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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS ASSOCIATION, INC., et al.,

Plaintiffs,

v.

CITY OF SAN DIEGO, et al.,

Defendants.

Case No. GIC 821191

CLASS ACTION

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL and MOTION TO SET ASIDE AND VACATE JUDGMENT UNDER CCP §§ 663 AND 473(d)

Date:	**October 10, 2014**
Time:	**10:30 a.m.**
Judge:	Hon. Joel Pressman
Dept:	C-66
Complaint Filed:	Nov. 18, 2003
Initial Bench Trial:	Oct. 9, 2007

INTRODUCTION

Like a thief disguised as a police officer in front of a crowd of onlookers, the City's Opposition brief casually declares: "Move along people…there's nothing to see here." But anyone peering beyond the disguise sees easily that: the air is thick with smoke and the smell of dynamite, the bank vault is twisted and blown open, and the City is loading bags of money into its get-away car parked at the side of the building. The City had *said* to Your Honor, "trust us, all is well, there's nothing to see here." And while that undeniably *sounds* good to the ear, the law and facts here *prove* that the motion for new trial should be granted.

After many years at the helm, Judge Hayes did not finish the job and left Your Honor in a position where considerably more is needed than mere work as a scrivener to achieve a valid, final judgment. Judge Hayes declined to issue a mandatory statement of decision, failed to address key issues still in dispute—including the park-closure date issue that permeates the City's proposed judgment that was signed by this Court—and failed to rebuff assumptions that were completely inconsistent with not only the law, but also the Special Master's recommendations and Judge Hayes' own prior rulings over the last 11 years. Yet the City expects everyone—including this Court—to look the other way, avoid addressing head-on the undisputed facts and law here, and just "move along" while the De Anza people lose their homes. The City would like nothing more than to reap the rewards of its years of issuing false press releases and illegal "notices" proclaiming that no relocation benefits were due, re-writing municipal relocation guidelines to suit its own self-interests, repeatedly violating State law, killing-off state legislation that would have allowed the Park to continue through the year 2053, and ultimately redeveloping the land for a massive hotel resort—all the while softly insisting, like an alter boy with his fingers crossed behind his back, that the City is just "returning the land to comply with the State tidelands trust."

Thankfully, the City is not left to its own devices, and this Court has the authority to order the City to comply with the law and compensate the De Anza homeowners and residents according to the law and undisputed facts showing the actual adverse impacts and losses they have suffered during this park closure process. To achieve an end to this case that both parties will accept without further appeals that will drag on for years to come, a judgment needs to be entered that protects the

mostly elderly De Anza homeowners who are losing their homes, compensates them in accordance with State law (no more and no less), and allows the City to move forward with its massive hotel redevelopment project that will bring in $150 million or more in future revenues for the City. Once ordered to comply with this Court's final judgment, the City will not only have the legal and factual basis to accept the judgment, but also the apparently all-important political cover that, to date, has prevented the City's politicians from doing anything other than what they are ordered to do. Thus, the Court should either: (1) issue a modified judgment that, among other issues, includes *at least* 84 months' rent differential as shown in the proposed judgment that is Exhibit 76, or (2) issue an additur with those same terms as requested in these motions. If the Court declines these first two options that would bring about an end to this case now, there is only one other option available since Judge Hayes is no longer available and cannot clarify what he did or did not intend: a new trial must be granted on the damages/compensation issues.

DISCUSSION

1. Through the motions before the Court, this Court is authorized by law to grant a modified judgment, an additur, or a new trial.

The City does not offer any opposition to the Code provisions cited by Plaintiffs showing that, following a bench trial, the law provides the Court broad powers to review, alter, and change any prior decision via a motion for new trial (e.g., Civ. Proc. Code §§ 661-663) and a motion to set aside and vacate judgment (e.g., Civ. Proc. Code §§ 473(d), 663). Nothing has changed the fact that, under the Code: "The motion for a new trial shall be heard and determined by the judge who presided at the trial; provided, however, that in case of the inability of such judge or if at the time noticed for hearing thereon he is absent from the county where the trial was had, the same shall be heard and determined by any other judge of the same court." (Civ. Proc. Code § 661.) And, after a bench trial, a new trial motion empowers the court to: "on such terms as may be just, change or add to the statement of decision, modify the judgment, in whole or in part, vacate the judgment, in whole or in part, and grant a new trial on all or part of the issues, or, in lieu of granting a new trial,

may vacate and set aside the statement of decision and judgment and reopen the case for further proceedings and the introduction of additional evidence with the same effect as if the case had been reopened after the submission thereof and before a decision had been filed or judgment rendered." (Civ. Proc. Code § 662.) And Code of Civil Procedure section 663 gives great latitude to set aside a judgment and then enter a corrected, amended judgment:

> A judgment or decree, when based upon a decision by the court,…may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment: (1) Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. (2) A judgment or decree not consistent with or not supported by the special verdict. (Civ. Proc. Code § 663.)

The City does not deny that the Court is empowered under Code of Civil Procedure section 473(d) to "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." (Civ. Proc. § 473(d).) The City does not dispute or distinguish the California Supreme Court precedent, or appellate cases, cited by Plaintiffs either. (See *Kelly v. Sparling Water Co.* (1959) 52 Cal.2d 628, 633-634 (citing Civ. Proc. Code § 662) (successor judge acting under authority of Section 661 has power to change the prior jurist's conclusions of law "so as to point to a different judgment" and to "modify the judgment, in whole or in part"); *Halperin v. Guzzardi* (1949) 95 Cal.App.2d 31 (successor judge stands in shoes of predecessor with same power and duty to weighing evidence and in granting or denying motion as was vested in the prior jurist who tried case, and is not bound by either prior decisions or findings); *Kershner v. Morgali* (1957) 152 Cal.App.2d 884, 884-885 (power and discretion of successor judge is as broad as trial judge presiding over bench trial).)

While the City does not address any of the Code sections applicable to a new trial motion brought after a bench trial, the City concludes—without citation to any legal authority—that there are "no stated or discernable grounds to grant a new trial in this case and that motion should be denied." (City Opp., p. 1:12-14.) This follows its theme of "there's nothing to see here, move along." The next page of its Opposition has some citations to legal authorities, but ones that do

nothing more than reiterate the "harmless error" rule. (City Opp., p. 2:11-27.) Plaintiffs agree that harmless error would not provide the proper basis for a new trial. But the errors Plaintiffs set forth in their moving papers are far from harmless, and certainly "materially affect the substantial rights" of Plaintiffs. Civ. Proc. Code § 657. As a brief reminder to the Court, the prejudicial and material errors in the current judgment include, but are not limited to:

- The current judgment does not award enough compensation to mitigate the loss of Plaintiffs' homes, and does not comport with the State law mandate to mitigate any adverse impact of the closure on the ability of displaced mobilehome park residents to *find adequate housing in a mobilehome park* (Gov't Code § 65863.7(e));
- Judge Hayes failed to correct a math error that takes away an average of $17,000 in compensation from each Class homeowner for no statistically or mathematically sound reason;
- Judge Hayes failed to affirm the November 23, 2003 park closure date, which materially affects class compensation, timing of payments, and the calculation of both pre- and post-judgment interest;
- Plaintiffs are entitled to statutory damages, an issue that Judge Hayes raised *sua sponte*, allowed only 5 days for briefing on which Plaintiffs had no opportunity to respond to the City's briefing, and no opportunity for hearing on the issue, all of which cost each Class Member potentially $14,000;
- There was no legal basis provided for denying mandatory Temporary Lodging payments to the Class;
- The Judgment purports to bind persons who were not party to this class action.

