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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 Judge: Hon. Joel Pressman **OPPOSITION TO PLAINTIFFS' MOTIONS FOR NEW TRIAL AND TO SET ASIDE AND VACATE THE JUDGMENT** Hearing Date: October 10, 2014 Hearing Time: 10:30 a.m. Location: Dept. 66

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I. INTRODUCTION

Few cases in California have benefitted from the judicial time and resources dedicated to this case to ensure that the City and the residents of De Anza Cove received a fair proceeding. From the inception of the case on November 18, 2003 to the entry of Judgment on August 20, 2014, the same judge has presided over every factual and legal detail of this mobilehome park closure litigation. Now, Plaintiffs ask the newly assigned judge to review the entire record and grant a new trial, or enter a new judgment.

As a threshold matter, however, Plaintiffs' Memorandum in Support of Motion for New Trial and Memorandum of Motion for Set Aside and Vacate Judgment (collectively "Motion") do not challenge any aspect of the actual trial which took place in 2007, or the Court's Statement of Decision and Order After Statement of Decision which were issued in May of 2008. And, with very limited exceptions, Plaintiffs do not lodge or cite to any portion of the trial record. Therefore, with no stated or discernible grounds to grant a new trial in this case and that motion should be denied. Further, Plaintiffs have not demonstrated any basis to disturb the Statement of Decision and Order After Statement of Decision (collectively "SOD").

Instead, Plaintiffs focus solely on the post-trial proceedings, which determined the specific mitigation compensation and other relocation assistance to be provided to the De Anza residents at the time of park closure. In 2008, the Court ordered the City to have a Relocation Impact Report ("RIR") prepared by a mobilehome park relocation specialist to address the impacts of park closure on the De Anza residents. The Court also ordered the appointment of a special master to review the mitigation provided in the RIR, consider evidence relevant to the mitigation of economic hardship as to each and every class member, and then make detailed findings and recommendations to the Court. On these mitigation issues, there were no cases to apply or points of law to debate. The Court had already determined as a matter of law that the mobilehome relocation policy enacted by San Diego Housing Commission ("SDHC") provided the framework for the mitigation, and what followed was a painstaking presentation and judicial review of detailed factual evidence to determine (1) whether the Court should deviate from the SDHC's 48-month rent differential multiplier and/or (2) whether the mitigation provided in the RIR was

otherwise sufficient to mitigate the adverse impacts of park closure on the residents.

Ultimately, Court's Decision on the required mitigation and resulting Judgment are the culmination of years of status conferences, meetings, briefings and hearings before the Court–appointed Special Master (many of which Judge Hayes attended), party-approved *ex-parte* conferences between the Special Master and the Court to discuss the mitigation issues, formal recommendations of the Special Master on the mitigation to be provided to the De Anza residents, and the submission of thousands of pages of briefs, exhibits, declarations to the Court for its final review and consideration, followed by multiple hours of oral argument.

Under the California Constitution, the trial court has no discretion to grant a new trial or set aside a judgment absent prejudicial error or a miscarriage of justice. (*Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 694-695.) Article VI, section 13 states:

> No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. (Cal. Constit, Art. VI, §13.)

Further, the California Code of Civil Procedure section 475:

> [A] court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown. (C.C.P., §475.)

Finally, as provided by Code of Civil Procedure section 657:

> A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision. (C.C.P., §657.)

Here, Plaintiffs have failed to demonstrate any prejudicial or a miscarriage of justice that

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would warrant the granting of a new trial, or the setting aside of the Judgment and entering a new judgment. Certainly, Plaintiffs do not contend that a new trial should be granted or the judgment set aside because relevant evidence was erroneously excluded, thereby prejudicing Plaintiffs' right to a fair proceeding. (See e.g. *Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 294.) To the contrary, in reaching its Decision, the Court admitted and thoughtfully considered nearly all of Plaintiffs' evidence over the City's objections, including numerous declarations and other evidence that Plaintiffs never submitted to the Special Master and introduced for the first time in their final briefing to the Court. (See City's Notice of Lodgment of Exhibits, Exs. 109, 115-117.)[1] Further, Plaintiff has failed to provide any legal or evidentiary basis that would convince this Court, upon a review of the record and any reasonable inferences, to substitute its judgment for the judgment of the judge that presided over every factual and legal detail of this mobilehome park closure litigation for over a decade.

Without question, Plaintiffs received a full and fair proceeding this case, and Plaintiffs' Motion must be denied.

II. THE COURT HAS PROPERLY REJECTED PLAINTIFFS' REPEATED REQUESTS FOR A RULING THAT THE PARK CLOSED AND/OR THAT RELOCATION FUNDS WERE DUE ON NOVEMBER 23, 2003

The centerpiece of Plaintiffs' Motion is to again request a ruling from the Court that (a) the park effectively closed on November 23, 2003, and therefore (b) that relocation compensation is owed to all class members as of November 23, 2003. (Motion, pp. 11-17.) And, once again, Plaintiffs either somehow continue to miss the point of the mitigation process, or improperly persist in seeking mitigation amounts with exceed the reasonable costs of relocation in violation of State law.

A. The Park Never Closed on November 23, 2003, And the Court Has Never Issued An Order That the Park Closed on November 23, 2003

While the City planned to close the park in November 23, 2003 in order to comply with the terms of the Kapiloff Bill, Plaintiffs filed their lawsuit prior to the November 23, 2003 park

[1] Unless otherwise noted, all exhibits cited herein are attached to the City's Notice of Lodgment of Exhibits submitted to the Court concurrently with this Opposition.

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closure date, seeking an injunction to keep the park open until the City complied with the tenant impact reporting, notice of closure, and mitigation requirements of the MRL and Government Code prior to closing the park. (Complaint, Ex. 49.) As requested, the Court granted Plaintiffs' request for injunctive relief. (SOD, Ex. 68, p. 11:10-16.) As a result, the park has remained open for eleven (11) more years (and counting) to allow for dispositive motions, trial, the preparation of the RIR, the review of the sufficiency of the RIR by the Special Master, and the Court's final determination of the mitigation amounts to be paid at the time of park closure. Now, seven years post-trial, the RIR has been completed and reviewed, and the necessary mitigation compensation at the time of park closure has been determined by the Court in its Decision and the resulting Judgment. All that is left now is for the City is to provide notice of closure as required by the MRL, pay the mitigation ordered by the Court, and close the park. The reality, however, is that until the Judgment is final, the park is still open and will potentially remain open for several more years for the hundreds of class members that still occupy spaces in the park (and **212** such households are identified in the Plaintiff Class Member Spreadsheet). Until then, for those residents still living in the park, no adverse impacts of closure have occurred, nor will any adverse impacts occur until the residents decide to vacate the park or the park is closed. Quite simply, the park remains open and the majority of class members still live on the property, with no harm to mitigate until the conclusion of the litigation. Under these circumstances, the mitigation does not become due and owing as of November 23, 2003, and any argument to the contrary is based on a fiction created by Plaintiffs to try to unlawfully extract a decade or more of undeserved interest payments beginning in 2003.

