election year in which he became a candidate for Magisterial District Judge, are *di minimis*, and do not form the basis of any misconduct charge or warrant any sanction by this Honorable Court. *See* RGSCMDJ, Preamble ¶ [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions").

Count 3 – Violation of Canon 4, Rule 4.2(A)(1)

40. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, paragraphs 4 through 26 are incorporated herein by reference as though set forth in full.

41. Denied as stated. Rule 4.2(A)(1) is a writing which speak for itself. It is admitted that the rule is accurately quoted.

42. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, regarding casting a vote as an LCDC Committee Person for his own endorsement for the position of Magisterial District Judge, paragraph 12 is

incorporated herein by reference as though set forth in full. Moreover, actions taken as a Committee Person do not implicate or run afoul of the dictates of Rule 4.2(A)(1) as they are not inconsistent with the independence, integrity or impartiality of the judiciary. Furthermore, the actions of then-LCDC Committee Person LeFever in endorsing himself for the office of Magisterial District Judge took place at one meeting early in the election year in which he became a candidate for Magisterial District Judge, are *di minimis*, and do not form the basis of any misconduct charge or warrant any sanction by this Honorable Court. *See* RGSCMDJ, Preamble ¶ [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions").

43. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, actions taken as an LCDC Committee Person do not implicate or run afoul of the dictates of Rule 4.2(A)(1) as they are not inconsistent with the independence, integrity or impartiality of the judiciary.

44. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. By way of further response, a judicial candidate may engage in a great deal of political activity consistent with the independence, integrity, and impartiality of the judiciary such as: (a) publicly or speaking on behalf of, or publicly opposing or speaking in

opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorsing or speaking on behalf of candidates for any other elective judicial office appearing on the same ballot as the magisterial district judge candidate, see RGSCMDJ Rule 4.2(B)(3); (b) attending or purchasing tickets for dinners or other events sponsored by a political organization or a candidate for non-judicial public office, see RGSCMDJ Rule 4.2(B)(4); (c) seeking, accepting, or using endorsements from any person or organization. including a political organization or political party, see RGSCMDJ Rule 4.2(B)(5); (d) contributing to a political organization, including a political party or candidate for non-judicial public office, see RGSCMDJ Rule 4.2(B)(6); and (e) identifying himself or herself as a member or candidate of a political organization or party, see RGSCMDJ Rule 4.2(B)(7). Furthermore, the actions complained of which occurred over a short span of approximately six weeks early in the election year in which Judge LeFever became a candidate for Magisterial District Judge are *di minimis* and do not form the basis of any misconduct charge or warrant any sanction by this Honorable Court. See RGSCMDJ, Preamble ¶ [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions").

<u>Count 4 – Violation of Article V, §17(b) of the Constitution of the</u> <u>Commonwealth of Pennsylvania</u>

45. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. The paragraphs set forth above are incorporated herein by reference as though set forth in full.

46. Denied as stated. Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania is a writing which speaks for itself. It is admitted that the constitutional provision is accurately quoted.

47. Denied as conclusions of law and argument requiring no response. It is admitted that this is a correct statement of the decisional law of the Commonwealth.

48. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraphs 4 through 34 are incorporated herein by reference as though set forth in full.

49. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraphs 4 through 26 and 35 through 39 are incorporated herein by reference as though set forth in full.

50. Denied as conclusions of fact and law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraphs 4 through 26 and 40 through 44 are incorporated herein by reference as though set forth in full.

51. Denied as conclusions of law and argument requiring no response. Strict proof thereof is demanded at time of trial. Paragraphs 48 through 50 are incorporated herein by reference as though set forth in full.

WHEREFORE, it is respectfully requested that this Honorable Court schedule this matter for a hearing consistent with Article V, § 18(b)(5) of the Constitution of the Commonwealth of Pennsylvania and to do justice as required by the facts and the law of the Commonwealth applicable to such proceedings and to dismiss the charges filed against Judge LeFever.

Respectfully submitted,

Robert A. Graci, Esquire Supreme Court ID No. 26722 Saxton & Stump, LLC 4250 Crums Mill Road Harrisburg, Pa 17112

Attorney for Andrew T. LeFever Magisterial District Judge

Date: December 9, 2020

IN RE:

Andrew T. LeFever, Esquire Magisterial District Judge Magisterial District 02-2-04 2nd Judicial District Lancaster County

7 JD 2020

VERIFICATION

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I, Andrew T. LeFever, verify that the statements in this Answer to Judicial

Conduct Board Complaint are made subject to the penalties of 18 Pa.C.S. § 4904,

relating to unsworn falsification to authorities.

Respectfully submitted,

Andrew T. LeFever

Date: December 8, 2020

IN RE:

Andrew T. LeFever, Esquire:Magisterial District Judge:Magisterial District 02-2-04:2nd Judicial District:Lancaster County:

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records* and Public Access Policy of the Unified Judicial System of Pennsylvania that require filing of confidential information and documents differently than nonconfidential information and documents.

Submitted by:

Counsel for Andrew T. LeFever

Chat la Sh

Signature:

Name:

Robert A. Graci, Esquire

Attorney ID Number:

IN RE:

Andrew T. LeFever, Esquire:Magisterial District Judge:Magisterial District 02-2-04:2nd Judicial District:Lancaster County:

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of

Procedure, on the date below a copy of the Answer to Judicial Conduct Board

Complaint was mailed and emailed to Colby J. Miller, Judicial Conduct Board

Deputy Counsel, at the following addresses:

Colby J. Miller, Deputy Counsel Judicial Conduct Board Pennsylvania Judicial Center 601 Commonwealth Avenue, Suite 3500 P.O. Box 62525 Harrisburg, PA 17106

and

Colby.Miller@jcbpa.org

Respectfully submitted,

Robert A. Graci, Esquire Supreme Court ID No. 26722 Saxton & Stump, LLC 4250 Crums Mill Road Harrisburg, Pa 17112 Phone: 717-216-5511 Cell: 717-585-3684 Fax: 717-547-1900 rag@saxtonstump.com

Date: December 9, 2020