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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF HUMBOLDT

11 The CITY OF EUREKA, a municipal
12 corporation, ("the City") and the PEOPLE OF
THE STATE OF CALIFORNIA, ("the
13 People") by and through Jones & Mayer,
Special Counsel to the City of Eureka,

14 Petitioners,

15 v.

16 FLOYD SQUIRES; FLOYD E. SQUIRES;
17 FLOYD E. SQUIRES III; BETTY J.
SQUIRES; FB SQUIRES FAMILY TRUST;
18 BETTY J'S BUILDING, INC.; and DOES
ONE through SIXTY,

19 Respondents.

Case No. DR110040

**MOTION FOR ADDITIONAL RECEIVER
AUTHORITY, OR IN THE
ALTERNATIVE, FOR REPLACEMENT
OF RECEIVER**

DATE: January 23, 2017
TIME: 4:00 p.m.
DEPT: 8

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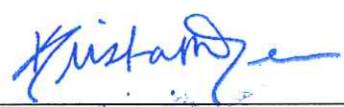
TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 23, 2017 at 4:00 p.m. or as soon thereafter as counsel may be heard, in Department 8 of the above-entitled Court, located at 825 5th St. Eureka, California 95501, Plaintiff/Petitioner City of Eureka will move the above-referenced Court for an order for Additional Receiver Authority, or in the Alternative for Replacement of the Receiver in the above-captioned matter. Such request will be that this Court order the Receiver to conduct required repairs for the properties of Respondents, over which he has authority and supervision on the Court's behalf as the Court's appointed receiver, or in the alternative, that the Court order that a replacement Receiver be appointed who can take over such repairs and supervision of the properties, since they have remained in dilapidated disrepair for the nearly *six years* that this action has been pending.

The City's Motion for Additional Receiver Authority, or in the Alternative for a Replacement Receiver will be based upon this notice, the attached memorandum of points and authorities in support thereof, the concurrently filed declarations in support hereof, and upon the records and documents on file in this action, and any other evidence and argument which may be presented to and considered by the Court at the hearing.

Dated: December 28, 2016

JONES & MAYER

By: 

Dean J. Pucci and
Krista MacNevin Jee,
Attorneys for City of Eureka

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Petitioner, the City of Eureka commenced this action in 2011 because it had a long-
4 standing history with Respondents of non-compliance as to the dilapidated and unsafe conditions
5 of their residential rental properties throughout the City. The City attempted to gain code
6 compliance by Respondents by other methods, such as a nuisance abatement administrative
7 process, administrative citations, etc. Respondents method of inadequate and piecemeal resolution
8 of the multitude of code violations at each of their 26 properties never allowed for reasonably
9 efficient or meaningful compliance with the law, and this behavior has been merely perpetuated in
10 perpetuity by this Court's creation of a hybrid and ineffective receiver over all of the properties.
11 Conditions which pose serious threat to the health, safety, and habitable living conditions of many
12 residential tenants has remained at risk for many years, and this Court cannot permit these
13 conditions to persist any longer. Therefore, the City renews its demand, for the third time this
14 year, and after many long years of patience, for this Court to order the receiver to conduct the
15 repairs of the properties, *not* Respondents, or in the alternative that this Court appoint a
16 replacement receiver over the properties so that a new receiver can accomplish the corrections that
17 have not been achieved in the more than *two years* that this receiver has been in place.

18 **II. HISTORICAL BACKGROUND.**

19 The City commenced this action in 2011 because Respondents have owned 26 rental
20 properties (primarily residential) within the City for years, which have been kept in a continuous,
21 substandard state of disrepair and on-going nuisance conditions. Significant testimony was
22 provided as to preliminary relief in or about March and May/June 2011. This Court issued an
23 order on October 24, 2011, finding that six of the properties were a substantially endangered health
24 and safety, namely the following properties: 117/119 5th Street; 315 C Street; 1637 3rd Street;
25 1233 A Street; 607 Summer/119 W. 6th Street; 216 3rd Street.

26 **III. OTHER, PRIOR ACTIONS AS TO RESPONDENTS' PROPERTIES**

27 Tenants (or former tenants) at the properties at 1625 and 1635 G Street and neighbors
28 successfully brought an action against Respondents for the same conditions alleged by the City

1 herein, in an action commenced several months prior to the City's within action (Case No.
2 DR101012). The City successfully brought a prior action for nuisance as to the long-continuing
3 code violations at 117/119 5th Street in 2009. (Case No. CV090191; Court of Appeal Case No.
4 A126384, 2010 Cal. App. Unpub. LEXIS 4099, 2010 WL 2163832). In this action, a preliminary
5 injunction was granted and the property was deemed a nuisance, which was upheld on appeal.

