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EXEMPT FROM FILING FEE - GOV. CODE §6103

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE**

11 CITY OF NORCO, a charter city,
12 Petitioner,

13 vs.

14 RONALD T. MUGAR, an individual; and
15 DOES 1-50, inclusive,

) Case No. RIC 1709678
) [Case assigned to Hon. Irma Poole Asberry,
) Dept. 3]

) **PETITIONER CITY OF NORCO'S**
) **NOTICE OF MOTION AND MOTION**
) **TO DECLARE THE CITY THE**
) **PREVAILING PARTY, FOR AN**
) **AWARD OF ATTORNEYS' FEES, TO**
) **DISMISS THE ACTION, TO**
) **DISCHARGE THE RECEIVER AND**
) **EXONERATE THE RECEIVER'S**
) **BOND; MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN SUPPORT**
) **THEREOF**

) [Filed concurrently with Declarations of
) Javier Rodriguez and Eric Markus;
) Request for Judicial Notice]

) [Proposed Order to be filed with Reply]

) Hearing Information:
) Date: March 4, 2019
) Time: 8:30 a.m.
) Dept.: 3

) **Confirmation No.: RES84682**

1 TO RESPONDENT RONALD T. MUGAR AND HIS ATTORNEYS HEREIN:

2 PLEASE TAKE NOTICE that on March 4, 2019, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard, in Department 3 of the above-entitled Court, located at 4050 Main Street,
4 Riverside, California 92501, the Hon. Irma Poole Asberry presiding, Petitioner CITY OF NORCO
5 (hereinafter, "Petitioner" or "City") will and hereby does move the Court for an order: (1) declaring
6 the City the prevailing party in this action; (2) awarding the City its reasonable attorneys' fees and
7 costs incurred in connection with this action in the amount of \$60,798.94; and, (3) deeming the
8 action moot because the substandard and public nuisance conditions at the Subject Property have
9 been abated. On that basis, the City further requests that the Court: (4) dismiss this action without
10 prejudice with a reservation of jurisdiction pursuant to Cal. Health and Safety Code section 17980.7,
11 subdivision (c)(1); and, (5) discharge the receiver and exonerate the bond posted August 1, 2017.

12 This Motion is made pursuant to Cal. Health & Safety Code sections 17980.7(c)(11) and (d),
13 and Norco Municipal Code sections 1.04.010 and 6.22.010 et seq., which provide, in relevant part,
14 that the City *shall* be entitled to reasonable attorneys' fees and costs, including inspection costs,
15 investigation costs, enforcement costs, and all costs of prosecution when it prevails in any action
16 brought pursuant to the Cal. Health & Safety Code to abate substandard conditions. This Motion
17 is further made pursuant to Cal. Health & Safety Code section 17980.7(c)(9), which requires that
18 the receiver be discharged when the conditions cited in the notice of violation have been remedied.

19 This Motion will be based upon this Notice of Motion, the Memorandum of Points and
20 Authorities, the concurrently filed Declarations of Javier Rodriguez and Eric P. Markus, the
21 pleadings and records on file with this Court, any evidence of which the Court may take judicial

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1 notice prior to or at the hearing of this matter, and upon such oral or documentary evidence as may
2 be presented at the hearing of this motion.

3
4 Dated: November 2, 2018

DAPEER, ROSENBLIT & LITVAK, LLP

5
6
7 By: _____

Eric P. Markus
Attorneys for Petitioner,
CITY OF NORCO

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I.

PRELIMINARY STATEMENT

The City of Norco ("City" or "Petitioner") filed the instant action against Respondent Ronald T. Mugar ("Respondent") for one purpose: to abate severe life-safety hazards on Mr. Mugar's property. The City was forced to file its Petition after Mr. Mugar obstinately refused to voluntarily comply with the California Health & Safety Code and Norco Municipal Code ("NMC") for over 10 years. Notwithstanding a prior criminal conviction for maintenance of substandard conditions, issuance by the City of numerous letters, notices and other correspondence declaring the property substandard and requesting compliance with the law, and several in-person meetings with the City (during inspections and at City Hall), Respondent refused to abate the severe life-safety hazards inundating his property, to the substantial detriment of not only neighboring residents and the surrounding community, but also to Respondent and his family. In fact, even after the City's filed its Petition and a receiver was appointed in this matter, Respondent continued to fight against compliance, choosing instead to engage in obstructionist litigation that ultimately resulted in the City incurring the attorneys' fees sought herein.

