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EXEMPT FROM FEES PER GOV'T CODE 6103 TO THE BENEFIT OF THE CITY OF SAN DIEGO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS ASSOCIATION, INC., et al, Plaintiffs, vs. CITY OF SAN DIEGO, et al, Defendants.	CASE NO. GIC 821191 **OPPOSITION TO PLAINTIFFS' OPENING BRIEF REGARDING CLASS COMPENSATION** Hearing Date: May 6, 2014 Hearing Time: 1:00 p.m. Location: Presiding

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I. INTRODUCTION

The purpose of these post-trial proceedings is to determine the steps to be taken by the City to mitigate any impacts of closure on the De Anza residents. During the course of the briefing to the Special Master and now to the Court, Plaintiffs' common theme has been to seek the most compensation as possible, without regard to the prior rulings of the Court or thoughtful consideration of whether the requested benefits are appropriate under the facts and circumstances specific to the De Anza park closure. Further, notwithstanding the fact that the evidence has long since been closed on the issues briefed to and heard by the Special Master over the course of two years, Plaintiffs are now attempting to submit numerous new declarations and other exhibits that were never presented to or considered by the Special Master (or the City) during those proceedings. The Special Master has already filed his First and Second Reports, and as ordered by the Court in its Order After Statement of Decision, now is the time to submit any objections to the recommendations based on the presented to the Special Master, not take another stab at the same issues with untimely, new evidence. As a threshold matter, therefore, the City requests that this new evidence be excluded and stricken from the record.[1]

Further, while the City has accepted the Court's ruling that the San Diego Housing Commission ("SDHC") relocation guidelines apply for the purposes of these post-trial proceedings, Plaintiffs have not. Instead, Plaintiffs continue to advance their position that the residents should receive mitigation in the form of fair market or replacement cost value, and to circumvent the Court's prior decision on this issue, simply calculate the number of months of rent differential that would equal those amounts. And relatedly, Plaintiffs also contend that the 84 months of rent differential paid to the Mission Valley Village ("MVV") residents was based on replacement cost. There is no evidence to that effect, and even if true, the Court would be then be required to wholly disregard the MVV proceedings as inconsistent with the prior decision of the Court in this case.

In any event, as the City briefed in its Objections to Special Master Recommendations,

[1] See the City's Objections to Plaintiffs' Newly Submitted Evidence and Motion to Exclude and/or Strike Certain Exhibits, filed concurrently herewith.

(1) the De Anza and MVV are different parks with different circumstances of park closure, (2) the park owner in the MVV case voluntarily increased the length of the rent differential from 48 to 84 months, (3) the MVV closure did not set a new standard for all park closures in San Diego (and in fact, the SDHC subsequently reduced the length of the rent differential from 48 to 42 months at the recommendation of the Mobile Home Community Issues Committee), and (4) the 48 months under the 1995 SDHC guidelines are more than sufficient to mitigate any adverse impacts of closure on the De Anza residents.

As to the other objections raised in Plaintiff's Opening Brief, the Special Master's recommendations are legally sound and well-reasoned based on the evidence submitted. Specifically, the following recommendations of the Special Master should be adopted and Plaintiffs' objections overruled.

1. The Special Master properly rejected Plaintiffs' request for the payment of the rent differential on a lump sum basis, and recommended periodic payments as provided under the SDHC guidelines;

2. The Special Master properly recommended that rent differential be calculated according to the year that the homeowner vacates the park, in order to specifically tie the mitigation to the year that the homeowner entered or will enter the apartment rental market, as would be done for a typical park closure;

3. The Special Master properly recommended, for the purposes of the rent differential calculation, that the residents' space rents that have been frozen since 2003 should be adjusted and brought "current" based on changes in the Consumer Price Index ("CPI"), up to and including the year the homeowner vacated or will vacate the park;

4. The Special Master properly recommended, for the purposes of the rent differential calculation, that the comparable apartment rental rates should be determined based on the year the homeowner vacated or will vacate the park using the biannual apartment surveys published by the San Diego County Apartment Association ("SDCAA"); and

5. The Special Master properly recommendation that lodging expenses should be determined and paid on a case-by-case basis, for a period not to exceed seven nights as provided

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in the SDHC guidelines.

Finally, the Court should exercise its discretion to deny Plaintiffs' request for statutory penalties. Plaintiffs did not present any evidence at trial, and even if the Court accepts the three resident declarations cited by Plaintiffs in their Request for Statement of Decision after trial (a request which the Court deferred until now), that Plaintiffs did not present any evidence that the City willfully violated the MRL. And, even if the Court deems it appropriate to consider new evidence on that issue now, Plaintiffs still have not shown, nor can they show, a willful violation.

II. THE SPECIAL MASTER PROPERLY DETERMINED THAT THE COURT HAS ALREADY REJECTED THE PAYMENT OF MITIGATION BASED ON FAIR MARKET VALUE OR THE COST TO ACQUIRE REPLACEMENT HOMES

As the Court is well aware, this decade-long litigation has been replete with Plaintiffs' dogged efforts to re-litigate issues long decided by the Court. Unfortunately, with the City ordered by the Court to bear the entire expense of the Special Master proceedings, Plaintiffs had free reign to waste the time of the City and the Special Master to seek the reconsideration of failed arguments at trial. Here, Plaintiffs again could not resist, and this time at the expense of the Court's limited resources.

Plaintiffs argued to the Special Master, as here, that the De Anza residents should receive the number of months of rent differential equal to the cost to acquire a mobilehome in another park. To get there, as they did at trial, Plaintiffs called on their expert James Brabant to survey purportedly "comparable" parks from North County and Orange County, none of which are truly comparable to the De Anza property, as De Anza sits on public property, all the leases have expired, and the park will close. Nonetheless, based on sales listings in purportedly comparable mobilehome parks, Brabant calculated an average price of $132.79 per square feet to buy a mobilehome in another park, which Plaintiffs directly apply to the average square footage of the De Anza mobilehomes: 1026.91 avg. sq. ft x $132.79 = $136,364. (Special Master's Report re Rent Differential ("First Report" or "FR"), p. 10.) From there, Plaintiffs determine how many rent differential payments it would take to pay the average De Anza homeowner the cost to acquire a replacement mobilehome (including the land) in another park, based on the size of each De Anza unit and using an assumed average rent differential amount. ($136,364/$1,274.26 = 107

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months.) (See FR, p. 10:11-24; Plaintiffs' Ex. 16, attached to the City's Supplemental Notice of Lodgment ("Supp. NOL").)

In support of this request to the Special Master, though now conspicuously absent from the current briefing to the Court, Plaintiffs relied on the ordinances from the other cities in California submitted at trial which generally provided for mitigation based on the fair market value "in place" appraisal method and/or replacement cost and Brabant's in place, fair market appraisal from trial based on the erroneous hypothetical assumption that the De Anza homes will remain in place at the Park indefinitely, along with his valuations for each De Anza household (all rejected by the Court). (Plaintiffs' Trial Exhibits 97-101, 129, 130, 164, 185.)[2] Taken together, despite the Court's directive to follow the SDHC guidelines in this case, Plaintiffs argued to the Special Master that State law required the payment of mitigation to the residents based on fair market value or the cost to acquire replacement homes for the residents, and simply calculated the number of months or rent differential it would take to accomplish that goal. (See Plaintiffs' Brief re: Issue #1 –Rent Differential, pp. 29:14-30:23, attached as Ex. 108 to Supp. NOL.)

And now, Brabant has purportedly "updated" his survey of mobilehomes for sale in "comparable" parks, and as a result, Plaintiffs have increased their request to 109.7 months of rent differential payments based on the average price of $173.77 per square foot (1025.9 avg. sq. ft x $173.77 = $178,270) and an unexplained increase in the average rent differential amount to $1,625 ($178,270/x = 109.7 months). (Plaintiffs' Opening Brief ("POB"), pp. 16:13- 17:5.)[3]

For the last and final time, this Court must again reject Plaintiffs' argument for mitigation based on the fair market value or the cost to purchase replacement homes in other parks.

A. In the Statement of Decision, the Court Rejected the Payment of Mitigation Based on Fair Market Value or the Cost to Acquire Replacement Homes

As correctly determined by the Special Master, the Court has already ruled in the

[2] These ordinance exhibits were submitted by Plaintiffs to the Special Master, but this time, Plaintiffs elected not to supply them to the Court or reference them with their Opening Brief, apparently in an attempt to be less conspicuous. (See Plaintiffs' Table of Exhibits, attached as Ex. 111 to Supp. NOL.)

[3] The first brief to Judge Papas in May of 2012 requested 98 months, the brief to Mr. Sharkey requested 107 months, and now the brief to the Court requests 109.7 months.

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Statement of Decision ("SOD") that State law does not require the payment of mitigation based on fair market value or replacement cost. (See FR, pp. 3:8 – 4:21, citing SOD, City Ex. 68.) First, the Court held:

> The Court rejects Plaintiffs' argument that an "in place" appraisal of fair market value is required to satisfy the State law mandate of mitigation of economic hardship resulting from the closure of De Anza Park. The "in place" valuation of State owned Mission Bay tidelands to determine amounts in mitigation for De Anza residents would be inappropriate and unwarranted payments in mitigation based in part on the value of the State tidelands, the functional equivalent of requiring the City to purchase State property. Further, the term mitigation as used in the statute means to lessen or minimize the severity of economic impact of park closure. In this statutory scheme, the term does not require the payment of fair market value as would be required in a condemnation proceeding. (SOD, City Ex. 68, p. 10.)

As the trial court correctly observed, the closure of this Park presents a unique situation because the Park sits on Mission Bay tidelands, state-owned public property held by the City in trust. (SOD, City Ex. 68, p. 10; City Exs. 1, 2.) Ordering the City to pay in place, fair market value to the De Anza residents would be the functional equivalent of requiring the City to purchase state tidelands. (*Ibid*.)

Second, despite Plaintiffs' best efforts to have them re-considered, the Court also expressly rejected the application of the various other city ordinances which provide for the payment of mitigation based on fair market value or replacement costs, finding that those ordinances had no bearing on this case at all:

> These ordinances generally provide that the homeowners be compensated for the loss of their homes using the fair market value accordingly to an "in place" appraisal method. . . .These municipal ordinances form a substantial part of the basis for the testimony of plaintiffs' experts who opine that fair market value is to be determined by appraisal "in place" which in effect includes a valuation of the real property, i.e. the land upon which the mobilehome rests. These ordinances have not been the subject of any appellate review. There is no reported case authority requiring an "in place" appraisal of fair market value of the mobilehome to meet the state mitigation requirements. Further, the constitutionality of requiring a park owner to pay mitigation based upon the value of the real property upon which the mobilehome rests using an admittedly erroneous hypothetical assumption that the park remains open indefinitely has not been reviewed. . . .The Court finds the approach of other municipalities are not in any respect binding on the City of San Diego nor do they necessarily provide insight into the appropriate definition of "reasonable costs of mitigation" required to meet State standards. (SOD, City Ex. 68, p. 9-10 (emphasis added).)

