No. _____

IN THE
Supreme Court of the United States

The Sunshine Group, LLC,

Petitioner,

v.

City of Dana Point, California And Mark Samuel Adams,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California Fourth Appellate District, Division Three

PETITION FOR A WRIT OF CERTIORARI

Michael M. Berger*
*Counsel of Record
MANATT, PHELPS & PHILLIPS
2049 Century Park East
Suite 1700
Los Angeles, CA 90067
(310) 312-4000
mmberger@manatt.com

Richard A. McDonald
Stoner Carlson LLP
301 E. Colorado Blvd.
Suite 320
Pasadena, CA 91101
(626) 356-4801

Counsel for Petitioner

QUESTIONS PRESENTED

The City of Dana Point "red tagged" Petitioner's motel and then had a receiver appointed to oversee its rehabilitation without ever providing notice of the hearing. Thereafter, it set the property for a foreclosure sale. It did all of this by means of "ex parte" proceedings that provided no formal notice or hearing. That raises serious due process issues, both procedural and substantive, as well as a taking of property without just compensation.

Question 1: When government acts without notice in a way that seriously impacts the rights of citizens, does the lack of constitutionally required notice deprive the victim of property without due process of law?

Question 2: Is it finally time to rein in California's practice of ignoring this Court's line of regulatory takings decisions, based on *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) and *Lucas v. South Carolina Coastal Council* 505 U.S. 1003 (1992), while charting its own more restrictive course on this federal constitutional issue for which this Court's decisions provide a floor?

PARTIES TO THE PROCEEDING

Petitioner Sunshine Group, LLC was the owner of the property that is the subject of this litigation at the time of the critical events described herein.

The Sunshine Group LLC is a California limited liability corporation located in San Marino, CA. It is owned by these members of the Manchanda family: Dr. Ramesh Manchanda, Prabhat Manchanda, Rahul Manchanda, and Rohit Manchanda. Dr. Ramesh Manchanda is the managing member. There are no corporate owners or subsidiaries involved.

The City of Dana Point, California, is a California municipal corporation.

Mark Samuel Adams is an individual who was appointed on motion of the City to serve as receiver for the subject property.

RELATED CASES

City of Dana Point v. The Sunshine Group, LLC, Orange Superior Court no. 30-2017-00915900-CU-PT-CJC., Judgment entered June 13, 2023.

City of Dana Point v. The Sunshine Group, LLC, California Court of Appeal, Fourth District, Division Three, Nos. G062484, G062828. Opinion filed April 21, 2025.

City of Dana Point v. The Sunshine Group, LLC, California Supreme Court No. S291187, Order entered July 9, 2025.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review a judgment of the California Court of Appeal, Fourth Appellate District, Division Three.

INTRODUCTION

The treatment meted out below to Petitioner Sunshine Group demonstrates California's continued refusal to adhere to constitutional precepts laid down by this Court.

As the law of regulatory takings began to develop, this Court had to repeatedly reprimand California for ignoring both settled law and the Constitution. *See First English Evangelical Lutheran Church v. County of Los Angeles,* 482 U.S. 304, 310-11 (1987) (California decisions are "inconsistent[] with the requirements of the Fifth Amendment"); *Nollan v. California Coastal Commn.*, 483 U.S. 827, 839 (1987) (California inconsistent with *all other state courts* and this Court). From these early cases down through the present-day decisions in *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) and *Cedar Point Nursery v. Hasid*, 141 S.Ct. 2063 (2021), California has continued to require correction to bring it in line with paramount federal constitutional law.

This case continues California's cavalier attitude toward the rights of its property-owning citizens. It has denied due process of law in manifold ways, including the deprivation of property without notice (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)) and continuing to impose its own truncated

view of regulatory takings law (*Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1015 (1992); *Cedar Point Nursery v. Hassid,* 141 S.Ct. 2063, 2071 (2021)). Each of these issues is presented here for this Court's review.

California has been occupying too much of this Court's limited schedule by its refusal to follow settled precepts of federal constitutional law. The following property rights cases are typical of the arrogance displayed by California — both its regulatory agencies and its judiciary — in mistreating its property-owning citizens. *See Lake Country Estates v. Tahoe Reg. Plan. Agency*, 440 U.S. 391 (1979); *Agins v. City of Tiburon*, 447 U.S. 255 (1981); *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621 (1981); *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987); *Nollan v. California Coastal Commn.*, 483 U.S. 825 (1987); *Yee v. City of Escondido*, 503 U.S. 519 (1992); *Suitum v. Tahoe Reg. Plan Agency*, 520 U.S. 725 (1997); *City of Monterey v. Del Monte Dunes*, 526 U.S. 687 (1999); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005); *Pakdel v. City & County of San Francisco,* 141 S.Ct. 2226 (2021); *Cedar Point Nursery v. Hasid*, 141 S.Ct. 2063 (2021); *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024).

It is time to call a definitive halt to California's unconstitutional attitude.

OPINIONS BELOW

The California Court of Appeal's unpublished opinion is reproduced at App. 1a. The California Supreme Court's unpublished Order denying review is reproduced at App. 43a. The trial court's judgment and order dismissing the case is reproduced at App. 40a. That neither of California's reviewing courts saw fit to publish its opinion serves to accentuate California's cavalier approach.

JURISDICTION

The California Court of Appeal filed its opinion on April 21, 2025. A timely petition to the California Supreme Court was denied on July 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides: "... nor shall private property be taken for public use without just compensation."

The Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

RAISING THE FEDERAL QUESTION

Petitioner raised its due process and takings claims in its initial response to the City's petition and continued to raise them in each subsequent pleading.

STATEMENT OF THE CASE

A. Sunshine Owns a Motel in Dana Point. Because the Buildings Dated From the 1940s and were in Disrepair, Sunshine Planned to Demolish and Replace them.

The property in question sits on the California coast. Since the 1940s, it had been improved with a motel. Sunshine bought the property with the plan to join it with neighboring properties to develop an integrated hospitality facility. Given the age of the facility and its general disrepair, Sunshine believed that the prudent course would be to demolish and replace it with a facility having larger rooms and more amenities to make it more competitive with its neighbors.

B. Dana Point Decides to "Red Tag" the Property and Appoint a Receiver to Effect Repairs but Violates Constitutional Standards Regarding Notice to the Property Owner.

The City evidently agreed with Sunshine about the condition of the old motel, as it served Sunshine with notices of multiple code violations and "red tagged" the property as being dangerous to occupy. Because Sunshine planned to demolish the old building and replace it, it saw no need to engage in

expensive remediation. Instead, it applied for a demolition permit.

Rather than deal with Sunshine's application to demolish and rebuild the facility, the City filed suit to have a receiver appointed to take charge of the repair work. However, instead of following the constitutional process of notice and hearing, with the presentation of evidence to justify such drastic action, the City applied "ex parte" for the receiver's appointment and did so with only cursory notice. The "notice" consisted of a brief informal letter that said such action would be taken, but without any information as to the date, time, or place of any hearing. Thereafter, a similar ex parte process was engaged to have the property sold at foreclosure without notice or hearing.

C. The City and Receiver Insist that the Property is "Historic" and Cost Estimates for Repair Skyrocket.

From the outset, the City and the Receiver insisted that the property was "listed" on both state and local registers of historic properties. Its petition in the superior court so alleged and, indeed, it filed a sworn statement from one of its employees to that effect. That assertion was false, but the falsity would not be revealed until years later.

Meanwhile, the erroneous "historic" label caused the projected cost of the Receiver's efforts to skyrocket. From the Receiver's initial estimate of no more than $973,000 to complete the job, the eventual cost soared to some $5 million. All of that was charged to the property, setting it up for sale on foreclosure. The radical cost increase was

attributable solely to the City's and Receiver's wrongful insistence that the property needed to be restored in a historic fashion.

D. The Trial Court Took Sunshine's Property Without Due Process by Approving the ex parte Process Adopted by the City and the Receiver.

The day after filing its petition, the City applied ex parte for the appointment of a receiver. It was in this package that the City swore that the property was listed as a historic resource on both the State and City registries of historic resources.

The trial court granted the City's ex parte application and appointed Respondent Mark Adams as receiver.

The Receiver represented that the cost to remediate the property would be "no greater than" $973,000. Sunshine agreed to underwrite that expense, even though it believed that adding that amount of debt to the property would render it unable to compete in the local market.

Within months, the Receiver began to seek additional funding, disregarding its initial representation as being an upper limit. The total amount eventually approved by the trial court was $5,061,832 — more than five times the original estimate. Sunshine was not able to keep pace with the Receiver's soaring demands.

The Receiver obtained loans from outside parties that eventually led to the property being sold (via another ex parte order) on foreclosure.

Judgment was entered against Sunshine, followed by an appeal.

E. The Appellate Courts Upheld the Trial Court's Unconstitutional Actions.

The Court of Appeal affirmed (App. 1a) in an opinion with manifold problems. In its brief opinion, that court ignored the serious due process and takings problems generated by the City, the Receiver, and the trial court with no discussion at all, even though those constitutional shortcomings had been pointed out by Sunshine's briefs.