Nearly 18 months after filing, the City's Petition has finally achieved its sole purpose. Despite consistent efforts by Respondent to avoid compliance through the filing of procedurally deficient and inappropriate motions, by making bad-faith representations to the City and the Court that he would voluntarily comply, and by attempting to politicize this case by involving the ex-Mayor of the City of Norco, all of the substandard and hazardous conditions identified in the City's Petition have now been abated. Having achieved the objective of its Petition, the City is undoubtedly the prevailing party in this matter, and is therefore entitled to its reasonable attorneys' fees, as mandated by Cal. Health & Safety Code sections 17980.7(c)(11) and 17980.7(d). As explained below, the City's attorneys' fees are reasonable in light of the extensive work and time put forth in litigating this matter. Respondent fought the City at every pre-filing stage of this matter, and his attorneys "over-litigated" this case, choosing to file motions without much merit and engage in a prolonged "back-and-forth" with the City in which Respondent feigned an

1 *agreement to comply, only to renege on his promises time and again.* The City therefore
2 respectfully requests that this Court issue an order: (1) declaring the City the prevailing party in this
3 action; (2) awarding the City its reasonable attorneys' fees and costs, in the amount of \$60,798.94;
4 (3) deeming the action moot because the substandard and public nuisance conditions at the Subject
5 Property have been abated; (4) discharging the receiver and exonerating the bond posted August 1,
6 2018; (5) ordering Respondent to pay to the receiver the bond premium, in the amount of \$250.00;
7 and, (6) dismissing this action without prejudice on the basis that the issues presented are moot.
8 The Receiver has represented that he does not object to such an order.
9

10 II.

11 STATEMENT OF FACTS

12 History of Substandard Conditions and Efforts to Achieve Compliance Before Filing

13 Respondent is the owner of real property located at 3421 Kips Korner Road, Norco,
14 California ("Subject Property"). (Decl. Rodriguez, at ¶ 4.) At the time this matter was filed, the
15 Subject Property had been an eyesore and a continuing source of complaints from area residents for
16 at least ten (10) years. (*Id.*, at ¶ 5.)

17 In or around September 2016, the City again began to receive numerous complaints from
18 City residents concerning substandard conditions at the Subject Property. (*Id.*, at ¶ 10.) On or
19 about September 28, 2016, City officials and Riverside County Sheriff's deputies conducted a joint
20 inspection of the Subject Property. (*Ibid.*, at ¶ 11.) The inspection revealed numerous and
21 widespread substandard conditions constituting a public nuisance and which rendered the Subject
22 Property hazardous to Respondent, his family, the surrounding community and any first responder
23 personnel that may have been called upon to respond to an emergency at the Subject Property. (*Id.*)

24 On November 30, 2016, the City issued correspondence to Respondent requesting that he
25 remove and/or remediate all of the substandard conditions. The correspondence further asked
26 Respondent to contact City Enforcement Officer, Javier Rodriguez, to schedule an inspection of the
27 Subject Property no later than December 12, 2016. (*Id.*, at ¶ 12; Decl. Markus, at ¶ 5; Ex. "A"
28 [November 30, 2016 correspondence].) Respondent failed and/or refused to respond. (*Id.*)

1 On January 30, 2017, the City performed another inspection of the Subject Property from
2 the public right-of-way and adjoining property. (Decl. Rodriguez, at ¶ 13.) The inspection revealed
3 that no action had been taken to abate any of the conditions identified in the City's November 30,
4 2016 correspondence, and that they had actually worsened. (*Id.*, Ex. "2" [Photographs].)

5 On February 28, 2017, the City Prosecutor sent another letter to Respondent requesting that
6 he undergo an inspection of the Subject Property. The correspondence further advised that an
7 inspection warrant would be obtained if Respondent continued to withhold consent. (Decl. Markus,
8 at ¶ 6; Ex. "B" [February 28, 2017 correspondence].) Again, Respondent failed and/or refused to
9 respond. (*Id.*)

10 The City thereafter applied for and obtained an inspection warrant, which the City executed
11 on March 30, 2017. (Decl. Rodriguez, at ¶ 15.) The City's inspection revealed over 20 Health and
12 Safety Code violations at the Subject Property constituting a severe life-safety hazard to
13 Respondent, occupants of the Subject Property, and the surrounding community. (*Id.*) The City's
14 Building Official subsequently declared the Subject Property a "substandard building" and "red-
15 tagged" it as unsafe to occupy. (*Id.*, at ¶¶ 15, 16; Ex. "3" [Photographs].)

16 On April 12, 2017, the City Prosecutor sent to Respondent a "Notice of Filing of Petition
17 for Receivership" in conjunction with another "Notice of Substandard Property and Buildings, and
18 Notice and Order to Abate Substandard, Hazardous, and Nuisance Conditions" ("Notice"). (Decl.
19 Markus, at ¶ 10; Ex. "C" [Notice, dated April 12, 2017]; Decl. Rodriguez, at ¶ 17.) The Notice
20 identified each substandard condition observed by the City, set forth in detail the actions that needed
21 to be taken in order to abate the substandard and hazardous conditions at the Subject Property, and
22 further advised that the City would initiate a receivership proceedings if the violations were not
23 abated within 10 days. (*Id.*) After the 10-day period expired, Respondent requested that the City
24 extend his compliance deadline. (Decl. Rodriguez, at ¶ 18.) In an effort to avoid litigation, the City
25 extended Respondent's deadline by two weeks. (Decl. Markus, at ¶ 11; Ex. "D" [April 25, 2017
26 correspondence].)

27 On May 2, 2017, the City attempted to perform an additional inspection of the Subject
28 Property to determine the progress of Respondent's abatement efforts. (Decl. Rodriguez, at ¶ 19.)

