Timothy J. Tatro (Bar No. 175633)
Peter A. Zamoyski (Bar No. 185579)
TATRO & ZAMOYSKI, LLP
12760 High Bluff Drive, Suite 210
San Diego, CA 92130
TEL: (858) 244-5032 FAX: (858) 847-0032

Vincent J. Bartolotta, Jr. (Bar No. 55139)
Karen R. Frostrom (Bar No. 207044)
THORSNES, BARTOLOTTA & MCGUIRE
2550 Fifth Ave., 11th Floor
San Diego, CA 92103
TEL: (619) 236-9363 FAX: (619) 236-9653

Attorneys for Plaintiffs

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' OPENING BRIEF REGARDING CLASS COMPENSATION OWED BY CITY OF SAN DIEGO, FINAL RULINGS NEEDED TO ISSUE JUDGMENT AND PERMANENT INJUNCTION, AND OBJECTIONS TO CERTAIN OF THE SPECIAL MASTER'S RECOMMENDATIONS

Date: **May 6, 2014**
Time: **1:00 p.m.**
Judge: **Hon. Charles R. Hayes (Ret.)** by Special Appointment
Dept: **Presiding Department (SD-P)**

Table of Contents

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Introduction

In a mobilehome park closure, State law provides very special, unique protections due to the extraordinary losses suffered by mobilehome park homeowners. The City of San Diego was obligated to complete, distribute, and hold open hearings discussing a Tenant Impact Report (TIR) one year before the November 23, 2003 park-closure date. (Civ. Code § 798.56(g)-(h); Gov't Code § 65863.7.) The TIR would have confirmed the existence of the residents' relocation claims and the amount of money the City would have to pay before requiring anyone to leave. But, as the Court knows, the City did everything the wrong way: it refused to follow State law, tried to exempt itself from State law through local ordinance, actively misinformed park residents that they were not entitled to any relocation benefits, started to close the park, moved out many homes, and threatened to immediately evict anyone who refused to sign the City's pre-drafted release agreement. The Court noted:

> What should have happened back in 2002 was a tenant impact report, the City should have recognized that a City ordinance does not trump a state statute. The City planned 20 years ago that they were going to have to deal with mitigation, and they should have at that time. (Ex. 56, Rptr. Trans., dated Nov. 22, 2010, p. 24:17-22.)

Fast forward to the present. The purpose of the parties' final briefing and the hearing set for early May 2014 is for this Court to make the final determinations of compensation owed to the Class Members and—in the 11th year after it began in November 2003—bring this case to a close. The parties and the Court need to compensate the homeowners based on the realities of the situation and real-world figures. It needs to be done right, so that the De Anza homeowners and residents will finally see justice prevail.

California's Mobilehome Residency Law requires a park owner to mitigate the adverse impacts of park closure and provide sufficient compensation to allow homeowners to find comparable replacement housing in another mobilehome park. (Gov't Code § 65863.7(e).) It is undisputed that none of the homes at De Anza Cove can be relocated to other mobilehome parks. **The reality here is that the most prominent adverse impact of park closure to the Class is the complete loss of their homes and the replacement cost to acquire another home in a comparable park**. So, how does one quantify the (1) loss of one's home; and (2) the replacement cost of housing in

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

another park, and how does one account for that cost based on the San Diego Housing Commission's Relocation Guidelines?

The loss of value of the De Anza Cove homes was assessed during trial via an exhaustive appraisal of each home. This Court ruled after trial that Class members were *not* entitled to receive the fair market value for the loss of their homes—$206,000 per home based on the appraisal performed *7 years ago* before trial in 2007. Instead, the Court ruled that Class members were entitled to mitigation of the loss of their homes in accordance with State law following: (a) the methodology shown in the City's Relocation Guidelines, and (b) consistent with the manner in which the City has applied its Guidelines to other park owners. (In accord with the Court's rulings, Plaintiffs did not request the fair market value loss during any briefing or argument before the Special Master and, once again, we do not do so in this final briefing.)

As the City acknowledged to the Special Master, the City's Relocation Guidelines are flexible and provide a ***bare minimum***—a floor for the number of months of rent-differential payments that can be adjusted upwards. The City confirmed: "The ordinance provides for a recommended minimum rent differential for all individuals who fall under the ordinance. However, the ordinance does not provide for precisely the number of months for how long an individual should receive the benefit of rent differential…. Instead, the number of months is not specified, only a minimum is provided, because these are guidelines where the numbers may vary in different cases." (City Opp. to Pl's Brief to Special Master re: Rent Diff'l, pp. 11:27-12:7 (underscoring in City's original).) And when the City Council revised its Guidelines most recently in 2010, Council President Todd Gloria reemphasized on the record that the City Council is empowered to require *higher* amounts of rent differential and other benefits in order to mitigate all adverse impacts of park closure.