Further, contrary to Plaintiffs' strained interpretation of the record in this case, the Court never ordered that the Park closed on November 23, 2003 or that relocation benefits were due and owing as of that date. Had the Court actually made such an order, Judge Hayes would have been made that plain in the Court's Decision. First, Plaintiffs had argued to the Special Master that the Court already ruled that the closure of the park occurred on November 23, 2003 and determined Plaintiffs' entitlement to prejudgment interest. (Special Master's Second Report ("SR"), Ex. 4 to Plaintiffs' NOL, p. 20-16-23.) The City disagreed, arguing that no such finding or order had been

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made by the Court. (*Id.*) The Special Master recommended that the residents still in the park not be entitled to pre-judgment interest, and only "hedged" to the extent that the Court had already ordered that the park closed on November 23, 2003, in which case the residents still in the park would be entitled to pre-judgment interest. (*Id.*) Plaintiffs also briefed these same exact arguments to the Court (nearly verbatim) in their final briefing/objections to Court (Ex. 73 to Plaintiffs' NOL, pp. 8-12), and asserted the same arguments at the final hearing on May 6, 2014. (Ex. 69 to Plaintiffs' NOL, p. 101:5-13.) Ultimately, the Court adopted the Special Master's recommendation for seven (7) percent prejudgment interest for residents that have already vacated the park, accruing from the date the vacated, but denied prejudgment interest for the residents still in the park. (Decision, Ex. 72 to Plaintiffs' NOL, p. 11:4-8.) Had the Court ordered that the park closed on November 23, 2003 and that relocation benefits were due at that time, as contended by Plaintiffs, the Court would have awarded prejudgment interest for the class members still living in the park. The Court did not, and no grounds exist for the Court to alter that finding now.

B. Government Code Section 65863.7 Mandates that Mitigation Be Tailored To The Actual Adverse Impacts Of Closure On Each Class Member, Not A Hypothetical Park Closure Date

A ruling that mitigation compensation was due as of November 23, 2003 would also violate State law. In the typical park closure situation, mobilehome residents in California are given a twelve (12)-month notice of park closure, during which time residents make arrangements to relocate from the park before the 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 and the current comparable apartment rental rates in the relevant area.

In the unique context of this litigation, however, 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. 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 operations, possibly several years from now. Under the circumstances, it makes no sense to determine benefits using the 2003 park closure date, as argued by Plaintiffs, as it would wholly fail to satisfy the

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requirements of the relocation statutes to mitigate the adverse impacts of closure on these residents. State law only requires the City to mitigate the actual adverse impacts of park closure on these residents and only in amounts which do not "exceed the reasonable costs of relocation." (Gov't Code, §65863.7(e).)

Necessarily, therefore, in order to comply with State law, the Court properly adopted the Special Master's recommendation (to which all parties agreed) that mitigation compensation for the residents that have already vacated the park be tied directly to the year that the class members actually vacated or will vacate the park. For those vacated residents, the Court ruled that those benefits became due on the date they vacated and awarded pre-judgment interest from their vacate date. (Decision, Ex. 72 to Plaintiffs' NOL. pp. 7:4-9, 11:4-13.) For the residents still living in the park, however, no adverse impacts of closure have occurred, and no mitigation will be due to those residents until the City issues a notice of park closure and proceeds to close the park.

Accordingly, the Court's Decision and the Judgment as entered are properly designed to provide mitigation to the class members (1) if and when the Judgment becomes final, and if so (2) tied directly to their respective adverse impacts of park closure (*e.g.* when the class members vacated or will vacate the park and experience the adverse impacts of park closure). On the other hand, Plaintiffs' request for a ruling that the park closed on November 23, 2003 and monies were due on November 23, 2003 would improperly award prejudgment beginning in November 2003 and post judgment interest to all class members, regardless of when the class member households actually vacated the park or whether they have even vacated at all. The Court properly rejected that request, and to rule otherwise would violate State law.

III. THE COURT PROPERLY ADOPTED THE 48-MONTH RENT DIFFERENTIAL MULTIPLIER IN THE SDHC GUIDELINES

The Court properly determined that there was no reason to deviate from the 48 month rent differential multiplier provided in the SDHC relocation guidelines, as originally set forth in the Court's SOD. (Decision, Ex. 72 to Plaintiffs' NOL, pp. 2:10-4:17.) And importantly, the Court's adoption of the 48-month rent differential guideline wholly satisfies the purpose and intent of the MRL and Government Code to determine the adverse impacts of park closure *on the De Anza*

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residents and the "reasonable costs of relocation" based on the facts and circumstances *specific to the De Anza park closure*.

A. <u>The 48-Month Multiplier Provided in the SDHC Guidelines Satisfies the Mitigation Requirements under the Government Code</u>

As determined by the Court in its SOD and again in its Decision, the SDHC's 48-month rent differential guideline fully satisfies the mitigation requirements of Government Code section 65863.7, and notably, the 48-month guideline was the product of years of debate among park owners and mobilehome owners on how to determine the "reasonable costs of relocation." Under section 65863.7, the steps to be taken by the park owner to mitigate the adverse impacts of park closure <u>shall not exceed the reasonable costs of relocation</u>. (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 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. (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), 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."), Ex. 120, ¶ 7; Exs. 24-28, 31-33, 79 (pp. 1428-1453).)

After trial, the Court ruled the 48-month rent differential approach to mitigation under the

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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, Ex. 68, p. 12.)

B. <u>Upon Review of the Facts and Evidence Presented, The Court Properly Declined to Deviate From SDHC's 48-Month Rent Differential Guideline Based on the Mission Valley Village Closure</u>

The parties presented extensive evidence to the Special Master and the Court related to the Mission Valley Village ("MVV") mobilehome park closure. For years, Plaintiffs contended that the De Anza residents should be awarded the same 84 months of rent differential benefits approved by City Council for the MVV closure. And for years, the City has advised the Court that the MVV closure presented a completely differential factual situation and that the MVV closure had no bearing at all on the De Anza park closure. Once the arguments were finally briefed and the evidence submitted, the Court agreed with the City and declined to adopt the 84 month multiplier sought by Plaintiffs. (Decision, Ex. 72 to Plaintiffs' NOL, pp. 2:10-4:17.) And, Plaintiffs have not shown any legal or evidentiary basis which would warrant the granting of a new trial or setting aside the judgment.

1. The Factual Situations Surrounding the Two Park Closures Are Substantially Different

First, the Court properly declined to adopt MVV's 84-month multiplier because the two park closures presented two completely different situations. Notably, the closure of De Anza Park is unique because the Park sits on Mission Bay tidelands, state-owned public property held by the City in trust. (SOD, Ex. 68, p. 10; City Exs. 1, 2.) The City agreed to use the property

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solely for public, park and recreational purposes and approved a 50-year ground lease for the use of the property as a tourist and transient trailer park area, effective November 24, 1953, with expiration date on November 23, 2003. (Exs. 2-4.) De Anza Harbor Resort and Golf ("DHRG") eventually became the ground lessee/park manager and remained the park owner and operator until the master lease expired on November 23, 2003. (Exs. 5, 6.)

In the 1970s, media and political pressure began to mount over the non-conforming use of this valuable, waterfront property as a mobilehome park at the expense of the public. (Ex. 7, 69.) In September of 1977, DHRG put the residents on formal notice of the situation. (*Ibid.*) In August of 1978, after reviewing the issue at the request of City Council, the City Attorney opined that the use of the property as a mobilehome park violated the tidelands trust and that steps should be taken to promptly return it to proper use. (Ex. 8.) In September of 1978, DHRG sent another notice to residents to advise them of the City Attorney's opinion. (Ex. 9.) In August of 1980, the State Lands Commission concurred with the City and agreed that residential use should be phased out. (Ex. 11.)

In 1988, the residents approached then-State Assemblyman Lawrence Kapiloff and requested legislation to prevent closure of the Park. (Ex. 55 (p. 36).) As a result, Kapiloff introduced Assembly Bill 447 ("AB 447") to allow the residents to remain until the expiration of the ground lease on November 23, 2003. (1981 Stats. Ch. 1008; Exs. 20, 21.) The stated purpose of AB 447 was to *balance the hardship of relocating tenants against the need to return the property to its intended use as public parkland.* (*Ibid.*) On January 25, 1982, the City adopted the findings of AB 447 pursuant to Resolution R-255718, which allowed the residents to remain in the Park until the expiration of the lease in 2003. (Exs. 17-21, 69.)