Plaintiffs' motion for new trial does not assert harmless error. Instead, Plaintiffs have shown how they have been aggrieved, materially and substantially, by the errors of the preceding jurist. The City quotes article VI, section 13 of the California Constitution, Code of Civil Procedure section 475, and the third unnumbered paragraph of Code of Civil Procedure section 657. (City Opp., p. 2.) Discussing how long it took to get to judgment, how many hearings occurred, and how thoughtful (the City claims) the trial judge and special master were, the City argues that the Court should not grant a new trial unless the court finds a that a miscarriage of transcendent justice occurred. In reality, the City's cited texts are no more than codifications of the harmless error rule. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069 [citing the constitutional and statutory provisions]; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 282 [under similar provisions of the Evidence Code, appellant failed to show that exclusion of evidence "made any

difference in the outcome"].) In the harmless error context, "miscarriage of justice" is a term of art. It means that the result of a trial may not be upset unless after considering an evidentiary or procedural error in the context of the entire case, including the evidence, "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Pool*, 42 Cal.3d at p. 1069.) "We have made clear that a 'probability' in this context does not mean more likely than not, but merely *a reasonable chance*, more than an *abstract possibility*." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715, emphasis original, followed, *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 29.)

The City is trying to sell a concept of justice that has no market in American jurisprudence. The American beacon is the rule of law, not the rule of men. (*People v. Williams* (2001) 25 Cal.4th 441, 462-463.) The rule of law is the "structure requisite for true freedom, for an ordered liberty that protects against anarchy as well as tyranny." (*Id.* at p. 455.) The law provides the content of justice; a juror—or for that matter a judge—who is unable or unwilling to follow the law is unable to perform his or her duty of office. (*Id.* at p. 463.) Plaintiffs' view is that none of their issues is merely procedural or a mere harmless error:

- On issue 2, the park closure date, hangs millions of dollars because of both prejudgment interest *and*, most importantly going forward, post-judgment interest.
- Issue 3 determines the amount of compensation to which plaintiffs are entitled under the MRL.
- Issue 4 determines whether the City is liable for civil penalties.
- Issue 5 concerns calculation of many plaintiffs' recoveries under the MRL.
- Issue 6 is also a core compensation matter.
- Issue 7 tests the extent to which the judgment may bind park residents who are not class members.
- The heart of issue 8 is procedural in that the Court signed a judgment that exceeds the scope of Judge Hayes's findings and conclusions, but the point is that the matters Judge Hayes did not decide have direct compensation consequences for many plaintiffs.

On the merits, Plaintiffs either did or did not receive the benefits to which they are entitled

under the MRL. To the extent they did not, neither the City's (flawed) notions of transcendent justice nor the hard work that went into making the error can nullify the MRL or overcome the Plaintiffs' right to a correct outcome under the rule of law.

"A trial judge is accorded a wide discretion in ruling on a motion for new trial and the exercise of this discretion is given great deference on appeal." *Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 693-694. And on appeal after a motion for new trial, "an appropriate standard of judicial review is one that defers to the trial court's resolution of conflicts in the evidence and inquires only whether the courts' decision was an abuse of discretion." *Oakland Raiders v. National Football League* (2007) 61 Cal.4th 624, 636. The trial court's exercise of discretion may only be disturbed where an unmistakable abuse of discretion clearly appears. This is particularly true where the court's discretion has been exercised in favor of *granting* a new trial. *Candido v. Huitt* (1984) 151 Cal.App.3d 918, 923.

Here, this Court is specifically empowered by the Legislature through these motions to either: (1) issue a modified judgment that, among other issues, includes *at least* 84 months' rent differential as shown in the proposed judgment that is Exhibit 76, or (2) issue an additur with those same terms as requested in these motions. If the Court declines these first two options that would bring about an end to this case now, there is only one other option available since Judge Hayes is no longer available and cannot clarify what he did or did not intend: a new trial must be granted on the damages/compensation issues. As our Fourth District Court of Appeal held after San Diego Superior Court Judge Froehlich retired, and then Presiding Judge Nares entered judgment that was "presumably conformable" with the findings made by Judge Froehlich after a bench trial, neither a newly-assigned judge nor the presiding judge of the superior court has the authority or jurisdiction to issue the SOD—or judgment—for the trial judge who presided over the trial. *Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122. "The judgment cannot stand; a new trial is required." *Id.* at 128.

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2. The City fails to cite to any supporting facts or authority to dispute that the Court already determined that the City had "closed" the Park as of November 2003.

The City's attack on the Park closure date amounts to little more than pointing out the fact that Plaintiffs have raised this issue repeatedly in the past. True, we have, because the Court already determined the park closure date and the City continues to pretend like that determination never happened.