6 **IV. COURT'S APPOINTMENT OF CURRENT RECEIVER, REPAIR ORDERS**
7 **THEREAFTER, AND RESPONDENTS' REPEATED NON-COMPLIANCE.**

8 A trial was conducted by this Court in October/November 2012, concluding on December
9 4, 2012. This Court issued a ruling after trial on July 2, 2013. The Court specifically found that
10 the properties had been maintained in violation of applicable codes, and despite Respondents'
11 failure to obtain proper permits or inspection for any purported repair work, the Court concluded
12 that there was evidence of correction of the violations. Therefore, the Court could not conclude
13 that there were current violations of Health and Safety Code Section 17980.6 and 17980.7.
14 However, the Court found that code violations existing on the properties constituted a violation of
15 California Business and Professions Code Sections 17200, et seq. The Court ordered that a
16 receiver be appointed over all of the properties. The Court ordered that the receiver should inspect
17 all of the properties and prepare a report "describe[ing] any code violations currently existing at
18 the subject properties." Inspections were required to occur within **30 days** of appointment of the
19 receiver and a report was required to be filed within **15 days** thereafter. Jeff Smith was appointed
20 the Court's receiver, by order on September 13, 2013.

21 Consistent with the prior order, Mr. Smith was ordered to inspect and prepare a report in
22 the times specified. Mr. Smith's report to the Court on the status of all properties was filed May
23 19, 2014. Instead of a report being filed within 45 days (by October 28, 2013) of the Court's
24 appointment, it was filed **204 days** thereafter. Notably, although the Court had found in its post-
25 trial order, that many repairs had purportedly been established by Respondents' evidence at trial,
26 the Receiver nonetheless somehow found many code violations requiring repair at Respondents'
27 properties, some of which were even considered critical and needed to be remedied immediately.
28

1 **A. Court's Order for Immediate Repairs**

2 On October 1, 2014, *135 days* after the Receiver's filing of his inspection report, the Court
3 issued an order directing certain immediate work to be overseen by the Receiver.¹ Specifically, the
4 Court ordered that particular repair work be completed within 60 days, such as the replacement of
5 smoke detectors, carbon monoxide detectors, and electrical outlets. Also, certain units/properties
6 were required to be verified to be unoccupied. Although Petitioners had repeatedly requested that
7 Respondents not be responsible for the repairs, the Court's order required that "Jeff Smith as
8 Receiver shall oversee all of the work Respondent is to perform pursuant to this Interim Order."

9 The Receiver filed a Supplemental Observation Report on November 25, 2014,
10 documenting inspections and observations as to the occupancy of certain units/properties. The
11 Receiver also filed an Observation Report as to the completion of designated corrective work on
12 December 22, 2014.

13 As to the latter report, there are many instances wherein the report was inadequate or
14 missing key information: repairs done by Respondents were found to be "deficient" by the
15 Receiver; there were notations that units were simply "not inspected" by the Receiver for
16 unspecified reasons; there was purported verification of corrections with departments other than
17 those specified in the Court's order; corrections were noted, but without verification of permits or
18 that work had been properly done; attachments did not correspond to what was stated, relied upon
19 only Respondents inspections of units or corrections, or related to incomplete unit inspections; etc.

20 A status conference was held on *June 30, 2015* regarding the "status of compliance with
21 the Interim Order of the Court" and "Issuance of a Final Order."² Thereafter, the Receiver
22 submitted a Proposed Repair Plan to the Court on *August 20, 2015*.

23 **B. Court's Order Re: Repairs for First Set of Properties**

24 The Court adopted that repair plan by order filed *November 6, 2015*, requiring that repairs
25 be made at 15 specified properties, and that such work was required to be completed within *90*
26 *days*. Again, the Receiver was required to inspect the properties and repair work, with City

27 _____
28 ¹ The Court's order reflects that, although a proposed order had been previously been timely filed by Petitioner, the Court did not receive it until a follow-up fax transmission again to the Court on September 23, 2014.

² No "final order" has yet been issued by the Court.

1 officials. Now, the Receiver was required to prepare the scope of work for each property,³
2 although Respondents were still charged with doing the corrective work.

3 The work specified for the 15 properties in the Court's November 6, 2015 order was *not*
4 *completed by Respondents within the required 90 days*. As documented previously in the City's
5 Motion for Additional Receiver Authority, filed on July 26, 2016,⁴ although the City prepared 13
6 permits for work at these properties, Respondents only obtained seven (7) of these permits,
7 apparently due to their disagreement with the remainder of the 13 permits.