In the Mission Valley Village park closure, that park's homeowners presented the City Council with nearly an inch-thick of documentation and data, including the actual cost of replacement housing in mobilehome parks in their surrounding vicinity. The homeowners advocated for sufficient compensation to be able to acquire replacement homes. During the hearing, the City Attorney confirmed the homeowners' legal position to the Council: "The Government Code, 65863.7[e], authorizes the City to require mitigation of any adverse impacts on the ability of

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

displaced persons to find housing in other mobilehome parks. So, in addition to making findings to convert the mobilehome [park], you also have authority to tinker with the mitigation, the adequacy of the mitigation, and the impacts to the actual displaced persons." The Council President responded, "That I get. And I understand that there is an effort to talk about what the appropriate mitigation is." (Ex. 31, Council Trans., p. 35.) The City Council considered the homeowners' data, the rationale behind the MRL's relocation requirements, and required the park owner to pay 84 months of rent differential in a lump sum.

Although the City's lawyers in this case have zealously advocated for less rent differential, the Special Master recommended—consistent with this Court's admonition that the City be held to the same standard as any other park owner—that the Court should award 84 months' rent differential.

While 84 months of rent differential is substantial and is the minimum standard that is required, it does not achieve the State law's mandate to provide sufficient compensation to allow homeowners to find comparable replacement housing in another mobilehome park. Using objective evidence of replacement housing costs in comparable mobilehome parks—*exactly* like the Mission Valley Village homeowners presented to the City Council—Plaintiffs demonstrate that the actual cost of replacement housing in 2014 averages $178,270. Even though the fair market value loss of their homes was $206,000 as appraised seven years ago, **Plaintiffs are only seeking a sufficient number of months of rent differential to mitigate the loss of their homes and provide the financial resources necessary to acquire replacement housing in another park**. As Plaintiffs will illustrate, that equates to 109.7 months of rent differential.

We expect that the City will assert that it does not have the financial resources to pay the judgment here, or will accuse the Class Members of seeking some sort of "windfall." But the facts reveal the absurdity of the City's unsupported notions—from the City's extensive insurance coverage, to millions in past rent revenues collected, and future development revenues projected by the City in excess of $100 million. Another fact particularly stands out: the City has had the opportunity to receive *over $45 million* in park-wide rent revenues from the De Anza homeowners…*just during the time that this case has been pending*.

With the sheer volume of information presented to the Special Master, the City was successful

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

in convoluting and contorting certain issues. For example, the City asserted to the Special Master that the Park has not yet closed, so relocation benefits are not owed to anyone except those who have already voluntarily vacated the Park (despite the fact that this Court issued written rulings against the City on this very issue multiple times in the past). This entire post-trial Tenant Impact Report process was ordered by this Court to determine the present value of relocation benefits and compensation owed to the entire Class based on the park closure date of November 23, 2003.

Likewise, Plaintiffs take issue with the City's request for an artificial and fictitious space rent increase, which has the sole effect of reducing the rent differential that would help homeowners mitigate the loss of their homes. (Rent differential is calculated by subtracting space rent from the comparable rent. So any change to the space rent component automatically shrinks the rent differential.) Just this one artificially-created error would cost each homeowner over $17,000! As Plaintiffs will show here, there is no justifiable reason to fictitiously-increase space rent after the City tore out common areas, eliminated many amenities, and destroyed the De Anza community. The City cannot be allowed to benefit in any way from its illegal actions that would cause yet another significant financial detriment to the Class.

Plaintiffs also briefly address: (a) certain mathematical/statistical errors that remained in OPC's latest compensation spreadsheet (a mathematically and statistically-unsupported 15% markup on the De Anza home-size breakpoints, and a missing, agreed-upon home-size compensation tier that, together, would cost each homeowner almost $19,000); (b) the correct application of the Relocation Guidelines, State law, and the actual custom and practice of the payment of park-closure relocation benefits, requires that the relocation payment be made in a lump sum; (c) the Guidelines require payment of Temporary Lodging benefits of up to 7 nights, and the realities of moving and relocating means that at least 3 or 4 nights' temporary lodging is needed per household; and (d) the Special Master recommended payment of 7% Prejudgment Interest accruing from the date of move-out for those people who had voluntarily vacated the Park, to which Plaintiffs agree.