Not one of Plaintiffs' factual assertions supporting the Park closure date was rebutted by the City using any fact or evidentiary references:

Evidence submitted by Plaintiffs showing Park was deemed "closed" as of Nov. 2003:	**Evidence submitted by City showing Park was *not* deemed "closed" as of Nov. 2003:**
Park closure notices referencing Nov. 23, 2003, as the closure date. (Exs. 5-8)	Nothing
Court ruling: "**[T]he City's position…that the City did not terminate the leases or close the Park also lacks merit.**" (Ex. 40)	Nothing
Court-approved class definition and class notice referencing 2003 as the closure date and cutoff for the class. (Ex. 10)	Nothing
Court ruling on order redefining class: "**City's argument that there is no closure date for the Park as it is still open lacks merit**….Clearly, both the California Legislature and the City of San Diego contemplated a Park closure date of November 23, 2003." (Ex. 11)	Nothing
City admission: **"The Court has ruled that the determination of the amount to be paid to mitigate the adverse impact of park closure will be based on a closure date of November 23, 2003."** (Ex. 13)	Nothing

City admission: **"This Court has ruled that the closure date will be November 23, 2003. That is the date that our experts relied upon…. We understand the Court's ruling that the date is November 23, 2003."** (Ex. 14)	Nothing
Transcript evidencing Court's rationale: "**The class definition mentions 11-23-03, and that's the date we're going to determine now the cost of mitigation of the closure of the park**…." (Ex. 14)	Nothing
Transcript of post-trial hearing confirming date of park closure: "MR. BARTOLOTTA: The date you are talking about, for purposes of the record, is **the official court-decided date of closure, November 23, 2003**, is assessed as the date of closure. THE COURT: **That was the date the City said the Park was closed**…." (Ex. 17: pp. 73:27–74:4)	Nothing

The sheer weight of the evidence—coupled with the Court's consistent rulings on the issue—demonstrate the fact that the Park had already been deemed "closed" as of November 23, 2003, for the purposes of litigation. The fact that some residents continued to live at the park during the pendency of the class action—simply because the City was enjoined from evicting them—doesn't change the Court's conclusion that the City had already taken actions triggering the Park closure requirements of the MRL. Therefore, the Park closure date was already determined to be November 23, 2003, which is, therefore, when the relocation funds were due. For this reason, the idea that the Park hasn't closed yet, that relocation benefits aren't due yet, or that interest hasn't been accruing since 2003—the central themes of this City-drafted judgment—is just plain wrong and contrary to Judge Hayes' prior determinations. Judge Hayes certainly couldn't have meant that no relocation benefits were yet due and owing when, after he rejected the City's arguments once

again, stated first in his tentative ruling: "The court orders **all relocation benefits be paid in a lump sum *at the outset*** without discounting to present value." (Tent. Ruling, p. 3.) And then confirmed in his 2014 Decision on Matter Under Submission: "the court orders **all relocation benefits be paid in a lump sum *at the outset***." (2014 Decision, p. 10.) Judge Hayes never intended the Class to have to wait months or years, without any interest accruing if/when the City appeals this case. And Judge Hayes knew that post-judgment interest of 7% would accrue, which is precisely why he ordered OPC—over the City's objections—to update its comparable rent survey in February 2014 so that the most up-to-date comparable rent data would be set in stone, then accrue post-judgment interest no matter how long this case might continue in the courts of appeal.

More than any other error, this flaw in the City's drafting of the proposed judgment completely infects the judgment and renders it unenforceable. The park was closed effective November 23, 2003. All relocation benefits are due and owing, and have been due and owing as of November 23, 2003. Pre-judgment interest should have been awarded to everyone, but the Court decided that only those who had vacated the Park were entitled to pre-judgment interest. Regardless, as a matter of law, all amounts owed in the judgment are due and owing now, and must, by law accrue 7% post-judgment interest for all Class Members.