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In particular, as noted by the Special Master (FR, pp. 4:24-5:17), the Court specifically referenced several of the rejected ordinances relied in the Plaintiffs at trial, including Santa Clarita, San Juan Capistrano, and Huntington Beach, which require mitigation based on in place, fair market value. And importantly, these values were to be determined based on the cost to acquire replacement homes in comparable parks, the same as Plaintiffs are requesting here. (*E.g.* **Santa Clarita:** "The appraisal shall value the manufactured home as if located in a comparable manufactured home park and will be based on a real estate valuation method and not the blue book value" (Plaintiffs' Trial Ex. 185, Ordinance No. 07-6, Section 2); **San Juan Capistrano**: "Fair market value shall be established through the use of an appraisal approach wherein a number of relevant factors, including, but not limited to, the price of comparable mobilehomes of similar size, proximity, and condition if sold on the open market without constraints imposed on the sales price, rental rate, or buyer qualification" (Plaintiffs' Trial Ex. 98 (San Juan Capistrano Muni. Code §§ 9.2.331(c)(2)(L), 9.2.331(k)(7)); **Huntington Beach**: "Such value shall be determined after consideration of relevant factors, including the value of the mobile/manufactured home in its current location, assuming the continuation of the mobile/manufactured home park in a safe, sanitary and well maintained condition and not considering the effect of the change of use on the value of the mobile/manufactured home, but at no time shall the value of the mobile/manufactured home be less than the replacement cost of a new home of similar size and square footage" (Plaintiffs' Trial Ex. 99 (Huntington Beach Muni. Code § 234.08(A)(1)-(2).)

Finally, and also correctly determined by the Special Master, the Court has already ruled in its SOD that the California Relocation Assistance Law (Gov's Code § 7260 *et seq*.) and Title 25 of the California Code of Regulations (25 C.C.R. § 6000 *et seq*), do not apply to this case. (FR, p. 5:18-21, citing SOD, Ex. 68, pp. 10:28 – 11:4.) As such, those statutes, including the provisions related to the cost to acquiring replacement homes, are inapposite.

B. The Applicable Relocation Statutes Do Not Require the Payment of Mitigation Based on the Cost to Acquire Replacement Mobilehomes in other Parks

Treating the SOD as if it does not exist, Plaintiffs' briefing is littered with erroneous assertions that State law requires compensation to allow homeowners to acquire replacement

mobilehomes in other parks. (E.g. POB, pp. 1:22-24, 3:11-13, 12:14-27, 13:22-27, 14:21-26, 15:3-9, 16:4-12.) As noted by the Court in the SOD, there is no legislative history or case law to assist in the interpretation of the relocation statutes. (SOD, City Ex. 68, p.7:7-13.) And, most certainly, there is no legal support for Plaintiffs' claim that these statutes require the payment of fair market value or the cost to acquire replacement homes. In fact, the statutes do not require any compensation at all.

First, the permissive language of Government Code subsection 65863.7(e) is clear and unambiguous – the agency "may" require the park owner to take steps to mitigate the adverse impacts of closure, or it may not. Subsection 65863.7(e) provides:

> The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation. (Gov't Code, § 65863.7(e) (emphasis added).)

Further, subsection (i), which addresses public entities, specifically refers to and reiterates the permissive language in subsection (e). (Gov. Code, § 65863.7(i) ["as may be required in subdivision (e)"].) As such, pursuant to this clear language, compensation to the De Anza residents is not mandatory. Rather, the steps to be taken, whether it be monetary compensation or some other form of relocation assistance, is subject to the discretion of the agency (or in this case, the Special Master and the Court) reviewing the impact report.

Importantly, under section 65863.7, the steps to be taken by the park owner to mitigate the adverse impacts of park closure shall not exceed the reasonable costs of relocation. (Gov't Code, § 65863.7(e).) The California legislature left it to local municipalities to enact ordinances to help define this standard and provide a framework to determine the "reasonable costs of relocation." For that purpose, the City of San Diego enacted San Diego Municipal Code ("SDMC") section 143.0610 to 143.0640 (the Mobilehome Park Discontinuance and Tenant Relocation Regulations), which requires the submission of a relocation plan for approval by the San Diego Housing Commission ("SDHC"). (Ex. 34.) In 1995, the SDHC issued Relocation Standards and Procedures Policy 300.401 to provide consistency in evaluating the adequacy of relocation plans.

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(Ex. 33.) Pursuant to this Policy, if the mobilehome can be moved or relocated, mitigation is based on the payment of the cost to relocate the mobilehome. For mobilehomes that cannot be moved, however, mitigation is based on monthly rent differential payments over 48-months, or the difference between the current space rent and rent for a comparable apartment. (*Ibid*.)

As already recognized by the Court (SOD, Ex. 68, p. 11:17-25) and recognized by the Special Master (FR, p. 7:9 - 8:3, 10:25-12:2), Policy 300.401 was the product of years of thoughtful debate among park owners and homeowner representatives to try to strike a balance between compensation for residents and maintaining the ability of park owners to close their parks without being overburdened, with both sides supporting the final resolution. (Declaration of Thomas Kerr ("Kerr Decl.)", ¶ 7; Exs. 24-28, 31-33, 79 (pp. 1428-1453).)

After trial, the Court ruled the rent differential approach to mitigation under the SDHC guidelines complied with State law requirements to mitigate the economic hardship of park closure, and that those guidelines were appropriately applied to the specific facts and circumstances of this case. The Court stated:

> The Court hereby finds that the Relocation Standards and Procedures of the San Diego Housing Commission (hereafter Housing Commission Guidelines or Guidelines) as adopted by the City of San Diego apply to the closure of De Anza Park. These Guidelines are intended to be the fiscal standard against which relocation plans are measured . . .The decision of this Court is aimed at determining appropriate mitigation methodology, consistent with the requirements of the Mobilehome Residency Law, to be used in San Diego under the circumstances presented by the evidence in this case. This Statement of Decision generally adopting the San Diego Housing Commission Guidelines in conjunction with the Relocation Impact Report prepared by Overland Pacific and Cutler satisfy the minimum requirements for mitigation of economic hardship required by the MRL. (SOD, City Ex. 68, p. 12.)

Consistent with Government Code section 65863.7, compensation is not mandatory under the San Diego Municipal Code. The SDMC requires the preparation of an impact report under the guidelines developed by the SDHC, and the purpose of the SDHC guidelines is "to provide consistency in evaluating the adequacy of relocation plans, the fiscal standard against which relocation plans will be measured." (SDMC, § 143.0630(c) (Ex. 34).) Further, the SDMC and SDHC guidelines cannot somehow be interpreted or manipulated to provide mitigation to residents based on fair market value or the cost to acquire replacement homes. The language of

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SDMC section 143.0630(c) is clear:

> The relocation plan shall provide for the relocation of the tenants who will be displaced by the discontinuance of the use of property as a mobilehome park or by the conversion of the mobilehome spaces to other uses. The relocation plan shall comply with standards and regulations for relocation plans developed by the Housing Commission. (Emphasis added.)

The San Diego ordinance refers directly to the SDHC guidelines under Policy 300.401, which provides for a 48-month rent differential period where it is not feasible to relocate the home. (Ex. 33.) Neither the ordinance nor Policy 300.401 requires payment for fair market value or replacement cost. And, as made plain by the Special Master in his First Report, the legislative history of the San Diego ordinance plainly reflects that, if SDHC intended to provide mitigation based on fair market value or replacement cost, it would have so stated in the guidelines.

> In the opinion of the Special Master, the methodology suggested by plaintiffs is in conflict not only with the plain language and intent of the SDHC guidelines but also the finding contained in the Court's SOD. First, the Court found that the ordinances in place in other cities in California using a fair market value or replacement cost method to mitigate adverse impact on displaced residents was not binding on San Diego (See SOD pg. 10 re: fair market value and replacement cost and SOD pg. 11 re: CRAL). Second, the Court found that the SDHC guidelines were applicable to the closure of De Anza (See SOD pg.11). Third, in 1995 the SDHC changed its guidelines, which at the time provided relocation guidelines of 75% of fair market value, to a new 48-month rent differential method. This was done after several years of hearings and review of information provided by the MHCIC, and this methodology was adopted by the City of San Diego and was in effect at the time of closure of De Anza in November of 2003 and when trial took place in late 2007 and early 2008. In 1995, when the guidelines were changed, it appears clear that if the SHDC intended to provide replacement cost to owners of mobile homes which could not be physically relocated, the guidelines would have specifically so provided. Rather, the stated purpose of the change was to avoid the inevitable dispute as to what constitutes fair market value, as well as ensuring compliance with the mandate of Gov. Code Sec. 65863.7(e) that mitigation not exceed the reasonable cost of relocation, and substitute in its place a bright line rent-differential method, i.e., the difference between comparable rent and the rent being paid in the park being closed. This method of calculating benefits for residents who cannot relocate their mobile homes, rather than compensation for fair market value, replacement cost, or some other form of mitigation, was determined to be fair, adequate and reasonable based upon information and data provided by the MHCIC after three years of hearings and meetings. In the opinion of the Special Master, there is no evidence to conclude that the SDHC intended that the rent differential method could or should be manipulated to provide displaced residents with replacement cost of

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their mobile homes. (FR, p. 11:1-26 (emphasis added).)

C. Plaintiffs' Purported Survey of "Comparable" Parks Highlights the Problem of Trying to Manipulate the SDHC's Rent Differential into Payments Based on Fair Market Value, Replacement Cost, or Some Other Form of Mitigation.

Notwithstanding the fact that the Court has already rejected Plaintiffs' request for mitigation based on fair market value or replacement cost, Plaintiffs' purported survey of "comparable" mobilehome parks highlights the problem of trying to artificially manipulate the SDHC rent differential guidelines into some other form of mitigation, which would invariably result in compensation which exceeds the reasonable cost of relocation.