Sunshine then filed a petition for review in the California Supreme Court, raising the constitutional issues brought here. That petition was denied without opinion. (App. 43a.)

This Petition followed.

REASONS FOR GRANTING CERTIORARI

I.
Government Action Done Without Notice Denies Due Process, Is Void, And Is Subject To Attack At Any Time.

A. Notice Is Key To Due Process.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of … the Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Put simply, "notice must be such as is reasonably calculated to reach interested parties." *Mullane,* 339 U.S. at 318. "The essence of

due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Mathews*, 424 U.S. at 348.

Thus, the key to due process is reaching interested parties so they may be heard. "It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims." *Board of Regents v. Roth,* 408 U.S. 564, 577 (1972).

There is no question that Sunshine was not sent notice. If nothing else, the City's insistence on proceeding "ex parte" and alleging only that it provided cursory notice that some relief would be sought without notice of when or where that would be should suffice.

All of the issues regarding notice — who gave notice (including when and how), who received notice (including when and how) — are contested fact issues that require trial to determine. Sunshine's pleadings allege that no notice was ever given. The City asserts otherwise. Resolution requires trial.

B. The City's Failure To Provide Notice Made Its Actions Void And Subject To Attack.

It is settled law that a judicial body failing to obtain jurisdiction over either the subject of the

action or the parties thereto will simply render a void judgment that is open to attack *at any time*:

> "A void judgment is a legal nullity. *See* Black's Law Dictionary 1822 (3d ed. 1933); *see also id.*, at 1709 (9th ed. 2009). Although the term 'void' describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See Restatement (Second) of Judgments 22 (1980); see generally id., § 12." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010).

See also Elliott v. Peirsol's Lessee, 26 U.S. 328, 329 (1828) (if a court acts "without authority, its judgments and orders are nullities").

The City and Receiver failed in their mandatory duty to notify the property owner and thus failed to obtain jurisdiction for any of their actions. Those actions were thus void and subject to attack at any time. The California courts ignored this fundamental rule.

II.
The California Courts Ignored Sunshine's Takings Claim in Conflict With This Court's Settled Precepts.

Regularly, in the modern era of takings law, this Court has repeated that, if a regulation deprives property owners of the "economically viable use" or "economically beneficial or productive use" of their

property, a taking has occurred. (The first formulation appeared in *Agins v. City of Tiburon,* 447 U.S. 255, 260 (1981); the latter refinement appeared in *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1015 (1992).) In *Lucas*, the Court was so focused on the impact of government action on the *use* remaining to private property owners, that it used the word "use" 37 times (generally in conjunction with the words "economically productive" or "economically beneficial"). *See* 505 U.S. at 1016-19, 1027-30. Thus, contrary to the impression given in the Court of Appeal's opinion, the allowance of "some" use is not constitutionally sufficient, it must be economically productive. And that is a question of fact that cannot be resolved without evidence.

By focusing on "productive" or "beneficial" use, *Lucas* clearly expressed the idea that the Constitution protects more than the ability to simply hold property in some theoretical manner. Indeed, Mr. Lucas himself was said to have minimal (though noneconomic) use of his property, but that was not sufficient to satisfy the Fifth Amendment. *See Lucas*, 505 U.S. at 1044 (Blackmun, J., dissenting).

So, here, the actions of the City and Receiver took Sunshine's property and did so as soon as the first ex parte application was filed, without either a hearing or just compensation. They were exacerbated when the property was foreclosed via another ex parte proceeding.

"Property" consists of many things. Indeed, the concept is so complex that this Court has repeatedly

used the law professors' "bundle of sticks" analogy to illustrate it, concluding that either the taking of an entire "stick" (or right) from the "bundle" or the taking of a slice through all the "sticks" violates the Fifth Amendment's Just Compensation Clause. Indeed, it is hard to pick up a property decision by this Court and not find some reference to the bundle of sticks as an explanation for the holding. *E.g.*, *Hodel v. Irving,* 481 U.S. 704, 716 (1987); *Nollan v. California Coastal Commn.*, 483 U.S. 825, 831 (1987); *Dolan v. City of Tigard,* 512 U.S. 374, 393 (1994); *Murr v. Wisconsin,* 137 S.Ct. 1933, 1952 (2017) (Roberts, C.J., dissenting); *Cedar Point Nursery v. Hassid,* 141 S.Ct. 2063, 2071 (2021). Freezing the use of Sunshine's property was a temporary taking of its right of use. *See First English*, 482 U.S. 304. The extent of the impairment, and the compensation due, is an issue of fact for trial. *Penn Central Transp. Co. v. City of New York,* 438 U.S. 104 (1978).

The decision here needs to blend with the Court's decisions generally protecting the rights of private property owners. The Court recently summarized that history this way:

> "As John Adams tersely put it, '[p]roperty must be secured, or liberty cannot exist.' Discourses on Davila, in 6 Works of John Adams 280 (C. Adams ed. 1851). This Court agrees, having noted that protection of property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are always eager

to do so for them.'" *Cedar Point*, 594 U.S. at 147.

For many decades, California has acted on the belief that it is free to set its own parameters for how it treats its property-owning citizens. It has consistently disregarded this Court's clear holdings, even to the point that (until this Court corrected the situation in *First English*), property rights cases were routinely filed in federal court because the California state courts provided no compensation remedy. *See*, *e.g.*, *City of Monterey v. Del Monte Dunes*, 526 U.S. 687 (1999). It is time to return California to the American constitutional fold. Indeed, it is long past time.

III.
The Court Should Grant Certiorari To Ensure That The Constitution Prevails Over Statutes.

Under our system of government, the Constitution is preeminent. It cannot be undercut by statutes. The issue here is whether a constitutional provision held by this Court to be "self-executing," i.e., requiring no Congressional action to enliven it, can be restricted or eliminated by a mere statute — particularly, as here, a *state* statute. In brief, it cannot.

Our Constitution provides a baseline of minimal protection to all the rights of all citizens, with individual states having the discretion to provide more, but never less protection. *Simmons v. South Carolina*, 512 U.S. 154, 174 (1994); *see West Virginia State Board of Education v. Barnette*, 319

U.S. 624, 638 (1943). Justice Kavanaugh explained it this way: "the Constitution sets a floor for the protection of individual rights. The constitutional floor is sturdy and often high, but it is a floor. Other . . . government entities generally possess authority to safeguard individual rights above and beyond the rights secured by the U.S. Constitution." *American Legion v. American Humanist Assn.*, 139 S.Ct. 2067, 2094 (2019) (Kavanaugh, J., concurring).

Thus, if there is a role for state courts and state laws, this is it: providing *more* protection than the U.S. Constitution mandates. As Professor Akhil Amar summarized it, "the federal constitution stands as a secure political safety net—a floor below which state law may not fall."[1] As this Court plainly expressed it, "The American people have declared their Constitution and the laws made in pursuance thereof to be supreme." *McCulloch*, 17 U.S. at 432. Beyond that, as the Court classically held in *Marbury v. Madison*, 5 U.S. [1 Cr.] 137, 177 (1803), it is the Court's job to see that other levels of government remain true to the Constitution. That would include protecting the rights of property

---

[1] Akhil Reed Amar, *Philadelphia Revisited: Amending the Constitution Outside Article V*, 55 U. Chi. L. Rev. 1043, 1100 (1988). *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997) ("the Due Process Clause . . . establishes a constitutional floor"); *see also* Gideon Kanner, *Just How Just is Just Compensation?* 48 Notre Dame L. Rev. 786, 784 (1973) ("it seems safe to say that the Constitution—or at least the Bill of Rights—was the product of the framers' fear of an overreaching government, and their desire to protect individual citizens from governmental excesses. . . . [T]he purpose of the . . . Bill of Rights [] was to protect the people from the government, not vice versa.").

owners from the depredations of state and local government. Here, that is done by providing protection against state agencies and officials, regardless of what state law might otherwise say. U.S. Const., art. VI, cl. 2. "It is basic to this constitutional command that all conflicting state provisions be without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 570 U.S. 472, 480 (2013).

Because the right to just compensation arises directly from the Constitution, neither Congress nor local legislators can abrogate this right. As the Court put it in *Jacobs v. United States*, 290 U.S. 13, 17 (1933), "the right to just compensation could not be taken away by statute or be qualified . . . ." In *Jacobs*, the question was whether the failure of Congress to provide for interest on awards of just compensation could override the general Constitutional command for payment of compensation for takings, as interest is part of just compensation. The Court answered curtly that it could not, because the Constitution prevailed in protecting the rights it guarantees. In other words, "acts of Congress are to be construed and applied in harmony with and not to thwart the purpose of the Constitution." *Phelps v. United States*, 274 U.S. 341, 344 (1927). The same must be true of state and local legislation.

A. The Constitution is paramount.

The Constitution is our paramount authority. *Marbury v. Madison*, 5 U.S. 137, 176-77 (1803):

> "The powers of the legislature are

> defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. [¶] .... Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that *an act of the legislature, repugnant to the constitution, is void*." (Emphasis added).