1 Based on what Officer Rodriguez was able to view from the public right-of-way, it appeared that
2 almost no corrective action had been taken to comply with the directives set forth in the City's
3 Notice. (*Id.*, Ex. "4" [Photographs].)

4 The City performed another inspection of the Subject Property on May 11, 2017. (*Id.*, ¶
5 20.) The inspection revealed that the interior had been partially cleaned-up, but that no work had
6 been performed to abate the substandard condition of the exterior. (*Id.*) Respondent had further
7 failed to submit any technical permit applications to the City or take any other action to legalize the
8 unpermitted and dilapidated laundry room addition to the Subject Property. (*Id.*)

9 On May 15, 2017, the City attempted to perform yet another inspection of the Subject
10 Property. Respondent refused to grant the City access, however, and stated that the conditions at
11 the property had "gotten worse." (*Id.*, at ¶ 21.)

12 On May 30, 2017, the City filed its Petition for the Appointment of a Receiver and its
13 Motion for the Appointment of a Receiver and Related Preliminary Injunction. (Decl. Markus, at
14 ¶ 13.) ***The Court granted the City's Motion on July 6, 2017, finding and declaring that the***
15 ***Subject Property was substandard, and appointed David Pasternak as receiver to remediate all***
16 ***of the substandard conditions at the Subject Property.*** (*Id.*, at ¶ 15, Ex. "F" [Order Appointing
17 Receiver].) ***The receiver filed his oath and posted his bond on August 1, 2017.*** (*Id.*, Ex. "G"
18 [Receiver's Oath and Bond].)

19 **Respondent's Post-Order Obstructive Tactics**

20 On or about August 2, 2017, Respondent presented to the Court an *ex parte* application to
21 stay the Court's order appointing a receiver pending the hearing of Respondent's motion for
22 reconsideration, which was scheduled to be heard September 6, 2017. (*Id.*, at ¶¶ 17-18.) Prior to
23 the hearing, Respondent's attorney, Mark Sabbah, advised the City Prosecutor that he had spoken
24 to Respondent and explained the gravity of the situation, and that Respondent had accepted that he
25 was going to have to change the way he had been living. (*Id.*, at ¶ 18.) Mr. Sabbah stated that
26 Respondent was ready and willing to perform all actions necessary to abate all substandard
27 conditions at the Subject Property, and that he simply needed additional time to do so. (*Id.*) Mr.
28 Sabbah further explained that Respondent was a "hoarder" and that Respondent's family had agreed

1 to assist Respondent in the cleanup. (*Ibid.*) On that basis, the City stipulated to hold the
2 receivership in abeyance to afford Respondent additional time to abate the substandard conditions
3 at the Subject Property himself. (*Id.*, at ¶ 20, Ex. “G” [Order After Hearing, dated August 14,
4 2017].)

5 As set forth in the Court’s stipulated Order, Respondent was required to abate all violations
6 – except those pertaining to the laundry room – and schedule, undergo and pass final inspection no
7 later than August 15, 2017. Respondent was further ordered to submit to the City all applications
8 for any permits needed to demolish and/or repair the unpermitted laundry room no later than August
9 8, 2017. (*Id.*) ***The Court’s Order further provided that the abeyance would not impact the City’s***
10 ***right to seek a declaration that it was the prevailing party and an award of attorneys’ fees.*** (*Id.*,
11 Ex. “H,” at p. 2, lines 21-23.)

12 Respondent completed abatement of all substandard conditions except those affecting the
13 laundry room by August 15, 2017, in accordance with the Court’s Order. (Decl. Rodriguez, at ¶
14 25, Ex. “5” [Photographs].) ***Respondent refused, however, to submit applications for the permits***
15 ***necessary to begin demolition and/or repair of the laundry room or otherwise make any effort***
16 ***toward abatement of the substandard conditions affecting it.*** (Decl. Markus, at ¶¶ 21; Decl.
17 Rodriguez, at ¶¶ 23-24.) Instead of applying for a new building permit, Respondent presented the
18 City with a plot plan prepared in 1969 and requested that the City summarily issue him an “over
19 the counter” permit for repair, without any plan check or approval. (*Id.*) When Respondent was
20 advised that the plot plan did not contain the information necessary to enable the City to evaluate
21 the project for the purpose of issuance of new permits, Respondent and his representative became
22 argumentative with City staff and left. (*Id.*)

23 Over the course of the next several months, the Parties engaged in a dispute regarding the
24 permit history of the laundry room and what would be required to do to abate the substandard
25 conditions inundating it. (Decl. Markus, at ¶¶ 24-26, Exs. “I,” “J,” “K” [Letters re: Permits].) The
26 City maintained that no final permit had ever been issued relative to construction of the laundry
27 room, and that any permits issued in 1969 had expired in accordance with applicable California
28 Building Code regulations. (*Id.*) On this basis, the City required Respondent to obtain new permits

1 and rebuild and/or demolish in accordance with current building standards. Respondent maintained
2 that the laundry room was validly permitted and that he was only required to repair the laundry
3 room in accordance with the building standards in place in 1969. (*Id.*)