Lastly, it is now time for the Court to determine the amount of Statutory Penalties to award based on the City's many violations of the Mobilehome Residency Law. (Civ. Code § 798.86.) Although the City is liable for amassing literally scores of violations, and then repeating those

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

violations over time, Plaintiffs ask that the Court ultimately award $14,000 per Class Member.

As this Court commented at the hearing earlier this year, the parties and OPC need to be able to look ourselves in the mirror and bring this case to a close in the right way because real peoples' lives are going to be dramatically affected. Therefore, as this final briefing and argument concerning the compensation owed to the Class culminates in May, Plaintiffs respectfully request that the Court rule as follows:

1. The Park Closure date was November 23, 2003, and compensation is presently owed to all Class Members based on the updated 2014 survey.

2. The Class is entitled to at least 84 months' rent differential, and up to 109.7 months' rent differential, paid in a lump sum.

3. The mathematical / clerical errors of OPC shall be corrected (15% markup eliminated; missing home-size tier added).

4. The City's request for an artificial space rent increase, which would decrease the rent differential owed to the homeowners, is denied.

5. Temporary Lodging of 4 nights is awarded per household.

6. 7% Prejudgment Interest shall accrue from the date of move-out on the relocation benefits and compensation owed to those homeowners who have already vacated the Park prior to entry of judgment.

7. Plaintiffs are entitled to Statutory Penalties of $14,000 per Class Member based on the City's violations of the MRL.

Once the Court issues its final compensation rulings, Plaintiffs will prepare the proposed Judgment and accompanying Permanent Injunction. Once Judgment is entered, the Class will be forever protected because post-judgment interest will accrue if the City should elect to appeal. And the Permanent Injunction will include the requirements that the City deposit the judgment amount into a protected fund with an appointed trustee, along with appointment of a relocation coordinator (such as OPC or other qualified company), and other key dates and items, like was done in the Mission Valley Village park closure case. Class Notice can be published with the Judgment, Permanent Injunction, and an updated, finalized Tenant Impact Report based on the Court's rulings. The intent and purpose of these proceedings, as every park closure situation is *supposed* to happen, is to help the homeowners find available comparable housing, provide full payment to the homeowners (so they can acquire their new home, pay the moving company and lodging costs),

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

coordinate moving companies and assist residents as they move out of the park, and ensure they get there and get set up as smoothly as possible. With the Court's rulings, Plaintiffs' counsel remains ready and able to make that a reality here.

Procedural History

To stop the City's attempt to evict hundreds of homeowners in violation of state law, Plaintiffs filed suit against the City of San Diego in November 2003. Injunctive relief quickly followed. In October 2005, the Court modified the preliminary injunction to further protect residents from the City and park management whose conduct was threatening the residents' rights under the MRL and the Court's ability to adjudicate this lawsuit without interference. In October 2006, the Court certified the case as a class action.

In April 2007, the Court granted Plaintiffs' motion for summary adjudication, finding that the City had a duty to comply with the MRL and breached that duty in multiple ways. More specifically, the Court ruled as a matter of law that:

a. De Anza Cove is a mobilehome park and the Mobilehome Residency Law (Civil Code §§ 798 et seq, Gov't Code §§ 65863.7-65863.8) applies in full to De Anza Cove and the City of San Diego;

b. The City of San Diego is under a mandatory duty to comply with the Mobilehome Residency Law, including but not limited to Civil Code §798.56(g)-(h) and Gov't Code §65863.7, which regulate closure of De Anza Cove, the timing and content of Notices to residents, and tenant-impact-reporting and relocation assistance requirements;

c. The City violated the Mobilehome Residency Law, Civil Code §798.56(g)-(h) and Gov't Code §65863.7 by failing to prepare a tenant impact report and serve lawful Notices that complied with the MRL's timing and content requirements. (Ex. 40, MSA Order, ¶ 6(a)-(c).)

At a subsequent status conference, the Court issued its first amendment of the class definition, and rejected the City's theory that De Anza Cove remained open and did not have a closure date. The Court concluded that the City Council's Resolution R-298609, dated November 18, 2003, together with its 1982 acceptance of the Kapiloff Bill, amounted to a closure effective November 23, 2003.

Finding that the City had effectuated a park closure and made a knowing and express decision

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

to do so without issuing a tenant impact report, the Court concluded that the judiciary had become the appropriate branch of government to determine relocation benefits. Trial began in October 2007, recessed during a rash of firestorms, then concluded in November 2007.