In its SOD, the Court summarized the unique nature of the De Anza property and the circumstances of park closure:

> The original lease for the development of De Anza in 1953 was for a finite period of fifty years. The first permanent resident to occupy a mobilehome in De Anza and all who followed, knew or should have known the park would not permanently remain open. Moreover, residents knew in 1980 that the park faced closure because of the State Lands Commission. Then in 1982 they knew closure would come on a date certain when the Kapiloff Bill extended De Anza's operation to November 23, 2003. Every homeowner during the fifty years of its

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operation knew or should have known the park was not permanent. Moreover, in the last 21 years every new and existing owner and every resident was on notice that the park would close in November 2003 because of the Long Term Lease Agreement. The November 2003 closure of De Anza was no surprise to anyone within the park or the San Diego community at large, as De Anza has been a matter of public interest in San Diego for decades.

(Ex. 68, p. 5.) In all, the De Anza residents have had thirty years of notice of park closure though written notices, state legislation, and the terms of their rental agreements.

By comparison, the 119-space MVV mobilehome park was built in 1959 on private property. In 2007, MVV was purchased by one of the largest investors, developers and operators of apartment communities in the United States (Archstone) with the intent to close the park and redevelop the property into a 444-unit multi-family, luxury apartment complex on 10.2 acres on Mission Gorge Road ("Archstone Mission Gorge project"), at a cost of $120 Million. (Ex. 76 (01:16:10 - 01:17:25, 01:26:18 - 01:31:00) (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report).)[2] At the time of City Council approval of the Mission Gorge project in November of 2008, Archstone projected that the MVV residents would have only three years notice of park closure. (Ex. 76: 01:16:08 - 01:19:00, 01:26:18 - 01:31:00 (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report).)

Taken together, the key differences between the De Anza and MVV mobilehome parks include:

	Mission Valley Village	**De Anza Cove**
Number of Spaces	119	510
Nature of real property	Private	Mission Bay tidelands intended for public use
Park ownership	Private apartment bldg owner / developer	Public entity ordered to keep park open after expiration of 50-year ground lease
Tenancies	Month-to-Month	Transferrable Long Term Lease Agreements (pre-2003)
Occupants	Homeowners only	Renters allowed
Age restrictions	At least one senior 55+ per space, others 45+	No age restrictions

[2] Exhibit 76 is a DVD of the entire MVV City Council meeting in 2008, which is cited in hours / minutes / seconds (00:00:00). The full written transcript has been lodged as Exhibit 76A.

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	Mission Valley Village	De Anza Cove
Nature of park closure	Private re-development	State mandate to close park and revert to public use
Notice of intended park closure to mitigate adverse impacts	1 to 3 years	20+ years post Kapiloff legislation (with 85% moving out prior to 2003) plus 10 years of pending litigation

Accordingly, as the Court properly concluded, the MVV and De Anza closure were not similar situations.

2. There Was No Determination by the Housing Commission or City Council that the SDHC's 48-Month Rent Differential Benefit Was Inadequate to Mitigate the Adverse Impacts of Closure on the MVV Residents

As correctly determined by the Court upon its independent review of the evidence, the Special Master misinterpreted what occurred at the MVV hearing and speculated, not based on actual words but on the "entire dynamic" of the hearing, that the City Council determined that the SDHC's 48-month rent differential benefit was not adequate to mitigate the adverse impacts of park closure on the MVV residents. What actually occurred, however, was a negotiation by the City Council on behalf of the MVV residents to obtain the most compensation as possible for the residents, resulting in Archstone's agreement to voluntarily increase the length of the rent differential period in order to secure approval for their development project.

Overland, Pacific & Cutler ("OPC"), the same mobilehome relocation specialist that is preparing the RIR in this case, prepared the relocation impact report for the MVV park closure ("MVV RIR"). (Ex. 71.) As with OPC's draft report for De Anza, the MVV RIR provided for a 48-month rent differential period, consistent with the Government Code and the then-applicable SDHC Policy 300.401. (*Ibid.*) At the approval hearing for the Archstone Mission Gorge project, it was well settled that the MVV RIR 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

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– 00:19:07 (City recommendation for approval of MVV 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 Atkins); 03:32:10 – 03:33:30 (Councilman Peters).) Accordingly, the SDHC had approved the MVV RIR (with the 48-month differential) and City staff recommended its approval by City Council. (*Ibid*.) Therefore, any rent differential period longer than the 48 months provided under the then-current SDHC guidelines (Policy 300.401) would necessarily exceed the "reasonable costs of relocation."

a. To Ensure Approval for its $120 Million Project, MVV's Private Park Owner Voluntarily Agreed to Pay a Rent Differential Period That Exceeded the Reasonable Costs of Relocation.

Unlike the City, Archstone was not precluded from offering to pay benefits to MVV residents that exceeded the reasonable costs of relocation. The private park owner, in such cases, can determine whether enhanced benefits would be economically feasible and offer such benefits to gain approval for park closure and the intended future development. (Ex. 76: 02:37:56 – 02:40:26 (Madaffer / Walseth); 02:46:40 – 02:49:30 (Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins); 03:32:10 – 03:33:30 (Peters). Certainly, the Mission Gorge approval hearing was a highly emotional event, with nearly two hours of speakers both for and against the Mission Gorge project. (Ex. 76: 00:19:07 – 01:11:20 (speakers in opposition); 01:11:21 – 01:57:00 (speakers in support.) Councilman Madaffer, feeling the weight of responsibility to his constituents and with his term ending in a matter of days, 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).) Archstone agreed to do so, and the City Council thanked Archstone and characterized its offer to so lengthen the rent differential period as both "huge" and "generous." (*Ibid* (emphasis added).) Archstone determined that it was both politically wise and economically feasible for it to agree to pay the 84-month benefit in order to gain City approval of its project, even though it was not legally required to do so.

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Contrary to the Special Master's speculative assumptions, however, there was no evidence that the City Council determined that the 48-month rent differential period in the SDHC guidelines was inadequate to mitigate the impact of closure on the MVV residents. First, as the foundation for this conclusion, the Special Master erroneously relied on a presentation by the City Attorney wherein "the City Attorney's office registered specific opposition to the 48-month rent differential recommended in the OPC RIR," stating that "the plan does not sufficiently cover the rent differential in new mobile home parks." (Special Masters First Report ("FR"), Ex. 3 to Plaintiffs'' NOL, p. 17:20-28, citing Tr. 11/18/08 council hearing, pg. 34 [Ex. 76A].) Importantly, however, the City Attorney was not objecting the <u>length</u> of the rent differential period, i.e. that the residents should receive more than 48 months of rent subsidies. Rather, the City Attorney's concern was the <u>per-month rent differential amount</u>, which under the SDHC guidelines is to be calculated based on the difference between the space rent and HUD Fair Market Rents. The City Attorney opined that this subsidy would not be enough to cover the rent differential between the $725 space rent at MVV and the space rent in more expensive mobilehome parks. (Ex. 76: 02:10:15 – 02:11:52; Ex. 76A, p. 34; see also City Attorney Memo, Plaintiffs' Ex. 8, Appendix F, p. 6; MVV RIR, Ex. 71, pp. 14-15.) And notably, in our case, this is a non-issue because the Court has already ruled in its SOD that the De Anza rent differential is to be calculated based on the market rents for an apartment of comparable size in a comparable beach community, in lieu of using the HUD Fair Market Rents. (SOD, Ex. 68, p. 14.) As such, the City's Attorney's opposition concerning the rent differential had nothing to do with increasing the number of months of rent differential payments. And, because that erroneous conclusion provided the entire basis for the Special Master's "fair reading of the transcript and interpretation of the video of the hearing," the Special Master's 84-month recommendation was properly rejected by the Court in its Decision.