The founders of this republic understood history — particularly the problems that arose because of the amorphous nature of the national governmental structure. Early on, this Court concluded that the Supremacy Clause was adopted in order to ensure that the central government did not suffer from the weaknesses that undercut the earlier attempt at union under the Articles of Confederation, acknowledging that "the conflicting powers of the General and State Governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled" (*McCulloch*, 17 U.S. at 405):

> "The American States, as well as the American people, have believed a close and firm Union to be essential to their liberty and to their happiness. They have been taught by experience that this Union cannot exist without a government for the whole, and they have been taught by the same experience that this government would be a mere shadow, that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent

> States. Under the influence of this opinion, and thus instructed by experience, the American people, in the conventions of their respective States, adopted the present Constitution." *Cohens*, 19 U.S. at 380-81.[2]

The Constitution — in this case, particularly the Fifth and Fourteenth Amendments — is thus supreme against legislative reduction or evasion. The California courts permitted a statute to eliminate the right to sue to vindicate the Fifth Amendment right to compensation for property taken. To the extent that any legislation can be read as restricting or eliminating the rights under constitutional guarantees, that legislation is "repugnant to the constitution [and] void."

The Constitution itself lays down this rule, in the section commonly referred to as the Supremacy Clause:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, *any Thing in the Constitution or Laws of any State to the Contrary notwithstanding*." (U.S. Const., art. VI, cl. 2, emphasis added.)

---

[2] This Court was keenly aware of the deficiencies of the Articles of Confederation, noting pointedly how national directives "were habitually disregarded [as being] a fact of universal notoriety. With the knowledge of this fact, and under its full pressure, a convention was assembled to change the system." *Id.* at 388. A key part of that change was the Supremacy Clause. *Id.* at 381.

McCulloch was both clear and forceful about how the Supremacy Clause permeated all provisions of the Constitution. It referred to that provision as:

> "a principle which so entirely *pervades* the Constitution, is so *intermixed* with the materials which compose it, so *interwoven* with its web, so *blended* with its texture, as to be incapable of being separated from it without rending it into shreds." *McCulloch*, 17 U.S. at 426 (emphasis added).

The unifying principle is that "the Constitution and the laws made in pursuance thereof are supreme; that *they control the Constitution and laws of the respective States*, and cannot be controlled by them." *McCulloch*, 17 U.S. at 426 (emphasis added).

Indeed, when individual rights are incorporated into the Constitution (through the Bill of Rights), they become part of the Constitution and thus are "supreme" over any state provision. *See Barnette*, 319 U.S. at 638-39.

As Chief Justice Marshall put it, "If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply." *Marbury*, 5 U.S. at 177-78; *see also* 1 Charles Warren, The United States Supreme Court in United States History 14-15 (rev. ed. 1932) (noting that "a supremacy of the Constitution and laws of the Union 'without a supremacy in the exposition and execution of them would be as much a mockery

as a scabbard put into the hands of a soldier without a sword in it.'" (quoting James Madison)).

The Supremacy Clause stands as a barrier to all state laws that trench on the rights of private property owners, like the rigid state statute of limitations applied here.

B. The Just Compensation Clause is a Constitutional Guarantee that This Court has held to be both Self-Executing and Irrevocable. It Does Not Depend Upon Legislative Grace.

Owners' rights to be secure in their property is one of the primary objects for which the national government was formed. In *United States v. Jones*, 565 U.S. 400, 405 (2012), the Court recalled Lord Camden's holding in *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765): "The great end for which men entered into society was to secure their property." This Court explained, "In any society the fullness and sufficiency of the securities which surround the individual in use and enjoyment of his property constitute one of the most certain tests of the character and value of government." *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 324 (1893) (followed by *Olson v. United States*, 292 U.S. 246, 254 (1934)).

This Court held the Fifth Amendment guarantee of compensation does not "depend on the good graces of Congress," explaining:

> "[A] landowner is entitled to bring an action in inverse condemnation as a result of the 'self-executing character of the

> constitutional provision with respect to compensation' . . . . As noted in Justice Brennan's dissent in *San Diego Gas* [], it has been established at least since *Jacobs v. United States*, 290 U.S. 13 (1933), that claims for just compensation are grounded in the Constitution itself[.]" *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 315-16 (1987).

The Court reiterated recently that the Just Compensation Clause is "self-executing." *Knick v. Township of Scott*, 588 U.S. 180, 192 (2019).

In *First English*, the Solicitor General (as amicus curiae) urged that the Fifth Amendment was merely "a limitation on the power of the Government to act, not a remedial provision." *See* 482 U.S. at 316, n.9. The Court rejected that argument, concluding that it was the Constitution itself that both established the right and dictated the remedy. *Id.*

Indeed, even before *San Diego Gas* and *First English*, this Court found:

> "whether the theory . . . be that there was a taking under the Fifth Amendment, and that therefore the Tucker Act may be invoked because it is a claim founded upon the Constitution, or that there was an implied promise by the Government to pay for it, is immaterial. In either event, the claim traces back to the prohibition of the Fifth Amendment . . . ." *United States v. Dickinson*, 331 U.S. 745, 748 (1947).

The Fifth Amendment "prevents the public from loading upon one individual more than his just share of the burdens of government and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him." *Monongahela*, 148 U.S. at 325. In other words, cash may not heal all wounds, but it is a constitutionally acceptable remedy for unconstitutional government action.

When the government takes an owner's property, the government has a "categorical duty" to comply with the Fifth Amendment. *See Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012); *Horne v. Dept. of Agriculture*, 576 U.S. 350, 362 (2015). The government may not escape this "categorical duty" by creating a statutory scheme that truncates the Constitutionally guaranteed compensation when property is taken. Thus, in *First English*, this Court held that California had "truncated" the Fifth Amendment's rule by refusing compensation for any part of the time that the regulation precluded use of the property. 482 U.S. at 317. So, here, California is up to its old tricks. The California Court of Appeal "truncated" the compensation rule by the use and approval of ex parte procedures that denied Sunshine both notice and hearing before court actions affecting its property.

More than that, this Court recently held that the duty to pay just compensation when government takes private property is "irrevocable." *Knick*, 588 U.S. at 192. A right that is both "self-executing" and

"irrevocable" cannot be eliminated by a state statute merely establishing the duties of receivers.

In a somewhat different context, the Court had no trouble in explaining the priority of the Constitution over lower forms of regulation, noting that "[t]he protections afforded by the Commerce Clause cannot be made to depend on the good grace of a state agency." *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 583 (1986). Governmental "grace" cannot overcome the Constitution.

The same is true here, where Dana Point's violation of settled requirements of notice, both of the appointment of the Receiver and the sale of the property by foreclosure, prevented Sunshine from timely asserting its rights. The City failed even to substantively address Sunshine's argument that its due process rights were violated when the property was sold at a foreclosure auction without court approval or the opportunity for Sunshine to be heard. Such unconstitutional actions cannot be countenanced.

CONCLUSION

The California courts once again ignored Constitutional dictates designed to protect private property owners. The brief opinion below found multiple ways to violate the Fifth Amendment. This must stop. The petition for certiorari should be granted.

MICHAEL M. BERGER*
**Counsel of Record*
MANATT, PHELPS & PHILLIPS
2049 Century Park East, Suite 1700
Los Angeles, CA 90067-3119
(310) 312-4000
mmberger@manatt.com
Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE COURT OF APPEAL OF CALIFORNIA FOR THE FOURTH APPELLATE DISTRICT, DIVISION THREE, FILED APRIL 21, 2025

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

G062484, G062828
(Super. Ct. No. 30-2017-00915900)

CITY OF DANA POINT,

Plaintiff and Respondent,

v.

THE SUNSHINE GROUP, LLC,

Defendant and Appellant;

MARK SAMUEL ADAMS,

Real Party in Interest and Respondent.

Filed April 21, 2025

Appeals from an order and judgment of the Superior Court of Orange County, Theodore R. Howard, Judge, and James Hansen, Temporary Judge (pursuant to Cal. Const., art. VI, § 21). Affirmed. Request for Judicial Notice. Granted.

Appendix A

* * *

In 2016, an inspection of an approximately 80-year-old commercial inn revealed substandard conditions which violated various code provisions and posed an immediate and significant health and safety hazard to the public. Respondent the City of Dana Point (the City) deemed the property not habitable until the substandard conditions were fixed and so notified the property's owner, Appellant The Sunshine Group, LLC (Sunshine).

After Sunshine failed to take action to correct the substandard conditions, the City filed a petition for the appointment of a receiver pursuant to Health and Safety Code section 17980.7, subdivision (c) (section 17980.7(c)).[1] The trial court granted the petition and appointed Real Party in Interest Mark Samuel Adams (receiver) as the receiver for the property. Following extensive litigation and the sale of the property, in March 2023, the trial court granted the receiver's motion for an order discharging the receiver and exonerating the surety and ordered Sunshine to pay the receiver and the City certain fees and costs. Judgment was entered accordingly.