At a February 21, 2008 conference, the Court discussed tentative conclusions it had reached on the merits. For the first time, the Court suggested requiring the City to cause a professional Tenant Impact Report to be prepared, subject to review by special masters, and then the Court would review it rather than the City because of the City's inherent conflict of interest as park owner, operator, and regulatory authority.

On May 21, 2008, the Court issued its written Statement of Decision and Order thereon. Pursuant to the Court's Order, Overland Pacific & Cutler was commissioned to prepare a Tenant Impact Report.

OPC's draft Tenant Impact Report was issued in January 2012. Mr. Thomas Sharkey was appointed as the lone Special Master on June 29, 2012. More than a year-and-a-half of briefing and hearings before the Special Master ensued, and the Special Master ultimately issued two reports.

The first report, dated November 9, 2012, addressed the number of months of rent differential that should be required to help mitigate the adverse effects of park closure, and the date on which the constituency of the class should be determined. The second report, dated June 25, 2013, addressed myriad issues involving, among other things, lump sum payments, CPI adjustments, temporary lodging costs, disability modifications needed, renter benefits, and prejudgment interest. Multiple follow up hearings occurred over several months—most recently in February 2014—and OPC was eventually tasked with updating the rental survey it had originally completed in late 2011. OPC provided the parties with its updated 2014 rental survey on March 21, 2014. A revised briefing scheduled was immediately finalized.

Per the Court's Order after Statement of Decision, this brief addresses certain recommendations contained in the Special Master's reports to which Plaintiffs object.

///

///

///

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Discussion

A. The City initiated the closure of the De Anza Cove mobilehome park in November 2003, triggering the City's obligation to pay relocation benefits—a fact unchanged by the Court's order not to evict any more homeowners until the case is over.

The City represented to the Special Master that *relocation benefits are not owed because the park has not closed yet.* As a result, Mr. Sharkey opined that, *if the Park is still open*, then no relocation benefits are owed. However, Mr. Sharkey astutely hedged his opinion, allowing that it would change if indeed the Court had already ruled on the date of park closure as Plaintiffs asserted. (Ex. 4, Special Master's 2nd Rpt., p. 20:16-23.)

The Special Master's initial recommendation was based on two false principles pushed by the City—first, that the Park has not closed yet, and second, that the Court had not ruled on a park closure date and had not determined that relocation benefits are due and owing based on current valuation. These falsehoods derailed much of the Special Master's relocation analysis vis-a-vis the assessment and timing of payment to the Class. The Special Master's decision to hedge his recommendation proves to be well taken, because, as detailed below, the Court has indeed affirmatively ruled—on summary adjudication, pre-trial, during trial, and post-trial—that the City closed the Park in 2003 and rejected the City's very same arguments raised anew to the Special Master.

1. Before this case was even filed, the City announced to everyone that it was closing the Park effective November 23, 2003.

Long before this case was filed more than ten years ago, 12-month, 6-month, 60-day, and 30-day Park Closure Notices were sent to the residents, informing them that the Park would close on November 23, 2003. (See Notices, attached collectively as Exs. 5-8; and MSA Order, pp. 8-9, Ex. 40.) The 60-day notice of Park closure states: "This will provide further notice to you…that your tenancy in the Park will terminate effective November 23, 2003…." (60-Day Notice, dated Sept. 15, 2003, Ex. 7; MSA Order, pp. 8-9, Ex. 40.) Then, on October 22, 2003, the City announced its "transition plan" with a November 23, 2003 park-closure date, making miniscule settlement offers to residents that didn't even cover the home-demolition costs residents that the

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

City tried to saddle them with, let alone compensate them for losing their homes. The City threatened: "[I]f you choose not to accept the offer and do not execute the settlement documents by November 21, 2003, the City of San Diego will be required to institute eviction proceedings against you beginning November 24, 2003." (Ex. 8, City's Oct. 22, 2003 Notice.) Thus, the City has always publically used November 23, 2003 as the official park closure date.

2. On summary adjudication, this Court rejected the City's argument that the Park had not yet closed.

On summary adjudication, the City again advanced the fiction that it had not yet closed the park and thus could not owe any relocation benefits, stating that "there is no and has been no 'change of use' within the meaning of the MRL and Government Code section 65863.7. The City has not proposed or required any change of use, has not decided to close or actually closed the Property, and has not embarked on any zoning or planning action." (Ex. 9, City's Opp. to Pl's MSA, p. 29:19-22 (emphasis added).) But the Court squarely rejected the City's contention: **"[T]he City's position…that the City did not terminate the leases or close the Park also lacks merit**." (Ex. 40, MSA Order, p. 10:21-22 (emphasis added).)