4 During this time, Respondent performed no work towards abatement of the unlawful
5 conditions in the laundry room, choosing instead to litigate his claimed right to maintain the laundry
6 room in a hazardous state. (See *Id.*, at ¶ 30; see Decl. Rodriguez, at ¶¶ 27-29.) Respondent further
7 repeatedly sought to add the issue of the City's determination to the City Council's agenda and
8 attempted to engage in a political attack against the City and its attorneys with the assistance of an
9 advisor, ex-Mayor of the City of Norco, Harvey Sullivan. (*Id.*) As a result of Respondent's tactics,
10 the City Prosecutor was required to expend significant time drafting correspondence, speaking with
11 Respondent's counsel, and preparing legal filings and declarations. (*Id.*) The City Prosecutor was
12 also regularly required to attend meetings of the City Council and engage in lengthy discussions
13 with both City Officials and the City Attorney about the case. (*Id.*) What should have been a
14 relatively straightforward code-enforcement case became a hot-button issue that necessitated near
15 daily contact between the City and its attorneys. (*Id.*)

16 On October 16, 2017, Respondent seemingly accepted the City's position and applied for
17 and obtained permits to demolish the laundry room. (Decl. Rodriguez, at ¶ 26, Ex. "6" [Demolition
18 Permit].) Insofar as the demolition permit was valid for 180 days, the Parties stipulated – as they
19 had several times in the past – to continue the hearing on Respondent's motion to afford him
20 additional time to complete demolition. (Decl. Markus, at ¶ 27.)

21 In or around December 2017, Respondent advised the City that he no longer intended to
22 demolish the laundry room. (Decl. Rodriguez, at ¶ 27.) Respondent reverted to his prior position
23 and again claimed that the laundry room was permitted such that he was entitled to "re-open" the
24 1969 permit and repair in accordance with the building standards in place at that time. (*Id.*)
25 Respondent steadfastly refused to submit applications to the City for new building permits despite
26 repeated invitations to do so. (*Id.*)

27 Notwithstanding Respondent's insistence that he was not required to obtain new permits,
28 Respondent renewed his demolition permit on or about April 12, 2018, extending his time to

1 complete demolition to October 2018. (Decl. Rodriguez, at ¶ 27.) At or around that time,
2 Respondent also submitted a formal written request to renew the long-expired building permit for
3 construction of the laundry room. The City denied Respondent's request on April 26, 2018. (*Id.*,
4 at ¶ 28, Ex. "7" [April 26, 2018 denial letter].)

5 On April 30, 2018, the Court heard Respondent's Motion for Reconsideration and entered
6 an order requiring Respondent to repair or demolish the laundry room at the Subject Property no
7 later than October 16, 2018 "with all requisite City permits, inspections and approvals, and in
8 accordance with the requirements of the City's current building and other technical codes." (Decl.
9 Markus, at ¶ 43.)

10 On or about May 24, 2018, notwithstanding the Court's unambiguous order, Respondent
11 again submitted a request to the City to renew the long-expired building permit for the laundry
12 room. (Decl. Rodriguez, at ¶ 29.) Respondent's request was formally denied – again – on June 7,
13 2018. (*Id.*, Ex. "8" [June 7, 2018 denial letter].) The City's correspondence denying the request
14 invited Respondent to discuss the matter with the City's Building and Safety Division, as the City's
15 Building Official believed that Respondent may have over-stated and/or over-estimated the amount
16 of work actually required to legalize the laundry room. (*Id.*)

17 On or about July 10, 2018, Respondent met with City Building Official Dan Chudy. (*Id.*,
18 at ¶ 30.) Following their meeting, Respondent applied for and was issued Building Permit No.
19 2018BD0405 authorizing him to perform all actions necessary to legalize the laundry room. (*Id.*,
20 at ¶ 30, Ex. "9" [New Building Permit].) In accordance with his authority under the California
21 Building Code¹, Mr. Chudy made the following allowances and placed the following conditions
22 upon issuance of the permit:

- 23 (a) City building inspectors were to be granted physical and visual
24 access to all components of construction to verify that materials
25 and methods of construction used do not pose safety or health
26 hazards;
27 (b) All damaged construction materials, including but not limited to
28 dry rotted or mold infested materials were to be replaced or

¹ Cal. Building Code section 104.10 authorizes the Building Official to modify the requirements of the Building Code at his/her discretion when it is impracticable for an applicant to fully comply with the Code's strict requirements.

1 certified as safe and useable by an approved qualified
2 professional;

3 (c) The laundry room was to be made weather tight to avoid water
4 intrusion into walls or ceiling;

5 (d) Gypsum wall and ceiling board were required to be ½”
6 minimum thickness;

7 (e) Electrical outlets and other electrical components needed to be
8 electrically grounded/bonded and installed in a safe and
9 workman like manner with GFCI protected outlets; and

10 (f) Plumbing improvements needed to be in safe working order with
11 the clothes washer standpipe drain to be compliant with current
12 codes as to size and configuration.

