December 17, 2020

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The Honorable Tani Cantil-Sakauye, Chief Justice
and Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: ***County of Sonoma v. Quail*** **(S265571)**
First Appellate District Case No. A155837/A157245)
Sonoma County Superior Court Case No. SCV256085

To the Honorable Chief Justice Cantil-Sakauye and Associate Justices:

The California State Association of Counties ("CSAC") and League of California Cities ("Cal Cities") respectfully submit this letter under California Rules of Court, rule 8.500(g) in support of the Petition for Review filed by the County of Sonoma in the above-named case.

Much of the Opinion provides a thorough analysis of the statutes governing receiverships, and a detailed explanation of why it was not an abuse of discretion for the trial court to authorize the receiver on the facts of this case to finance its rehabilitation efforts on the subject property through a loan secured by a "super-priority" lien on the property. By contrast, however, the Court of Appeal spends a mere three paragraphs at the very end of the Opinion concluding that there is no basis in the receivership statutes for a trial court to prioritize a public agency's enforcement fees and costs on equal footing with the receiver.

The Opinion so concludes without citing to, let alone distinguishing, case law directly on point concluding that trial courts have such discretion. (*Winslow v. Harold Ferguson* (1944) 25 Cal.2d. 274 ("*Winslow*"); *Hozz v. Varga* (1958) 166 Cal.App.2d 539 ("*Hozz*"); *City of Sierra Madre v. Suntrust Mortgage, Inc.* (2019) 32 Cal.App.5th 648 ("*Sierra Madre*").) The Opinion also never addresses the broad equitable powers the trial court has in receivership cases depending on the circumstances, including the power to place the public agency's costs in the super priority certificate.

In order to resolve the dispute between these cases and the Opinion, and to maintain a source of funding that has been available to public agencies to

begin the remediation process for extremely dangerous properties, CSAC and Cal Cities urge this Court to grant the Petition for Review in this case.

Interest of Amici Curiae

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

California's cities and counties are concerned that Section E of the Opinion (at pages 35 through 36) would serve to eliminate the funding source that public agencies use to enforce the State's Housing Law and remove seriously dangerous nuisances from our communities. While the ability of the receivership to operate with a super-priority lien on blighted property is essential to the ability to fulfil the purposes of the receivership statutes, the receivership itself would not even exist without a public agency's work in initiating the process. Municipalities operate within a limited budget. Without the ability to recover costs of enforcement, it would not be feasible in many cases for local enforcement agencies to enforce the State's Housing Law, especially in the most economically challenged areas where they are needed to protect the most socioeconomically disenfranchised populations. These are important issues on which the Opinion has created a conflict in the law that requires resolution.

The Petition Should Be Granted to Resolve Conflicting Case Law and Provide Guidance to Public Agencies on How Costs Can Be Recovered in Receivership Actions

Supreme Court review of this Opinion is necessary to secure uniformity of decisions as to public agency fees and costs in receivership cases. (Cal. Rules of Court ("CRC"), rule 8.500(b)(1).) As noted in the Petition for Review, this Court has spoken in unmistakable terms on this issue, concluding that it would "be wholly out of line with the traditional concept of equitable practice" to give a receiver's fees and costs priority and "at the same time to subordinate the payment of fees to the attorney who has invoked the powers of the court of equity to appoint that same receiver." (*Winslow,* 25 Cal.2d at 284.) In reaching that conclusion, this Court relied on a trial

court's broad equitable powers to shift prioritization of property liens even when it is not expressly stated in statute.

This Court confirmed a trial court's broad equitable powers in *City of Santa Monica v. Gonzalez* ("*Gonzalez*") (2008) 43 Cal.4th 905, which found that a trial court's equitable power includes the ability to empower court receivers to take particular actions based on the totality of circumstances in the case. (*Gonzalez* (2008) 43 Cal.4th 905, 930–34.) The Opinion below lays out in detail the circumstances in this case that clearly warranted the actions of a receiver and the ability to finance those efforts through a loan secured by a super-priority lien on the property. Yet in Section E of the Opinion, the court never raises either *Winslow* or *Gonzalez,* let alone attempts to distinguish the cases in a manner that would provide guidance to trial courts and future litigants. The Opinion also does not explain why the trial court could not utilize its broad authority in Health and Safety Code receivership matters, as authorized under *Gonzalez*, to empower the Court Receiver to reimburse the County's cost recovery in the same priority as the Court Receiver.