3. This Court approved the Class Definition and Class Notice based on the November 23, 2003 park-closure date.

Two months after the Court ruled on summary adjudication, the Court defined the Class and approved the Class definition to include residents and homeowners who resided at the Park on October 22, 2003—the date on which the City announced its transition plan with a **November 23, 2003** park closure date. Thus, 2003 was always the year of park closure for the purposes of determining who was in the Class, what laws would apply, and when relocation benefits were due. (See Ex. 10, Class Notice, p. 3:5-13.)

4. Pretrial, this Court issued an Order Redefining the Class, and reaffirming that the Park closed on November 23, 2003—again rejecting the City's argument that the Park is still "open."

In its pretrial Order Redefining the Class, this Court reaffirmed that the park "closed" on November 23, 2003, and found baseless the City's contentions that the park remained open such

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

that it was premature to determine relocation benefits: "**defendant 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, Order Redefining Class, dated May 21, 2007, pp. 3:23-24, 4:20-21.)

5. At trial, the City argued forcefully—and this Court reaffirmed—that the Park closed on November 23, 2003.

In its trial brief, the City acknowledged that the Court had already ruled that the Park closed on November 23, 2003: "the Court ordered that the park closure date was November 23, 2003 for the purposes of the determination of the reasonable cost of relocation." (Ex. 12, City's Trial Brief, p. 20:25-26; see also p. 3:17.) The City also filed a motion *in limine* to exclude evidence as to any park closure date other than November 23, 2003. In its motion, the City stated: **"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, City's Mtn. in Lim., No. 9 of 10, p. 4:17-19 (emphasis added).)

At oral argument on its *in limine* motion, the City again emphasized that the Court had already ruled on the park closure date: "Your Honor, this is a pretty significant motion in limine, and this is a motion to exclude…opinion evidence…relating to a hypothetical 2007 park closure date…. **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**…. Certainly we [the City] rely on the park's closure date." (Ex. 14, Rptr.'s Trans., Oct. 9, 2007, p. 102:15-28; p. 104:9-10 (emphasis added).) The Court agreed with the City, stating: "I think my decision was a correct one…. **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, Rptr. Trans., p. 105:11-17 (emphasis added).) Consequently, the Court excluded evidence related to any closure date other than November 23, 2003: "Following oral arguments of counsel the Court grants defendant's motion for the operative date of 11/23/03." (Ex. 15, Minute Order dated Oct. 9, 2007, p. 3.)

///

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

6. Post-trial, the Court again confirmed that the Park was deemed "closed" as of November 23, 2003, and that compensation would be based on current rent differential and comparable rents.

At post-trial hearings on the appropriate scope of the Tenant Impact Report, the Court at least twice reaffirmed that the Park "closed" on November 23, 2003, and that relocation benefits would be determined for the Class based on present-day values:

> MR. TATRO: There's just one point I wrote two different ways in my notes so I want to make sure I have this right. We're talking about **November 2003 as the closure date**, and using that also as the date upon which we decide who was there and that's who's included in the report, and that's also the timeframe for whatever regulations and ordinances were in place then, that's what we're going to use now; but **we're going to use current rent differentials, market rates, moving expenses** as of 2011. Is that a fair synopsis?
>
> THE COURT: **I think that's a fair synopsis.** (Ex. 16, Rptr. Trans., Jan. 19, 2011, pp. 45:26–46:6 (emphasis added).)
>
> * * *
>
> 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, Rptr. Trans., Jan. 4, 2011, pp. 73:27–74:4 (emphasis added).)

Despite the Court's prior rulings, the City's arguments at trial, and the Court's reaffirmation both during and after trial that the Park closed on November 23, 2003 and that relocation benefits were indeed owed to the Class, it appears that the City attempted to rewrite history and mislead the Special Master into believing that the park hasn't closed for purposes of this case and that the City's relocation payment obligations were somehow premature. Because Mr. Sharkey conditioned his recommendation regarding several related issues on there being no prior ruling as to the date of park closure, the Court must consider Mr. Sharkey's recommendations in light of the facts that he had been misinformed by the City: **the Court *has* already determined the date of park closure, and rejected the City's argument that relocation benefits are not yet due**. Recognition of these facts will affect the Special Master's recommendations regarding when compensation was due, the propriety of the City's request to apply artificial rent adjustments for CPI to decrease the rent differential owed to the Class, and when and how to apply prejudgment interest.