13 The modifications and conditions were made to reduce the cost of the work required of Respondent
14 to legalize the laundry room. (*Id.*)

15 The City performed interim inspections of the abatement work on July 11, 2018 and again
16 on July 24, 2018. The laundry room passed final inspection on August 9, 2018, at which time the
17 permit became final. (*Id.*, at ¶ 31, Ex. “10” [Finaled Permit].) As of the date of this writing, the
18 Subject Property is in full compliance with all applicable local and state law. (*Id.*, at ¶ 32.)

19 III.

20 LEGAL DISCUSSION

21 I. THE CITY OF NORCO IS THE PREVAILING PARTY IN THIS ACTION

22 In California, courts take a broad, pragmatic view of what constitutes a prevailing party.
23 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.) “In determining whether a
24 plaintiff is a successful party...’[t]he critical fact is the impact of the action, not the manner of its
25 resolution.’ ” (*Graham, supra* 34 Cal.4th at 566, quoting *Folson v. Butte County Assn. of*
26 *Governments* (1982) 32 Cal.3d 685, 668.) “The trial court in its discretion ‘must realistically assess
27 the litigation and determine, from a practical perspective, whether or not the action served to
28 vindicate an important right...’ ” (*Id.*, quoting *Woodland Hills Residents Assn., v. City Council*
(1979) 23 Cal.3d 917, 936.) In *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140,
153, the court held, “[i]t is settled that ‘plaintiffs may be considered the prevailing parties for
attorneys’ fees purposes *if they succeed on any significant issue in litigation which achieves some
of the benefit the parties sought in bringing suit.*” (Emphasis added.) In fact, “prior cases

1 uniformly explain that an attorney fee award may be justified even when plaintiff's legal action
2 does not result in a favorable final judgment." (*Westside Community for Independent Living, Inc.*
3 *v. Obledo* (1983) 33 Cal.3d 348, 352.)

4 The NMC further sets forth a number of factors to be utilized in determining a prevailing
5 party. Pursuant to section 1.04.010, subdivision (G),

6 In addition to any other determination of prevailing party, the City
7 shall be considered a prevailing party entitled to its costs...when it
8 can demonstrate that:

- 9 1. Its lawsuit was the catalyst motivating the defendant to
10 provide the primary relief sought;
- 11 2. The lawsuit was meritorious and achieved its result by "threat
12 of victory"; and
- 13 3. The City reasonably attempted to settle the litigation before
14 filing the lawsuit.

15 (Request for Judicial Notice ("RJN"), at ¶ 3, Ex. "B.")

16 In this lawsuit, the City is the prevailing party because it succeeded in obtaining all of its
17 objectives and vindicating its important right – indeed, its duty – to protect its residents from
18 hazardous and substandard conditions. The City's objective – the primary relief sought –was
19 straightforward: to abate severe substandard and hazardous conditions at the Subject Property.
20 Following the filing of the Petition and Motion for the Appointment of a Receiver in this action,
21 the Court appointed a receiver to abate the substandard conditions at the Subject Property. (Decl.
22 Markus, at ¶ 15, Ex. "F" [Order Appointing Receiver].) The Parties' thereafter stipulated to hold
23 the receivership in abeyance to allow Respondent one final opportunity to perform the abatement
24 himself, and Respondent remediated the Subject Property such that the substandard conditions
25 identified in the City's moving papers were abated. (See Decl. Rodriguez, generally.) Given
26 Respondent's decades-long history of maintenance of substandard and hazardous conditions at the
27 Subject Property, and the fact that Respondent only undertook remedial efforts *after* the City filed
28 this action (and, in fact, failed and/or refused to perform abatement prior to filing), it is clear that
Respondent would not have done so *but for* the filing. The lawsuit therefore achieved its result by
"threat of victory." Finally, as set forth in greater detail in the declarations of Javier Rodriguez and

1 Eric P. Markus, the City sought for over six (6) months to obtain Respondent's voluntary
2 compliance (*i.e.*, a settlement/resolution of the City's claims) in a good faith effort to avoid what
3 should have been unnecessary litigation, and further attempted to informally resolve this matter
4 throughout the litigation, which was the entire reason the City agreed to hold the receivership in
5 abeyance in the first place. (See Decl. Rodriguez, at ¶¶ 8-21; Decl. Markus, at ¶¶ 16-47.)

6 **A. Respondent Is Not the Prevailing Party**

7 In contrast, Respondent did not obtain any relief from the City, nor were any actions of the
8 City in this case dependent on any successful legal strategy or actions by Respondent. Respondent
9 was ordered to, and did, perform an abatement that he steadfastly opposed prior to the initiation of
10 this action. (See Decl. Rodriguez, at ¶¶ 5-21.) Respondent was further ordered to obtain a *new*
11 building permit to perform repairs on the laundry room at the Subject Property, despite the fact that
12 he vigorously opposed such an order both in Court and directly to the City for over a year. (See
13 Decl. Markus, at ¶¶ 40, 44-45; see also Decl. Rodriguez, at ¶¶ 30-31.) While the City made every
14 effort to accommodate Respondent's stated desire and willingness to perform the abatement
15 himself, the fact that the abatement was performed – irrespective of who performed it – necessarily
16 means that Respondent did not prevail in his defense against the City's Petition. Accordingly, the
17 Court can only reasonably determine the City to be the prevailing party.

