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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF MARIPOSA

15 COUNTY OF MARIPOSA,

16 Plaintiff,

17 v.

18 JDC LAND COMPANY, LLC; a California
19 limited liability company;
20 CONTINENTAL HERITAGE INSURANCE
21 COMPANY; and
22 DOES 1 through 50,

23 Defendants.

Action Filed: March 13, 2017
Case Number: 10887

**COUNTY OF MARIPOSA'S RESPONSE
TO THE RECEIVER'S SUPPLEMENT TO
FINAL REPORT AND ACCOUNTING**

[Filed concurrently with:
1. Declaration of Attorney Jones.
2. Proof of Service.]

Hearing:
Date: November 22-23, 2021
Time: 9:00 a.m.
Dept: 3

SILVER & WRIGHT LLP
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1 **I. INTRODUCTION**

2 Plaintiff County of Mariposa (the “County”) submits this response to the Receiver’s Supplement
3 to Final Report and Accounting (the “Supplement”). The Receiver Mark Adams (the “Receiver”)
4 originally filed his Motion for Discharge on December 26, 2019 (the “Discharge Motion”). On March
5 19, 2020, the County filed a lengthy opposition to the Receiver’s Discharge Motion in which it objected
6 to the Receiver’s shocking request for payment of \$437,084.27 in fees and costs. The amount requested
7 by the Receiver in the Discharge Motion does not include the cost of actually remediating the Subject
8 Property and bringing it into compliance with the law. This is just the amount of fees the Receiver and
9 his 26 employees charged for the more than 1,500 hours they billed on this receivership. As the County
10 explained in its opposition, the County has no objection to the Receiver’s right to obtain **reasonable**
11 compensation for the services he and his employees performed. However, based on the duplicate billing
12 entries, excessive billing entries, unauthorized billing entries, and unauthorized billing rate increases,
13 the County believes that the fees awarded to the Receiver for the billing records submitted in connection
14 with the Discharge Motion should be reduced by \$151,224.83.

15 Now the Receiver is seeking an additional \$170,555.41 in fees and costs that he claims he
16 incurred since he filed the Discharge Motion for billing time from 18 employees when the Receivership
17 was basically over since the Subject Property was sold to a third party in November 2019. As set forth
18 below, the County seeks three types of reductions to the Receiver’s requested fees:

- 19 1. A reduction of **\$209,213.66** for a total award of the Receiver’s fees of \$398,426.02
20 (\$151,224.83 fee reduction from amount requested in the Discharge Motion filed on 12/26/19
21 + an additional \$57,988.83 fee reduction from amount requested in the Supplement).
- 22 2. A reduction of at least another **\$93,811.03** as set forth in the County’s interim demand for its
23 fees and costs to the Receiver to provide the County with some of its fees and costs for
24 initiating the action, successfully appointing the Receiver, and bringing the Subject Property
25 into compliance.
- 26 3. A reduction of an **additional 25%** to send a message to the Receiver that he just cannot
27 submit an outrageously unreasonable fee request and then expect the Court to trim some
28 hours to end up a reasonable amount.

1 **II. THE RECEIVER’S REQUESTED FEES ARE EXCESSIVE AND UNREASONABLE**

2 In the Receiver’s Supplement, the Receiver is asking the Court to award him an *additional*
3 \$170,555.41 in fees and costs and now claims that he is entitled to a total payment of \$607,639.68 in
4 fees and costs. The Receiver would thus have this Court and the parties believe that after the Subject
5 Property was fully rehabilitated and brought into compliance with the law, after the Subject Property
6 was sold to a third party in November 2019, and after he filed his Discharge Motion, the Receiver
7 *reasonably* proceeded to incur an additional \$170,555.41 in fees and costs by billing time for 18 different
8 employees. That figure is not only absurd but unjustified in light of the procedural history of the case
9 since the Receiver filed his Discharge Motion on December 26, 2019.