First, Plaintiffs focused their survey on all of the most expensive coastal areas in Southern California and heavily weighted to Orange County: Encinitas, Carlsbad, Oceanside, San Clemente, Dana Point, Laguna Beach, Newport Beach, and Huntington Beach, with sales listing ranging in price from $21,900 to $565,990. (Plaintiffs' Exhibit 21 (Declaration of James Brabant ("Brabant Decl."), ¶¶17-18.) In doing so, as they did at trial, Plaintiffs try to focus the discussion outside the Court's directives to more expensive mobilehome park locations in order to artificially skew their mitigation numbers even higher. Mobilehome parks in North County or Orange County are not comparable and have no bearing on this case at all, even for the purposes of finding comparable rental housing, as "comparable unit" is defined as an apartment unit of comparable size situated in a beach community in San Diego County. (SOD, City Ex. 68, p. 14.)

Second, Brabant admits that his purported "comparables" includes listings in all-age parks, seniors-only parks, and resident-owned parks that include an interest in the land. (*Id*. at ¶13.) This resulted in a staggering average price of $208,406, or $173.77 per square foot. At trial, using these same parks in Orange County as comparisons for their "in place," fair market appraisals, Brabant appraised each De Anza home at an average fair market value of $206,000. Brabant then calculates a "replacement cost" by multiplying the total square footage of each De Anza coach by $173.77. ((*Id*. at ¶¶17-18.) However, unlike the homeowners in the purportedly "comparable" parks relied on by Plaintiffs, the De Anza residents (1) do not live in parks that will remain open indefinitely, (2) do not have any property interest in the land, and (3) do not even have any remaining leasehold interests. The residents own mobilehomes parked on rented spaces

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on public property. (City Ex. 1 (Stats. 1945, Ch. 142, pp. 624-629).) The residents also have no continuing right to occupy their spaces pursuant to a lease agreement, as they occupied the park subject to leases which expired on November 23, 2003 (City Exs. 4, 70) and the value of their leasehold interests diminished to zero when the lease terms reached expiration. (See Miller & Star, *California Real Estate* (3d ed.), §19:149 (tenant's leasehold interest limited to present value for "balance of the term"); *New Haven Unified School Dist. v. Taco Bell Corp*. (1994) 24 Cal.App.4th 1473, 1479 (lease valued "through the remaining lease term").)

By including listings in parks where prospective purchasers are acquiring real property interests (and land in some of the most expensive coastal areas of California), Plaintiffs improperly try to shift the comparisons required in the SOD from (1) the rental of mobilehome spaces with the rental of apartments (as ordered by the Court) to (2) the rental of mobilehome spaces with the acquisition of a mobilehome with the land, which is more comparable to purchase of a conventional single-family home or a condominium (which was rejected by the Court). (See Supplemental Declaration of Thomas P. Kerr and exhibits filed with the Special Master, attached to the Supp. NOL as Ex. 110, ¶¶4-6.) The reality is that none of Brabant's listed mobilehome parks are truly comparable to De Anza, as none are scheduled for closure. All of Brabant's parks are likely to continue to be operated as mobilehome parks well into the future (especially those that are resident-owned). And, a purchaser of a mobilehome in a park where spaces are rented is acquiring the long-term right to occupy the space, the value of which can be and is monetized by the seller. This is why mitigation based on a rent differential, as already determined by the Court (and confirmed by the Special Master), makes sense in this case.

D. <u>There is No Evidence that the 84-Month Rent Differential Period In Mission Valley Village Was Based on Replacement Cost</u>

In a further desperate effort to make Plaintiffs' request for replacement cost relevant to the rent differential discussion, Plaintiffs have also contended that the 84-months of rent differential period offered by Archstone was based on the cost to acquire a replacement home in another park. Not true. Naturally, in an effort to maximize their relocation benefits, the MVV residents (who were represented by the same counsel as in this case) attempted to advance the same theory that

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the Court has already rejected here – that the park owner was required to buy replacement homes for the residents. (Plaintiffs' Ex. 30, pp. 17-18 ("Relocation Plan Recommended Changes… Residents are HOMEOWNERS – if their homes cannot be moved Archstone should BUY them a Replacement Home. Same standard practiced by Caltrans and public entities").) The MVV residents made this pitch based on the California Relocation Assistance Law ("CRAL"), Government Code section 7260 et seq.). (Plaintiffs' Ex. 30, pp. 17-18 and Appendix J thereto.) Again, the Court has repeatedly ruled that the CRAL and related provisions of Title 25 of the California Code of Regulations (25 C.C.R. § 6000 *et seq*) have no application to this case. (Order on Demurrer, City Ex. 102 to Supp. NOL, p. 2 (f), SOD, City Ex. 68, pp. 10:27-11:4.) In any event, whatever materials the MVV residents decided to lodge with the City Council for their consideration, there is zero admissible evidence in the record that the 84-month rent differential period in MVV was based on the cost to buy replacement homes. (See City Exs. 76 [DVD of MVV City Council meeting], 76A [Transcript].)[4]

At the MVV approval hearing, it was well settled that the MVV relocation plan submitted to the City for approval and the relocation benefits provided to the residents therein (including the 48-month rent differential) complied with all legal requirements for the discontinuance of a mobilehome park in San Diego, including Government Code section 65863.7(e), Civil Code section 798.56(g), SDMC sections 143.0610-143.0640, and SDHC Policy 300.401. (Ex. 76: 00:02:30 – 00:03:05 (City staff report); 00:16:40 – 00:19:07 (City recommendation for approval of MVV Relocation Impact Report ("RIR")); 01:13:00 – 01:16:08 (Paul Robinson), 01:18:50 – 01:26:18 (Walseth); 02:19:25 – 02:27:20 (various City staff); 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Councilman Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Councilperson

[4] Plaintiffs have improperly submitted a declaration from former MVV resident Homer Barrs dated April 1, 2014 (Plaintiffs' Exhibit 29) which must be stricken in its entirety and not considered by the Court. In the Special Master proceedings, Plaintiffs tried to submit a late declaration from Barrs after the briefing was concluded, and the Special Master sustained the City's objections on the grounds of timeliness, inadmissible hearsay, and inadmissible opinion and speculation. (See Special Master's Ruling re: Objections to Declaration of Homer Barrs dated November 9, 2012, attached to the Supp. NOL as Ex. 109.) Plaintiffs have attempted to circumvent the Special Master's Ruling by submitting a new declaration. Plaintiffs had an opportunity to object to the Special Master's Ruling as to the original Barrs declaration, and have now lost that opportunity.

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Atkins); 03:32:10 – 03:33:30 (Councilman Peters).) Accordingly, the SDHC approved the MVV relocation plan (with the 48-month differential), and City staff recommended its approval by the City Council. (*Ibid*.) Ultimately, Councilman Madaffer, feeling the weight of responsibility to his constituents and with his term ending in a matter of days, simply asked Archstone if they would agree to lengthen the rent differential period to 84 months, an enhancement to the MVV RIR that was clearly not required under State and local laws. (Ex. 76: 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Madaffer) 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins).)

Notably, at no point did Madaffer ever correlate his request for an 84-month rent differential to the cost to acquire mobilehomes for the residents. (City Exs. 76 (DVD of MVV City Council meeting), 76A (Transcript).) In fact, there was no zero discussion (or even an inference) from any member of the City Council that the rent differential should be increased to 84 months because of the cost to acquire to acquire a mobilehome in another park. Instead, there was only complete agreement that Archstone's offer to pay 84 months (at Madaffer's suggestion) well exceeded the reasonable costs of relocation. (*Ibid*; Ex. 76: 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Madaffer) 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins).)

Further, the actual payments made to MVV residents based on the 84-month rent differential period demonstrate that there was no actual correlation between the replacement cost figures provided by the MVV residents and the 84-month period. The materials submitted by the MVV residents to City Council showed the costs to buy replacement mobilehomes in the range of $80,000 to $179,000. (POB, pp. 13:27-14:4; Plaintiffs' Ex. 30, Appendix G.) However, the sales data compiled by the MVV resident, accurate or not, are not actually representative of what most of the MVV residents received for the 84 months of rent differential. Rather, 58 out of 70 mobilehomes in MVV (82 percent) received $48,000. (MVV Settlement Agreement, Plaintiffs' Ex. 46, p. 2 and Ex. A thereto.) Only one homeowner had a large enough mobilehome (4 bedrooms) to receive $121,000, and ten homeowners received $89,000 (3 bedrooms). (*Ibid*.) Therefore, notwithstanding the misleading nature of Plaintiffs' entire argument on this point, the total payments made to the MVV residents show no actual correlation between the cost to acquire

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replacement mobilehomes and the final MVV rent differential numbers.[5]

E. <u>If MVV's 84-Month Rent Differential Was Based on Replacement Cost, As Speculated by Plaintiffs, Then the Special Master's Recommendation Must be Rejected as Inconsistent with SDHC Guidelines and the Court's Statement of Decision</u>

Finally, if Plaintiffs are correct that the 84-month rent differential for the MVV closure was based on the MVV residents' request for replacement cost pursuant to the CRAL and Title 25, then the Court has no choice but to reject the Special Master's recommendation for the same rent differential period as it would be inconsistent with the SDHC Guidelines and the Court's Statement of Decision. As outlined in sections II. A and B *ante*, the Court has ruled in its SOD that (1) the mitigation for the De Anza residents is to be based on the rent differential under the SDHC guidelines, which provides for payments based on the difference between space rent and rent for a comparable apartment in a comparable location, not fair market value or replacement cost, and (2) the replacement cost provisions of the CRAL and Title 25 do not apply to this case. Therefore, if the 84 month rent differential period provided in the MVV closure was in fact an artificial manipulation of the SDHC guidelines to provide MVV residents with compensation to acquire replacement homes, then the Court must completely disregard the MVV closure for the purposes of determining the mitigation in this case, reject the Special Master's recommendation based on the MVV closure, and properly award the De Anza residents with the 48 months of rent differential based on the SDHC guidelines. And, as briefed on the City's Objections to Special Master's Recommendations, 48 months of rent differential payment will adequately mitigate the adverse impacts of closure on the De Anza residents based on the decades-long history and unique circumstances of this particular closure.

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[5] It also bears noting that Archstone agreed to pay 84 months to <u>70</u> households. (Plaintiffs' Ex. 46, p. 2, Ex. A thereto.) This relatively small number of residents undoubtedly factored into their decision to pay 7 years of rent differential instead of the 48 months approved by SDHC. By comparison, the De Anza class includes over <u>270</u> households.

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III. THE SPECIAL MASTER PROPERLY REJECTED PLAINTIFFS' REQUEST FOR PAYMENT OF THE MONTHLY RENT DIFFERENTIAL IN A LUMP SUM

As directed by the Court in the SOD, the Special Master followed the SDHC guidelines in effect in 2003 and determined that the City was not legally required to pay the rent differential on a lump sum basis. The rent differential under the 1995 SDHC guidelines was intended to be paid out over time, and that is all that was required of park owners as of 2003. Interestingly, however, Plaintiffs now rely on the current SDHC guidelines, adopted in 2010 after the MVV closure, which provides for the payment of the rent differential benefit on a lump sum basis. Plaintiffs also argue for lump sum payments based on Archstone's agreement to make such payments as part of the MVV closure.