18 **II. THE CITY OF NORCO IS ENTITLED TO ITS REASONABLE ATTORNEYS'**
19 **FEEES AS A MATTER OF LAW**

20 California Health and Safety Code section 17980.7, subsection (c)(11), states: "The
21 prevailing party in an action pursuant to this section *shall* be entitled to reasonable attorney's fees
22 and court costs as may be fixed by the court." (Emphasis added.) Subsection (d) continues,

23 If the court finds that a building is in a condition which substantially
24 endangers the health and safety of residents pursuant to Section
25 17980.6, upon entry of any order or judgment, the court *shall do all*
26 *of the following:*

- 27 (1) *Order the owner to pay* all reasonable and actual costs of the
28 enforcement agency including, but not limited to, inspection
costs, investigation costs, enforcement costs, *attorney fees*
or costs, and all costs of prosecution.

(RJN, at ¶ 1, Ex. "A" [Emphasis added].)

1 The NMC also provides for an award of attorneys' fees in cases such as this. As set forth
2 at section 1.04.010, subdivision (F),

3 In any action...commenced by the City to abate a public nuisance,
4 if the City elects at the initiation of that individual action or
5 proceeding to seek recovery of its own attorneys' fees and costs, the
6 prevailing party *shall* be entitled to recover its attorneys' fees.

(RJN, at ¶ 2, Ex. "B" [emphasis added].)

7 In this case, the City's Petition was brought pursuant to Cal. Health and Safety Code section
8 17980.7 on its face. (See, Petition.) The Court's Order appointing the receiver further references
9 the fact that the City's Petition and Motion were brought pursuant to that section. (See Decl.
10 Markus, at ¶ 15, Ex. "F.") Still further, the Court found in its Order that "Respondent's maintenance
11 of the Subject Property with the conditions described above further render[s] the Subject Property
12 substandard and a public nuisance, which endangers the life, limb, health, property, safety or
13 welfare of the public or the occupants thereof..." (*Id.*, Ex. "F," at ¶ 1.2.) All of the prerequisites
14 to an award of attorneys' fees are therefore satisfied in this case, and the City is entitled to such an
15 award as a matter of both state and local law.

16 **III. THE CITY'S ATTORNEYS' FEES WERE REASONABLY INCURRED**

17 Statutory attorneys' fees are ordinarily determined by the "lodestar" method. Under this
18 approach, a base amount is calculated from a compilation of time reasonably spent multiplied by
19 the reasonable hourly compensation of each attorney. This figure is then adjusted in light of various
20 factors. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) The lodestar method vests the Court with
21 discretion to decide which of the hours expended by attorneys were "reasonably spent." (*Hammond*
22 *v. Agran* (2002) 99 Cal.App.4th 115, 133.) The Court's focus in evaluating the facts should be to
23 provide a fee award reasonably designed to completely compensate attorneys for the services
24 provided. The starting point for this determination is the attorney's time records. (*Horsford v.*
25 *Board of Trustees* (2005) 132 Cal.App.4th 359, 395-397.) Declarations filed by counsel are
26 sufficient to establish the prima facie reasonableness of this fee claim. (*Hadley v. Krepel* (1985)
27 167 Cal.App.3d 677, 682.) Additionally, an attorney's itemized statement of fees and costs incurred
28 is presumptively reasonable. (*Melynk v. Robledo* (1976) 64 Cal.App.3d 618, 624.)

1 The customary billing rates of counsel for Plaintiff and time spent in this matter, including
2 an itemization of fees and costs and redacted copies of the City's legal invoices, are set forth in the
3 supporting Declaration of Eric P. Markus and supporting exhibits. (See Decl. Markus, Ex. "M"
4 [Billing Statements].) As reflected therein, the time spent litigating this case was reasonable and
5 the hourly rates are well below market.

6 **A. The Amount of Fees Incurred by The City Is Directly Attributable to the**
7 **Improper and Disingenuous Conduct of Respondent and His Lawyers**

8 As set forth in substantial detail in the concurrently-filed declaration of Eric P. Markus,
9 Respondent and his lawyers turned what should have been a relatively straightforward receivership
10 devolved into contentious proceedings and a political smear campaign against the City and its
11 Prosecutor's office. Respondent initially refused to cooperate with the City and completely ignored
12 its directives, and the City was left no choice but to file its Petition. (*Id.*, at ¶¶ 5-13.) Then, after
13 the City's Motion for Appointment of a Receiver was granted, Respondent hired an attorney, who
14 filed a Motion for Reconsideration and sought an *ex parte* order staying the receivership. (*Id.*, at
15 ¶¶ 16-18.) Respondent and his lawyers then feigned a desire to cooperate such that the City agreed
16 to hold the receivership in abeyance, only to revert back to Respondent's pre-filing position that he
17 shouldn't be required to perform all of the work necessary to legalize the Subject Property. (*Id.*, at
18 ¶ 21.) Respondent then flip-flopped on whether he intended to comply repeatedly over the next
19 several months and got the ex-Mayor of the City involved in the case, which greatly expanded the
20 scope of the issues associated with this case and which necessitated substantial work on the part of
21 the Prosecutor's office. (*Id.*, at 22-32.) Respondent then agreed to settle the entire case, only to
22 smugly renege on his agreement after an order was issued by the Court that Respondent felt gave
23 him the "upper hand." (*Id.*, at ¶ 36.) Respondent then vociferously refused to comply with the
24 Court's order of April 30, 2018, which forced the City to incur additional attorneys' fees. (*Id.*, at
25 ¶¶ 44-47.)