10 Since the Receiver filed his Discharge Motion on December 26, 2019: (1) the Court held a
11 hearing on JDC’s motion to compel discovery from the County (1/6/20); (2) the Court held two informal
12 discovery conference hearings (1/21/20 and 1/30/20); (3) the Receiver filed a reply brief to JDC’s
13 opposition to his motion for sanctions (3/26/20); (4) the Receiver filed reply briefs to the County’s and
14 JDC’s oppositions to the Receiver’s Discharge Motion (3/26/20); (5) the Court held 11 status hearings
15 (7/21/20, 8/5/20, 9/14/20, 9/28/20, 11/9/20, 1/11/21, 1/25/21, 4/5/21, 6/7/21, 7/12/21, 8/2/21); (6) the
16 Receiver sat for his deposition (6/29/20); (7) the Receiver filed a status report on the Discharge Motion
17 (8/17/20); (8) the Receiver filed a declaration regarding the appointment of a special master for JDC
18 (9/21/20); (9) the Receiver filed his twenty-second report (5/11/21); and (10) the Receiver filed a
19 supplement to his final report and accounting (8/30/21). (Ct. Dkt.)

20 Incredibly, the Receiver claims that, as a result of appearing at the aforementioned hearings and
21 his deposition and preparing the pleadings described in the preceding paragraph, the Receiver should be
22 paid an *additional* \$170,555.41 in fees and costs. To award the Receiver such an outrageous amount,
23 the Court would be required to abdicate its responsibility to “closely scrutinize the receiver’s account to
24 make sure that all expenditures are reasonable.” (Cal. Judges Benchbook, Civ. Proc. Before Trial, §
25 14.166.) Moreover, although the Court has approved the Receiver’s monthly accountings, the Court
26 “retains jurisdiction to award a greater or lesser amount as the full, fair, and final value of the services
27 rendered.” (Cal. Rules of Court, Rule 3.1183(a).)

28 As even a cursory review demonstrates, the Receiver’s billing records that are attached as an

1 exhibit to the Supplement are comprised of numerous entries that simply cannot be considered
2 reasonable by any stretch of the imagination. (Declaration of Attorney Amanda R. Jones in Support of
3 County’s Response to Receiver’s Supplement (“Jones Supplement Decl.”), ¶ 4.) As the receivership
4 case was largely resolved by the time the Receiver filed his Motion for Discharge in December of 2019,
5 it is unfathomable that, even after the filing of his Motion for Discharge, the Receiver still had 18
6 different employees working on and billing for their time on this case. (*Id.* at ¶ 4; Exhibit G [Summary
7 of CRG Employee Time Billed Since Receivership Motion].) Although it is understandable that the
8 Receiver and Andrew Adams would have billing entries after the Motion for Discharge was filed, it
9 boggles the mind that CRG employees Trevor Axt and Eddie Gao billed more than 100 hours each on
10 this case. (*Id.* at ¶ 5; Exhibit G [Summary of CRG Employee Time Billed Since Receivership Motion].)
11 Additionally, there are a number of employees who only billed for their attendance at weekly staff
12 meetings and did no other work on this case so clearly their presence was not needed at these meetings.
13 (*Id.*)

14 The Receiver’s billing records filed in conjunction with the Supplement suffer from the same
15 fatal flaws as the billing records submitted by the Receiver in conjunction with his Motion for Discharge
16 that he filed on December 26, 2019. (Jones Suppl. Decl., ¶ 6.) First, the billing records contain billing
17 entries from multiple employees who were not authorized by the Court to work on this receivership case.
18 (Jones Suppl. Decl., ¶ 6; see County’s Opposition to Receiver’s Motion for Discharge (“Opposition”),
19 3:5–25; 3/19/20 Declaration of Attorney Amanda R. Jones in Support of Opposition (“Jones Opposition
20 Decl.”), ¶ 5, Exhibit B [Declaration of Receiver Mark Adams In Support of the County’s Receivership
21 Motion, Exhibit 2 – California Receivership Group Rate List].) Second, the Receiver unilaterally, and
22 without the Court’s permission, increased the hourly billing rates of 11 of the Receiver’s employees
23 substantially beyond what was approved by the Court when it issued its Order appointing the Receiver,
24 with billing rate increases as high as 84%. (Jones Suppl. Decl., ¶ 6; Opposition, 4:1–5:12; Jones
25 Opposition Decl., ¶¶ 7–9.) Third, the billing records contain duplicate billing entries in which one of
26 the Receiver’s employees submitted multiple entries for the same work. (Jones Suppl. Decl., ¶ 6;
27 Opposition, 5:13–7:10; Jones Opposition Decl., ¶¶ 11–14.) Fourth, the billing records are replete with
28 billing entries in which three or more of the Receiver’s employees submitted a billing entry for reviewing

1 the same document or email. (Jones Suppl. Decl., ¶ 6; Opposition, 7:11–21; Jones Opposition Decl., ¶
2 15.) Fifth, the Receiver’s billing records contain numerous weekly status meetings wherein an average
3 of 6 employees, and sometimes as many as 10 employees, billed for their attendance at the same meeting.
4 (Jones Suppl. Decl., ¶ 6; Opposition, 7:22–8:10; Jones Opposition Decl., ¶¶ 16–17.)