As a threshold matter, the 2010 policy does not apply to this case pursuant to the SOD. And, even if it did, the revised SDHC policy only contemplates the payment of a lump sum for a period not to exceed 42 months, which is entirely different than requiring a park owner to pay 84 months in a lump sum. Further, the record of the MVV proceedings in 2008 reflects that (1) Archstone was not legally required to pay benefits in a lump sum, and (2) Archstone voluntary agreed to enhance the benefits in that fashion.

A. The SDHD Policy In Effect in 2003 Does Not Provide for Lump Sum Payments

There is no legal obligation for the City to pay relocation benefits in a lump sum. SDHC Policy 300.401, which was in effect in 2003 and applies to this case, requires that: "In cases where it is not feasible to relocate the mobile home, the park owner (or lessee in the case of a leasehold) shall provide the residence with reasonable relocation expenses as follows: (1) The difference between current space rent and rent for a comparable apartment unit of a size appropriate to accommodate the displaced household and that meets HUD Housing quality standards with this amount provided for 48 months." (Ex. 33 (emphasis added).) This language means that the rent differential would be paid over time, as opposed to a lump sum. And, consistent with the Policy, OPC's draft Relocation Impact Report ("RIR") provides for payment to be made as: "The difference between current space rent and rent for a comparable apartment

unit . . .with this amount paid over 48 months." (See RIR (p. 15), City Ex. I (emphasis added).)[6] There is nothing in the local ordinance which indicates that the rent differential must be paid in a lump sum. In fact, there is evidence to the contrary.

SDHC records provide insight into the purpose and intent of the rent differential option. In a SDHC Report dated June 19, 2005, in recommending the approval of revised Policy 300.401, the following analysis was provided:

> The relocation benefit guideline approved by the MHCIC [Mobile Home Community Issues Committee] for homeowners whose home cannot be moved is: (1) The difference between current space rent and rent for a comparable apartment unit of a size appropriate to accommodate the displaced household and that meets HUD Housing Quality Standards with this amount provided for 48 months, and (2) total actual cost of moving expenses for furniture and personal belongings, not to exceed $1000. During that time, the displaced homeowner would receive the difference between the amount paid for space rent in the closing park and rent for a comparable apartment unit. For example, if a displaced homeowner's space rent was $300 a month and rent for an apartment was $600 a month, the total relocation payment based on a 48-month term would be $14,400 ($300 x 48), an amount comparable to actual relocation costs. This option is similar to Federal relocation guidelines. (See SDHC Report dated June 19, 1995, City's Ex. 31 (emphasis added).)

First, the phrase "during that time" implies that payments are to be made over time, not in a lump sum. Second, the reference to similar federal guidelines is important because the federal guidelines expressly provide for the displacing party with the option to pay the 42-month rent differential via periodic payments, but it is not required. (42 U.S.C. 4624 ("At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments…").) The federal publication cited by Plaintiffs also does not require lump sum payments, but states that: "The rental assistance payment will be paid in a lump sum unless the Agency determines that the payment should be paid in installments. (Plaintiffs' Ex. 38 (emphasis added).) Similarly, the City can choose whether to pay in a lump sum or in periodic payments. But, the operative SDHC guidelines do not legally require the City to make rent differential payments on a lump sum basis, as correctly recognized by the Special Master.

[6] Plaintiffs falsely state that the OPC did not make any recommendation for monthly or periodic payments. (POB, p. 27:8-12.) To the contrary, OPC recommended the payment of the rent differential "over 48 months," consistent with the Policy 300.401.

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B. The SDHC Guidelines were Revised in 2010 to Provide for Rent Differential on a Lump Sum Basis, But Only for a Period Not to Exceed 42 Months

Plaintiffs now cite the recently revised SDHC guidelines in support lump sum payments. In 2010, the SDHC updated their guidelines to provide for lump sum payments. (See Policy 301.06, effective January 26, 2010, City Ex. 75.) Like the operative 1995 Policy, these revisions were the culmination of years of meetings involving San Diego park owners and residents. (City Exs. 72-74.) Obvious problems exist, however, with Plaintiffs' reliance on the current version of the SDHC Policy. First, Policy 301.06 was not in effect in 2003. The Court has ruled that Policy 300.401 (effective 1995) applies to this case, and Policy 300.401 does not legally require the City to make lump sum payments of the 48-month rent differential period. (Ex. 33; SOD, Ex. 68.) Second, under the new Policy 301.06, the SDHC contemplated that park owners would be making lump sum payments for a rent differential period not to exceed 42 months, similar to federal guidelines, not twice that length at 84 months. (Exs. 72-75.) Such payments would constitute an incredible financial burden on park owners that the MHCIC and the SDHC never intended. Therefore, if Plaintiffs' argument is that should receive lump sum payments based on the "updated, crystal-clear Guideline" adopted in 2010 (POB, p. 28:18-20), and the Court is inclined to grant Plaintiffs' request, then Plaintiffs should also only receive the 42 month rent differential period under the same guidelines. Either the entire current Policy applies or it doesn't (and the Court has already ruled it does not). Plaintiffs cannot rely on piecemeal portions of the current SDHC guidelines and only when it suits their purposes.

C. As Recognized by the Special Master, the City Can Efficiently Handle the Administration of Periodic Payments as Intended by the Applicable SDHC Guidelines

Plaintiffs also seek to spare the City the cost and administrative burden of issuing monthly rent differential checks to the residents. First, the issue here is what the City is legally required to do under the guidelines to mitigate the adverse impacts of closure, and the guidelines provide for the payment of rent subsidies on a periodic basis. Most certainly, a city with 1.3 Million residents and 20,000 employees is more than capable of efficiently handing the issuance of monthly checks to 270 households every month in a timely fashion. And, whatever the cost and burden of

monthly payments to class members, this is the City's responsibility, not Plaintiffs.

Second, the fact that there are no other instances of monthly rent differential payments for San Diego park closures does not somehow make the process improper or unacceptable. There has only been one other application of Policy 300.401 in the City of San Diego, which was the MVV closure, and in that case Archstone voluntarily agreed to make lump sum payments. (See below.) The mobilehome relocation laws are intended to mitigate the impact of relocation. If the mobilehome cannot be moved, then the rent differential payments are intended to compensate the resident with an amount that, when combined with the amount of monthly space rent, will be sufficient to rent a comparable apartment. The residents would receive each payment before rent is due to be paid to the landlord, and therefore it would not be necessary to receive lump sum payments.[7]

D. Archstone Voluntarily Agreed to Pay 48 Months of Rent Differential in a Lump Sum, Not Because It Was Legally Required

Plaintiffs also argue for the payment of the rent differential benefit on a lump sum basis because the MVV residents received lump sum payments. However, not only did Archstone contemplate the payment of this benefit to 70 households (not 270), Archstone voluntarily agreed to make lump sum payments. During its opening presentation at the City Council hearing on the MVV closure in November of 2008, Archstone advised that City Council that it would be offering to pay the 48 month rent differential in a lump sum. The MVV RIR submitted to City Council had proposed that: "In situations where it is not feasible to relocate the mobilehome, payment will be provided as follows: 1. The difference between current space rent and rent for a comparable apartment unit of a size appropriate to accommodate the displaced household, with this amount paid over 48 months." (See MVV RIR (p. 14), City Ex. 71 (emphasis added).) During its

[7] Plaintiffs also submitted an untimely declaration from Plaintiffs relocation expert Phillip Schwartze, claiming that he had been involved in ten park closures and had never seen payments made over time. This declaration is also subject to City's motion to strike Plaintiffs' late-submitted evidence and must be stricken from the record. Plaintiffs had their opportunity to submit evidence to the Special Master, and it is too late now. In any event, none of Schwartze's purported closures involved San Diego mobilehome parks or the application of SDHC guidelines in effect in 1995, which provides for rent differential payments over 48 months and does not require lump sum payments. As such, his declaration is irrelevant.

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presentation, however, Archstone advised City Council that it had subsequently agreed pay the 48 months in a lump sum, and importantly, stressed that its agreement to pay the 48-month rent differential exceeded what was required under the SDHC Policy 300.401. Specifically, Archstone representative Michael Walseth stated:

> In the rare case that a coach is in a condition where it cannot be relocated, Archstone is required by law to make a rent subsidy payment to the displaced resident for a period of 48 months. These payments are calculated by the difference between the rent the displaced resident is paying in the park, and the HUD fair market rent for an equivalent apartment unit in the community. For example, if the displaced resident is paying $725 a month, and the HUD fair market rent is $1,725, Archstone is obligated to pay the displaced resident $1,000 per month or $48,000. By not raising rents, Archstone has affected the subsidy payment to reach a range of $30,000 to $80,000 for each resident depending on the number of bedrooms in the unit. Archstone's program also significantly exceeds the guidelines in the report because we will be offering residents a lump sum payment in lieu of the stream of payments as required by the policy. This added financial assistance will provide for more replacement housing options for the residents. Next slide, please. (Ex. 76A, pp. 23-24 (emphasis added).)

There is nothing in the MVV RIR or the MVV City Council testimony which supports the proposition that Policy 300.401 requires the payment of the rent differential as a lump sum.[8]

E. If the Court Requires Payment of 84 Months in a Lump Sum Based on the MVV Closure, Then the Same 4.75 Discount Rate is Also Required

Finally, if the Court accepts Plaintiffs' position that they should be paid 84 months in a lump sum as in MVV, then the Court must also discount those payments by the same 4.75 discount rate. The Special Master stated in the Second Report that:

> Therefore, in the event the Court disagrees with the above recommendation for periodic rent differential payment, and orders a lump-sum payment, fairness and good business practice would indicate that it should be discounted to present value as was done in the MVV case when the City imposed 84 months rather than

[8] Plaintiffs also submitted an untimely declaration from a purported La Mesa Terrace resident, claiming that he received a lump sum payment upon the closure of La Mesa Terrace. This declaration is also subject to City's motion to strike Plaintiffs' late-submitted evidence and must be stricken from the record. In any event, as with MVV, Plaintiffs fail to appreciate the difference between what a park owner will voluntarily agree to do to secure approval of park closure, as opposed to what is legally required. Whether or not this resident or other La Mesa Terrace residents received a lump sum payment, OPC did not recommend same in the La Mesa RIR, nor was it required under Policy 300.401. (City Ex. 52, pp. KERR 956-957.) La Mesa Terrace also only had 20 occupied spaces, so making lump sum payments in that case would not have been onerous, if that is what actually occurred. (City Ex. 52, p. KERR 950.)