Second, no one on City Council actually verbalized a belief (if any) that the length of the rent differential period under the SDHC guidelines was inadequate to mitigate the adverse impacts of closure. Nonetheless, the Special Master determined that "a careful review of not only what was said but the entire dynamic that existed during the hearing leads me to conclude that the

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Council was clearly signaling to Archstone that it considered the relocation benefits in the OPC RIR to be inadequate." (FR, Ex. 3 to Plaintiffs' NOL, p. 19:12-15.) This is not what occurred. There was complete agreement that Archstone's offer to pay 84 months well exceeded the reasonable costs of relocation. (Ex. 76: 02:37:56 – 02:40:26 (Madaffer / Walseth); 02:46:40 – 02:49:30 (Madaffer); 02:58:45 – 02:59:20, 03:27:50 – 03:28:39 (Atkins); 03:32:10 – 03:33:30 (Peters). In fact, as noted by the Special Master, Madaffer himself prefaced his request for 84 months by stating: "I'm troubled by only 48 months. Now, maybe that's over and above what should be done …So I get that and I understand that absent this project, these enhanced benefits (sic). 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." (FR, Ex. 3 to Plaintiffs' NOL, p. 18:14-18, citing Tr. 11/18/08 council hearing, p. 44 (emphasis added) [Ex. 76A].) Certainly, Madaffer is not "signaling" that he believed 48 months of rent differential to be inadequate mitigation, nor do any of the other Council members state anything about the SDHC guidelines not providing adequate mitigation. Madaffer was simply looking to negotiate the best deal possible for his constituents, using Archstone's project as leverage.

3. The MVV Park Closure Did Not Set an 84-Month Precedent for All Future Park Closures or Establish New City Policy Guidelines

As noted, the MVV closure was a one-off exception where Archstone made a business decision to increase the rent differential in order to secure approval for their development project. Further, despite the gratuitous comments of Archstone's counsel at the conclusion of the MVV hearing, the MVV case did not establish an 84-month precedent that would be required of all future park owners, or establish new City policy. In fact, as ruled by the Court, City Council subsequently approved the SDHC's recommendation to reduce the standard rent differential period from 48 to 42 months, an update to the policy that had been in progress well before the MVV hearing.

As with Policy 300.401 that went into effect in 1995, the SDHC's revised guidelines (Policy 301.06) were adopted in 2010 after comment and discussion among mobilehome park owners and residents. In January of 2007, the SDHC began to consider a reduction of the 48-

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month rent differential period to 42 months, to be consistent with federal and state standards for rental subsidies. (City Exs. 72-75.)[3] In 2007, the SDHC staff presented its draft amendments to Policy 300.401 to MHCIC for discussion and comment on January 17, 2007, February 21, 2007 and April 18, 2007. (Ex. 72.) The proposed amendments included a reduction of the period of rent differential payments from 48 to 42 months. (Ex. 74.) The SDHC summarized this proposed revision as follows:

> Another suggested change to the policy is to reduce the number of months by which the rental subsidy is calculated. Currently it is calculated at 48 months. Pursuant to State Government Code Section 7264(b), the current state standard for rental subsidies to be paid to displaced tenants is 42 months. The Commission feels it is appropriate to establish the state standard as the standard in the City's regulations rather than rely upon an arbitrary number of 48 months.

(Ex. 74.) On January 16, 2008, the MHCIC unanimously approved the draft amendments. (Ex. 73.) Thereafter, the new policy (PO-BEF-301.06) was unanimously approved by the Land Use and Housing Committee on February 18, 2009 and finally approved by the Housing Authority on January 26, 2010. (Exs. 74, 75.)

Importantly, the San Diego guidelines adopted by the SDHC are intended to be the fiscal standard against which relocation plans were to be measured, and the mitigation to be afforded for each closure needs to be determined on a park-by-park basis, subject to the facts and circumstances of the particular property. (See Declaration of Thomas Kerr ("Kerr Decl."), Ex. 120, ¶7.) Further, as noted, there is nothing in the SDHC guidelines which prevents the City Council from negotiating for tenants on an *individual basis* for benefits above the rent differential stated in the guidelines. Notably, in 2010, when the City Council, sitting as the Housing Authority, approved SDHC's proposed reduction of the rent differential period from 48 to 42 months, the meeting minutes stated:

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[3] This discussion began before Archstone had even purchased the MVV property in 2007 (Ex. 76: 01:16:10 - 01:17:25, 01:26:18 - 01:31:00 (owner representative Michael Walseth); 00:00:15 – 00:07:15 (City Staff Report)) and before Archstone submitted its 2008 Relocation Impact Report for the MVV park closure. (City Ex. 71.)

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> Councilmember Gloria reiterated that this policy sets the ground for relocation and that **nothing could prevent Council from negotiating for tenants on an individual basis beyond the 42 months stated in the policy**. (Plaintiffs' Exhibit 18 [emphasis added].)

This is clearly what Madaffer did for the residents in the MVV situation. And, Archstone congratulated City Council on its efforts , stating that it was "pure folly" that City Council did not accept Archstone's original offer and that "you've done a hell of a job for these people." (FR, Ex. 3 to Plaintiffs' NOL, p. 19:22-24.) The MVV RIR submitted to the City for approval (City Ex. 71) complied with all legal requirements for the discontinuance of a mobilehome park in San Diego. Accordingly, the SDHC approved the report (including the 48-month rent differential), and City staff recommended its approval by the City Council. (*Ibid.*) Thereafter, the City Council negotiated on behalf of the residents to increase the benefits, to which Archstone agreed in order to gain approval for its project. That scenario does not then somehow equate to a new 84-month precedent or new City policy wherein all residents in mobilehome parks are now entitled to the same 84-month rent differential at the time of park closure. If it did, City Council would have re-set the SDHC guideline at 84 months, instead of 42 months.

4. State Law Does Not Require the Payment of Mitigation Based on the Cost to Acquire Replacement Mobilehomes

Plaintiffs continue to assert that State law requires compensation to allow homeowners to acquire replacement mobilehomes in other parks. 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.) Plaintiffs also have never cited any authority to support their position that State law requires mitigation in the form of 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:

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> 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. As noted, to provide a framework to determine the "reasonable costs of relocation," the SDHC issued Relocation Standards and Procedures Policy 300.401, which provides a rent differential approach to mitigation. (Ex. 33.) The Court ruled this 48-month rent differential approach complied with State law requirements and that SDHC guidelines applied to the closure of De Anza. (SOD, Ex. 68, pp. 11:5-12:21.)