5 To account for the unauthorized, duplicative, unreasonable and unjustified billing entries
6 submitted by the Receiver in conjunction with the Supplement, the additional \$170,555.41 in fees and
7 costs requested by the Receiver should be reduced by the same percentage requested in the County’s
8 Opposition, which was 34%, and would amount to a reduction in the Receiver’s fees and costs requested
9 in the Supplement in the amount of \$57,988.83. Additional reductions are necessary and explained
10 below.

11 **III. THE COURT SHOULD SET ASIDE MONEY FROM THE RECEIVERSHIP ESTATE**
12 **FOR A PARTIAL REIMBURSEMENT OF SOME OF THE COUNTY’S FEES AND**
13 **COSTS FOR ITS EFFORTS IN THE SUCCESSFUL APPOINTMENT OF THE**
14 **RECEIVER AND BRINGING THE SUBJECT PROPERTY INTO COMPLIANCE**

15 Pursuant to the Order appointing a receiver over the Subject Property that was issued by the Court
16 on July 17, 2017, the “Receiver shall reimburse the County out of the receivership estate for all of the
17 County’s reasonable inspection costs, investigation costs, enforcement costs, court costs, fines, and
18 penalties and attorneys’ fees related to this Action.” (Jones Supplement Decl., ¶ 7; Ex. H [Order], 3:23–
19 25.) The County is also entitled to recover its reasonable fees and court costs pursuant to Health and
20 Safety Code (“HSC”) section 17980.7(c)(11) as the Subject Property has been remediated and the
21 County has obtained all relief sought in its Verified Complaint for Nuisance Abatement and
22 Receivership. (HSC, § 17980.7(c)(11) [“The prevailing party in an action pursuant to this section shall
23 be entitled to reasonable attorney’s fees and court costs as may be fixed by the court.”].) Recovery of
24 the County’s fees and costs is also mandated under HSC section 17980.7(d)(1) because, in its Order, the
25 Court specifically found that the code violations on the Subject Property substantially endangered the
26 health and safety of the residents and the public and that the County had properly issued Defendants a
27 Notice and Order to Repair or Abate pursuant to HSC section 17980.6. (HSC, § 17980.7(d)(1); Jones
28 Supplement Decl., ¶ 8; Ex. H [Order], 1:14–18.)

1 Pursuant to well-established case law, the County’s recovery of its fees and costs is entitled to
2 the same prioritization as the Receiver’s recovery of his fees and costs. (*Winslow v. Harold Ferguson*
3 (1944) 25 Cal.2d 274, 284–85 [“It would be wholly out of line with the traditional concept of equitable
4 practice to pay the expenses of a receiver and the fees of his counsel prior to the participation of any
5 creditor or beneficiary and at the same time to subordinate the payment of fees to the attorney who has
6 invoked the powers of the court of equity to appoint that same receiver.”].) Like receivers, counties’
7 efforts to inspect properties, issue correction notices, initiate receivership actions, and bear the costs of
8 receivership litigation are directly related to the rehabilitation of distressed properties. The same
9 reasoning and rationale supporting the right of receivers to record receivership debts as first priority liens
10 also applies to the right of counties to be reimbursed on a priority basis, which is also confirmed in the
11 Court’s Order. (See *City of Chula Vista v. Gutierrez* (2019) 207 Cal.App.4th 681, 685 [“Generally, the
12 costs of a receivership are paid from the property in the receivership estate.”]; *City of Santa Paula v.*
13 *Narula* (2003) 114 Cal.App.4th 485, 493 [“It would frustrate code enforcement efforts and reward
14 noncompliance if the City had to bear the fees it incurred as result of the Narulas’ recalcitrance.”]
15 [internal quotations omitted].) Recognizing how vital it is for counties to enforce such laws, the
16 Legislature included not one, but two, separate cost recovery provisions in HSC section 17980.7. It is
17 equitable and most efficient to authorize recovery of the County’s fee and costs directly out of the Subject
18 Property; it was the Subject Property that endangered the safety of its occupants and the community.