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48 months of rent differential. (SR, p. 12:7-11 (emphasis added).)

As a further enhancement to the MVV RIR, Archstone agreed to increase the rent differential amount from 48 months paid over time to a lump sum payment of 84 months at net present value at the date of displacement. Archstone only agreed to the lump sum payment of 84 months based on the assumptions that: (1) the 48 months was to be paid over time, and (2) if the 84 months was to paid in a lump sum, Archstone could pay the 84 months at the net present value of the stream of cash outflows:

> [Madaffer] And then, I guess the question, Mr. Robinson, for you is, is-- I'm troubled by only 48 months. Now, maybe that's over and above what should be done. And I get the fact, which I don't like sitting here either, is the fact that you guys could just, if I vote to deny you today, you guys could just basically keep doing what you've been doing, keep relocating people, and essentially, let's just say two years from now you have done that. You now have a big vacant, dirt parcel. Then, it sounds like you can just come back through development services again, file another application and this time because it's not a currently operating mobilehome park, there's nothing to worry about, you can just go get your entitlements.
>
> [Robinson] Correct.
>
> [Madaffer] So I get that and I understand that absent this project, these enhanced benefits. So let's talk about enhancing the benefits a little bit more, and see if you couldn't go from say four years to say seven years for benefits. I mean, I look at the fact that residents are currently paying $725 a month and, you know, fair market rent for a two-bedroom apartment is $1205. So that, what you've said is that Archstone would pay for 48 months, the difference between the $725 and the $1205, which is about $480 a month. That comes out to $23,040 over the four years, and now I understand you're gonna pay that as a lump sum upfront. Is that correct?
>
> [Robinson] Yes.
>
> [Madaffer] So, you're just gonna pay it up front as a lump sum?
>
> [Walseth] We'd be willing to accept seven years, we'd want the present value of the seven years of cash flow.
>
> [Madaffer] So, today's rent, seven years.
>
> [Walseth] What's that?
>
> [Madaffer] Yeah, discounted is what you're saying?
>
> [Walseth] Yeah.

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> [Madaffer] Seven times whatever it is today. So you would be in agreement to seven years?
>
> [Walseth] We would. (City Ex. 76A, pp. 44; City Ex. 76:7:49:00-7:50:35.)

This agreement by Archstone was confirmed in the Todd Philips memorandum dated December 1, 2008 cited by Plaintiffs, which states that: "Archstone will provide 84 months, or seven years, of rent differential paid in one lump sum (present value at the date of displacement)." (Plaintiffs' Exhibit 45.) There was, however, no discussion on the record as to what discount rate to use. However, this term was negotiated between Archstone and the MVV residents (through the same Plaintiff attorneys in this case), and in late 2010, the parties agreed to a discount rate of 4.75 percent, which was incorporated into the lump sum amounts listed in the final MVV Settlement Agreement. (See Plaintiffs' Ex. 46, p. 2, ¶ 1 [Tables 1 & 2].)[9]

Therefore, to the extent that the Court agrees with Plaintiffs that the City should be required to pay 84 months of rent differential on a lump sum basis, and Court intends the City to be treated the same as Archstone in the MVV case and "no better, no worse" (see Court's comments cited in FR, p. 15:14-16:1), then the 4.75 discount rate must be similarly applied here.

F. The City Will Be Entitled to Pay the Judgment in Installments Over Ten Years

As demonstrated, there is no legal requirement that the City pay the rent differential benefit on a lump sum basis. And, as a practical matter, upon a demonstration of unreasonable hardship by the City, the City will be allowed to pay any judgment against it in annual installments over 10 years. This can be easily met in this case due to the significant dollar amounts at issue. Government Code section 970.6 provides:

> **§ 970.6. Installment payments; conditions**
>
> (a) The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:
>
> (1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is

[9] Plaintiffs' counsel does not dispute the application of the 4.75 discount rate to the lump sum payments in the MVV case, which was negotiated with the involvement of Hon. Wayne Peterson (Ret.) in 2010.

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paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

(b) Each installment payment shall be of an equal amount, consisting of a portion of the principal of the judgment and the unpaid interest on the judgment to the date of the payment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

IV. THE MITIGATION IN THIS CASE MUST BE SPECIFICALLY TAILORED TO THE ACTUAL ADVERSE IMPACTS OF CLOSURE ON EACH CLASS MEMBER BASED ON THE YEAR THEY VACATED OR WILL VACATE THE PARK

Plaintiffs spend the first portion of their Opening Brief (POP, pp. 8-12) with the claim that City argued to the Special Master that no relocation benefits are owed because the park is not closed. Not so. Certainly, on the subject of pre-judgment interest, which is the portion of the Second Report cited by Plaintiffs (POB, pp. 8, citing SR, p. 20) and to which neither party objects, the City argued, in part, that pre-judgment interest was not appropriate for residents that still live in the park. The Special Master only "hedged" to the extent that the Court already ordered that Plaintiffs were entitled to pre-judgment interest, as urged by Plaintiffs at the hearing with the Special Master. (See SR, p. 20:16-23.) Ultimately, the Special Master recommended seven (7) percent pre-judgment interest for residents that have already vacated the park. Neither party has objected to that finding for the purposes of this briefing, nor do Plaintiffs continue to argue that the Court ever ordered pre-judgment interest.

On the subject of mitigation, however, despite Plaintiffs' best efforts to misguide the Court, the Special Master in no way conditioned his recommendations on how to determine the components of the rent differential calculation. Specifically, in order to mitigate the actual adverse impacts of closure on these residents and in amounts that do not exceed the "reasonable costs of relocation, the Special Master recommended that rent differential payments be tied directly to the year that the class member actually vacated or will vacate the park, by (a) updating the 2003 space rents at De Anza according to annual changes in the Consumer Price Index (CPI), thereby making them "current" for the purposes of the SDHC guidelines, and (b) determining the

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comparable apartment rental rates for the year that the class member actually vacated or will vacate the park based on the annual surveys published by the San Diego County Apartment Association (SDCAA). These findings must be adopted.

In the typical park closure situation, mobilehome residents in California are given a six-month or 12-month notice of park closure, during which time residents make arrangements to relocate and move out on or before the park closure date. (Civil Code, § 798.56(g).) In that case, based on the SDHC guidelines, the residents would receive a rent subsidy based on the difference between their current space rent, which the park owner presumably has adjusted over time based on market forces, and the current comparable apartment rental rates in the relevant area. Here, the task is not so easy. First, the 2003 space rents at De Anza have not been adjusted for the last 10 years, and therefore none have a "current" space rent as contemplated by the SDHC guidelines. Second, not all class members have vacated or will vacate the park on the same date, as would be the case in the typical park closure. Here, hundreds of class members have already vacated, more will vacate during the pendency of the litigation, and others will remain in the park until the date the park finally ceases operation. As of the time of the briefing to the Special Master, an estimated **144** class member homeowners had already moved out of and/or removed their mobilehomes from the park since late 2003. Park management records reflect the following numbers of relocated homeowners per year:

YEAR RELOCATED	# HOMEOWNERS
Late 2003	26
2004	28
2005	16
2006	8
2007	11
2008	11
2009	12
2010	15

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YEAR RELOCATED	# HOMEOWNERS
2011	10
2012	7
TOTAL # RELOCATED HOMEOWNERS	**144**

Further, there were only an estimated **132** class-eligible homeowners that have lived in the park during the entire class period, from 2003 to present, and most will continue to live in the park for several more years. Under these circumstances, it makes no sense to calculate benefits based on a single comparable apartment survey from 2014 or using the 2003 park closure date, as alternatively argued by Plaintiffs, as those options would wholly fail to satisfy the requirements of the relocation statutes to mitigate the adverse impacts of closure on these residents and in amounts that do not exceed the "reasonable costs of relocation."

Therefore, to ensure uniform and equal treatment among all eligible class members, the rent differential calculation for each class member should be based on the year that they actually vacated or will vacate the park. First, because the De Anza space rents have not been adjusted since 2003, CPI adjustments would need to be made to the space rents (for the purposes of the benefit calculation only) up to the year the resident vacated or will vacate the park. Second, the fair market apartment rental figures for the same year would be determined by OPC using the historical apartment rental survey information published by the SDCAA in the Spring and Fall each year. Taken together, when utilizing both a CPI-adjusted space rent and the comparable apartment rents based on the then-current rental survey information, each class eligible household will receive a rent differential benefit tied precisely to the period of time when they actually entered the apartment rental market.

A. The Special Master Properly Recommended That The 2003 Space Rents Must be Adjusted by CPI For The Purposes of Calculating the Rent Differential

Pursuant to the San Diego mobilehome relocation standards and procedures, where it is not feasible to relocate the mobilehome, rent differential payments are to be made based on the difference between the resident's "current" space rent and the rent for a comparable apartment

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unit. (San Diego Housing Commission ("SDHC") Policy PO300.401, Exhibit A, p.3 § 1(b)(1).) In this case, however, the Court entered an injunction at the inception of the litigation to maintain the "status quo" at the park pending the resolution of the litigation, effectively freezing the rents since 2003. If the rent differential calculation, for example, were based on the difference between space rents from 2003 and fair market apartment rents from 2015 (or whatever year the resident vacates the park), the rent differential payments would result in potentially excessive and unreasonable relocation payments at the expense of City taxpayers. As such, reasonable adjustments must be made to the purportedly "current" space rents at De Anza before calculating the rent differential in this case. Accordingly, the Special Master has recommended that the space rents be adjusting annually in accordance with changes in the CPI. (SR, pp. 22-25.)

Importantly, the City has not requested that the CPI adjustments be applied retroactively to the rents paid by residents based on the 2003 rental rates over the last ten years, nor has the City requested future adjustments to the 2003 rental rates that the residents continue to enjoy. Rather, the 2003 space rents are to be adjusted for the purposes of the rent differential calculation only. Of course, the adjustments to the 2003 space rents will result in a reduction of benefits per household. (POB, p. 18:10.) That is the whole point. Government Code section 65863.7 mandates that the steps required to mitigate the adverse impacts of closure "shall not exceed the reasonable costs of relocation." (Gov't Code, § 65863.7(e).) And here, to avoid forcing the City to pay a rent differential benefit that exceed the reasonable costs of relocation, the Special Master has recommended that rent differential benefits be calculated based on the year that the resident vacated or will vacate the park.