8 Although work was required to be completed by February 5, 2016, as of the beginning of
9 February, no inspections had been requested by Respondents for the work in the portion of the 13
10 permits that Respondents had actually obtained from the City. This Court's order of April 19,
11 2016, reflects the fact that, even later -- as of the Court's hearing on March 11, 2016, repairs had
12 still not been completed as to the first set of properties to be repaired under the November 6, 2015
13 order. Despite the then-current passage of 126 days, Respondents had still not completed repairs
14 specified in the November 6, 2015 order.

15 At the Court's March 11, 2016 status hearing, the City specifically pointed out the delays in
16 obtaining permits (or not at all, as to some of the permits) and work being timely or adequately
17 completed by Respondents. The City requested that, if Respondents failed to timely conduct
18 repairs, that the Court order the Receiver to take over all corrective work.
19 Since some work was still pending at the time of the March 11, 2016 hearing, the Court continued
20 the review to April 22, 2016. As noted in the City's Motion, inspections for some of this work did
21 not occur until just prior to that continued hearing, on April 15, 2016 and April 22, 2016. True to
22 prior longstanding practices of Respondents, work is regularly not done or inspected until the
23 eleventh hour.

24 **C. Court's Order Re: Repairs for Second Set of Properties**

25
26
27 ³ As had occurred regularly before the City's action was filed, Mr. Squires was unable to timely and adequately
prepare documentation for the issuance of building permits. Therefore, this task was given by the Court to the
Receiver instead.

28 ⁴ The Court is requested to take judicial notice of its own files, as to the City's prior motion and evidence filed by
the City in support of that prior motion. Cal. Evid. Code § 452 (d).

1 The Court had also issued an order on April 19, 2016, regarding the next set of properties
2 to be repaired. At the April 22, 2016 hearing, the City requested that the order be modified so as to
3 require that, if Respondents again did not complete the specified work in the time required, that the
4 Receiver would be ordered to take over the work. The City also requested that the Receiver be
5 given explicit authority to encumber the properties in order to fund consultants or contractors
6 necessary to conduct or consult regarding required work. The Court denied these requests without
7 prejudice by order dated July 19, 2016.

8 By the Court's April 19, 2016 order, a second set of properties was ordered repaired, by the
9 work of Respondents, within 90 days, in accordance with the Receiver's August 20, 2015 plan.
10 Such work was thus required to be completed by July 5, 2016, and was, again, not completed by
11 Respondents within the time required.

12 In fact, the Receiver had prepare the permit application scopes of work for the second set of
13 properties, and the City had prepared the permits in early May, but Respondents did not pick up
14 the permits until nearly a month later on June 10, 2016. And when permits were picked up, only
15 three of them were obtained by Respondents because, as stated by Respondents, they did not want
16 to spend the money for the remaining permits.

17 The work for the second set of properties was required to be completed by July 18, 2016.
18 However, as of July 22, 2016, the permits Respondents had not picked up in June still had not been
19 obtained, and none of the work under the permits that Respondents had obtained from the City had
20 been done.

21 Thereafter, the City again made a motion for the Court to order that the Receiver take over
22 all repair work for the properties. Despite the fact that the City, the Receiver, and even
23 Respondents had agreed that the time frames permitted by the Court for work to be completed
24 were reasonable, Respondents had repeatedly been unable or unwilling to efficiently and
25 expeditiously complete the required corrections.

26 On November 2, 2016, this Court filed an order on the City's motion for additional receiver
27 authority, granting it in part and denying it in part. The Court did not order the Receiver to take
28 over repairs on all properties, but did order that "Receiver Jeff Smith is granted the authority in his

1 capacity as receiver over the properties of respondents over which he has authority and supervision
2 on behalf of the Court, in his discretion, to oversee and accomplish the repairs of all code
3 violations as set forth in the Receiver's report submitted on or about 05/21/14 that he believes that
4 respondents are not performing in an appropriate or timely manner."