26 **B. Petitioner's Counsels' Hourly Rates Are Reasonable**

27 A "reasonable" hourly rate is the prevailing rate charged by attorneys of similar skill and
28 experience in the relevant community. (*PCLM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,
1095.) The court may consider various other factors when determining a reasonable hourly rate,

1 including attorney's skill and experience, the nature of work performed, area of expertise, and
2 customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.)

3 The reasonableness of the hourly rate charged by Petitioner's counsel is set out in more detail in
4 the accompanying Declaration of Eric P. Markus. (Decl. Markus, at ¶¶ 49-55.) As set forth therein,
5 the hourly rate charged by counsel for the City is \$175.00 per hour for civil litigation matters,
6 irrespective of whether the attorney billing is a partner, senior associate, or associate. These rates
7 are well below the normal and customary rates charged by other firms of similar expertise for
8 similar work in the community and are significantly less than those normally charged by the City's
9 counsel, which range from \$250.00 to \$605.00 per hour. (Decl. Markus, at ¶¶ 51.) Accordingly,
10 the hourly rate of \$175.00 charged by Plaintiff's counsel in this matter is reasonable.

11 In all, this matter was given careful attention at all stages and the City ultimately succeeded
12 in causing the abatement of the substandard conditions on the Subject Property. Accordingly, this
13 Court should award the full amount of fees and costs in favor of the City as the time spent on this
14 matter was reasonable and the hourly rates are below market.

15 **IV. THIS ACTION SHOULD MAY BE DISMISSED AS WITHOUT PREJUDICE**
16 **BECAUSE THE PUBLIC NUISANCE CONDITIONS AT THE SUBJECT**
17 **PROPERTY HAVE BEEN ABATED, DEFENDANTS ARE NO LONGER IN**
18 **POSSESSION, AND THE ISSUES PRESENTED IN THE CITY'S COMPLAINT**
19 **ARE MOOT**

20 As described more fully above, the relief requested by the City in its Complaint has been
21 obtained. The hazardous conditions that rendered the Subject Property substandard have all been
22 abated. As such, the issues presented in the Complaint are moot and a trial on this matter would be
23 a waste of both judicial and public resources. Accordingly, the City requests that the Court dismiss
24 this action without prejudice as to all Defendants subject to the Court's Order concerning the City's
25 status as prevailing party in this matter and the City's right to recover its attorneys' fees.

26 Given Respondent's decade-long history of maintaining hazardous conditions at the Subject
27 Property, the City respectfully requests that the Court retain jurisdiction over this matter for "18
28 consecutive months, and require the owner and the enforcement agency responsible for enforcing
section 17980 to report to the court in accordance with a schedule determined by the Court,"
pursuant to Cal. Health and Safety Code section 17980.7(c)(10).

1 **V. THE COURT SHOULD DISCHARGE THE RECEIVER AND EXONERATE HIS**
2 **BOND AS PART OF ITS DISMISSAL OF THIS ACTION**

3 Cal. Health and Safety Code section 17980.7, subdivision (c)(9), provides as follows: “[t]he
4 receiver shall be discharged when the conditions cited in the notice of violation have been remedied
5 in accordance with the court order or judgment...”

6 In this case, the receiver was appointed by the Court in July 2017. The receiver filed his
7 oath and posted his bond on August 1, 2018 and has remained appointed in this case at all relevant
8 times. Insofar as the work that was to be performed by the receiver is now complete, there is no
9 need for the receiver to remain appointed and it is appropriate at this time to discharge him and
10 exonerate his bond.

11 The receiver has requested that the Court exonerate his bond as of August 2, 2018 such that
12 the receiver can avoid having to pay an additional bond premium. The receiver has further
13 requested that the Court order Respondent to pay the bond premium that has already been paid, in
14 the amount of \$250.00.