Ironically, even assuming, hypothetically, that the City is correct and Judge Hayes never ruled on the date of park closure, that omission provides perhaps the most compelling ground for granting a new trial on damages. On June 17, 2014, Plaintiffs filed objections to Judge Hayes' final ruling. The number one objection raised was the fact that Judge Hayes' final order failed to include his prior determination that November 23, 2003 was the functional and effective closure date for the Park. (Ex. 70; pp. 5-7) In sustaining the objection, the remedy would normally be to remand the matter to the trial judge to correct that omission in the statement of decision. But where the trial judge is no longer available, the only remedy is to grant a new trial on the issue in question. *Wallis v. PHL Associates, Inc.* (2013) 220 Cal.App.4th 814, 827; *Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122, 128 (4th Dist., Div. 1); Civil Trials & Evid (The Rutter Group 2013) ¶¶ 16:200-16:202. Accordingly, if this Court determines that the date of park closure was never adjudicated by Judge Hayes, then the Court must grant a new trial on damages.

3. The City failed to address the shortfall between 48 months of rent differential and the State-law requirement to mitigate the actual cost of relocation.

State law requires the City to mitigate all adverse impacts of park closure "on the ability of displaced mobilehome park residents to *find adequate housing in a mobilehome park.*" Gov't Code § 65863.7(e). The reasonable cost of relocating to another mobilehome park is the only limiting factor under Government Code section 65863.7.

So, here, the City does not dispute that the greatest harm suffered by Class members upon park closure is the <u>total loss</u> of their homes. It is undisputed that the value of the loss of the De Anza homes is well in excess of $200,000 per home. This is by far the largest adverse impact of park closure. In all of its briefs, the City ignores that fact.

Next, finding adequate housing in a mobilehome park, and determining the reasonable cost of adequate housing in another mobilehome park, is the final step to determining compensation under the Mobilehome Residency Law. This is also undisputed. Plaintiffs have shown that the reasonable cost of housing in other mobilehome parks averages about $178,000 per home. There is no contrary evidence presented. In all of its briefs, the City had never presented any evidence to contradict the actual cost of replacement housing in other mobilehome parks. The City ignores the facts, ignores State law, and reiterates its unsupported conclusion that "48 months rent differential satisfies State law without exceeding the reasonable costs of relocation."

How is State law complied with when there is a **<u>$220,000 loss of one's home</u>**, and an undisputed **<u>cost of $178,000 to relocate to another mobilehome park</u>**, but the municipal relocation guidelines that the City claims complies with State law, results in 48 months' rent differential that equates to **<u>only $57,000</u>**? This question has gone unanswered by the City. And, worse yet, it has gone unanswered by Judge Hayes in his 2014 Decision.

The City doesn't even try to argue that 48 months of rent differential will *ever* cover the actual cost of replacement housing for the Class. In fact, the City admits that 48 months is the <u>bare minimum</u> required by San Diego Housing Commission Guidelines, and that proper mitigation may at times require *more* than the minimum.

Thus, the culmination of these undisputed facts is that 48 months of rent differential—the absolute minimum allowance—will not enable the Class to find comparable replacement housing. At best, the Class will be forced to transition from being homeowners to being renters, never able to afford the down payment needed to replace the homes they are losing. That result is a far cry from the MRL's mandate to ensure that the park owner mitigates the adverse impacts of park closure "on the ability of displaced mobilehome park residents to *find adequate housing in a mobilehome park.*" Government Code section 65863.7(e)(emphasis added).

Instead, the City merely states that the Special Master's recommendation to order 84 months of rent differential was erroneous, and that the Court was correct to disregard that finding. Bear in mind that Special Master Sharkey was briefed on the rent differential issue at least twice, extensively, and then he heard oral argument, twice, on the issue. His initial tentative was to recommend only 48 months of rent differential; but upon further review of the materials and counsel's arguments, he changed his mind and recommended 84 months—an amount of mitigation that would actually allow Class members to be able to find replacement housing.