We affirm. For the reasons we explain, we conclude (1) the trial court did not misconstrue or misapply section 17980.7(c) and did not abuse its discretion in allowing the receiver to address the health and safety violations while also preserving the property's historic character;

1. All further code references are to the Health and Safety Code unless otherwise specified.

(2) Sunshine's due process rights were not violated by the trial court's approval of the sale of the property via ex parte application because Sunshine was no longer the owner of the property at the time the application was filed; (3) the trial court did not abuse its discretion by rejecting Sunshine's argument the receiver failed to be impartial and denying its motion to surcharge the receiver; (4) the trial court did not abuse its discretion in awarding fees to the receiver; and (5) the trial court did not abuse its discretion in awarding fees to the City.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Sunshine Is Notified of Substandard Conditions on the Property and Fails to Take Any Corrective Action

In 1998, Sunshine acquired a 1.09 acre parcel of real property in the City upon which stood an approximately 80-year-old commercial inn known as the Seaside Property Inn-Capistrano Seaside Inn (the property). The property is located on Pacific Coast Highway, directly across the street from the Pacific Ocean. Dr. Ramesh K. Manchanda is Sunshine's managing partner.

In 2016, following a "fire and life safety inspection" of the property, the City and county officials identified health and safety hazards and code violations at the property, including the lack of a working fire alarm, smoke detector, or sprinkler system, and the presence of flammable

materials, dead and dying vegetation adjacent to and overhanging the property, unlabeled hazardous chemicals, sliding locking devices, deadbolts, and obstructions to doorways and windows preventing egress. In addition, the property had become "a target of opportunity for the local homeless population."

Consequently, in a letter dated September 1, 2016 (the letter), the City notified Sunshine that after the inspection of the property revealed "multiple substandard/dangerous conditions," the property had been declared to be "substandard, dangerous and a public nuisance." Attachments to the letter included a "Notice of Substandard Building" (the notice) which identified health and safety hazards and code violations at the property. The notice identified alterations that had been made to the property without permits, compromising the property's structural integrity, electrical system, and general safety. The letter informed Sunshine it had until October 3, 2016 to begin taking the specified corrective actions required to abate the substandard conditions, and until December 5, 2016 to complete such actions. Sunshine was further notified it had to obtain all required permits before beginning that work.

Also attached to the letter was a "Fire and Life Safety Inspection Notice" identifying the fire and safety violations at the property that required corrective action to bring the property into compliance with the fire codes and to eliminate fire and life safety risks associated with the property. The county fire inspector who issued that notice declared the property posed a high fire risk and

severe hazards to occupants and first responders and demonstrated "a threat to life safety."

Staff members of the City met with Sunshine's representative several times in October 2016 and again in January 2017, during which meetings the staff members "informed [the representative] in detail of the process that was required to bring the Property into compliance with State and Local Laws, as well as the potential complexities associated with demolition and new development at the Property as a result of its low cost affordable accommodation and historic resource designations." After each meeting, Sunshine's representative assured City staff that the requisite permit applications would be filed "'this week.'"

After Sunshine failed to file any application for permits relating to the property's rehabilitation and repair, or the prevention of further deterioration, on March 21, 2017, the City Council voted to authorize litigation seeking the appointment of a receiver over the property. About two weeks later, on April 5, 2017, Sunshine submitted an application for a coastal development permit to demolish the property.

II.

The City Successfully Petitions the Trial Court to Appoint a Receiver

In April 2017, the City initiated this action by filing a petition and motion for an order appointing a receiver

for the property and requiring reimbursements under section 17980.7 (the petition). In support of the petition, the City filed a declaration of its director of community development which stated, inter alia, the property was then categorized as a low cost affordable accommodation and was not only listed as an historic resource on the City's Historic Resource Inventory, it was listed as an historic resource on the California Register of Historic Resources.

Following a hearing on April 25, 2017, the trial court appointed "California Receivership Group, a California public benefit corporation, through its president Mark Adams ('Receiver') . . . as the Receiver for the Property and . . . delegated [to the receiver] the duty and power to correct all of the existing violations now existing upon the property and to see to it that the violations do not reoccur." In its order, the trial court granted the receiver the authority under section 17980.7(c)(4)(H) and Code of Civil Procedure section 568 "to generally do such acts respecting the Property as this Court may authorize," and further ordered the receiver to "immediately supervise and coordinate the inspection of the Property and securing of the Property in order to assess the necessary work and prohibit the Property from entry by unauthorized persons."

In addition, the court "specifically empowered" the receiver to (1) "take full and complete control of the Property"; (2) manage the property; (3) "secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the offending conditions set forth in the City's notice to

abate"; (4) employ a licensed contractor as necessary to correct offending conditions; (5) borrow funds to pay for repairs as necessary and "secure that debt with a super-priority lien on the Property"; (6) "exercise the powers granted to receivers under section 568 of the Code of Civil Procedure"; and (7) "apply to this Court for further or other instructions or orders and for further powers necessary to enable the Receiver to perform its duties properly, or to address unforeseen circumstances that may arise with respect to this receivership."

III.

The Trial Court Approves the Construction Plan to Remediate the Property and the Additional Funding Request, and Rejects Sunshine's Motion to Terminate the Receivership

In 2017, the receiver reported to the court Sunshine expressed its preference to have the property's structures demolished and to "build anew." He further reported it was the City's position that the property should be preserved because it was listed as an historic resource and was categorized as "'a low cost affordable accommodation.'"[2]

2. Section 17980, subdivision (c)(2) provides: "In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element." (See Pub. Resources Code, § 30213

The receiver advised the court that, in his opinion, the property could be rehabilitated and should not be demolished. He further advised that Miken Construction (Miken), a licensed contractor California Receiver Group has used on similar properties throughout California, performed a thorough inspection of the entire property on May 15, 2017 and thereafter provided an initial cost estimate of $863,000 to remediate all of the issues at the property.

The receiver additionally "obtained an initial value estimate from a firm which specializes in hospitality properties," which estimated "the 'as improved' value of the Property will be at least $6 million," such that the cost of remediation should "be more than offset by the increased value of the Property." Sunshine disputed the property as rehabilitated would be profitable.

Following the July 7, 2017 hearing on an order to show cause to confirm the receiver's appointment and to approve the receiver's initial funding request, the trial court observed that Sunshine's proposed demolition plan would likely be subject to regulations of the Coastal Commission. The court explained the purpose of the receivership was to abate substandard property, not to ensure a property's profitability. The trial court confirmed the receiver's appointment, approved the receiver's recommended

---

["Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided"].) In the respondent's brief, the City cited Dana Point Municipal Code section 9.07.250 which it described as "setting forth [a] program to preserve historic properties."

abatement plan, and approved increasing the receiver's certificates.

The following month, the receiver learned that because the required repairs encompassed over 50 percent of the property, architectural drawings would need to be submitted to and approved by the City and all repairs would need to be brought up to the current code. The receiver retained Architectural Resources Group (ARG), an architectural firm specializing in historic properties, to develop construction plans "that both preserve the historical significance of the Property while addressing the necessary health and safety repairs, all while utilizing the Historic Building Code, which would significantly reduce construction costs by avoiding certain requirements that would be necessary under current code standards."

The receiver reported that after the receiver provided copies of ARG's final construction drawing and project manual to Sunshine's principal, Manchanda, for his contractors to prepare competing bids, the receiver filed a motion requesting an additional $4 million in funding to cover the construction costs necessary to complete the remediation, cover the estimated security costs during construction, and cover the estimated receiver and City fees throughout the construction period. The receiver stated he expected Manchanda to submit alternative bids for the trial court's consideration, but no such bids were submitted.

Sunshine opposed the receiver's motion for additional funding and filed a motion to terminate the receivership. In a detailed minute order dated October 26, 2018, the trial court granted the receiver's motion to increase the receiver's certificate, to be secured by a super-priority deed of trust, and denied Sunshine's motion to terminate the receivership. The court found the receiver substantiated the amount of funding requested and that various costs appeared reasonable to the court.

The court also found Sunshine's "moving papers do not set forth sufficient grounds to terminate the receivership." As to Sunshine's argument the receivership was taking too long, the court found "many of the delays have been due to [Sunshine]'s actions and/or inactions." The court also noted while Sunshine "takes issue with the proposed construction and remediation costs . . . [it] has not provided any reasonable alternative, other than to repeatedly demand authorization to demolish the property." The court added that while Sunshine titled its motion as one seeking to terminate the receivership, its motion "again repeats [its] request for an order allowing it to demolish the property. This request has been rejected in the past. The purpose of the receivership here is to abate the substandard conditions at the property, while at the same time maintaining its historical character and compliance with Coastal Act requirements; demolition would not further these goals."

Appendix A

IV.

Sunshine's Appeal from the Order Approving the Receiver's Funding Request and Its Bankruptcy Petition

Sunshine appealed from the trial court's order approving the receiver's funding request and filed a petition for writ of supersedeas in this court seeking a stay of that order pending its appeal. In November 2018, this court issued the requested stay, but in December 2018, denied the petition and dissolved the stay.