5 **D. Court's Order Re: Repairs for Third Set of Properties**

6 Despite repairs not being timely completed as to the prior second set of properties, the
7 Court further ordered that work be done in connection with a third set of properties, as specified in
8 the Court's order filed November 17, 2016. No time was specified as to work on the third set of
9 properties, but the Court set a status conference on the state of repairs for January 23, 2017. As of
10 the filing of this motion, no scopes of work for permits have yet been submitted by the Receiver as
11 required as to the five (5) properties in the third set, except as to 833 H Street. (Declaration of
12 Brian Gerving, filed concurrently herewith ("Gerving Decl."), at ¶ 4.) However, as to 833 H
13 Street, the scope of work and permit issuance occurred prior to the Court's November 17, 2016
14 order, and so the inspection of the foundation and floor structure by the City, Receiver and a
15 structural or civil engineer, as required by the Court's order, has not occurred, and the issued
16 permit does not reflect any requirements by such professionals as to repair work required at this
17 property. More importantly, the permit has not even been picked up by Floyd Squires, since he
18 once again disputes the amount of the fee for the permit. (Id.)

19 Outstanding repairs on the second set of properties were also included in the Court's
20 November 17, 2016 order and were required to be completed within 30 days. Even though
21 Respondents had not complied with the Court's time requirements for completion of these repairs
22 (by July 5, 2016) pursuant to the Court's prior order, the Court still only ordered that all pending
23 repairs and inspections on these properties be completed within an additional 30 days after the
24 November 17, 2016 order. That time has now passed, expiring on December 17, 2016. These
25 repairs have still not been completed as to two of the four properties specified in the Court's order.

26
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28 **III. CURRENT STATUS OF PROPERTIES PREVIOUSLY INSPECTED**

1 The District Attorney has investigated and prepared a report of current code violations and
2 substandard conditions that currently exist at 1625 and 1635 G Street. This property was
3 previously cleared in the first set of properties pursuant to the Court's November 6, 2015 order. In
4 addition, the District Attorney has also inspected and investigated additional properties of
5 Respondents, including 833 H Street. Inspections were also conducted by City Building Inspectors
6 as to the current conditions of these same properties. The City has also inspected the property at
7 117/119 5th Street. Current and/or recent conditions for each of these properties are detailed
8 below.

9 **A. 1635 G Street**

10 The following conditions were observed on October 7, 2016: defective and deteriorating
11 flooring in various locations throughout the building; exposed hazardous electrical wiring
12 protruding from the wall in one tenant's room; the door was also broken on that room and had been
13 taken off its hinges by Floyd Squires, as well as multiple other doors broken and/or missing
14 throughout the building; ineffective waterproofing due to a broken window in that tenant's room,
15 as well as multiple other broken windows throughout the building; some tenant rooms had locks
16 and hasps on the outside of the doors to the rooms, in violation of the Fire Code; missing smoke
17 detectors and fire extinguishers throughout the building; and significant roof deterioration in
18 multiple locations.

19 On November 7, 2016, the following conditions were present: doors to the building were
20 open and unsecured; exposed wiring was present in open flooring; and no handrails were present
21 on the stairwell. Declaration of Matthew Morgan, filed concurrently herewith ("Morgan Decl."),
22 at ¶ 4. These are new conditions that were not previously present when repair work was previously
23 inspected by the Receiver and the City. (Morgan Decl., at ¶ 8.)

24 On November 8, 2016, the following conditions were present: missing exterior wooden
25 fascia from under second story bedroom window, which constitutes ineffective waterproofing of
26 exterior walls; plywood was attached to the front door and several windows; and stair handrail was
27 missing to the landing between the first and second floor (which had been missing for at least five
28

1 months). See Declaration of Krista MacNevin Jee, filed concurrently herewith (“Jee Decl.”), at ¶
2 3; Exhibit A (Reports of District Attorney Investigator John Burke).

3 On November 28, 2016, the following conditions were present: exterior wooden fascia
4 under second story bedroom window was still missing; first floor window was broken and
5 completely missing, with a blanket attached to the opening; front door was secured by a large
6 wooden screw; stair handrail was still missing; mold on the ceiling in one tenant room; one tenant
7 had an open umbrella attached to the ceiling in order to collect water leaking from the floor above;
8 and an electrical cord hanging from the ceiling with a bare light bulb in one tenant room. (Jee
9 Decl., at ¶ 3; Exhibit A (Burke report).)

10 On December 1, 2016, the following conditions were present: doors again were open and
11 unsecured at the front and side of the building; numerous squatters were present who were not
12 paying rent and were ordered to immediately vacate the premises; multiple individuals were
13 encountered actively engaging in the administration of illegal controlled substances; and garbage at
14 the back of the property was pile high or spilling out into the parking lot. On December 10, 2016,
15 the following conditions were present: the open umbrella to catch leaking water through the
16 ceiling from a second story unit was still in place; numerous code violations were observed still
17 continuing at the property, including broken windows, missing doors, accumulation of garbage,
18 hazardous electrical, and hazardous plumbing. These are new conditions that were not previously
19 present when repair work was previously inspected by the Receiver and the City. (Morgan Decl.,
20 at pp. 6-7, ¶ 8.) Also, there were two shootings at the property on October 18, 2016 and December
21 16, 2016. (Morgan Decl., at ¶ 7; Jee Decl., at ¶ 4; Ex. B; Benzonelli Decl.)