For example, if the resident vacated in 2008, the rent differential must be calculated based on (a) the space rent adjusted to 2008 in accordance with changes in the CPI (up or down) and (b) the comparable apartment rental rate for 2008. If the space rents are not adjusted for the purposes of the calculating the rent differential, several things occur. First, calculations based on space rents in 2003 and comparable rents for 2008 do not reflect the mitigation actually required for that homeowner and potentially requires the City to pay windfalls to residents that exceed the reasonable costs of relocation (and may even result in a shortfall). Second, in addition to the

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rental income already lost due to 10 years of frozen rents, the City would be forced to effectively pay the amount of lost rental income to the residents due to the artificially low space rents. The City and its taxpayers lose twice - not an equitable result. Therefore, the Special Master's recommendation for CPI adjustments to the 2003 space rents must be adopted.

1. History of Annual CPI Rent Increases Prior to 2003

Prior to 2003, when De Anza Harbor Resort & Golf ("DHRG") operated the Park, annual space rent increases were governed by Article 2 of the Long Term Rental Agreements ("LTRA"). (City Ex. 70.) Under the LTRA, there were two rent increase scenarios. If DHRG still intended to proceed with plans to redevelop the property, DHRG would adjust the rent according to annual changes in the CPI. (*Id.* at p. 7, § 2.2; p. 11, §2.9.) If DHRG abandoned their redevelopment plans, it had the option to increase space rents by 4 percent annually if the CPI increased by less than 4 percent, or based on the annual CPI increases if more than 4 percent, up to a maximum of 10 percent. (*Id.* at p. 8, § 2.3; p. 11, § 2.9.)

Historically, DHRG adjusted monthly space rents according to percentage changes in the CPI. (See e.g. Ex. C to Supp. NOL.) Pursuant to section 2.9 of the LTRA, CPI is defined as the United States Department of Labor Consumer Price Index, U.S. City Average – All Urban Consumers, 1967 = 100, or the successor index in effect, and annual rent adjustments were determined by the increase or decrease in the CPI for the first twelve (12) months of the period commencing (16) months immediately preceding the last anniversary of the Effective Date of the LTRA. (Ex. 70, p. 11, § 2.9.) The Effective Date of the LTRA was October 1, 1988. (*Id.* at p. 2.) Therefore, for example, to adjust the monthly rent for space #SD-30 beginning on the residents' anniversary date of February 1, 2001, one would start at anniversary of the Effective Date of the LTRA (October 1, 2000), go back 16 months to June 1, 1999 and adjust the rent based on the CPI increase or decrease from June 1, 1999 to June 1, 2000. Pursuant to the United States Department of Labor Consumer Price Index, U.S. City Average – All Urban Consumers, 1982-84 = 100, the index for June 1999 was 166.2 and for June 2000 was 172.4, for a change in index points of +6.2. (Ex. D to Supp. NOL, p. 2.) The CPI increase, therefore, was 3.7 percent (6.2 / 166.2 x 100 = 3.73 percent). Accordingly, on October 27, 2000, DHRG notified the residents of

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space SD-30 that their monthly space rent would increase 3.7 percent beginning on February 1, 2001. (See Ex. C to Supp. NOL , p. SD30-0102.)

On November 15, 2002, DHRG officially abandoned plans to re-develop the property. (City Ex. 40.) Therefore, pursuant to the terms of the LTRA, DHRG had the option to increase space rents by 4 percent annually if the CPI increased by less than 4 percent, or based on the annual CPI increases if more than 4 percent, up to a maximum of 10 percent. (Ex. B to Supp. NOL at p. 8, § 2.3; p. 11, § 2.9.)

2. The Court-Ordered Freezing of Rents Pending Case Resolution

On November 20, 2003, the residents obtained a temporary restraining order against unlawful detainer proceedings to evict them from the property. (City Ex. 51.) The 50-year term of the ground lease then expired on November 23, 2003 and DHRG returned possession of the property to the City. On January 15, 2004, the trial court issued a Preliminary Injunction enjoining the City from initiating unlawful detainer proceedings or other legal action against the residents without leave of court, changing Park operations, practices, procedure or rules and regulations of the Park that existed at the Park on and prior to November 20, 2003, discontinuing or diminishing any current services to Park residents, or closing the common areas during the pendency of the action. (City Ex. 54.) On October 14, 2005, the trial court issued a Modified Preliminary Injunction, which remains in effect. (*Ibid.*) Effectively, therefore, the Court has ordered the maintenance of the *status quo* at the Park as of November of 2003 until the resolution of the litigation. As a result, there have been no adjustments to the monthly space rents at the Park for more than ten years, since November of 2003.

3. For the Purposes of the Rent Differential Calculation, Park Space Rents Should be Adjusted by Changes in the CPI Each Year the Residents Lived in the Park After 2003

The parties agree that the rent differential is to be calculated based on the difference between the current space rent and the fair market value rent for a comparable apartment. However, in the context of this case, the purportedly "current" space rents at De Anza are actually space rents that have been frozen in time since 2003. Prior to 2003, DHRG operated the Park as a business and was freely able to increase the space rents annually based on changes in the CPI. On

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November 15, 2002, DHRG officially abandoned plans to re-develop the property. (Ex. E.) Therefore, pursuant to the terms of the LTRA, which was the subject of extensive negotiations between the residents, their attorneys and DHRG, the landlord had the option to increase space rents by 4 percent annually if the CPI increased by less than 4 percent, or based on the annual CPI increases if more than 4 percent, up to a maximum of 10 percent. (Ex. B at §§ 2.3, 2.9.) From 2004 to 2012, the annual data reflects that the CPI increased less than 4 percent each year. (Ex. D.) Accordingly, absent the injunction from the Court and had the City been able to operate the Park as a business, annual space rent increases of 4 percent pursuant to the terms of the LTRAs would have been not only permissible, but entirely reasonable.

As a result of the Court's *status quo* injunction, the lack of CPI--adjusted space rents since 2003 has already resulted in a rent savings of tens of thousands of dollars for the average De Anza resident. For example, the monthly space rent in 2003 for space SD-30 was $1380.87. In 2012, the monthly space rent for coach SD-30 is still $1380.87. As a result, without the annual CPI adjustments, this household saved over **$21,000** from 2004 to 2012.

Year	Rent Prior Year	% Change	$ Change	Adjusted space rent	Annual Savings
2004	$1,380.87	2.66%	$36.73	$1,417.60	$440.77
2005	$1,417.60	3.39%	$48.06	$1,465.66	$1,017.45
2006	$1,465.66	3.23%	$47.34	$1,513.00	$1,585.54
2007	$1,513.00	2.85%	$43.12	$1,556.12	$2,102.99
2008	$1,556.12	3.80%	$59.13	$1,615.25	$2,812.58
2009	$1,615.25	-0.40%	$-6.46	$1,608.79	$2,735.05
2010	$1,608.79	1.60%	$25.74	$1,634.53	$3,043.93
2011	$1,634.53	3.20%	$52.30	$1,686.84	$3,671.59
2012	$1,686.84	2.10%	$35.42	$1,722.26	$4,096.68

				Total Rent Savings	**$21,506.58**

The City is not requesting reimbursement or an offset of those rental savings dating back to 2003. However, the failure to adjust the 2003 space rents for the purposes of the rent differential calculation would only result in additional windfalls to the residents. Specifically, such adjustments should be made each year after 2003 until the year that the residents vacated the park, with the rent differential benefit then calculated based on the fair market comparable

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apartment rental rate for that same year. As an example, if the homeowner in SD-30 hypothetically vacated the park in 2012, her rent differential would be calculated as the difference between her space rent adjusted to 2012 based on CPI ($1,722.26) and the fair market apartment rent for 2012 (based on data in the biannual SDCAA apartment rental surveys), and multiply the differential over the period of 42, 48, or 84 months. This procedure is necessary to tie relocation compensation directly to the year that the residents vacated the park as would be done in the normal park closure situation, and avoid the payment of benefits that exceed the reasonable costs of relocation. Otherwise, calculating the rent differential at the 2003 rental rate of $1,380.87 instead of the CPI adjusted $1,722.26 (a difference of $341.39 per month) multiplied by 84 months would be an additional **$28,000** windfall to that resident, in addition to the rental savings already enjoyed since 2003.

Accordingly, the Court should adopt the Special Master's recommendation to adjust the 2003 space rent numbers in accordance with increases or decreases in the CPI, and for the purposes of calculating the rent differential only. As concluded by the Special Master, "to do otherwise would result in an unwarranted penalty imposed against the City and a windfall to the resident, neither of which would constitute mitigation that '…shall not exceed the reasonable cost of relocation"' as required by the Government Code section 65863.7 and as contemplated by the SDHC guidelines. (SR, p. 24:22-25.)

4. The *Abbit* Litigation Related to the Condition of the Park Was Settled Years Ago and Has No Relevance to the Case

When all else fails, Plaintiffs go-to argument in this class action has always been to re-hash old claims about the conditions of the park after 2003. This time, Plaintiffs oppose the Special Master's recommendation for adjustments to the 2003 space rents due to the "decline in the conditions of the park since the City took over operations in November 2003." (POB, p 18-19.) As the Court will recall, however, Plaintiffs' claims related to the condition of the park were litigated *and resolved* in the separate action entitled *Abbit v. City of San Diego, et al*. (San Diego County Superior Court Case No. GIC865536) after the claims were severed from this class action in 2006. (Plaintiffs' Ex. 22.) After four years, the *Abbit* action settled in 2010 for $3.6 Million.

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(Plaintiffs' Ex. 22.) Importantly, the *Abbit* case did not only include claims for emotional distress and personal injuries, as contended by Plaintiffs. (POB, p. 20-21.) Rather, the *Abbit* case included causes of action for: breach of contract; breach of implied covenant of quiet enjoyment; breach of implied covenant of habitability; breach of implied covenant of good faith and fair dealing; interference with contract; and interference with prospective economic advantage. (See *Abbit* Fourth Amended Complaint, Ex. 107 to Supp. NOL.) Notably, in addition to the tort claims, Plaintiffs contract-based claims related to the residents' rental agreements and alleged that the City breached those rental agreements and implied covenants implicit in those agreements due to the decline in conditions of the park, including the failure to preserve and maintain common areas and facilities, as well as other allegations of park mismanagement dating back to November 24, 2003. (*Id*. at pp. 44-57.) The prayer also seeks restitution of all rent paid to the City since November 24, 2003. (*Id*. at p. 62:11-12.) As such, any claims related to an alleged imbalance of space rents due to park conditions were addressed or should have been addressed by Plaintiffs in the *Abbit* case, and Plaintiffs agreed to resolve those claims for a substantial settlement.[10] (Plaintiffs' Ex. 22.) And, as correctly recognized by the Special Master:

> Lastly, one of plaintiffs' key arguments is that, notwithstanding that rents currently being paid by De Anza residents have been in effect for 13 years without adjustment, nevertheless, those rental rates, in effect, represent current fair market rates because plaintiffs have been deprived of amenities and/or infrastructure destroyed by the City during attempts at eviction before being enjoined by the Court. Although I do not know what amount was paid to plaintiffs by way of settlement of their claims in the *Abbit* case, given the history of this hard-fought case over many years, where both sides are represented by very experienced and capable counsel, I have to believe that, if plaintiffs were not adequately compensated in the *Abbit* case for whatever loss they suffered, and that created an imbalance in rent they were paying, this issue would have been called to the attention of the Court long ago. (SR, p. 25:8-17 (emphasis added).)