The Court, however, rejected Plaintiffs' position that State law requires the payment of mitigation based on fair market value or replacement cost. (SOD, Ex. 68, pp. 9:3-11:4.) As the Court correctly observed, the closure of De Anza presents a unique situation because the Park sits on Mission Bay tidelands, state-owned public property held by the City in trust. (SOD, 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.*) Further, the Court 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. (SOD, Ex. 68, p. 9:3-11:4 ("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").) Moreover, the Court has repeatedly ruled in its SOD that the California Relocation Assistance Law (Gov't 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. (Order on Demurrer,

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1 City Ex. 102, p. 2 (f); SOD, Ex. 68, pp. 10:28–11:4;.) As such, those statutes, including their
2 provisions related to the cost to acquiring replacement homes, are inapposite.
3 Nonetheless, since the SOD in 2008, Plaintiffs have persisted in their attempts to
4 manipulate the Court-ordered rent differential benefit to provide mitigation to residents based on
5 the cost to acquire replacement homes. Specifically, Plaintiffs have contended that the De Anza
6 residents should receive the number of months of rent differential equal to the cost to acquire a
7 mobilehome in another park. (Motion, p. 24:10-24.) First, as noted, the Court ruled that the
8 SDHC's rent differential approach to mitigation applied to De Anza, not the payment of
9 mitigation based on the cost to acquire a replacement mobilehome. Second, Plaintiffs improperly
10 focused their survey on all of the most expensive coastal areas in Southern California and heavily
11 weighted to Orange County, with sales listing ranging in price from $21,900 to $565,990.
12 (Declaration of James Brabant ("Brabant Decl."), Ex. 21 to Plaintiffs' NOL, ¶¶17-18.) However,
13 mobilehome parks in North County or Orange County are not comparable and have no bearing on
14 this case at all, even for the purposes of finding comparable rental housing, as "comparable unit"
15 is defined as an apartment unit of comparable size situated in a beach community in San Diego
16 County. (SOD, Ex. 68, p. 14.)
17 Third, Plaintiffs' purported "comparables" included listings in all-age parks, seniors-only
18 parks, and resident-owned parks that include an interest in the land. (Brabant Decl., Ex. 21 to
19 Plaintiffs' NOL, ¶13.) This resulted in an average price of $208,406, or $173.77 per square foot.
20 (Interestingly, at the trial in 2007, using these same parks in Orange County as comparisons for
21 their "in place," fair market appraisals (which the Court rejected), Brabant appraised each De
22 Anza home at an average fair market value of $206,000.) Brabant then calculated a "replacement
23 cost" by multiplying the total square footage of each De Anza coach by $173.77. ((*Id*. at ¶¶17-
24 18.) However, unlike the homeowners in the purportedly "comparable" parks relied on by
25 Plaintiffs, the De Anza residents (1) do not live in parks that will remain open indefinitely, (2) do
26 not have any property interest in the land, and (3) do not even have any remaining leasehold
27 interests. The De Anza residents own mobilehomes parked on rented spaces on public property.
28 (Ex. 1 (Stats. 1945, Ch. 142, pp. 624-629).) The residents also have no continuing right to occupy

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their spaces pursuant to a lease agreement, as they occupied the park subject to leases which expired on November 23, 2003 (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").)

The reality here is that none of Plaintiffs' surveyed mobilehome parks is truly comparable to De Anza, as none are scheduled for closure. Instead, 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, purchasers of mobilehomes in these "comparable" parks will also be acquiring either an interest in the land or a leasehold interest (whereas the De Anza residents have neither). This is why mitigation based on a rent differential as determined by the Court, not replacement cost, makes perfect sense in this case.

5. There is No Evidence that the 84-Month Rent Differential Period In Mission Valley Village Was Based on Replacement Cost

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 to the MVV residents 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 the Court has already rejected here – that the park owner was required to buy replacement homes for the residents. (Ex. 30 to Plaintiffs' NOL, 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.). (*Id*. and Appendix J thereto.) Again, however, 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

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1 this case. (Order on Demurrer, Ex. 102, p. 2 (f); SOD, Ex. 68, pp. 10:27-11:4.)

2 In any event, whatever materials the MVV residents decided to lodge with the City
3 Council for their consideration, Plaintiffs presented no competent evidence that the 84-month rent
4 differential period in MVV was based on the cost to buy replacement homes. (Exs. 76 [DVD of
5 MVV City Council meeting], 76A [Transcript].) At no point did Madaffer ever correlate his
6 request for an 84-month rent differential to the cost to acquire mobilehomes for the residents.
7 (*Id.*) In fact, there was no zero discussion (or even an inference) from <u>any</u> member of the City
8 Council that the rent differential should be increased to 84 months because of the cost to acquire
9 to acquire a mobilehome in another park. Instead, there was only complete agreement that
10 Archstone's offer to pay 84 months (at Madaffer's suggestion) well exceeded the reasonable costs
11 of relocation. (*Ibid*; Ex. 76: 02:37:56 – 02:40:26, 02:46:40 – 02:49:30 (Madaffer) 02:58:45 –
12 02:59:20, 03:27:50 – 03:28:39 (Atkins).)

13 Further, the actual payments made to MVV residents based on the 84-month rent
14 differential period demonstrated that there was no actual correlation between the replacement cost
15 figures provided by the MVV residents and the 84-month period. The materials submitted by the
16 MVV residents to City Council showed the costs to buy replacement mobilehomes in the range of
17 $80,000 to $179,000. (Ex. 30 to Plaintiffs' NOL, Appendix G.) However, the sales data
18 compiled by the MVV resident, accurate or not, are not actually representative of what most of
19 the MVV residents received for the 84 months of rent differential. Rather, <u>58 out of 70</u>
20 mobilehomes in MVV (82 percent) received <u>$48,000</u>. (MVV Settlement Agreement, Ex. 46 to
21 Plaintiffs' NOL, p. 2 and Ex. A thereto.) Only <u>one</u> homeowner had a large enough mobilehome
22 (4 bedrooms) to receive $121,000, and <u>ten</u> homeowners received $89,000 (3 bedrooms). (*Ibid.*)
23 Therefore, notwithstanding the misleading nature of Plaintiffs' entire argument on this point, the
24 total payments made to the MVV residents show no actual correlation between the costs to
25 acquire replacement mobilehomes and the final MVV rent differential numbers.

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6. Even If MVV's 84-Month Rent Differential Was Based on Replacement Cost, As Speculated by Plaintiffs, Then the Court Had No Choice But to Reject the Special Master's Recommendation as Inconsistent with SDHC Guidelines and the Court's Statement of Decision

Finally, even if Plaintiffs were 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, the Court would have had no choice but to reject the Special Master's recommendation for the same rent differential period as inconsistent with the SDHC Guidelines and the Court's SOD. As outlined above, the Court 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 provided 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 properly disregarded the MVV closure for the purposes of determining the mitigation in this case, rejected the Special Master's recommendation based on the MVV closure, and properly awarded the De Anza residents the 48-month rent differential multiplier based on the SDHC guidelines.

IV. THE COURT PROPERLY RULED THAT THE CITY IS IMMUNE FROM STATUTORY PENALTIES UNDER THE MRL

The Court properly ruled that the City is immune from Civil Code section 798.86 penalties under Government Code section 818. (Decision, Ex. 72 to Plaintiffs' NOL, pp. 11:14 - 13:6.) As a threshold matter, contrary to the arguments raised by Plaintiffs for the first time in their Motion, the City never waived this immunity defense. Further, even if the City was not immune from statutory penalties (and it is), (1) Plaintiffs waived their ability to recover such penalties by failing to present any evidence on this issue at the trial in 2007, and (2) the Court would still have been well within its discretion to deny Plaintiffs' request based on the unique facts and circumstances of this property.

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A. There Was No Waiver By the City Related to Its Defense under Government Code Section 818

For the first time in their Motion, Plaintiffs contend that the City waived its appeal to assert the defense of immunity under Government Code section 818. Not so. First, there was no purported waiver during the "claims process." In fact, Plaintiffs wholly failed to file a claim with the City prior to filing their Complaint in November of 2003. (See Ex. 49.) Plaintiffs did not file an administration claim form until 2004, which the City denied. But even then, contrary to Plaintiffs' claim that the Government Claims Act requires the City to "either serve a written objection to the claim based on government immunity or forever waive any defense," the Act does not require to a public entity to allege every affirmative defense in response to claim. Rather, the Act requires the public entity to notify the claimant of any procedural defects in the claim regarding form and content (*i.e*. Gov't Code sections 910, 910.2, 910.4) within twenty days or waive any defenses as to defect or omissions in the claim form. (Gov't Code, §§910.8, 911; *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705-707.) Further, contrary to Plaintiffs' blatant misstatement of the record, the City did allege in its affirmative defenses that it was immune from exemplary damages under Government Code section 818. (See City's Answer to Third Amended Complaint (Affirmative Defense XXXII), Ex. 118, p. 7:1-3.) Accordingly, the City's defense of immunity from statutory penalties was properly preserved.