The receiver issued a receiver's certificate to Miken to provide Miken security for its work on the property and filed an ex parte application seeking court approval of the subordination of the original receiver's certificate that had been issued in favor of Manchanda. The day before the hearing on the receiver's ex parte application in March 2019, Sunshine filed a bankruptcy petition. Sunshine also filed a motion requesting the bankruptcy court approve the sale of the property to Dr. Nirmal Kumar, a friend of Manchanda's. The bankruptcy court denied Sunshine's motion, concluding Sunshine had attempted "to forum shop its way into a potentially friendlier venue" which the court found "to be an abuse of the judicial process and inconsistent with the spirit of the Bankruptcy Code," and dismissed the bankruptcy case.[3] Sunshine eventually dismissed its appeal.

---

3. The Ninth Circuit Bankruptcy Appellate Panel later affirmed the dismissal order.

Following a court-ordered mandatory settlement conference, the parties and the receiver agreed to the implementation of the remediation plan approved by the court on October 26, 2018 and specifically agreed to the sale of the property for no less than $3.1 million and contingent on the buyer's agreement to complete the repairs and the receiver's monitoring to ensure the proper and timely completion of the remediation process (the settlement agreement).

V.

The Receiver Entertains Offers to Purchase the Property But the Court Does Not Approve a Qualifying Offer After the Receiver Clarifies the Property Was Not *Listed* on an Historic Registry

In April 2019, the trial court authorized the receiver to sell the property. After receiving several offers, the receiver filed a motion to confirm the sale of the property "as is" for $3.1 million pursuant to the terms of the settlement agreement. The receiver informed the court that a $3.85 million offer had been submitted by Kumar, but he did not agree to the remediation of the property pursuant to the plan approved by the court and required by the settlement agreement. In support of its motion, the receiver filed his declaration in which he informed the court he had learned the property was not *listed* as an historic resource on the California Register of Historic Resources or the Dana Point Historic Resources Inventory, but was eligible to be on those lists.

In July 2019, the receiver reported having received another and higher offer to purchase the property, this time from Artist Guild Hospitality, LLC (AGH), which also agreed to remediate the property pursuant to the court's order and the settlement agreement. The receiver received three other bids to purchase the property, but only one of those three proposed buyers agreed to comply with the remediation requirement of the settlement agreement. That bidder's offer, however, was about $600,000 less than AGH's offer.

The receiver recommended the court approve AGH's $3.8 million offer to purchase the property. In October 2019, however, the trial court denied the receiver's motion for approval to sell the property on the ground there had been a "mistake of fact" as to whether the property was included on an historical resources list. The court did not vacate the settlement agreement, but "left it to the parties to work out a resolution based on the additional option of demolition." The court made no ruling on the property's status as an historic resource.

VI.

After The Super-priority Receiver's Certificate Matures and Refinancing Efforts Fail, the Property Is Sold to Miken at a Trustee's Sale; the Court Thereafter Approves the Sale of the Property to AGH

In August 2020, the super-priority receiver's certificate funded by Glan Investments matured. After

the receiver's unsuccessful negotiations with Manchanda to refinance the note, Miken, a junior lien holder, agreed with Glan Investments to take assignment of the matured super-priority receiver's certificate. Because Manchanda did not agree to pay off what was now Miken's note, a payoff the receiver explained "would [have] extinguish[ed] it and remove[d] it as debt on the Property," Miken proceeded with a trustee's sale of the property on July 20, 2020. This sale was attended by both Manchanda and Kumar. No bids, however, were submitted and the property was sold to Miken for the credit bid amount.

In May 2021, the City filed an ex parte application asking the trial court to approve the settlement agreement and authorize Miken's sale of the property to AGH. The court granted the application, approved the settlement agreement, and authorized Miken's sale of the property to AGH, which closed on June 23, 2021.

VII.

The Trial Court Grants the Receiver's Motion for Discharge, Exoneration of Surety, and Payment of Costs and Fees; Denies Sunshine's Surcharge Motion; and Awards the City Its Attorney Fees

In October 2021, the receiver filed a motion for discharge of receiver, exoneration of surety, and payment of fees and costs; the motion was set for hearing in March 2022. Sunshine thereafter filed five ex parte applications, a petition for writ of mandate in this court which was denied, and a petition for review in the California Supreme

Court which was denied. Sunshine also filed a motion to surcharge the receiver.

Almost one and a half years later, on March 1, 2023, the trial court issued a minute order (1) granting the receiver's motion for discharge of receiver, exoneration of surety, and payment of receivership fees; (2) awarding the receiver a total of $488,548.66 in fees, including $459,833.62 enforceable against Sunshine; (3) awarding the City $841,382.88 in attorney fees against Sunshine; and (4) denying Sunshine's motion to surcharge the receiver. In its order, the trial court found the property was an historic resource and that it was not also listed on an historic registry was inconsequential. Additionally, as to Sunshine's arguments the receiver had failed to act impartially, the trial court erred by approving Miken's sale of the property to AGH via an ex parte application, and the court further erred by awarding fees to the receiver and to the City, the trial court rejected each.

In its order, the court observed, inter alia, Sunshine's own lengthy delays and/or inaction led to the property being sold at a trustee's sale. The court also found Sunshine had every opportunity to assume the liens on the property to avoid the trustee's sale, to purchase the property at the trustee's sale, or to proceed with the remediation plans, but failed to do so. Instead, the court found, Sunshine "participated in lengthy protracted legal maneuvering that ultimately led to the Property being sold to Miken due to Sunshine not meaningfully participating in remediating the issues that brought about this action."

Sunshine timely filed a notice of appeal from the March 1, 2023 minute order under the collateral order doctrine. (See *Schreiber v. Ditch Road Investors* (1980) 105 Cal.App.3d 675, 677, 164 Cal. Rptr. 633.)

VIII.

The Judgment

On June 13, 2023, final judgment was entered in favor of the City and the receiver and against Sunshine. The judgment stated the receiver's motion for discharge of receiver, exoneration of security, and payment of receivership fees was granted and judgment was entered in favor of the City and the receiver. The judgment awarded the receiver $459,833.62 in fees and costs against Sunshine and awarded the City $841,382.88 in attorney fees against Sunshine.

Sunshine filed a timely notice of appeal from the judgment. Sunshine filed an unopposed motion to consolidate its two appeals. This court granted that motion.

REQUEST FOR JUDICIAL NOTICE

The City has filed an unopposed request for judicial notice requesting this court take judicial notice of the following: (1) the City's opposition to Sunshine's election of remedies (demolition) filed on October 9, 2019; (2) the City's petition for a peremptory writ of mandate filed with this court on October 18, 2019; and (3) this court's October

31, 2019 order denying the City's petition for peremptory writ of mandate.

We treat the City's request for judicial notice of the City's opposition to Sunshine's election of remedies filed on October 9, 2019 as a motion to augment the record under California Rules of Court, rule 8.155(a)(1); we grant that request. We also grant the City's request for judicial notice of the City's petition for a peremptory writ of mandate filed in this court on October 18, 2019, and our October 31, 2019 order denying that petition. (Evid. Code, §§ 452, 459.)

DISCUSSION

I.

The Trial Court Did Not Misconstrue or Misapply Section 17980.7(c) or Otherwise Abuse Its Discretion With Respect to The Receiver's Statutory Authority

Sunshine argues the trial court "misconstrued and misapplied" section 17980.7(c) by "allow[ing] the receiver to act far beyond the scope of his appointment under the statute." (Boldface and capitalization omitted.) For the reasons we will explain, Sunshine has failed to show the trial court erred.

A. Overview of Receiverships Under Section 17980.7

"Sections 17980.6 and 17980.7 of the Health and Safety Code[] compose a statutory scheme providing certain remedies to address substandard residential housing

that is unsafe to occupy. Pursuant to section 17980.6, an enforcement agency may issue a notice to an owner to repair or abate property conditions that violate state or local building standards and substantially endanger the health and safety of residents or the public. Section 17980.7 provides that, if the owner fails to comply with the notice despite having been afforded a reasonable opportunity to do so, the enforcement agency may seek judicial appointment of a receiver to assume control over the property and remediate the violations or take other appropriate action." (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 912, 76 Cal. Rptr. 3d 483, 182 P.3d 1027 (*Gonzalez*), fn. omitted.)

"The function of the receiver is to aid the court in preserving and managing the property involved in a particular lawsuit for the benefit of those to whom it can ultimately be determined to belong. [Citations.] A receiver is an officer of the court and is subject to the court's continuing control. . . . The receiver, acting for the court, is not the agent of any party but acts for the benefit of all holding an interest in the receivership property. . . . [¶] . . . The receiver acquires no title in the property but instead acts as an officer of the court, and title remains vested in those persons or entities in whom it was vested when the receiver was appointed." (*City of Sierra Madre v. SunTrust Mortgage, Inc.* (2019) 32 Cal.App.5th 648, 656, 244 Cal. Rptr. 3d 118 (*SunTrust*).)

"[T]he functions and powers of a receiver are controlled by statute, by the order of appointment, and

by the court's subsequent orders." (*Gonzalez, supra*, 43 Cal.4th at p. 930.) Section 17980.7(c)(4) provides in part: "(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

"(A) To take full and complete control of the substandard property.

"(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

"(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

"(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation. [¶] . . .