19 The Order also specified that the “County shall be entitled to submit demands upon the
20 receivership estate for recovery of these reasonable costs, expenses, and fees, which shall be paid by
21 Receiver.” (Jones Decl., ¶ 9; Ex. H [Order], 3:25–27.) On July 28, 2017, the County submitted an
22 interim demand for its fees and costs to Receiver in the amount of \$93,811.03. (Jones Supplement Decl.,
23 ¶ 10; Ex. I [Interim Demand].) The County therefore requests that at least \$93,811.03 be held in the
24 receivership estate, and not used to pay the Receiver’s fees and costs, for disbursement to the County
25 pursuant to a properly noticed motion for recovery of its fees and costs. (*Id.* at ¶ 11.) The County has
26 since incurred in excess of \$170,000 in additional fees and costs. (*Id.* at ¶ 10.) To rule otherwise would
27 leave the County with nothing despite its tireless efforts over the past four years to bring the Subject
28 Property into compliance with the law. The Court has discretion to further reduce the Receiver’s

1 outrageous fee request as set forth below. (*Id.* at ¶ 12.)

2 **IV. THE RECEIVER’S FEES ARE OUTRAGEOUS AND SHOULD BE DRASTICALLY**
3 **REDUCED TO DISCOURAGE SUCH EXCESSIVE OVERBILLING**

4 The Receiver has treated this case like an ATM, billing time for dozens of employees in his
5 company. The state Supreme Court has cautioned that outrageous fee requests will be drastically
6 reduced. “[T]rial courts must carefully review attorney documentation of hours expended; ‘padding’ in
7 the form of inefficient or duplicative efforts is not subject to compensation.” (*Ketchum v. Moses* (2001)
8 24 Cal.4th 1122, 1132; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 [“A fee request that appears
9 unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one
10 altogether.”].) The Supreme Court has instructed trial courts that when a prevailing party requests an
11 outrageously unreasonable amount, a court should reduce the requested fees by more than just what the
12 court believes would make the fee request reasonable.

13 If the ... [c]ourt were required to award a reasonable fee when an
14 **outrageously unreasonable** one has been asked for, claimants would be
15 encouraged to make unreasonable demands, knowing that the only
16 unfavorable consequence of such misconduct would be reduction of their
17 fee to what they should have asked in the first place. **To discourage such
18 greed, a severer reaction is needful.**

17 (*Serrano, supra*, 32 Cal.3d at 635 (bolding added.) “A trial court may not rubber stamp a request for
18 attorney fees, but must determine the number of hours *reasonably* expended.” “A trial court is also
19 justified in reducing a claim if it believes the billing is unjustly inflated.” (*Save Our Uniquely Rural*
20 *Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1185–86
21 [affirming reduction in requested amount of \$110,559 plus \$9,900 for work on the fees motion for a total
22 of **\$120,459** to a total of **\$19,196** (which included \$1,500 for working in the fees motion), for an **84%**
23 **reduction** in the amount requested].)

24 Here, as set forth below, the Receiver has sought to cash in on requesting fees 18 employees
25 billing a whopping **666** hours for work done after the Subject Property had been sold to a third-party in
26 November 2019. The Court should send a message to the Receiver that he just cannot submit an
27 outrageously unreasonable fee request and then expect the Court to trim some hours to end up at a
28 reasonable amount. Doing so simply encourages the Receiver to continue to submit outrageously

1 unreasonable demands. Thus, the Court should likewise reduce the amount by an **additional 25%** as
2 Receiver's fee request is wholly unreasonable.

3 **V. CONCLUSION**

4 Accordingly, for the reasons set forth herein and in the County's Opposition to the Receiver's
5 Discharge Motion, the County requests that the fees and costs awarded to the Receiver be reduced as
6 follows:

- 7 1. By **\$209,213.66** for a total award of fees and costs to the Receiver of \$398,426.02
8 (\$151,224.83 fee reduction from amount requested in the Discharge Motion filed on
9 December 26, 2019 + an additional \$57,988.83 fee reduction from amount requested in the
10 Supplement).
- 11 2. By at least another **\$93,811.03** as set forth in the County's interim demand for its fees and
12 costs to Receiver.
- 13 3. By an **additional 25%** to send a message to the Receiver that he just cannot submit an
14 outrageously unreasonable fee request and then expect the Court to trim some hours to end
15 up at a reasonable amount.

16
17 Dated: September 30, 2021

SILVER & WRIGHT LLP

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