B. The Court Properly Determined As A Matter of Law that the City Is Immune from Statutory Penalties Under Government Code Section 818

The Court also properly denied Plaintiffs' request for statutory penalties, as the request for such damages only served the purpose of punishing the City, which is prohibited by Government Code section 818.

As a general rule, statutory penalty provisions do not apply to public entities. (*Dubois v. Workers Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 398.) Government Code section 818 provides: "Notwithstanding any other provision of law, a public entity is not liable for damages under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant." (Gov't. Code, §818.) Civil Code section 798.86 provides

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that statutory penalties *may*, in the discretion of the court, be awarded in an amount not to exceed two thousand dollars ($2,000) for each willful violation, but that the homeowner may only be awarded *either* punitive damages pursuant to Section 3294 of the Civil Code *or* the statutory penalty. (Civ. Code, §798.86(a), (b).)

There are no published cases which address the applicability of Government Code section 818 to the statutory penalty provision of Civil Code section 798.86. California courts, however, have construed section 818 in other civil penalty contexts to prohibit awards of damages against a public entity which punish the defendant rather than compensate the plaintiff. As stated by the California Supreme Court, the purpose behind the statutory ban on punitive damages against public entities is to protect taxpayer funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured parties. (*Wells v. One2One Learning Found.* (2006) 39 Cal.4th 1164, 1196, fn. 20; see also *Dept. of Corrections v. Workmen's Comp. Appeals Bd*. (1971) 5 Cal.3d 885,891 ("It seems clear to us that section 818 of the Government Code, in referring to 'damages imposed primarily for the sake of example and by way of punishing the defendant' contemplates, as the comment to the section by the California Law Revision Commission indicates, punitive damages which are designed to punish the defendant rather than to compensate the plaintiff. Punitive damages are by definition in addition to actual damages and beyond the equivalent of harm done").) As a result, courts must carefully consider whether the Legislature intended to expose the public entity to a particular statutory liability.

Here, the Legislature intended the statutory penalty provision of Civil Code section 796.86 to be punitive in nature, not fulfill a compensatory function. First, the statute plainly requires the plaintiff to elect *either* punitive damages *or* the statutory penalty. (Civ. Code, §798.86(b).) As a result, the Legislature considered the punitive damages and statutory penalties as serving the same remedial purpose - to punish or make an example of the mobilehome park owner. As explained in the legislative history of the 2003 amendment to section 798.86:

> This Bill Would Not Allow Double Recovery. While it is appropriate to clarify that punitive damages are recoverable for violation of the statute, this bill would not permit recovery of both punitive damages and the statutory damages for willful violations. Under this bill, a plaintiff must elect between punitive damages and willful damages. (2003 Legis. Bill Hist. CA A.B. 693, Assembly Committee on Judiciary, April 1, 2003.)

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And, importantly, the Legislature expressly enacted the 2003 amendment in response to the decision of *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* ((2001) 94 Cal.App.4th 890), which had held that plaintiffs could not recover punitive damages under section 798.86. In that case, the Court recognized that, where punitive damages and statutory penalties have the same purpose, plaintiff cannot obtain a double recovery and must elect one or the other. (*Id.* at 911-915.) Therefore, it is beyond dispute that the Legislature viewed the punitive damages and statutory penalty options in section 798.86 as serving the same purpose – to punish the defendant.

Certainly, if the Legislature had intended the statutory penalty provision to serve a *different* purpose than punitive damages (e.g. to compensate the plaintiff), it would have treated them as separate and distinct remedies and made them both recoverable. For example, in *Los Angeles County Metropolitan Transportation Authority v. Superior Court* ((2004) 123 Cal.App.4th 261), the Court held that by authorizing both punitive damages and civil penalties in Civil Code section 52, the Legislature obviously intended for the two categories of relief to be distinct remedies, one punitive and one compensatory. (*Id.* at 267-268.) However, in *Troensegaard v. Silvercrest* ((1985) 175 Cal.App.3d 218), the Court refused to allow punitive damages *and* a civil penalty because both remedies served to punish and would allow a double recovery. (*Id*. at 228 ("had the Legislature intended a double recovery of punitive and penal damages for the same willful, oppressive, malicious and oppressive acts, it would in some appropriate matter have said so").) In this case, by its 2003 amendment to section 798.86, the Legislature made it plain that it did not intend the recovery of both punitive damages and civil penalties because both served the purpose of punishing defendants.

Further, the discretionary nature of section 798.86 also makes it clear that the Legislature did not intend the statutory penalty provision to fulfill a compensatory function. The statute gives complete discretion to the Court on whether to award *any* statutory damages and provides *no* minimum compensation for a violation of the MRL. As such, the statutory penalty provision is not tied to the injury suffered by the plaintiff or intended to fulfill a compensatory function. Rather, section 798.86 is a simply a means to punish the defendant.

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Finally, the 1997 amendment to section 798.86 is instructive as to the punitive nature of the statutory penalty provision. At that time, the Legislature raised the limit of the discretionary penalty from $500 to $2,000. And, the Legislature explained that the statutory penalties were intended to serve as a deterrent, not to provide compensation to plaintiffs.

> [T]he author asserts that the existing discretionary damages cap of $500 for each willful violation of the MRL is not an effective deterrent. Compensable damages or out-of-pocket expenses which are recovered by residents through small claims court are usually very small, primarily because the personal belongings and assets of mobilehome residents are generally low in cash value. (Senate Rules Committee, Assembly Bill 591.)

As stated by the Court in *De Anza Santa Cruz Mobile Estates Homeowners Assn, supra*: "By providing a monetary penalty not tied to actual damages, and a relatively simple means of making the showing justifying such a penalty, the Legislature had a dual purpose: to promote effective enforcement of the provisions of the MRL by low-income tenants, and to punish "willful" violators of the MRL." (*Id*. at 911.)

Accordingly, based on a plain reading of section 798.86 and its legislative history, and the application of section 818 in other statutory contexts, the Legislature created the statutory penalty of section 798.86 to punish violators of the MRL, not to fulfill a compensatory function. And, certainly, in the context of this park closure case, the Court has already ensured that the residents receive adequate mitigation compensation in accordance with Government Code section 65863.7, and any award of statutory penalties will not serve a compensatory function. Necessarily, therefore, the Court properly determined as a matter of law that the City was immune from statutory penalties pursuant to Government Code section 818.

C. Even if the City Was Not Immune from Statutory Penalties, Plaintiffs Waived The Ability to Recovery such Penalties By Failing To Present Evidence on the Issue at Trial in 2007

Even if the City was not immune from statutory penalties pursuant to Government Code section 818 (and it is), Plaintiffs waived the ability to recover these damages by failing to present evidence on the issue at trial. In their post-trial Request for Statement of Decision, Plaintiffs claimed to have submitted three declarations from De Anza residents (Ruffato, Anthony and Epstein) on the issue of statutory penalties, to purportedly show the repercussions suffered by the

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residents due to MRL violations. (Ex. 106, p. 13:3-7.)[4] However, if Plaintiffs had in fact submitted that evidence on the issue of statutory penalties, that fact was never made known to the City at trial, and therefore the City had no opportunity to respond. Plaintiffs also did not cite any evidence on this issue in their Trial Brief. (Ex. 105, pp. 9-10.) Instead, Plaintiffs simply picked some exhibits off the admitted exhibit list *after* the trial and called it their evidence on the statutory penalty issue. Plaintiffs had their opportunity to present evidence on the issue of statutory penalties at trial, and they failed to do so. The City also had a right to defend itself at trial on the issue of statutory penalties had Plaintiffs elected to present evidence at that time, and not be required to respond to Plaintiffs' purported evidence after the trial had already concluded. (*In re Marriage of Carter* (1971) 19 Cal.App.3d 479, 494.) As such, notwithstanding the fact that the City is immune from statutory penalties under Civil Code section 798.86, Plaintiffs waived any right to recover them.