22 On December 2, 2016, the following conditions were present: the exterior fascia was still
23 missing under the second story bedroom window, a window was still missing; front doors could
24 not be secured due to damage to the dead bolt (which had been existing in that state since June
25 2016); mold and the umbrella catching water from the leaking ceiling were still present; handrail
26 on stairs to second floor were still missing and stairs were damaged; an individual was sleeping in
27 an unnumbered room, was not a tenant, and left the building; a door was missing to one unit,
28

1 which had only a sheet of plywood in the door opening, which had been in that state since
2 approximately June 2016. (Jee Decl., at ¶ 3; Exhibit A (Burke report).)

3 As of December 27, 2016, there was no heat in at least one apartment at 1635 G Street, and
4 this had been the case for almost one month. (Jee Decl., at ¶ 3; Exhibit A (Burke report).) Despite
5 the tenant trying to get the heater checked on by Pacific Gas and Electric, Floyd Squires had
6 PG&E representatives leave the property, but he did not fix the heater. (Id.)

7 The District Attorney has investigated reports by tenants at 1635 G Street, that Floyd
8 Squires physically assaulted two tenants. Due to the alleged physical assault, one tenant was
9 removed from the property by the Humboldt County Department of Health and Human Services,
10 which had been paying for the tenant's rent, due to lack of security and the tenant's fear of
11 continued assaults from Mr. Squires. (Jee Decl., at ¶ 3; Exhibit A (Burke report).) In addition, the
12 District Attorney has investigated Mr. Squires' refusal to refund rent monies paid for this tenant by
13 the Department, and has concluded that his refusal to return the Department's funds is an unlawful
14 holding of County funds in violation of the Penal Code. (Id.)

15 The District Attorney investigator also concluded, from his multiple inspections of the
16 property, that the neglectful management of the property has resulted in a unsafe, unsanitary and
17 uninhabitable place for residential dwelling, in violation of the implied warranty of habitability
18 provided for in the California Civil Code, as well as violations of the Health and Safety Code,
19 Section 17920, et seq. (Id.)

20 **B. 216 3rd Street**

21 Recent conditions at the property include the following: trash strewn all over the property,
22 blocked windows that limit emergency egress, deteriorating flooring, boarded up rooms, cracked
23 ceilings, missing fire extinguishers, accumulation of trash within the structure, and other unsafe
24 conditions or evidence of general dilapidation. (Morgan Decl., at ¶ 5.)

25 **III. CURRENT STATUS OF A FEW OTHER PROPERTIES**

26 **A. 833 H Street**

27 On or about December 14, 2016, the following conditions were present: the front security
28 door and the front door were both missing door knobs, so that the doors could not be secured and

1 vagrants and non-tenants can and do regularly have access to these areas; approximately one foot
2 of standing water was present in the basement; no window was in a window frame on the second
3 floor; garbage was overflowing from the receptacles, due to inadequate garbage containers; a door
4 on the second floor, leading to the exterior, had no landing or stairs to the outside; and cockroach
5 infestation was visible in several rooms. (Jee Decl., at ¶ 3; Exhibit A (Burke report).)

6 The City has recently received multiple complaints from the public or tenants at this
7 property about the unsafe and unsanitary conditions of the property. (Morgan Decl., at p. 4 ¶ 8.)
8 On December 14, 2016, the following conditions were present at the property: broken windows,
9 missing smoke detectors and other required firefighting equipment throughout the entire building,
10 including in individual unites as well as common areas; hazardous electrical wiring; hazardous
11 plumbing; unsafe egress from the top floor; a second floor door to the outside that is not secure and
12 has no stairs on the outside; large accumulations of trash around the exterior of the property; severe
13 infestations of cockroaches in multiple rooms; and individuals residing in the basement, while
14 there was approximately six inches of standing water present. (Morgan Decl., at pp. 4-5, ¶ 8.)