"(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation . . . and, with court approval, secure that debt and any moneys owed to . . . the receiver for services performed pursuant to this article with a lien on the real property upon which the substandard building is located. . . .

"(H) To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure."[4]

B. Governing Standards of Review

"Our determination of the proper scope of the trial court's authority and inquiry under section 17980.7(c) is a matter of statutory construction we review de novo." (*City of Desert Hot Springs v. Valenti* (2019) 43 Cal.App.5th 788, 793, 256 Cal. Rptr. 3d 876.) Most matters related to receiverships, however, "rest in the sound discretion of the trial court" and will not be disturbed on appeal absent an abuse of that discretion. (*SunTrust, supra*, 32 Cal.App.5th at pp. 657-658, 660; see *Gonzalez, supra*, 43 Cal.4th at p. 931 [the trial court's rulings with respect to receivership matters are typically "afforded considerable deference on review"].) "Such deference is the rule, even where the court confirms extraordinary action by the receiver, such as a sale of real property." (*Gonzalez*, at p. 931.)

C. Sunshine Failed to Show the Trial Court Allowed the Receiver to Act Beyond the Scope of His Authority Under Section 17980.7(c)

Sunshine does not argue the trial court ever expressly authorized the receiver to act in excess of powers provided

4. "The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and *generally to do such acts respecting the property as the court may authorize*." (Code Civ. Proc., § 568, italics added.)

in section 17980.7(c). Instead, Sunshine argues the court erred by allowing the receiver to take statutorily unauthorized action. In its opening brief, Sunshine argues "[t]he statutory scheme does not . . . provide for the trial court to go beyond the remediation of . . . alleged violations to require the full restoration of a historic resource," and yet, the receiver "did not limit his actions to remediating the violations set forth in the City's September 1, 2016 notice of violation." Sunshine's argument continues: "[T]he facts show that the Receiver spent all his time, and incurred exorbitant fees by, allying himself to the City in its quest to restore the Property according to historic standards, instead of focusing only on abatement work to address the health and safety violations identified by the City." It further argues: "Simply put, by not considering the limits on what the Receiver was authorized to do under the statute and, instead, allowing the Receiver to require work be done to the more exacting ARG architectural standards for the 'historic characteristics of the Property' [citations] despite the fact that the costs of remediation according to those standards was almost $2 million more than the cost for a non-historic site [citation], the Court erred because the statute does not authorize that."

In support of its argument on this point, Sunshine only offers one set of string cites to pages in the record without any accompanying description or discussion. Those string record citations (to the extent they are relevant to its argument) reference excerpts from the receiver's reports and other filings with the court in which the receiver simply reports his efforts to address the property's substandard conditions and code violations while preserving the property's historical character.

It is fundamental to appellate review "a judgment is presumed correct" and "all intendments and presumptions are indulged in favor of correctness." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58, 58 Cal. Rptr. 3d 225.) It is also fundamental: "The one contesting [the judgment] thus bears the burden of showing legal error. That requires legal authority." (*Singman v. IMDB.com, Inc.* (2021) 72 Cal.App.5th 1150, 1151, 287 Cal. Rptr. 3d 717.) "'This means that an appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record. [Citations.]' [Citation.] Accordingly, the California Rules of Court expressly require appellate briefs to '[s]tate each point . . . and support each point by argument and, if possible, by citation of authority' and to '[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.' (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C).)" (*L.O. v. Kilrain* (2023) 96 Cal. App.5th 616, 619-620, 314 Cal. Rptr. 3d 470.) Furthermore, "'[w]hen legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration. . . . We are not required to examine undeveloped claims or to supply arguments for the litigants.'" (*Martine v. Heavenly Valley Limited Partnership* (2018) 27 Cal.App.5th 715, 728, 238 Cal. Rptr. 3d 237 (*Martine*).)

Here, Sunshine's cited evidence the receiver reported to the court he was working to address the property's

health and safety violations while preserving the historic character of the property does not, in and of itself, establish that the receiver exceeded the scope of his authority under section 17980.7(c); Sunshine does not argue otherwise. Its argument depends on the additional assertions the receiver improperly allied with the City, "spent all his time" incurring exorbitant fees in a quest to embark on a $2 million restoration project, and imposed unnecessarily exacting architectural standards, instead of focusing on remediating the property's health and safety violations. Those assertions, however, are unsupported by citations to evidence in the record and its argument does not include any relevant legal analysis with citations to legal authority. Consequently, Sunshine's argument the trial court erred by allowing the receiver to exceed his statutory authority is forfeited.

Even if this argument were not forfeited, however, we would conclude it is without merit. There is no dispute the property required extensive remediation at the time the receiver was appointed. Attachment A to the letter reported the property's grounds and structures had not been maintained "for some time" and appeared dilapidated, and "[u]npermitted and hazardous structural members, electrical conditions and Fire Code violations constitute[d] an immediate life, safety hazard." As to the referenced unpermitted hazards, attachment A specifies the electrical system to "the Inn Keepers Cottage" and the guest rooms had been altered, the "structural integrity" of the guest rooms, garage, and laundry room had also been altered, and the guest room bathrooms had been remodeled, all without permits, resulting in "immediate hazardous/dangerous condition[s]."

Sunshine does not challenge in this appeal the validity of the letter, any of the substandard conditions and code violations identified in the attachments to the letter, or the court's order appointing a receiver for the property in the first place. Significantly, Sunshine does not dispute the property is an "'historical resource'" within the meaning of section 5024.1, subdivision (g) of the Public Resources Code, and section 15064.5(a) of title 14 of the California Code of Regulations, as found by the trial court in its March 1, 2023 order. And Sunshine does not dispute, as stated by the trial court in the same order, "[a] significant change in a historical resource . . . will have a significant effect on the environment under the code and qualify for special consideration."

Notwithstanding these concessions, Sunshine argues the receiver exceeded his statutory authority because he endeavored to address the identified code violations and substandard conditions in a manner that also preserved the property's established historic character. We conclude the trial court had discretion under section 17980.7(c) to order the receiver to remediate the noticed health and safety violations while preserving the property's historic character. Here, in appointing the receiver, the trial court exercised that discretion by, inter alia, authorizing funds to be used by the receiver "to *preserve* and maintain the Property and to help ensure the rehabilitation and cleanup of said property as the Receiver sees fit to order." (Italics added.) Moreover, the receiver's reports cited by Sunshine as discussed *ante* show that throughout the litigation the receiver dutifully informed the court of his efforts to address the health and safety violations while preserving

the historic character of the property. Hence the record does not establish the receiver ever acted outside the supervision and approval of the trial court in performing his duties, and Sunshine does not argue otherwise.

In sum, we conclude Sunshine failed to show the trial court misunderstood or misapplied section 17980.7 or abused its discretion under that statute by allowing the receiver to work to preserve the property's historical character while remediating the noticed health and safety violations.

II.

Sunshine Did Not Own the Property at the Time the Trial Court Granted the Receiver Its Approval to Sell the Property

In its opening brief, Sunshine argues the trial court erred by granting the City's ex parte application seeking court approval to sell the property instead of requiring the City to file a noticed motion "with evidence and witnesses" before giving such approval. Sunshine acknowledges section 17980.7(c)(4) vests in receivers "substantial powers over substandard property" and "may sometimes even sell the real property they control." (See *Gonzalez, supra*, 43 Cal.4th at p. 930 [holding § 17980.7 "empowers the receiver to sell the property or to take any other action respecting the property as the court may authorize"]; *Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 273-274, 187 Cal. Rptr. 703 ["Code of Civil Procedure sections 568 and 568.5 authorize

the receiver to perform such acts respecting the property as the court may authorize, including the sale of real and personal property upon notice and subject to court confirmation" (fns. omitted)].)

Sunshine argues here, however, "[t]he proposed sale of the Property affected Sunshine's important right to control and enjoy its property, and therefore, the considerations weighed in favor of the most robust procedural protections to decrease the likelihood of erroneous taking of private property rights." Sunshine further argues: "As a result of the Court's decision to grant the requested relief on an ex parte basis, Sunshine was divested of its property through the acts of the Receiver and the rushed sale of the Property to Miken, which gave it the appearance of an insider deal and simply does not comport with due process rights and protections."

The main problem with Sunshine's due process argument is that at the time the City applied ex parte for an order approving the sale of the property in May 2021, Sunshine no longer owned the property. As explained in the March 1, 2023 minute order, "Sunshine's own lengthy delays and/or inaction led [to] the Property being sold at a Trustee's sale" almost a year earlier in July 2020. In the March 1, 2023 minute order, the trial court explained: "Sunshine had every opportunity to assume the liens on the Property in order to avoid a Trustee's sale, to purchase the Property at the Trustee's sale, or proceed with remediation plans, but failed to do so. Instead, Sunshine participated in lengthy protracted legal maneuvering that ultimately led to the Property being sold to Miken." The

City's ex parte application itself explains that in 2020, Glan Investments initiated foreclosure proceedings on its receiver's certificate and, during that process, Miken purchased the Glan note and then became the owner of the property.