Therefore, Plaintiffs respectfully request that the Court overrule the Special Master's

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

recommendation on this issue and reiterate its decision that the park-closure date was November 23, 2003, and compensation is presently owed to all Class Members based on the updated 2014 survey.

B. The Court should award Class members sufficient compensation, in the form of rent differential benefits, to mitigate the loss of their homes and enable them to find comparable replacement housing in other mobilehome parks.

Plaintiffs agree with the Special Master's overall conclusion that—consistent with this Court's admonition that the City be held to the same standard as any other park owner—the Court should apply the same standard here as was applied in the Mission Valley Village park closure. The Special Master correctly relayed that 84 months' rent differential was required by the City Council in the Mission Valley Village closure and he, therefore, ruled that 84 months' rent differential should be required for De Anza. But it is the underlying basis and rationale for the increased benefits in the Mission Valley Village closure that Plaintiffs contend should apply here too.

The Mission Valley Village homeowners presented to the City Council evidence and testimony of the cost of replacement homes in other mobilehome parks, and reminded the Council about State law that requires sufficient compensation to allow homeowners to find replacement homes in comparable mobile home parks. As shown below, the evidence of the cost of replacement housing and knowledge of State law is what proved convincing to the City Council and caused the Council in the Mission Valley Village closure to nearly double the rent differential benefit. And so, while 84 months of rent differential here would be substantial and is, admittedly, the minimum standard that is required, in this instance that amount will not achieve the State law mandate to provide sufficient compensation to allow homeowners to find replacement homes in comparable mobilehome parks because De Anza is a coastal community and the cost of replacement homes is a little higher. In the following sections of this brief, Plaintiffs will first highlight the facts and events surrounding the Mission Valley Village park closure, followed by the present-day evidence that supports a slightly higher rent differential amount for the De Anza park closure to accomplish the goal of State law of finding replacement homes in other comparable parks.

The Special Master's Report summarized the arguments and evidence presented to the City

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Council and the approach and standard ultimately adopted by the City Council:

> During the council hearing on November 18, 2008, MVV residents and supporters contended, in substance, that the park should not be closed; that the mobile home park overlay zone should not be removed; and that, if the park was closed, **residents should receive replacement cost for their mobile homes as mitigation**. Thus, the issues that were before the Council were (1) whether the MVV mobile home park should be closed, (2) whether the mobile home overlay zone in which MVV was located should be removed, and (3) whether the OPC RIR, which proposed 48 months of rent differential…as mitigation for mobilehomes which could not be relocated, should be approved. (Ex. 3, Special Master Report re: Rent Diff'l, pp. 16:27–17:8 (bold added).)
>
> The MVV residents opposed the closing of the park and contended, **in the event park closure was approved by the council, that Archstone should pay the cost of residents acquiring a comparable replacement mobile home** – an amount substantially greater than the sum of 48 months of rent differential. After a lengthy three and one-half hour hearing, during which speakers in favor of as well as in opposition to Archstone's request stated their views, the City Council approved closure of the park…as well as a relocation mitigation package which provided, in substance, that at the option of the displaced MVV residents, they could choose to accept either (a) physical relocation of their mobile homes to another mobile home park at Archstone's cost or (b) immediate payment of 84 months of rent differential. (Ex. 3, Special Master Report re: Rent Diff'l, p. 12:10-19 (bold added).)

A week before the hearing even took place, the MVV HOA presented both the City Council and the San Diego Housing Commission with documentation regarding the cost of alternate housing in other parks, and stacks of data, graphs, photos, and testimonials that underscored the impossibility of finding comparable housing in another park with only 48 months of rent differential. (See Ex. 30, "Argument Against Archstone Project at Mission Valley Village," dated Nov. 10, 2008.) The MVV homeowners showed the Council and their staff that listings from nearby mobilehome parks illustrated exactly how much it would cost to acquire comparable replacement homes. (Ex. 32, Appx. G to MVV HOA's submission to City Council; Ex. 30.)

During the hearing, the MVV homeowners "reiterated that the real negative impact of park closure was being able to afford to buy an adequate home in another comparable park" and "reminded the Council about the law: 'Archstone is required by State Civil Code to provide adequate replacement housing to all displaced residents and, as the legislative body, this Council is required to ensure the state requirements are met via the relocation plan.'" (See Ex. 29, Decl. of MVV HOA President Homer Barrs, ¶ 8.) They provided sales data from nearby mobilehome parks showing the cost of buying a comparable mobilehome with an analysis of 65 homes. (Ex. 32, MVV

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

HOA Appx. G.) They showed the Council these high costs—for example, back in 2008, it cost $179,000, $105,000, $95,000, $140,000, $113,000, and $99,000 for homes at the Linda Vista Village park; and $100,000, $120,300, $149,900, $80,000, and $117,000 in the Rancho Del Rio park. (Ex. 32, Appx. G.) The residents summed up for the Council what was at stake: "State Code requires adequate replacement housing…. Most residents will be stripped of homeownership if this plan is approved." (Ex. 30, p. 18.)