[10] This *Abbit* settlement also necessarily included Plaintiffs' new claim that De Anza space rents should have been decreased by 10 percent starting in December 2004, as contended in the speculative and conclusory declaration from Mr. Brabant based on his review of park "data." (Plaintiffs' Ex. 21.) In any event, the declaration is subject to the City's motion to strike late submitted evidence, as well as Plaintiffs' new DVD and photograph submissions to improperly give the Court a "fresher" on old claims long since resolved. (Plaintiffs' Exs. 19, 43.) These improper and prejudicial submissions must be disregarded.

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5. The City is Requesting a Space Rents Adjustment for the Purposes of the Rent Differential Calculation Only

Finally, Plaintiffs oppose the CPI adjustment on the grounds that the City waived its right to request a modification of the preliminary injunction to increase space rents. Again, the City is not requesting an increase in space rents paid by the residents at the park. The City is also not seeking reimbursement or an offset for the inability to increases space rents since 2003. Rather, for the purposes of the rent differential calculation only, CPI adjustments need to be made to the 2003 space rents, so that when the SDHC guidelines are applied, the rent differential calculated between a comparable fair market apartment rent and the fair market space rent at the time the resident vacates the park. This is not accomplished by using artificially low space rents as part of the calculation, and the adjustment is necessary to serve the purposes of the statutes to mitigate the actual impacts of park closure on the De Anza residents, but not in amounts that exceed the reasonable costs of relocation.

B. In Addition to Annual CPI Adjustments to Space Rents, The Special Master Also Properly Recommended that the Comparable Fair Market Apartment Rents Be Determined Based on the Year the Resident Vacated or Will Vacate the Park Using the SDCAA Apartment Surveys

Next, to accomplish the determination of comparable apartment rent component of the rent differential for each class member household based on the actual year they left or will leave the park, reliable historical apartment rental survey information is available to OPC for the ZIP codes selected (92106, 92107, 92109). The SDCAA publishes its Vacancy & Rental Rate Survey in the Spring and Fall each year, and the surveys not only contain ZIP-code specific information, they also provide average apartment rents per square foot. As such, OPC can simply multiple the square footage of each coach by the average rent per square footage for the three selected ZIP code areas for the particular year that the class member household vacated the park. For example, if a resident vacated in 2004, the comparable rent component for the class member would be determined by multiplying the square footage of their De Anza home by the price per square foot for an apartment unit of comparable size and in a comparable locale in 2004. The rent differential

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would then be the difference between the resident's CPI-adjusted space rent through 2004 and comparable rent for 2004 based on the specific size of the home. As indicated by the Special Master, "the City's request that OPC utilize the SDCAA data makes a great deal of sense." (SR, p. 32:18.)

Notably, however, the Special Master also recommended in the Second Report that:

> Rather than requiring OPC to use SDCAA data exclusively, in lieu of information from Internet websites, OPC should be allowed to exercise its expertise on this issue and, in its best judgment, use information from Internet websites in conjunction with SDCAA data unless that would result in an inconsistent or unfair calculation, in which case only SDCAA should be used. (SR, p. 33:4-8.)

As the Court is aware, after hearings with the Court and Special Master, OPC was recently requested to (1) conduct a current apartment survey in order to update its comparable rent numbers and (2) determine whether these new figures can be used in conjunction with the SDCAA surveys. In March of 2014, OPC completed that survey and determined the following median comparable rent numbers:

1	$1,300 ($2.01/sq.ft) – 1BR units are under 665 sq.ft
665	$1,750 ($1.75/sq.ft) – 2BR units are under 1060 sq.ft
1060	$2,600 ($2.18/sq.ft) – 3BR units are under 1380 sq.ft
1380	$3,395 ($1.88/sq.ft) – 4BR units are over 1380 sq.ft

On a conference call with counsel, however, OPC advised that it did not know how it could use this square footage data in conjunction with the SDCAA square footage data.

Accordingly, as recommended by the Special Master, and to ensure that the final rent differential methodology is fairly and consistently applied to each class member based on the year that they relocated from the park or will relocate from the park, the 2014 survey should be disregard. Instead, OPC should utilize the historical, current or future SDCAA rental survey information for the ZIP codes selected by OPC, and calculate the comparable rent for each unit by multiplying the square footage of each De Anza mobilehome by the price per square foot for an apartment unit of comparable size. The monthly rent differential can then be calculated by subtracting the homeowner's CPI-adjusted space rent.

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V. OPC'S BREAKDOWN OF THE DE ANZA HOMES BY SQUARE FOOTAGE IS PROPER AND IS CONSISTENT WITH OPC'S ANALYSIS FOR THE 2011 DRAFT REPORT, TO WHICH PLAINTIFFS DID NOT OBJECT

In its Opening Brief, Plaintiffs also seeks the correction of purported "simple math errors" in OPC's breakdown of the De Anza homes by square footage. For clarification, these purported corrections are being requested by Plaintiffs, not "jointly" as contended by Plaintiffs. There are no errors in OPC's analysis which need correction.

Earlier in the RIR process, OPC determined that the square footage data for the De Anza units would be more reliable than resident-reported bedroom counts. In 2011, in its Draft RIR, OPC analyzed the square footage of each unit at De Anza to determine the range for each bedroom size. (See Ex. 15.) In response to an inquiry from the parties about the Draft RIR, OPC provided the following explanation of how it determined the ranges for each bedroom size:

> We analyzed the square footage of each unit within the Park to determine the range for each bedroom size. The square footage cut-off points are related to reported square footage of the 1, 2, 3, and 4 bedroom groups within the Park. The cut-off points were based on a process that included the mean square foot value of De Anza MH units with a reported bedroom and square foot value. Once the mean square foot value was determined, each value was also plotted on a chart and a square foot range was applied to each bedroom size. A 15% deviance from the value was applied, which was then rounded, to arrive at the range for each bedroom size. Median analysis was not used because several De Anza HM (sic) units did not have a reported bedroom size and/or reported square foot. (OPC Q&A, Ex. 112 to Supp. NOL, Question # 2.)

During the Special Master briefing process, Plaintiffs had no objection to the application of the OPC's application of the 15% deviance from average to determine the range for each bedroom size (with breakpoints at 700/1205/1450). Instead, Plaintiff concern was the inconsistent application of mean vs. median, which Plaintiffs contended skewed the results unfavorably to Plaintiffs. (SR, p. 31:23-32:4; see also Ex. 112, Question #4.) In OPC's view, a median analysis was appropriate to determine the middle cost of replacement housing. (*Id.*) However, OPC did not use median for the De Anza homes due to missing data. (OPC Q&A, Ex. 112 to Supp. NOL, Question # 2.) Since that time, all of the square footage data for the De Anza homes has been determined, so OPC could now apply the median analysis.

In February of 2014, as the Court is aware, Plaintiffs requested that OPC perform an

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updated apartment rental survey to determine the median comparable rents based on the sizes of the comparable units. Thereafter, on March 11, 2014, Plaintiffs also asked OPC to update their 2011 De Anza square footage breakdowns in order to consistently apply the median analysis. (Ex. 114 to Supp NOL.) In doing so, consistent with the methodology it used in 2011, OPC applied the 15% deviation (this time from median) to determine the square footage ranges of the De Anza units. (See OPC's explanation, Plaintiffs' Ex. 28.) This resulted in new breakpoints at 665/1060/1380. (See Plaintiffs' Ex. 26, p. 2.) Now, though OPC did exactly as requested, Plaintiffs do not like the results and contend that the break points are artificially elevated and lack "statistical foundation and methodology." (POB, p. 23.)

First, if Plaintiffs had objections to the application of the 15% deviation to determine the break points for the De Anza homes, it is too late to raise them now.[11] OPC simply applied the same methodology as they did in 2011 for the Draft RIR. Second, as OPC explained, the De Anza homes reflected a distribution of home sizes spread over a broad range and OPC's intent was to show the percentage of homes lying within a deviation from the median. (Plaintiffs' Ex. 28.) For example, for the resident reported one-bedroom units at De Anza, the square footages ranged from 380 to 882 square feet, and the two-bedroom units ranged from 400 to 2140 square feet. (See attachment to Ex. 144 to Supp. NOL.) Therefore, As OPC clarified for Plaintiffs:

> We used a deviation from the median, which would be used as the limits for each group. Please note that this is not a "mark-up" as you have stated, but is rather a deviation, both up and down, from the median in order to identify the square footage for the group. The range is to represent the majority of the homes within this group. (Plaintiffs' Ex. 28.)

Accordingly, as the relocation expert, OPC properly exercised its discretion to determine appropriate square-footage tiers for the purposes of calculating relocation benefits. There will always be examples of homes sizes that fall just short of the upper range, resulting in a lesser amount of benefits, or homes just large enough to make the cut. (Interestingly, in Plaintiffs' example of the homeowner with the 1,000 square foot mobilehome, that size home still falls in

[11] Again, Plaintiffs' untimely submission of the declaration of Patrick Kennedy is subject to the City's motion to strike late evidence.

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the same second tier under both the 2011 mean breakpoints and the updated median breakpoints.) (PB, p. 22-23.) The break points, however, need to fall somewhere and there has been no attempt by OPC to artificially skew the ranges in order to decrease the benefits for the residents.

Finally, as requested by Plaintiffs, OPC has already included the data for the 4 bedroom and larger homes, but at the correct 1380 square footage and over cut-off. (Plaintiffs' Exs. 26-28.)