15 **B. 117/119 5th Street**

16 A structure fire occurred on this property on February 9, 2015, during which an occupant of
17 the property was burned. This fire damage has still not been repaired to date. On December 21,
18 2016, the City inspected the property and noted the following conditions currently existing:
19 hazardous electrical wiring; unsafe and deteriorating stairs that could not sufficiently bear weight;
20 evidence of occupancy of the building, despite permits not being finalized for occupancy; broken
21 and boarded windows and doors; accumulation of debris and garbage; electrical breaker box open
22 and exposed; and a generally continued state of unrepaired fire damage and boarding up of the
23 property. (Morgan Decl., at p. 6, ¶ 7).

24 **C. 2245 Broadway Street**

25 The two structures at this property have been boarded up since February 4, 2015, due to
26 violation of the Eureka Municipal Code, but no repairs or corrections of the violations have been
27 done since that date, and the property has deteriorated in condition since that time. (Morgan Decl.,
28 at pp. 5-6, ¶ 6.) Even though no one may occupy the structures, there are continual complaints to

1 the City that the structures have been re-occupied. Continual re-occupation has occurred due to
2 Respondents' failure to secure the property. (Id.) Also, trash continually accumulates on the
3 property, graffiti is a constant problem, and there are rat present on the property. Government
4 officials cannot enter the property for concern of their safety due to manmade traps. (Id.)

5 **IV. ADDITIONAL RECEIVER AUTHORITY OR A REPLACEMENT RECEIVER IS**
6 **NEEDED IN ORDER TO PROVIDE EFFECTIVE MANAGEMENT AND REPAIR OF**
7 **THE PROPERTIES UNDER THE COURT'S SUPERVISION.**

8 We are now at the close of 2016, and the entire year has been spent monitoring
9 Respondents' untimely repairs, only to have all the properties languish – those that were
10 previously repaired have now been returned to their unsafe and dilapidated condition with new,
11 additional code violations, and properties that have more recently been placed within the current
12 set of properties to be repaired still have been repaired yet. The present circumstances are the very
13 reason the City commenced this action nearly six years ago – because Respondents have been
14 unable for many years – and continue to be unable today -- to successfully manage their properties
15 in a code compliant state, that does not constitute a nuisance and does not present health and safety
16 hazards to tenants, neighbors and the public.

17 As set forth above, Respondents have repeatedly failed to timely comply with this Court's
18 orders for the time period within which repairs have been required to be made. Not once or twice,
19 but every single time and throughout the whole past year. This Court first ordered certain
20 immediate repairs to be made to the properties in October 2014, which were not timely completed.
21 Then, the Court ordered comprehensive repairs on a first set of properties more than a year ago in
22 November 2015. Such work was also not timely completed by Respondents. This Court then
23 ordered repairs on a second set of properties in April 2016. (Gerving Decl., at ¶ 3.) These repairs
24 were again not timely completed by Respondents. We are now in the third set of properties, for
25 which work is not progressing. (Gerving Decl., at ¶ 4.)

26 Respondents' actions are well beyond reasonable and Respondents have clearly
27 demonstrated their inability to timely comply, even as to very minor repairs. More importantly,
28 the properties that have been repaired have again fallen into a state of disrepair. As detailed above,

1 1635 G Street has numerous conditions which render the property not habitable and dangerous to
2 tenants currently living there, as well as a nuisance to surrounding properties and neighborhoods.
3 The property has been unsecured on multiple occasions, allowing for unauthorized individuals to
4 not only occupy the property but also to engage in illegal activity, namely the active use of illegal
5 substances which poses a health hazard to residents and neighbors. The City has received
6 complaints from neighbors and neighborhood organizations about the continuing conditions of
7 these properties, including the crimes, illegal drugs and vagrants that often frequent the properties
8 and are permitted to engage in harmful and dangerous activities due, at least in part, to
9 Respondents utter failure to properly secure the properties. See Declaration of Heidi Benzonelli,
10 filed concurrently herewith (“Benzonelli Decl.”), at ¶¶ 1-5; Exhibit A. There have also been two
11 shootings at this unsecured property, including one as recent as December 16, 2016. After the
12 shooting, Respondents took no steps to secure the building, and some neighbors were leaving the
13 area due to them feeling unsafe. (Benzonelli Decl., at ¶ 3-4.) In the properties’ present states, they
14 are no closer to being rendered code compliant and in many cases, are worse off.

15 The incomplete and untimely repairs by Respondents have been on-going throughout 2016.
16 And this is after it took more than one year for the Court’s appointed Receiver to merely inspect
17 the properties and document conditions; more than one year passed between the time of the
18 Court’s appointment order on September 13, 2013 and this Court’s first order for initial repairs to
19 be made on October 1, 2014.