The Council's staff met directly with the MVV HOA's President and revealed that the Council planned to deny Archstone's park-closure application unless rent differential were increased sufficiently:

> 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. [¶]
>
> I discussed this proposal with my wife and the other MVV Board Members and residents who were in attendance. We considered the cost and delays of a long legal battle with Archstone, and calculated whether an 84-month lump sum would satisfy most homeowners' needs to find replacement homes in other parks. We pulled out a calculator and ran the numbers to analyze whether our residents would be made whole and would be able to buy comparable homes in nearby parks. We estimated that all homeowners, except perhaps three to six of them, would be able to afford replacement homes under the proposed plan. So, ultimately, we jointly agreed that the City Council's proposal was reasonable, and I relayed the HOA's approval to the Council staff members. (Ex. 29, Barrs Decl, ¶¶ 11-12.)

Not only were the MVV homeowners urging a rent differential payment sufficient to achieve the State law purpose to enable displaced homeowners to acquire a comparable mobile home in another park, the City Attorney attending the hearing advised the City Council that California's Mobilehome Residency Law authorized the Council to require it: "The Government Code, 65863.7[e], authorizes the City to require mitigation of any adverse impacts on the ability of displaced persons to find housing in other mobilehome parks. So, in addition to making findings to convert the mobilehome [park], you also have authority to tinker with the mitigation, the adequacy of the mitigation, and the impacts to the actual displaced persons." The Council President

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

responded, "That I get. And I understand that there is an effort to talk about what the appropriate mitigation is." (Ex. 31, Council Trans., p. 35.)

The MVV HOA President confirmed that only "after Archstone had agreed during the hearing to: (a) pay 84-months' rent differential, (b) make an up-front lump-sum payment using current rates at the time of park closure rather than based on what was stated in the original tenant impact report, and (c) ensure that residents would receive the full rent-differential benefits even if their homes could or would be relocated, did I, on behalf of the MVV HOA, state on the record that we believed that the relocation benefits finally complied with the requirements of both State and local law." (Ex. 29, Barrs Decl, ¶ 18.)

The Special Master considered the City's argument that Archstone had possibly just voluntarily gifted enhanced benefits to the MVV homeowners as opposed to being required to do so:

> As a first impression, much of the discussion at the hearing, particularly the dialogue between Councilmembers Madaffer and Atkins with the Archstone representatives, appears, perhaps, ambiguous or equivocal and subject to interpretation. However, a careful review of not only what was said but the entire dynamic that existed during the hearing leads me to conclude that the Council was clearly signaling to Archstone that it considered the relocation benefits in the OPC RIR to be inadequate and that unless Archstone agreed to enhance those benefits, the Council would formally impose substantial enhancements as a condition of park closure and approval of Archstone's proposed condominium development. (Ex. 3, Special Master Report re: Rent Diff'l, p.19:10-17.)

The Special Master continued:

> Probably the best insight into what actually transpired at the hearing is the exchange at the end of the meeting between the Archstone representatives and the Councilmembers. Archstone's attorney addressed the entire Council, stating: "You have increased the rent assistance to seven years. We acknowledge that. And I have to tell Ms. Atkins it's one of the last times I'll probably appear before you. But I was going to tell you I thought it was pure folly that you didn't accept our original offer but you've done a hell of a job for these people. And we've just agreed to give them the option of reasonable relocation cost or the buyout. And that to me City Council members, I don't know what you've done really as far as setting a precedent, because future parks are going to have to live with this. And I hope you didn't do anything against De Anza on this, unfortunately, but that's another matter." In response, Councilperson Madaffer stated: "We may have cost ourselves on the other side." **These comments are telling. It seems evident that Councilmembers as well as representatives of Archstone recognized that by not following the SDHC relocation standards and guidelines regarding mitigation benefits, the City Council was setting a precedent for other mobilehome park closures, specifically De Anza Cove**. (Ex. 3, Special Master Report re: Rent Diff'l, pp.19:18–20:7.)