15 **IV.**
16 **CONCLUSION**

17 As discussed above, the City is the prevailing party in this lawsuit. Based on the unique
18 circumstances of this case, the attorneys’ fees incurred by the City over the approximately two (2)
19 years of this litigation have been reasonable. Had Respondent simply cooperated with the City in
20 abating the substandard conditions at the Subject Property in the first place, litigation could have
21 been avoided. Similarly, had Defendants cooperated in any regard with the City or timely complied
22 with the terms of this Court’s Orders at anytime during the pendency of this action, the City could

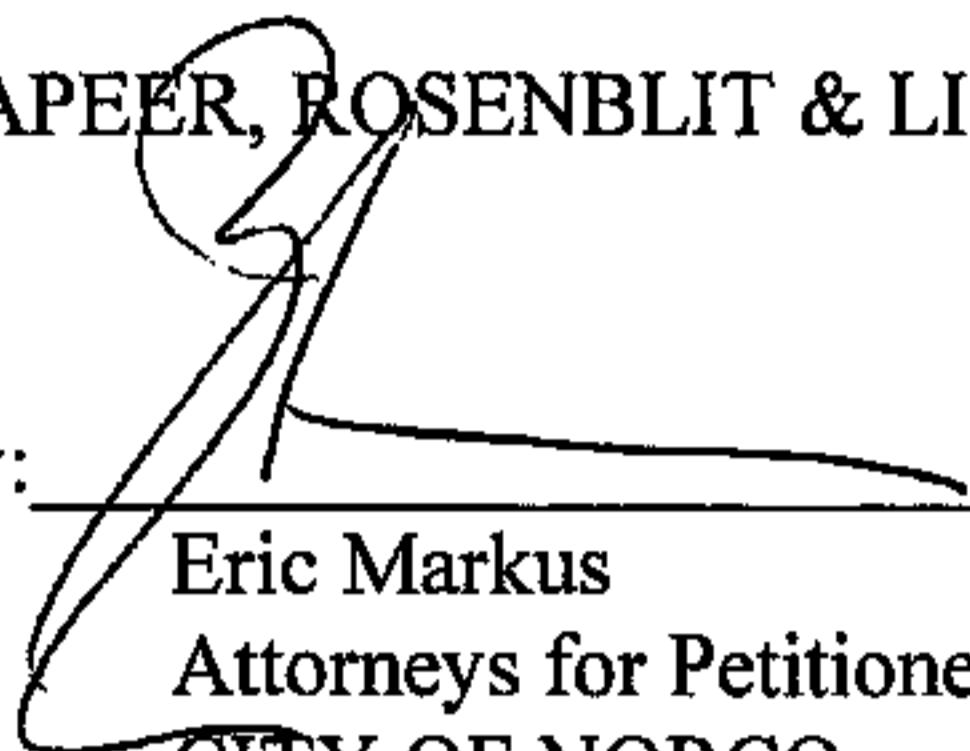
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1 have avoided a majority of the attorneys' fees incurred by it. Unfortunately, Defendants chose to
2 remain steadfast in their refusal to cooperate. Accordingly, the City respectfully request that this
3 court grant the entirety of its reasonable attorneys' fees and costs expended in the total amount of
4 \$91,830.29.

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Dated: November 2, 2018

DAPEER, ROSENBLIT & LITVAK, LLP

By: 
Eric Markus
Attorneys for Petitioner,
CITY OF NORCO

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 11500 W. Olympic Blvd., Suite 550,
5 Los Angeles, CA 90064-1524.

6 On November 2, 2018, I served the foregoing document described as **PETITIONER**
7 **CITY OF NORCO'S NOTICE OF MOTION AND MOTION TO DECLARE THE CITY**
8 **THE PREVAILING PARTY, FOR AN AWARD OF ATTORNEYS' FEES, TO DISMISS**
9 **THE ACTION, TO DISCHARGE THE RECEIVER AND EXONERATE THE**
10 **RECEIVER'S BOND; MEMORANDUM OF POINTS AND AUTHORITIES IN**
11 **SUPPORT THEREOF** interested parties in this action by placing a true copy thereof enclosed in
12 sealed envelopes addressed as follows:

13 Ronald Mugar
14 3241 Kips Korner Road
15 Norco, CA 92860

Defendant

16 I am "readily familiar" with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice it would be deposited with U.S. postal service on
18 that same day with postage thereon full prepaid at Los Angeles, California in the ordinary course
19 of business. I am aware that on motion of the party served, service is presumed invalid if postal
20 cancellation date or postage meter date is more than one day after date of deposit for mailing in
21 affidavit.

22 Executed on November 2, 2018 at Los Angeles, California. I declare under penalty of
23 perjury under the laws of the State of California that the above is true and correct.

24 
25 Laura Rodriguez, Declarant
26
27
28

ONLINE CIVIL LAW AND MOTION RESERVATION COMPLETED

A MOTION HEARING DATE HAS BEEN RESERVED AS LISTED BELOW.

ALL PLEADINGS MUST BE SERVED AND FILED IN A TIMELY MANNER, PURSUANT TO STATUTE.

FAILURE TO FILE THE REQUIRED PAPERS WILL RESULT IN THE RESERVATION BEING VACATED.

Case Type	Case Number	Department	Motion Date	Motion Time	Motion
RIC	1709678	03	03/04/2019	8:30 AM	MOTION TO BE DECLARED THE PREVAILING PARTY AND FOR FEES

IF ANY CHANGES NEED TO BE MADE PLEASE CALL THE COURT AT (951) 777-3147.

PLEASE PRINT THIS PAGE AS CONFIRMATION OF YOUR PAYMENT OF \$90 CONFIRMATION NUMBER: RES84682

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