20 The City has made two prior requests to this Court to give additional authority to the
21 Receiver to conduct the repairs – at the April 22, 2016 hearing and again on August 16, 2016. The
22 first was denied without prejudice and the second was granted only in part. As to the latter, this
23 Court permitted the Receiver to take over repairs that he felt in his discretion were not being
24 conducted properly or timely. As of yet, the Receiver has not exercised such discretion, and has
25 not taken over any repairs. Therefore, given the present facts and circumstances, this Court must
26 order that the Receiver take over management of the properties and the conduct of all repairs, or in
27 the alternative, this Court must appoint a replacement receiver who can properly exercise
28 discretion to overtake repairs and management due to Respondents’ failure to properly do so.

1 The overwhelming evidence in this matter has established that Respondents have and
2 continue to hold their properties, since 2011, in continuous and/or reoccurring violation of various
3 codes, including Building, Electrical, Fire, Health and Safety, etc. Most critically, this Court has
4 merely allowed Respondents to continue their unlawful business practices as to properties that are
5 currently under the supervision of this Court. This Court's allowing such code violations to
6 continue and to reoccur is tacit approval by this Court.

7 Despite the City's best efforts to move this action along and to finally and fully bring
8 Respondents' properties into compliance with applicable code requirements and to render them
9 safe and habitable as required by law, this Court has simply allowed its appointed Receiver and
10 Respondents to carry on the code violations that have repeatedly existed at Respondents'
11 properties for more than six years. Notably, every order of this Court as to repairs to be conducted
12 under the Receiver's supervision has included the requirement that the Receiver's inspections
13 include documentation as to "[c]ode violations currently existing at the subject properties" and that
14 all such current violations at the properties "be identified, repaired and [that the properties be]
15 brought into compliance with applicable codes." This is an on-going obligation of the Receiver
16 to assure that all properties under this Court's and his authority and control be brought into and
17 maintained code compliant. This, he has failed to do.

18 The City, as Petitioner, and the public, are entitled to this Court's following through with
19 its order that the properties be brought into compliance – and not another year from now, but now.
20 It has come to the point where it is clear that Respondents cannot properly maintain their
21 properties, cannot timely conduct repairs, and cannot effectively complete such repairs, or keep
22 their properties safe for the community and the tenants that reside at the properties. Respondents
23 are merely permitted by this Court to continue their longstanding exploitation of their residents.
24 And since the Court is responsible for the present condition of these properties, it must take
25 immediate action to remedy the code violations that still persist at Respondents' properties.

26 This Court has control and authority over Respondents' properties. This Court has
27 previously ordered that Respondents' properties be taken under the supervision of this Court and
28 the appointment of the Receiver, pursuant to California Business and Professions Code Section

1 17203. This authority permits this Court to “make such orders or judgments, including the
2 appointment of a receiver, as may be necessary to prevent the use or employment by any person of
3 any practice which constitutes unfair competition” Further, Section 564 of the California
4 Code of Civil Procedure also provides that a receiver may be appointed by the court in specified
5 circumstances as well as “where necessary to preserve the property or rights of any party.” In
6 addition, as specified in Section 568 of the Code of Civil Procedure, receivers are to have, “under
7 the control of the court, power to bring and defend actions in his own name, as receiver; to take
8 and keep possession of the property, to receive rents, collect debts, to compound for and
9 compromise the same, to make transfers, and generally to do such acts respecting the property as
10 the court may authorize.” Also, specifically as to substandard conditions of rental properties, a
11 court “shall consider appropriate orders or instructions to enable the receiver to correct the
12 substandard conditions” Cal. Civ. Proc. Code § 568.2 (e).

13 California Rules of Court, Rule 3.1179 provides that a receiver is an “agent of the court”
14 and is required to “[a]ct[] for the benefit of all who may have an interest in the receivership
15 property.” Therefore, the conditions of the properties that have been permitted by the Receiver to
16 continue are the conditions permitted to continue by this Court. The interests of the public and the
17 City in abating the on-going nuisance and unsafe conditions at the properties have certainly not
18 been preserved by the Receiver or this Court, where so much time delay has been permitted and
19 code violations and nuisance conditions have continued and/or reoccurred.

20 Instead of granting the Receiver full management of the properties and the active ability to
21 quickly and effectively remedy the myriad code violations at the properties – or requiring such
22 involvement by the Receiver, this Court has created a limited receivership that has thus far merely
23 inspected the properties, noted existing code violations, and inspected repairs. Not until this
24 Court’s order of November 2, 2016, wherein the Court permitted the Receiver discretion to take
25 over repairs at the properties did this Court explicitly allow the Receiver to intervene where
26 Respondents have failed to timely or completely conducted required repairs. This Court has failed
27 to give the Receiver necessary authority to successively achieve code compliance, and the
28 Receiver has failed since that order to exercise that authority in a reasonable manner.