In straining to distinguish the precedent set in the Mission Valley Village closure case, the City contends that the City's push for the park owner to pay 84 months of rent differential in that case was completely different, and not just because the City wasn't the one picking up the tab. But the City fails to address perhaps the single best source of evidence of what happened in that case—the eyewitness testimony of Homer Barrs. Mr. Barrs was the President of the MVV Homeowners Association, and was the lead point of contact for the City Council and their staff. As Mr. Barrs explained in testimony that the City failed to counter and which Judge Hayes neglected to address:

> During a break in the proceedings, I was personally approached by a staff representative for Councilman Ben Hueso and a staff representative for Councilman Jim Madaffer, and we stepped outside and huddled together just outside Council chambers. Mr. Hueso's representative relayed to me that, **in light of the evidence we had submitted, if the homeowners continued to oppose the parkowner's request, the City Council would deny Archstone's application**…. But he also relayed to me an alternative—one that would allow us to afford housing in comparable parks and hopefully avoid litigation for everyone. The City Council would approve Archstone's application, but if and only if Archstone agreed to pay 7 years' worth of rent differential, in a lump sum. (Ex. 29, ¶ 11.)

This testimony provided ample support for the Special Master's conclusion that the City

required Archstone to pay 84 months of rent differential in order to secure permission to close the park. The City could have looked for counter testimony from an Archstone witness—it did not. The City could have provided testimony from a then-sitting-Council member to support its contention that the City would have approved the closure at 48 months' rent differential—it did not. The City could have sought to depose Mr. Barrs—it did not. Thus, the testimony of the lead negotiator, in the only other park closure case to which the San Diego local ordinance has been applied, stands alone and unscathed. And the import of the MVV compensation package is not only that it demonstrated the City's recognition that 48 months of rent differential is simply inadequate when homes are being lost, but that the City is more proactive in asserting the MRL's mitigation requirements when it's policing a private park owner instead of itself—thus the conflict that gave rise to the instant action.

The City cannot receive special treatment. The City must be held to the same relocation requirements imposed on private park owners. So the precedent set by the City in the MVV case cannot be ignored, particularly where both sides acknowledge that the 48-month guideline represents the absolute, bare-minimum starting point for mitigation, and where the costs of relocation for De Anza residents are undoubtedly by higher than those for MVV residents living much more inland. Accordingly, Plaintiffs request the court issue a modified judgment that reflects the true costs of relocation, issue an additur, or grant Plaintiffs' motion for new trial on damages/compensation issues.

4. The City failed to contest why the judgment should not be modified to include an award for statutory penalties.

A. The City failed to raise any immunity defenses to statutory penalties.

The City did not raise, as an affirmative defense, immunity from the statutory penalties allowed under the MRL, Civil Code § 798.86. The City only raised immunity from punitive damages as an affirmative defense under Government Code section 818, and now argues that that section also covers statutory penalties. But, as Plaintiffs detailed in their opening briefe, punitive damages and statutory penalties serve different functions. The City could have raised immunity from such

penalties as a defense, but chose not to; it is too late for the City to do so now.

B. The City does not disagree with Plaintiffs' premise for their motion: Judge Hayes raised the immunity issue *sua sponte* and without sufficient notice to Plaintiffs, violating Plaintiffs' due process rights.

The City does not dispute that the issue of immunity to statutory penalties was raised *sua sponte* by Judge Hayes, that Plaintiffs had only 5 days to submit a brief on this issue, that Plaintiffs never had the opportunity to respond to the City's brief on the issue, and that there was no hearing or oral argument on the issue. As such, the City did not deny that Plaintiffs were denied due process. The resultant judgment incorrectly fails to include any award for statutory penalties.

C. The City tacitly concedes that all 7 categories of MRL violations alleged actually occurred and that these violations affected everyone in the Park.

City does not dispute that any of the 7 MRL classes of violations Plaintiffs raised in their brief actually occurred, or that the violations affected everyone at the Park. The City simply claims they were "unaware" of the evidence of these violations. But this evidence was part of the trial record, was raised again during closing arguments, and was raised again during the post-trial motions and hearings with Judge Hayes. In fact, Judge Hayes ordered that statutory penalties would be addressed after all the relocation issues were finally adjudicated. (Pltfs.' Ex. 53, Order after Statement of Decision, p. 4, lines 1-3) So everyone knew that Plaintiffs were seeking this relief. Moreover, the Court had already determined that the City had decisively chosen not to follow the MRL—essentially ruling that the City had willfully violated the statute, thereby providing the predicate for statutory penalties. (Pltfs.' Ex. 40, April 20, 2007 Order on MSA) Accordingly, the number of violations, the evidence that these violations occurred, and the significant impact these violations had on the Class—all remain points uncontested by the City and the judgment must be modified to reflect an award for those violations.