VI. THE SPECIAL MASTER PROPERLY RECOMMENDED THAT LODGING EXPENSES BE PAID ONLY TO RESIDENTS PHYSICALLY RELOCATING THEIR COACHES AND ON A CASE-BY-CASE BASIS UP TO SEVEN NIGHTS

The City does not object to the Special Master's recommendation for an adjustment to the $40 lodging amount under the operative SDHC guidelines. (City Ex. 33; SR, p. 18:25-19:5.) And, OPC has already recommended an amount not to exceed $139 per night, for up to seven nights. (See Ex. 113 to Supp. NOL.) Otherwise, the Special Master appropriately agreed with the recommendations of OPC that (1) the lodging benefit should only be paid to resident owners that physically relocate their homes and for their actual period of displacement, and (2) that the payment of the lodging benefit should be handled on a case-by-case basis. (SR, p. 19:6-20.)

Plaintiffs, however, continue to miss the point of these proceedings, which is to mitigate any actual adverse impacts of closure, not provide the De Anza residents with cash windfalls because it is logistically easier. The SDHC guidelines do not require, as requested by Plaintiffs, the payment of lodging to every class member for a fixed number of nights. First, under the SDHC guidelines, the lodging benefit is not an automatic, seven-night benefit for each homeowner. (City Ex. 33.) It is a variable benefit paid "up to" seven nights. (*Ibid*.) Second, as a practical matter, only resident owners that will be physically relocating their coach may need the lodging benefit, while their home is moved and installed into the new park. (SR, p. 19:6-20.) OPC made this same recommendation in the MVV case and for good reason. (City Ex. 71, p. 14.) Non-resident homeowners that did not or do not actually live in their coaches will only need to move or dispose of their home at the time of closure, and therefore do not need a stipend for lodging. Further, those resident homeowners with coaches that cannot be relocated will have more than adequate notice of the park closure date (at least six months or more) to make plans to

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move directly from the park into their apartment. (*Ibid.*)

Therefore, the Special Master properly recommended that the lodging benefit should only be paid to resident owners that are physically relocating their homes and only for the actual period of displacement. And, even if the Court disagrees that eligibility for the lodging benefit should be so limited, the SDHC guidelines still only require the City to pay the lodging benefit to homeowners as needed on a case-by-case basis, and for a period not to exceed seven nights. This process will be capably handled by OPC and fulfills the purpose and intent of the Government Code to mitigate adverse impacts of closure, but not in amounts that exceed the reasonable costs of relocation.

VII. THE COURT SHOULD EXERCISE ITS DISCRETION TO DENY PLAINTIFFS' REQUEST FOR STATUTORY PENALTIES

There is no basis for the recovery of statutory damages in this case. While it is true that the Court ruled that the City violated the MRL (which the City does not concede and will address on appeal), statutory penalties are not mandatory. Rather, such penalties are: (1) completely within the discretion of the Court, and (2) only awardable if the Court determines that the park owner or management willfully violated the MRL. (Civil Code, § 798.86.) Specifically, Civil Code section 798.86(a) provides:

> **§ 798.86. Award for willful violation in addition to damages; Punitive damages or statutory penalty**
>
> (a) If a homeowner or former homeowner of a park is the prevailing party in a civil action, including a small claims court action, against the management to enforce his or her rights under this chapter, the homeowner, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed two thousand dollars ($2,000) for each willful violation of this chapter by the management.
>
> (b) A homeowner or former homeowner of a park who is the prevailing party in a civil action against management to enforce his or her rights under this chapter may be awarded either punitive damages pursuant to Section 3294 of the Civil Code or the statutory penalty provided by subdivision (a).
> (Civ. Code, § 798.86 (emphasis added).)

As a threshold matter, Plaintiffs presented no evidence on the issue of statutory penalties at trial. In their post-trial Request for Statement of Decision, Plaintiffs claim to have submitted

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three declarations from De Anza residents (Ruffato, Anthony and Epstein) on the issue of statutory penalties, to purportedly show the repercussions suffered by the residents due to MRL violations. (Plaintiffs' Request for Statement of Decision, Ex. 106 to Supp. NOL, p. 13:3-7.)[12] However, if Plaintiffs had in fact submitted that evidence on the issue of statutory penalties, that fact was never made known to the parties or the City at trial, and therefore the City had no opportunity to respond. Nor did Plaintiffs cite any evidence on this issue in their Plaintiffs' Trial Brief. (Ex. 105 to Supp. NOL, pp. 9-10.) Instead, it appears Plaintiffs simply picked some exhibits off the admitted exhibit list after trial and called it their evidence. The City has a right to a court trial on the issue of statutory penalties, and it is not proper to have that issue determined now in summary fashion. Therefore, no findings by the Court are required. (*In re Marriage of Carter* (1971) 19 Cal.App.3d 479, 494.) In any event, even if the Court deems it appropriate to consider the three resident declarations cited in Plaintiffs' Request for Statement of Decision, such evidence obviously fails to satisfy the requirements of the statute, which is to prove that the City willfully violated the MRL. The three resident declarations do not speak to that issue, nor could they. Plaintiffs' request for statutory penalties should be rejected on this basis alone.

Third, to the extent that further argument is necessary on this issue, Plaintiffs also now claim that the Court found seven MRL violations. On summary adjudication, Plaintiffs broadly requested a ruling that: "The City violated the Mobilehome Residency Law, Civil Code §798.56(g)-(h) and Gov't Code §6583.7, by failing to prepare a tenant impact report and serve lawful Notices that complied with the MRL's timing and content requirements." (Plaintiffs' Notice of Motion and Motion for Summary Adjudication ("MSA"), Ex. 104 to Supp. NOL.) The Court granted the MSA as noticed. (Order, Plaintiffs' Ex. 40, p.3.) Thus, the Court only found a single violation of the MRL in its Order, as requested by Plaintiffs in their MSA. (Plaintiffs' Ex. 40.) After the trial, citing the Court's MSA Order, Plaintiffs requested statutory penalties based on three alleged violations. (See Plaintiffs' Request for Statement of Decision, Ex. 106 to Supp.

[12] Plaintiffs included these three declarations with their briefing (Plaintiffs' Ex. 42), but also included some additional declarations which were not admitted at trial and should be disregarded (Smithwick, Gloudeman, Pletcher, Stevens).

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NOL, p. 12:22-13:10 ("Plaintiffs… for the purposes of this case, only requested that the Court award statutory penalties of $6,000 per Class Member ($2,000 x three willful violations of the Mobilehome Residency Law).) Even if the Court agreed with Plaintiffs' generous interpretation of the Court's MSA ruling, it is too late now for Plaintiffs to try to increase their request from three to seven violations, now that pre-trial motions and trial has already been completed.[13]

Finally, even if the Court deems it appropriate to consider new evidence on the issue of statutory penalties for the first time in this briefing process, Plaintiffs still have not shown, nor can they show, that the City willfully violated the MRL. The term "willful" generally refers to intentional conduct undertaken with knowledge or consciousness of its probable results. (*Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829.) Further, while the term does not require a purpose or intent to bring about a result, it requires more than negligence or accidental conduct. (*Ibid*.) Here, it is beyond dispute that, the City (and park operator DHRG) for decades maintained the consistent opinion that the park was a unique property with unique circumstances to which the MRL did not apply. (Declaration of Will Griffith, Ex. 56, ¶¶ 2-3; Declaration of Robert Collins, Ex. 57, ¶3; 2003 Resolution, Ex. 50.) Dating back to 1978, the City Attorney has opined that the use of the property as a mobilehome park was a non-conforming use of the property that violated the tidelands trust and that steps should be taken to promptly return it to proper use. (City Attorney Opinion, Ex. 8.) In 1980, the State Lands Commission concurred with the City and agreed that residential use should be phased out. (Ex. 11.) Thereafter, the Kapiloff legislation (AB 447) was enacted with the express purpose of balancing the hardship of relocating tenants against the need to return the property to its intended use as public parkland. (1981 Stats. Ch. 1008; Exs. 20, 21.)

In 1994, the City asked for the State's legal opinion on the residents' claimed right to relocation benefits and the application of the MRL. The State Lands Commission advised San Diego City Council that: (1) the park was closing at lease expiration due to the non-conforming use of the property, and therefore the park closure was not the result of some "decision, action or

[13] Penalties are also only awarded to homeowners according to the statute, not to every resident or class member as claimed by Plaintiffs in their brief.

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inaction" by the City that would trigger the tenant impact reporting and mitigation obligations under the MRL and Government Code, (2) the 22-year period of non-conforming use authorized by the Kapiloff Legislation was in fact a benefit already granted to the De Anza residents by the Legislature; (3) any relocation assistance provided by the City to the De Anza residents would be an unconstitutional gift of public funds, and therefore (4) the De Anza residents had no right to relocation benefits. (Ex. 30.) Therefore, the City specifically exempted De Anza from the mobilehome relocation guidelines in the San Diego Municipal Code due to these unique circumstances, and provided that any discontinuance or relocation issues related to De Anza would be dealt with by separate ordinance or resolution. (SDMC, §143.0615, Ex. 34.)

Nonetheless, the City continued to work with DHRG on a redevelopment plan which would have addressed the relocation of the residents. (Exs. 35-38.) Unfortunately, in May 2003, those efforts were ultimately abandoned. (Ex. 40.) In any event, the City maintained a consistent position that the requirements of the MRL did not apply to the park. (*Ibid.*) As the owner of DHRG testified, the City and DHRG were in agreement that neither party had a legal obligation to prepare a report or pay relocation costs to the De Anza residents. (Ex. 55, p. 76:15-79:18.)

On this record, there is no evidentiary support for a finding, as contended by Plaintiffs, that the City "knew" the MRL applied to De Anza, "knew" that its local ordinance exempting De Anza from the SDHC relocation guidelines would be preempted by the MRL, or "knew" that a tenant impact report "should have been done." (POB, p. 33:8-24.) Clearly, the opposite is true, and ultimately, it took thirty (30) years for a Court to rule that the City's longstanding legal position was incorrect (and that ruling is still subject to appeal). As has been recognized by all concerned, including the Court, this case presents a unique set of circumstances and a complicated area of law for which there is little or no judicial or legislative guidance.

At a minimum, the City acted in justifiable reliance on the decades of consistent opinions from the City Attorney and the State of California that (1) the De Anza mobilehome park was a non-conforming use of public property granted to the City in trust by the State; (2) the City had no obligation to comply with the tenant impact reporting requirements or pay relocation benefits to the De Anza residents, (3) any such relocation payments would be constitute an

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unconstitutional gift of public funds, and (4) the Kapiloff legislation served its purpose of providing the residents with twenty (20) years notice to mitigate any adverse impacts of closure prior to lease expiration. Under these circumstances, there was no willful violation of the MRL which would warrant statutory penalties and the Court should properly exercise its discretion to deny Plaintiffs' request for an award of statutory penalties.

Dated: April 16, 2014

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