1 Further, the Court cannot claim ignorance about the rampant code violations still existing at
2 the properties or which have reoccurred. Presently, it is this Court and its Receiver that have
3 responsibility over these properties. Should some injury or disaster occur while these properties
4 are permitted by the Court and its Receiver to be out of compliance with applicable codes, the fault
5 will lie with them. As the City noted in its prior motion, a fire occurred at one of the properties in
6 June of this year. There was also another fire at one of the other properties, this year alone. (Jee
7 Decl., at ¶ 2.) Plus, two shootings have occurred just this year month, one only a month ago, at
8 1635 G Street. Tenants are continually permitted to reside in uninhabitable conditions and the
9 properties are not secured, permitting illegal and unsafe activities to occur. (Jee Decl., at ¶¶ 3-4;
10 Exhibits A (Burke report) and B (Eureka Police Department reports – shooting and drug activity))

11 The City entreats this Court yet again to take swift action and require its Receiver, or a
12 replacement receiver, to manage and repair the properties in the reasonable and expeditious
13 manner that Respondents have thus far, and repeatedly, been incapable of doing. To refuse to take
14 this action is not only the continued denial of justice for the City and the public that is put at risk
15 by Respondents' properties, but also the acceptance of risk that further injury and damage will
16 occur during this Court's watch over these unsafe and improperly maintained properties.

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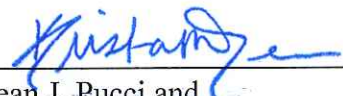
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V. CONCLUSION.

For all of the foregoing reasons, this Court is again requested to order that the Receiver conduct, supervise and otherwise carry out all remaining repair work for the properties and that Respondents no longer be permitted to obtain any permits or conduct any such work themselves, or in the alternative, that the Court order that the Receiver be replaced so that the proper supervision and conducting of necessary repairs at the properties be taken over by a new receiver. The state of these properties in constant or reoccurring disrepair cannot be tolerated any longer. To do so, puts the public and tenants at risk, as well as this Court being at risk for fault as to any harm or damage that may occur from the nuisance, unhealthy, and often dangerous conditions being permitted to continue to exist by this Court and its Receiver.

Dated: December 28, 2016

JONES & MAYER

By: 
Dean J. Pucci and
Krista MacNevin Jee,
Attorneys for City of Eureka

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3777 North Harbor Boulevard, Fullerton, California 92835.

On **December 28, 2016**, I served the foregoing document described as:

**MOTION FOR ADDITIONAL RECEIVER AUTHORITY, OR IN THE
ALTERNATIVE, FOR REPLACEMENT OF RECEIVER**

on each interested party listed on the attached service list:

Counsel for Defendants

Bradford C. Floyd, Esq.
Floyd Law Firm,
A California Partnership
819 Seventh Street
Eureka, CA 95501
EMAIL: bcfloyd@floydlawfirm.net

Court Appointed Receiver

Jeff Smith
Lenders Construction Services
P.O. Box 6218
Eureka, CA 95502
Email: jeff@lendersconstructionservices.com

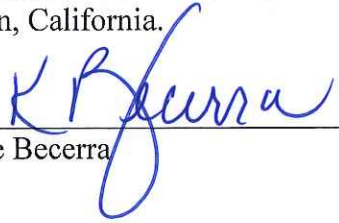
_____ (VIA MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Jones & Mayer's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at La Habra, California, in the ordinary course of business. I am aware that on motion of the parties served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

 X (VIA EMAIL) By electronically transmitting the document(s) listed above to the e-mail address(es) of the person(s) set forth above. The transmission was reported as complete and without error. See Rules of Court, Rule 2.251.

 X (VIA PERSONAL SERVICE) I caused the aforementioned documents to be personally delivered to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney(s) office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

 X (VIA OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to each interested party. I placed the envelope or package for collection and overnight delivery in the overnight delivery carrier depository at Fullerton, California to ensure next day delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 28, 2016**, at Fullerton, California.



Kate Becerra

SERVICE LIST

Counsel for Defendants

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**VIA EMAIL AND PERSONAL
DELIVERY**

Court Appointed Receiver

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Lenders Construction Services
P.O. Box 6218
Eureka, CA 95502
Email: jeff@lendersconstructionservices.com

**VIA EMAIL AND OVERNIGHT
DELIVERY**