Further, even if the Court had deemed it appropriate to consider the three resident declarations cited in Plaintiffs' post trial Request for Statement of Decision, such evidence obviously failed to satisfy the requirements of the statute. Statutory 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(a) ("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" (emphasis added).) At trial, therefore, Plaintiffs were required to submit evidence that the City willfully violated the MRL. Instead, at most, Plaintiffs admittedly submitted only three resident declarations to demonstrate the "effects" of the City's alleged violations. (Ex. 106, p. 13:3-7.) These declarations do not in any way constitute evidence on the issue of whether the City willfully violated the MRL.

Accordingly, even if the Court had not ruled in the Decision that the City was immune

[4] Plaintiffs included these three declarations with their briefing (Ex. 42 to Plaintiffs' NOL), but also improperly included some additional declarations which were never admitted at trial (Smithwick, Gloudeman, Pletcher, Stevens).

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from statutory penalties under Government Code section 818, the Court would still have rejected Plaintiffs' request for statutory penalties for (a) wholly failing to present evidence on the issue at trial in 2007 and giving the City an opportunity to respond at trial; and/or (b) failing to present any evidence at trial that the City willfully violated the MRL. As such, there is no basis to disturb the Court's Decision on this issue.

V. THE COURT PROPERLY UTILIZED THE DE ANZA MOBILEHOME SQUARE FOOTAGE RANGES DETERMINED BY THE INDEPENDENT, COURT-APPOINTED MOBILEHOME RELOCATION EXPERT

Plaintiffs further claim that the Court adopted a "math error" that "arose during OPC's initial comparable rent survey in 2011." (Motion, p. 39:1.) On this issue, Plaintiffs have a skewed view of history, and their argument on this issue needs to be seen for what it is – a belated effort to artificially reduce the lower end of each square footage range so that, in calculating the rent differential benefit, more of the smaller De Anza coaches and their correspondingly low monthly space rents will be matched with larger San Diego apartments and their significantly higher rental rates. In doing so, the rent differential between the smaller De Anza homes and the apartments rents identified in OPC's San Diego market survey becomes much wider, leading to inflated rent differential compensation amounts which exceed the reasonable costs of relocation.

Ideally, in determining the rent differential for each unit, OPC would have identified the number of bedrooms for each De Anza mobilehome and then compared its monthly space rent to the monthly rent for San Diego apartments with the same number of bedrooms. Early in the RIR process, however, OPC determined that the square footage data for the De Anza units would be more reliable than resident-reported bedroom counts. For example, the resident-reported one-bedroom units at De Anza ranged from 380 to 882 square feet, and the resident-reported two-bedroom units ranged from 400 to 2140 square feet. (See attachment to Ex. 114.) Therefore, in 2011, for its Draft RIR, OPC charted the square footages and resident-reported bedroom numbers for each unit at De Anza to determine the range for each bedroom size. (Ex. I, p. 15.) In response to an inquiry from the parties about the Draft RIR, OPC provided the following explanation of how it determined the ranges:

> We analyzed the square footage of each unit within the Park to determine the

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> 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, 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, Plaintiffs' complaint was that OPC inconsistently used a "mean" analysis to establish the De Anza home size ranges, but used a "median" analysis to calculate the cost of apartment housing, which Plaintiffs contended skewed the results unfavorably to the City. (Second Report, Ex. 4 to Plaintiffs' NOL, 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 originally did not use median for the De Anza homes due to missing data. (OPC Q&A, Ex. 112, Question # 2.)

In February of 2014, Plaintiffs requested that OPC perform an updated apartment rental survey to determine the median comparable rents based on the sizes of the comparable units. Thereafter, on March 11, 2014, Plaintiffs asked OPC to update their 2011 De Anza square footage breakdowns in order to consistently apply the median analysis. (Ex. 114.) By that time, <u>all</u> of the square footage data for the De Anza homes had been determined, so OPC could consistently apply the median analysis. 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. (Ex. 28 to Plaintiffs' NOL.) This resulted in new breakpoints at 665/1060/1380. (Ex. 26 to Plaintiffs' NOL, p. 2.) Though OPC did exactly as Plaintiffs requested, Plaintiffs did not like the results and have contended that the break points are artificially elevated.

First, OPC simply applied the same deviation methodology as they did in 2011 for the Draft RIR, to which Plaintiffs never objected. Second, as OPC explained to Plaintiffs, the De

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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. (Ex. 28 to Plaintiffs' NOL.)

> 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. (*Ibid*.)

As the mobilehome relocation specialist, OPC properly exercised its discretion to determine appropriate square-footage tiers for the purposes of calculating relocation benefits. And certainly, there can be no mistake that the Court thoughtfully considered, and rejected, the opinions of Plaintiffs' expert (Evidentiary Rulings dated May 30, 2014, Ex. 117, p. 1:27), and instead exercised its discretion to adopt the non-biased opinions of the independent, Court-appointed expert. (Decision, Ex. 72 to Plaintiffs' NOL, p. 6:11-7:23.) There will always be an example of a home size that falls just short of the upper range, resulting in a lesser amount of benefits, or a home just large enough to make it to that next tier. The break points, however, need to fall somewhere and there was no attempt by OPC to artificially skew the ranges in order to decrease the benefits for the residents. Accordingly, Plaintiffs' request to vacate the judgment to correct purported "math errors" must be denied.

VI. <u>THE COURT PROPERLY RULED THAT LODGING EXPENSES ARE TO BE PAID TO CLASS MEMBERS ON AN "AS NEEDED" BASIS</u>

The Court also properly determined that temporary lodging expenses are to be paid to class members on a case-by-case basis. The Special Master had recommended that, consistent with the recommendation of OPC, the lodging benefit should only be paid to resident owners that would need to physically relocate their mobilehomes and on a case-by-case basis for their actual period of displacement. (Decision, Ex. 72 to Plaintiffs' NOL, pp. 7:24-8:6; SR, Ex. 4 to Plaintiffs' NOL, pp. 16-19.) The Court expanded the scope of the lodging benefit to include <u>all other</u> class members upon a showing of reasonable necessity for temporary lodging. (Decision, Ex. 72 to Plaintiffs' NOL, pp. 8:7-11.) The Court's Decision in this regard fulfills the purpose

and intent of Government Code section 65863.7(e) to mitigate adverse impacts of closure, but not in amounts that exceed the reasonable costs of relocation.

The SDHC guidelines do not require, as argued by Plaintiffs, the payment of lodging to every class member for a fixed number of nights. The lodging benefit is not a mandatory benefit for each homeowner; rather, it is a variable benefit paid "up to" seven nights. (Ex. 33.) Further, as a practical matter, most (if not all) class members will not need a lodging stipend at all. The parties agreed at trial that nearly all of the mobilehomes in the park cannot be relocated due to their age or condition, and as a result, most class members will be moving directly from the park into their new residence. Because these class members will be afforded a minimum of 12 months to coordinate this move before the park closes, temporary lodging expenses will not be needed. For those few class members that can physically relocate their mobilehome, only resident owners physically living in their mobilehome would potentially need the lodging benefit while their home is moved and installed in the new park. (SR, Ex. 4 to Plaintiffs' NOL, p. 19:6-20.) Non-resident homeowners that 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. In any event, the Court has provided in its Decision that all class members may be eligible for a lodging benefit up to seven nights upon a showing a reasonable necessity, and this is a fair result that comports with statutory mitigation requirements.