Even if Sunshine had been the owner of the property at the time the City filed the ex parte application, Sunshine does not explain why the asserted procedural error would require reversal, particularly given the fact Sunshine filed an opposition to the ex parte application. Sunshine asserts its due process rights were violated, but does not provide relevant constitutional analysis. Instead it merely argues it was not given the opportunity to present witnesses and other evidence it neither identified nor described in its opposition to the ex parte application or in their appellate briefs in this appeal.

As any procedural deficiency in the City's manner of obtaining court approval for the sale of the property from Miken to AGH did not affect Sunshine, much less deprive it of its constitutional rights to due process, Sunshine has failed to show prejudicial error in the court's order granting the receiver's ex parte application.

Appendix A

III.

The Trial Court Did Not Abuse Its Discretion in Rejecting Sunshine's Argument the Receiver Had Failed to Act Impartially and for the Benefit of All Parties

Sunshine next argues its due process rights were violated because the receiver failed to be impartial and act for the benefit of all parties. In the opening brief, Sunshine states: "From the outset of the Receivership, the Receiver failed to preserve and manage the Property for the benefit of Sunshine, the owner of the Property, despite its obligation to act in the interests of not only the City, but Sunshine as well. [Citation.] Whether by refusing to secure competitive bids before selecting his own contractor, or by failing to investigate the City's claim that the Property was designated as historic, the Receiver acted against the interests of Sunshine, only later admitting that the City was wrong. [Citation.] Indeed, throughout the litigation, the Receiver did the City's bidding, by insisting on the restoration of the Property according to the standards for a historic resource, denying Sunshine's repeated requests for an economic feasibility study, rejecting all reasonable alternatives—such as demolition—presented by Sunshine, and summarily dismissing high offers from potential buyers who were perceived by the Receiver to have a relationship with Sunshine and/or its managing member, Dr. Manchanda." (Boldface and italics omitted.)

Again, Sunshine offers no legal analysis or citations to evidence in the record in support of its argument except

to cite the following portion of the receiver's declaration filed in support of his motion for authority to approve and confirm the sale of the property: "The Property is not listed as an historic resource on both the California Register of Historic Resources, and the Dana Point Historic Resources Inventory, rather, it is eligible to be on those lists. I had previously relied on statements made by the City of Dana Point."

In its March 1, 2023 order denying Sunshine's motion to surcharge the receiver, the trial court expressly addressed and rejected Sunshine's contention the receiver failed to be impartial. The court stated that while the City official's misstatement that the property was already listed on an historic registry resulted in a "misunderstanding," the "City and Receiver's incorrect belief the Property was actually list[ed] on a historical index when it was not, d[id] not support a surcharge." The court explained the misunderstanding was not consequential because the property, although not already listed on an historical index, constituted an "'historical resource'" pursuant to section 15064.5(a) of title 14 of the California Code of Regulations and section 5024.1, subdivision (g) of the Public Resources Code. The court further noted the property's "'historical resource'" qualification was determined back in 1997 and 2016—well before the instant litigation commenced—rendering it eligible for listing on historical indexes. Sunshine does not address any of the trial court's findings on this point much less explain how the trial court abused its discretion in concluding the misunderstanding regarding the property's historic registry status did not show the receiver had been impartial and should be subject to surcharge.

As to other asserted instances of the receiver's lack of neutrality, again, Sunshine does not cite to the record or to legal authority, or otherwise provide any legal analysis supporting its position, and thus has forfeited its argument on this point. (*Martine, supra*, 27 Cal.App.5th at p. 728 [appellate issue forfeited when unsupported by legal argument with citation to authority].)

If we were to reach Sunshine's additional arguments on the issue of the receiver's neutrality, we would find them to be without merit. In granting the receiver's motion to increase the amount of the receiver's certificate in October 2018, the trial court addressed and rejected Sunshine's contention the receiver refused to consider competitive bids as "speculative and argumentative at best."

In addition, in the March 1, 2023 order, the trial court also expressly found "there is no evidence Receiver lacked neutrality."[5] The court explained: "Working with

5. In its opening brief, Sunshine cites to a 2020 tentative ruling on a motion for interim receiver fees in which one of the trial judges involved in this case stated: "'Instead of maintaining neutrality, the receiver appears to have repeatedly found reasons not to demolish. . . . Here, the receiver may appear to have advanced the City's position and vision and perhaps misplaced neutrality in favor of expedience which of course was not expedient at all.'" (Boldface and italics omitted.) That tentative decision never became the trial court's final decision. "[A] tentative statement of decision is not binding on the trial court and can be modified or changed as the judge sees fit before entry of judgment. [Citations.] A tentative decision cannot be relied on to impeach the judgment on appeal." (*FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1284, 95 Cal. Rptr. 3d 307.) As we discuss *ante*, in the trial

companies (such as Glan and Miken) on prior or subsequent occasions does not violate a receiver's duty of neutrality. Receiver[]s would be unable to act in their official capacity if they were only permitted to use the services of companies once. There is no evidence of collusion between Receiver and any other party that has been involved in this matter." The court added the evidence presented by Sunshine does not support a finding the receiver acted as "'secret escrow agency for a private money lender'" as contended by Sunshine.

As for considering demolition as an option for the property, the trial court stated: "A significant change in a historical resource, such as demolition, will have a significant effect on the environment under the code and qualify for special consideration." In any event, the court found that the receiver "proceeding with rehabilitation versus demolition did not cause any damage to Sunshine."

Sunshine has not addressed the above cited court orders or otherwise challenged the trial court's analysis rejecting Sunshine's contentions the receiver lacked impartiality. We see no basis for concluding the trial court abused its discretion in evaluating Sunshine's arguments.

In addition, Sunshine has failed to show the receiver refused its request for a feasibility study or that the receiver summarily dismissed any qualifying competitive offers from potential buyers of the property.

---

court's subsequent March 1, 2023 order, the court expressly found the receiver had not "lacked neutrality" and judgment was entered accordingly.

As we find no error in the court's analysis of Sunshine's argument the receiver lacked impartiality, we find no error in the court's denial of Sunshine's motion for a surcharge brought on that basis.

IV.

The Trial Court Did Not Abuse Its Discretion in Awarding the Receiver Fees and Costs

Sunshine argues the trial court erred by awarding the receiver fees and costs. Sunshine's argument is unpersuasive.

A. Governing Legal Principles and Standard of Review

"'Receivers are entitled to compensation for their own services and the services performed by their attorneys.'" (*Southern California Sunbelt Developers, Inc. v. Banyan Limited Partnership* (2017) 8 Cal.App.5th 910, 922, 214 Cal. Rptr. 3d 719; see § 17980.7(c)(5) ["The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages"].) "[T]he amount of compensation paid to a receiver is within the court's discretion. [Citation.] And although the receiver's compensation is typically paid from the receivership estate, the court has considerable discretion to determine who must ultimately bear the cost of the receivership." (*SunTrust, supra*, 32 Cal.App.5th at p. 657.)

B. The Trial Court Awarded the Receiver a Reduced Amount of Fees and Costs

In the March 1, 2023 order, the trial court awarded the receiver an amount of fees and costs that was 39 percent less than what the receiver had requested. The court explained its fees and costs award as follows:

"Receiver presently requests final payment of the additional remaining fees and costs of $2,061,163, which comes from $1,053,385.08 for combined Receiver fees and costs, and $1,007,778.32 for City of Dana Point's ('City') fees and costs. [Citations.] There are no funds remaining in the receivership accounts at this time. [Citation.] Receiver requests the court hold Sunshine and Manchanda jointly and severally liable for the unpaid costs. Those unpaid costs are:

Amount:	Purpose:	Payable to:
$849,048.00	Unpaid Receiver fees between May 2019 through September 2021	Receiver
$6,690.65	Unreimbursed costs to CRG	Receiver
$172,646,43	Unpaid attorney fees to Receiver's counsel	Receiver
$25,000.00	Anticipated additional fees incurred through to hearing	Receiver
$1,007,778.32	City's unpaid Attorney fees and Costs	City

"[¶] . . . [¶]

"The present motion only requests unpaid receiver fees from May 2019 through September 2021 in the amount of $849,048.00. In reviewing the invoices submitted by Receiver, the amounts billed appear to be an average of at least 39% higher than is reasonable. This is largely due to approximately 14 staff members submitting billing each month, with extensive billing for administrative functions, billing for multiple people without any apparent necessity or work, and other items which are not reasonable expenses. The court hereby reduces the requested $849,048.00 amount by the 39% average in overbilling, and awards Receiver $517,919.28 for fees during that time.

"The $469,186.25 in receivership fees already paid must also be reduced by that 39%, which equates to $182,982.64 in an overpayment on Receiver fees. The court will reduce that amount from the present/pending award ($517,919.28—$182,982.64 = $334,936.64). The court hereby awards Receiver $334,936.64 for remaining fees.

"[¶] . . . [¶]

"The requested $172,646.43 in Receiver's unpaid attorney fees incurred by Receiver is also high. The court previously granted Receiver's request for permission to retain outside counsel, but the court specifically noted that the $675/hr. billing rate was double the hourly rate of Receiver and that the court would be unlikely to authorize reimbursement at the hour rate requested. [Citation.]