As such, because Judge Hayes's 2014 Decision concerning the denial of statutory penalties is an

error of law and contrary to law, and an irregularity in the proceedings, Plaintiffs respectfully request that Your Honor modify the 2014 Decision to conclude that no immunity under Section 818 applies here, and enter judgment in the amount of $14,000 in statutory penalties per Class Member, or at the least in the alternative, grant a new trial on such compensation owed to the Class.

5. The City failed to properly contest the need to correct mathematical errors that plague the spreadsheet incorporated into the judgment.

Plaintiffs have pointed out the mathematical anomalies in OPC's spreadsheet, buttressed by the uncontested expert opinion of Dr. Patrick Kennedy who determined that: "**…OPC's approach has substantial limitations and does not appear to be based on an underlying statistically accepted methodology or process….The 15% markup of the De Anza median home sizes suggested by OPC lacks a statistical foundation or methodology and introduces counter-intuitive results.**" (Ex. 18, Kennedy Decl., ¶¶ 21, 23.) The City did not present any opposing expert testimony on the issue, nor did the City cite any authority for the proposition that arbitrarily marking up the break-points for each home-size tier did anything but artificially decrease the mitigation payments by over $17,000 per Class homeowner. Furthermore, the City was unable to counter the testimony of Plaintiffs' expert economist regarding the more appropriate approach of using the median home size as the fairest break-point between each tier: "the De Anza median home sizes should be used without any markup to those tiers: the median 1-bedroom De Anza Cove home was 576 square feet, the median 2-bedroom home was 920 square feet, the median 3-bedroom home was 1202 square feet, and the median 4-bedroom home was 1412 square feet…. These median figures provide a consistent, objective statistical measure of the cut-off for each of OPC's rent tiers." (Ex. 18, ¶¶ 21-27) Again, these assessments by a well-respected doctorate of economics remain unchallenged by the City. There was simply no fundamental basis for failing to correct this error in the spreadsheet. Plaintiffs, therefore, respectfully request that the Court order that the natural median break points be used throughout, without any markup, so that the corrected spreadsheet can be incorporated into the judgment.

6. The City does not dispute that temporary lodging benefits are available to all Class members regardless of whether their home can be moved.

While the City contends that no fixed amount of temporary lodging is mandated, it does not dispute that the City's own ordinance makes this lodging benefit available to all those who need it without regard to whether their homes can be relocated. At a minimum, then, the judgment should be modified to eliminate the restriction of this benefit to only those Class members whose homes can be moved. Furthermore, while the City is correct that the ordinance does not require payment for a fixed number of nights, Plaintiffs suggested this approach to alleviate the need to amend the judgment after every member of the Class has relocated and submitted receipts for their temporary lodging costs. Plaintiffs did not suggest the maximum benefit, nor the minimum one; rather, Plaintiffs suggested 4 nights' worth of lodging at the updated nightly rate of $147. This amount should be added to the judgment as an allowance.

7. Ignoring well-settled principles of law, the City urges this Court to attempt to bind persons outside the Class, which would further render the judgment unenforceable.

The City does not address the central tenet of jurisdictional law: issuing a judgment against a person who is not a party to the action is beyond the court's authority and is void. (Civ. Proc. Code § 473(d); *Moore v. Kaufman* (2010) 189 Cal.App.4th 604, 615-616; Cal. Judges Benchbook: Civ. Proc. Trial (2013 Supp.) § 16.2.) As shown previously, there are more than 150 De Anza households that fall outside of the class definition. Many of these non-class member homeowners are individual plaintiffs in the companion case of *Aglio, et al. v. City of San Diego* (Case No. 37-2009-00081994-CU-EI-CTL). That case, which was filed in 2009, is assigned to Judge Meyer and has been stayed pending the conclusion of the instant case. So both cases have existed for the past 5 years and at no point did either Court or any party ever suggest that Judge Hayes had jurisdiction to dispose of the claims contained in the *Aglio* case in front of Judge Meyer. Moreover, to even suggest that the *Aglio* plaintiffs would be ordered out of the Park by a judgment issuing in the De

Anza case would not only violate the due process and statutory rights of the *Aglio* plaintiffs, but would cripple the enforceability of any De Anza judgment, as noted above.