In ruling that trial courts do not have discretion to authorize the County's costs as a priority lien, the Opinion creates a conflict with existing case law that warrants resolution by this Court.

The Opinion Should be Reviewed to Address Other Statutory Provisions that Would Authorize Priority Status for Public Agency Costs in Receiverships

In the three paragraphs addressing the issue of public agency costs in receiverships, the Opinion briefly reviews Code of Civil Procedure sections 564 and 568, and Health and Safety Code section 17980.7, but it does not address Health and Safety Code section 17983 (a provision of the State Housing Law), which provides express statutory authority for courts to make any order that is applied for in a receivership case brought pursuant to the State's Housing Law. The County relied on section 17983 in applying for super-priority status for its statutory cost recovery in its receivership motion, and the trial court granted the County's request pursuant to the authority granted to it in section 17983. Yet, the Court of Appeal reversed the trial court's order granting the County's cost recovery pursuant to super-priority status without any citation to or discussion of section 17983. If there was a flaw in the trial court's analysis of its authority to issue orders under this section, the Opinion provides no guidance on the nature of that flaw. Supreme Court review is therefore needed to provide clarity on this point in a manner that considers all relevant authority under the State Housing Law.

Similarly, Health and Safety Code section 17980.7(c)(4)(H) states that a court receiver appointed under Health and Safety Code section 17980.7 et seq., has the authority to "exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure." Code of Civil Procedure ("CCP") section 568 states that "the receiver

has, under the control of the Court, power to . . . do such acts respecting the property as the Court may authorize." H&S section 17980.7(c)(4)(H) and CCP section 568, taken together with a trial court's broad equitable powers, indicate that a trial court is in fact within its power to grant the County's cost recovery super-priority status. Given these contradictions between the statutes and the Opinion, Supreme Court review is needed to settle these important questions of law facing trial courts concerning their power to set the priority of a public agency's cost recovery in receivership actions.

Review Should Be Granted to Address Financing Remediation of Dangerous Properties, Which is a Critical Issue of Ongoing Interest

Nuisance abatement and receivership actions are critical to protecting the public's health and safety. (See *City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458 and *City and County of San Francisco v. Ballard* ("*Ballard*") (2006) 136 Cal.App.4th 381, 403 [acknowledging that the legislative intent of H&S section 17980.7 et seq. is to encourage enforcement agencies to pursue public nuisance actions and to protect the public interest, and to provide new enforcement measures].) The facts of this case provide a perfect example of the importance of such work. Neither the property owner, nor the bank with an interest in the property, took any action to correct the numerous, dangerous conditions on the property. Prior to the County seeking the appointment of a court receiver, the bank had ample opportunity to protect its collateral; however, it chose not to act. As a result, the community via the County, was forced to expend tremendous resources rehabilitating the property. It was only through the County's considerable efforts, time, and resources, that a receivership was established, the residents living in substandard conditions relocated, and the most dangerous conditions on the property removed. The property is now able to be sold to a neighboring property owner committed to completing the abatement.

Principles of equity dictate that a lienholder in this situation should not receive priority over the public because that would unjustly enrich the bank. Local government action in receivership cases already benefit banks because the receivership initiated by local government secure the value of the bank's asset. The public's expenses should not be subordinated and lost to the benefit of the private entity that sat idly by as its collateral wasted away and became a danger to the community. The purpose of the State's Housing Law is not to unjustly enrich lienholders that are negligent with regard to property maintenance. The purpose is to uphold standards of habitability that ensure public health and safety.

The case law discussed above – *Winslow*, *Hozz*, *Gonzalez*, and S*ierra Madre* – provides the courts with broad equitable powers to reach such a result. CSAC and Cal Cities urge the Supreme Court to review Section E of the Opinion so that it conforms to established legal precedent and public policy considerations authorizing reimbursement of public agency cost recovery in same priority as court receivers.

CONCLUSION

For these reasons, CSAC and Cal Cities respectfully urge this Court to grant the Petition for Review filed in this case, and review Section E of the Opinion below.

Sincerely,

/s/

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California State Association of Counties