VII. THE JUDGMENT PROPERLY PROVIDES FOR NON-CLASS MEMBERS TO VACATE THE PARK UPON THE ENTRY OF JUDGMENT

The Judgment properly provides for all residents in the park to vacate at the park prior to the expiration of the City's Twelve-Month Notice of park closure or be subject to eviction proceedings. (Judgment, ¶¶18-19.) These terms are consistent with the Court's Statement of Decision dated May 21, 2008, which states:

> ***All other residents/non-residents***: All other residents/non-residents claiming an interest in the leasehold of the De Anza Mission Bay tidelands on or after November 23, 2003, are not subject to the statutory mandates of the Mobilehome Residency Law. Accordingly, these individuals are not entitled to mitigation and will be required to depart from the State tidelands upon entry of Judgment in this action. (SOD, Ex. 68, p. 15:15-19.)

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The park remains open by Court order pending the resolution of the class action litigation and all of the residents in the park are currently holdover tenants. While the class members will receive their mitigation prior to park closure, the Court has already ordered that non-class members are not entitled to mitigation and will be required to depart the property upon entry of Judgment. Under California's general landlord-tenant laws, only thirty (30) or sixty (60) days' notice of termination is required. (Civil Code, §§1946, 1946.1.) Nonetheless, though the park closure notice requirements of the MRL do not apply to the non-class members residing in De Anza, the Judgment (as drafted and proposed by the City) provides that the City will serve a Twelve-Month Notice of park closure on all homeowners and residents in the park to establish the deadline for the final closure of the park. In addition, the Judgment provides that the City will serve *additional* sixty (60) day notices of termination on all homeowners and residents that remain in the park ten (10) months into the park closure period. These terms more than satisfy any notice of tenancy termination obligations to the non-class member residents (if any), and the City certainly has no obligation to provide relocation benefits to homeowners and residents that are not class members. The City also cannot be precluded from evicting any and all homeowners and residents that fail to vacate the park by the final date of closure, whether class members or not. Accordingly, the terms of the Judgment related to the evictions of non-class members are proper and do not require modification.

VIII. THE JUDGMENT PROPERLY DOES NOT PROVIDE FOR POST-JUDGMENT INTEREST ON MITIGATION FOR ALL CLASS MEMBERS

The Judgment also properly does not provide for the accrual of post-judgment interest on mitigation for all class members. As the City indicated to the Court at the status conference on September 10, 2014, the parties agree that the class member households that have already moved out of the park are entitled to the continued accrual of interest beyond May 30, 2014 and post judgment. However, as to class members that still live in the park, the Court did not award those residents pre-judgment interest, nor should those funds accrue post-judgment interest because the relocation funds are not due until the time of park closure.

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A. The Plaintiff Class Member Compensation Spreadsheet Can be Updated to Reflect Continued Interest Accrual for Class Members That Have Vacated the Park

As a threshold matter, with respect to the residents identified in the Plaintiff Class Member Compensation Spreadsheet ("Compensation Spreadsheet") with a "V" (Vacated Class Members), the Court ordered that pre-judgment interest be added to the lump sum payments due to those residents as of the date they vacated the park. As such, the City does not object the continued accrual of pre-judgment interest on the mitigation due to the Vacated Class Members from May 30, 2014 (the date of the Compensation Spreadsheet) to the entry of Judgment on August 20, 2014. And, the City further does not object to the accrual of post-judgment interest for Vacated Class Members from the entry of Judgment until the date upon which the City issues the Twelve-Month Notice of Closure (at which point the Vacated Class Members can file claims for immediate payment pursuant to the terms of the Judgment). As a result, because interest is already calculated in the Compensation Spreadsheet through May 30, 2014 for Vacated Class Members, the Compensation Spreadsheet can be updated to simply state that interest will continue to accrue at seven (7) percent as to the Vacated Class Members only. For that purpose, the Judgment itself need not be vacated and amended.

B. The Court Properly Did Not Award Pre-Judgment Interest to Class Members Still Living in the Park, Nor Are They Entitled to Post-Judgment Interest on Funds That Are Not Yet Due

As to the class members still living in the park, their mitigation funds will not be due from the City until the City closes the park and therefore (1) the Court properly did not award pre-judgment interest on their mitigation funds, and (2) these residents are not entitled to post-judgment interest.

As to pre-judgment interest, it should first be noted that Plaintiffs rely on statutes that either do not apply to this case or have since been amended by the legislature. Civil Code section 3287 allows pre-judgment interest in certain situations where is a person is entitled to recover "damages," whereas the Court has ruled that is not a case involving money damages, but rather a determination of what is necessary to mitigation the adverse effects of park closure. (SOD, Ex.

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68, p. 6; see also SR, Ex. 4 to Plaintiffs' NOL, pp. 19-22.) Further, Plaintiffs claim that California Rules of Court, Rule 3.1802, provides that judgments must include "the interest accrued since the entry of the verdict." (Motion, p. 45:25-27.) However, Rule 3.1802 was amended effective January 1, 2104, and now simply states that: "The clerk must include in the judgment any interest awarded by the Court." Rule 3.1802 was amended to strike out "and the interest accrued since the entry of the verdict" to remove the ambiguity caused by the provision that could be interpreted as mandating a clerk to include this pre-judgment interest in all cases. Such pre-judgment is <u>not</u> automatic and must be ordered by the Court under the appropriate circumstances. (See *North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.app.4th 824, 829.) Here, however, the Court has properly determined that such pre-judgment interest is not appropriate for class members still living in the park, based on the analysis and recommendations provided by the Special Master. (Decision, Ex. 72 to Plaintiffs' NOL, p. 11:4-8; SR, Ex. 4 to Plaintiffs' NOL, pp. 19-22.) This case presents a unique situation where the Court has determined the steps required to mitigate the adverse impacts of mobilehome park closure, including economic mitigation or other relocation assistance. This park remains open by Court order and it will continue to remain open until (1) the judgment is final (the time for the parties to appeal the Judgment has lapsed or all avenues of appeal or review have been exhausted, and (2) the City issues a notice of park closure pursuant to Civil Code section 798.56(g). As such, the final closure of the park is not likely to occur for two to three years, or more. Until that time, no monetary amounts are owed to the residents and the City has no obligation to make those payments or provide any other relocation assistance to the residents.

And importantly, that situation will not change post-judgment, as there will not be a situation where mitigation payments came due but were unpaid. Once the Twelve-Month Notice is issued, the homeowners and residents have complete discretion as to the timing of their departure during the park closure period – some may elect to notify the City of their intent to vacate after the legal minimum of 60 days and others may elect to vacate on the 365th day. And, on the date that the resident chooses to terminate his/her tenancy and vacate the park (i.e. the date that the residents incurs the harm and requires the mitigation to pay for replacement housing), the

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City will have their checks ready. Under these circumstances, there is no legal basis for the accrual of interest on the portion of the mitigation to be paid to the residents still in the park.

Accordingly, while the City agrees that the Compensation Spreadsheet can be updated to provide that interest will continue to accrue after May 30, 2014 at seven (7) percent as to the Vacated Class Members, the Court has properly determined that the class members still living the park are not entitled to pre-judgment or post-judgment interest. As such, there is no need to vacate the existing Judgment and amended the Judgment, and Plaintiffs' request for interest accrual after May 30, 2014 for all class members should be denied.

IX. CONCLUSION

Based the foregoing, having demonstrated no legal or factual basis for granting a new trial or setting aside the judgment, Plaintiffs' motions should be denied.

Dated: October 1, 2014

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By: ______________________

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