The passage of Judge Hayes' ruling cited by the City refers not to homeowners outside the Class (i.e., in the *Aglio* case), but to Class members who are not eligible for relocation benefits. In other words, true investors that never lived in their home and simply used their De Anza coach as a vacation rental would not be eligible for relocation benefits, but they are bound by the judgment as Class members. Conversely, someone who is not a Class member—because they allegedly signed a settlement agreement—would not be bound by the judgment, and could not be ordered out of the Park with relocation payments, as that would be every bit a violation of the MRL as the City's initial transgressions against the Class. In fact, through orders entered earlier this year, the parties, Special Master, and Judge Hayes confirmed that the non-class members have NOT waived any of their rights to relocation benefits or State law mandates, and are eligible to join the *Aglio* suit on an individual basis if they have not already done so. For example, the Order dated February 14, 2014, states: "The parties understand that the ability of homeowners and other residents who are excluded from this Class Action pursuant to this Stipulation to have their individual relocation claims determined on the merits in the *Aglio* case without the prospect of a pleading challenge…is the principal consideration for Plaintiff and Plaintiffs' Class Counsel's Stipulation herein." (Stip. & Findings re Class Membership Eligibility and Certain Relocation Benefits; And Order Thereon, dated Feb. 14, 2014.) Judge Hayes *never* ruled that the non-class members are entitled to be evicted without the City first following the law and paying lawfully-required relocation benefits.

Accordingly, Plaintiffs request that the Court set aside the City's void judgment, and enter the proposed Amended Judgment that rectifies the error and limits the applicability of the judgment to Plaintiff Class Members.

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8. The City's continuing assertion that no post-judgment interest should accrue is based on the fiction that the City never officially "closed" the park—contrary to the prior findings of the Court.

For the purpose of determining the City's relocation obligations, the City closed De Anza Cove on November 23, 2003—see Section 2, *infra*. The compensation should have been paid to the Class on or before that date. Regardless, upon entry of judgment now, post-judgment interest accrues at 7%. Plaintiffs request the Court correct this error by modifying the judgment to include the Park closure date of November 23, 2003, and to clearly and definitively provide for post-judgment interest to the entire Class accordingly.

CONCLUSION

The City's Opposition is short on authorities and short on evidence. It relies primarily on the City's exposition of how disruptive it would be *to the City* to fix the judgment. This is the time, though, for the Court to order the City to comply with the law and compensate the De Anza homeowners and residents according to the law and undisputed facts showing the actual adverse impacts and losses they have suffered during this park closure process. To avoid further appeals that will drag on for years to come, a judgment needs to be entered that compensates the De Anza Class Members in accordance with State law—no more and no less—and provides the requisite legal and factual basis to support such a judgment. Plaintiffs respectfully request that the Court grant their motion by, alternatively either: (1) issuing a modified judgment that, among other issues, includes *at least* 84 months' rent differential, corrects the math error promulgated by OPC, and encompasses only Class Members, as shown in the proposed judgment that is Exhibit 76, or (2) issue an additur with those same terms as requested in these motions. If the Court declines these first two options that would bring about an end to this case now, there is only one other option available since Judge Hayes is no longer available and cannot clarify what he did or did not intend: the Court should grant a new trial on the compensation portion of the case and evaluate first-hand the evidence demonstrating the true cost of park closure on those tasked with finding a new home.

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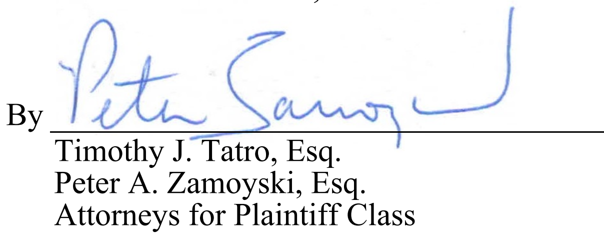
Respectfully Submitted,

DATE: Oct. 6, 2014

TATRO & ZAMOYSKI, LLP



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