The court has determined the requested attorney fees are 9.18% higher than reasonable and therefore awards a total of $156,789.87 towards attorney fees that have yet to be paid.

"The $107,500 already paid to Receiver's attorneys must also be reduced by the 9.18%, which equates to $9,868.50 in overpayments. The court will reduce that amount from the present/pending award ($156,789.87—$9,868.50 = $146,921.37). The court hereby awards $146,921.37 for Receiver's remaining unpaid attorney fees.

"The motion requests an 'anticipated' additional $25,000 for various reasons. [Citation.] There is no evidence before the court at this time that the amount was actually incurred and the court will not award Receiver that amount at this time."

The court broke down its total award of $488,548.66 in receiver costs and fees as follows:

Amount:	Purpose:	Payable to:
$334,936.64	Unpaid Receiver fees between May 2019 through September 2021	Receiver
$6,690.65	Unreimbursed costs to CRG	Receiver
$146,921.37	Unpaid attorney fees to Receiver's counsel	Receiver
$0	Anticipated additional fees incurred through to hearing	Receiver

The court further ordered the receiver could only recover $459,833.62 of the total fees and costs award amount of $488,548.66 from Sunshine due to an offset of costs, including the $6,690.65 in unreimbursed costs cited *ante*.

C. Sunshine Fails to Show the Trial Court Abused Its Discretion in Awarding Fees and Costs to the Receiver

In its opening brief, Sunshine argues the receiver "engaged in misconduct and the Court erred in not holding the Receiver liable for his mismanagement of the receivership estate and misconduct and not denying his request for fees and costs. [Citation.] While the Court did find that the Receiver had overcharged and reduced the requested amount of fees and costs for the Receiver and his counsel [citation], Sunshine respectfully urges this Court to find that the Court erred in awarding him anything for any of the work related to the historic rehabilitation of the motel and any other work after the full funding for the remedial work was approved by the Court in July 2017. [¶] Sunshine lost its property because the Receiver failed to act as an impartial agent of the Court. He should not be compensated for it."

Sunshine has failed to offer any analysis showing the trial court abused its discretion in awarding the receiver fees and costs. As acknowledged by Sunshine, the trial court awarded receiver fees and costs in an amount that is significantly lower than what was asked for. Sunshine does not explain how the final award necessarily includes any unrecoverable, excessive, or duplicative fees and/or costs.

Sunshine makes no attempt to quantify the amount of fees or costs it considered excessive or otherwise inappropriate due to any alleged misconduct by the receiver. As discussed *ante*, we have concluded the trial court did not abuse its discretion by allowing the receiver to address noticed health and safety violations while preserving the historic character of the property. As also discussed *ante*, Sunshine failed to show the receiver lacked impartiality or otherwise colluded with any other party involved in the matter. Sunshine has therefore failed to carry its burden of demonstrating error.

V.

The Trial Court Did Not Abuse Its Discretion in Awarding Fees to the City

Sunshine also argues the trial court abused its discretion by awarding excessive and duplicative attorney fees to the City. The prevailing party in an action brought under section 17980.7(c)(11) "shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court." In addition, section 17980.7, subdivision (d) provides: "If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following: [¶] (1) Order the owner to pay all reasonable and actual costs of the enforcement agency, including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney's fees or costs, and all costs of prosecution."

Appendix A

In its March 1, 2023 minute order, the trial court stated: "Receiver also requests the court award City's attorney fees and costs associated with this action in the amount of $1,007,778.32. City has produced evidence supporting this amount was allegedly incurred throughout this litigation. [Citation.] While initial attorney hourly billing was on the high side, due to the amount of litigation and concern over rising costs, City's attorneys . . . apparently agreed to a discounted flat fee hourly rate of between $270/hr. starting October 2020, and raising each July thereafter up to $356/hr. for work starting July 2022. [Citation.] These new hourly rates are reasonable.

"[¶] . . . [¶]

"The Court also previously ruled City was entitled to attorney fees and costs. [Citation.] However, the court also finds the amount requested by City is higher than w[hat] is reasonable by approximately 15% due to overlapping billing and interoffice communications that should not be billed to the client. The court will reduce City's requested attorney amount by 15% down to $856,611.60 for the period at issue in this Motion.

"The $101,524.77 already paid to City's attorneys must also be reduced by the 15%, which equates to $15,228.72 in overpayments. The court will reduce that amount from the present/pending award ($856,611.60—$15,228.72 = $841,382.88). The court hereby awards $841,382.88 for City's remaining unpaid attorney fees." The court further ruled the City was entitled to recover the full amount of $841,382.88 from Sunshine.

We review an award of attorney fees for an abuse of discretion. (*Sanders v. Lawson* (2008) 164 Cal.App.4th 434, 438, 78 Cal. Rptr. 3d 851.) "An abuse of discretion is shown when it may be fairly said that the court exceeded the bounds of reason or contravened uncontradicted evidence." (*Mustachio v. Great Western Bank* (1996) 48 Cal.App.4th 1145, 1151, 56 Cal. Rptr. 2d 33.)

Again, Sunshine has failed to make any showing of how the trial court might have exceeded the bounds of reason or contravened uncontradicted evidence in calculating the attorney fees award in favor of the City. Sunshine's contention the City filed unnecessary or duplicative pleadings and briefs is speculative. Sunshine has not provided legal analysis with citations to the record and pertinent legal authority in support of its argument. We find no abuse of discretion.

DISPOSITION

The order and judgment are affirmed. Respondents to recover costs on appeal.

MOTOIKE, J.

WE CONCUR:

MOORE, ACTING P. J.

GOODING, J.

APPENDIX B — JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER, FILED JUNE 13, 2023

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE,
CENTRAL JUSTICE CENTER

Case No. 30-2017-00915900-CU-PT-CJC

THE CITY OF DANA POINT,

Petitioner,

v.

THE SUNSHINE GROUP, LLC, AND
DOES 1-10, INCLUSIVE,

Respondents.

Filed June 13, 2023

Assigned For All Purposes To:
Hon. Theodore R. Howard; Dept. C18

[~~PROPOSED~~] JUDGMENT BY THE COURT

Date Action Filed: April 20, 2017
Trial Date: None Set

Appendix B

On April 20. 2017, Petitioner CITY OF DANA POINT ("City") filed a Petition to Appoint a Receiver to take control and possession of the substandard property located at 34862 Pacific Coast Highway, Dana Point, CA 92624 (the "Property"), commonly referred to as the Capistrano Seaside Inn, owned by THE SUNSHINE GROUP, LLC ("Sunshine Group"). The Court granted the City's Petition and, on April 25, 2017, entered an Order Appointing a Receiver, Mark Adams ("Receiver"), pursuant to the City's Petition. Upon completion of the nuisance abatement work associated with the remediation of the Property, the Receiver filed a Motion for Discharge of Receiver, Exoneration of Security, and Payment of Receivership Fees. On March 1, 2023, this Court granted Receiver's Motion, and ordered Respondent THE SUNSHINE GROUP, LLC to pay outstanding receivership fees to the Receiver and the City, as set forth in detail below.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Receiver's Motion for Discharge of Receiver, Exoneration of Security, and Payment of Receivership Fees is granted, and judgment is entered in favor of the City and Receiver, as follows.

2. The Receiver is awarded a total of **$459,833.62** in fees, costs, and expenses, against Respondent THE SUNSHINE GROUP, LLC which is ordered to immediately pay the sum of $459,833.62 to the Receiver.

3. The City is awarded a total of **$841,382.88** in attorney's fees, against Respondent THE SUNSHINE

GROUP, LLC which is ordered to immediately pay the sum of $841,382.88 to the City.

4. Final judgment is entered in favor of the City and against Respondent THE SUNSHINE GROUP, LLC.

5. Respondent THE SUNSHINE GROUP, LLC shall take nothing in this action against the City and Receiver.

6. As the prevailing parties, the City and Receiver are entitled to recover costs from Respondent THE SUNSHINE GROUP, LLC in an amount to be determined by memorandum or motion.

7. The Clerk is ordered to enter judgment in this matter in the City's and Receiver's favor forthwith.

8. Pursuant to California Code of Civil Procedure Section 685.010, the City and Receiver shall be awarded interest at a rate of 10% per annum on all monies awarded pursuant to this Judgment.

9. The Receiver's bond is hereby terminated, and the sureties exonerated thereon.

IT IS SO ORDERED.

Dated: **JUN 13 2023**

/s/ Theodore R. Howard
Hon. Theodore R. Howard
Judge of the Superior Court

APPENDIX C — SUPREME COURT ORDER, FILED JULY 9, 2025

Court of Appeal, Fourth Appellate District,
Division Three - No. G062484, G062828

S291187

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CITY OF DANA POINT,

Plaintiff and Respondent,

v.

THE SUNSHINE GROUP, LLC,

Defendant and Appellant;

MARK SAMUEL ADAMS,

Real Party in Interest and Respondent.

Filed July 9, 2025

AND CONSOLIDATED CASE

Appendix C

The petition for review is denied.

GUERRERO
Chief Justice