Not only did the City Council acknowledge "we may have cost ourselves" in the De Anza park

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

closure, Councilperson Peters concluded the hearing by confirming that the City had created a new standard to be proud of: "this does set a standard I think that provides a lot of comfort to people. And I think everyone is to be congratulated." (Ex. 31, Council Trans., p. 58.)

With mitigation, in the form of a sufficient amount of rent-differential benefit, tied to the replacement cost of homes in other mobilehome parks, the compensation provided through the MVV closure plan worked as the State legislature and the City Council intended—to give the homeowners the freedom and flexibility to continue being homeowners: "For my wife and I, receiving our relocation payment in a lump sum made all the difference. It allowed us the means to buy a replacement home…and allowed us to qualify for financing. If we had received only monthly payments, we would not have qualified for the purchase loan and would not have had enough money for the down payment. We would have been relegated to being renters for the rest of our lives." (Ex. 29, Barrs Decl, ¶ 21.)

Plaintiffs have applied that same standard here—providing this Court the objective evidence of the cost of replacement housing in other comparable parks and requesting that the mitigation awarded be commensurate. James Brabant, a renowned mobilehome expert, conducted a survey of listings of coastal mobilehome parks comparable to De Anza Cove. His "Summary of Comparable Mobile Home Listings" identifies 105 active mobilehome listings as of February 2014 in 18 parks. (Ex. 21, Brabant Decl., ¶¶ 11-17; Summary, Ex. A to Brabant Decl.) He found that comparable replacement mobilehomes currently range in price from $21,900 to $565,990, with an average price per square foot of $173.77. (Ex. 31, Brabant Decl., ¶ 17.) Because the average square footage at De Anza is 1,025.9 per home, the average cost for De Anza homeowners to purchase a comparable replacement mobilehome is $178,270. ($173.77 per s.f. x 1,025.9 square feet = $178,270.) Mr. Brabant opined that, based on the MRL's requirement to find adequate replacement housing in another mobilehome park, as well as based on his more than 30 years of mobilehome park expertise, it is "reasonable that the total number of months of rent differential to be awarded in this case should be calculated to approximate the cost of the comparable replacement mobilehomes." (Ex. 21, Brabant Decl., ¶ 18.)

Plaintiffs' relocation expert, Phillip Schwartze, agrees: "Financially speaking…replacement

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

cost represents the largest adverse impact De Anza residents will face when they lose their current homes due to park closure. Accordingly, mitigation must be sufficient to allow De Anza residents to absorb that replacement cost. In this instance…mitigation of this adverse effect (home loss) would require payment of at least 109.7 months of rent differential…." (Ex. 55, Schwartze Decl., ¶¶ 6-8.)

The data provided by Plaintiffs gives an accurate picture of homes currently available in comparable parks, as well as the true cost to buy similarly-sized homes. The City has provided nothing. Just like the facts and evidence determined the required benefits in the Mission Valley Village closure, it is undisputed here that:

1. Plaintiffs' homes cannot be moved from De Anza Cove to any other park;

2. The largest adverse impact of park closure is the total loss of the homes and the high cost to buy comparably-sized homes in other parks;

3. State law requires the park owner to mitigate all adverse impacts of park closure, including the financial ability of class members to find replacement housing in comparable parks;

4. The City Council in the Mission Valley Village park closure found the mitigation suggested by its Housing Commission's Guidelines insufficient, considered the actual cost of replacement housing, and required significantly enhanced compensation to help cover the cost of replacement housing;

5. Based on the survey of comparable parks with homes for sale in February 2014, it will take an average of 109.7 months' rent differential to cover the cost of replacement housing for the De Anza homeowners.

Therefore, in order to mitigate the loss of the De Anza homes, comply with the State law mandate to find replacement housing in comparable parks, and to equally apply here the same standard and methodology that was used in the Mission Valley Village park closure, this Court has the authority, and is respectfully requested, to award mitigation in the amount of 109.7 months' rent differential.

C. The Court should disregard the Special Master's suggestion to artificially increase the space rent by CPI adjustments for each of the last 11 years because doing so penalizes the Class for the City's failure to timely pay relocation benefits when they were due in 2003.

The City persuaded the Special Master to recommend artificially increasing the base rents at the

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Park by CPI annually in order to "make up for" the fact that rents at De Anza have remained unchanged since 2003. The effect of such an artificial increase is dramatic, as it gouges away a large chunk of the Class' rent differential. Rent differential is calculated as the difference between the current space rent and the rent for a comparably-sized apartment in a coastal area. Inflating the current space rent decreases the resulting rent differential, thereby shrinking the amount of mitigation the Class receives to find replacement housing. Not surprisingly, **OPC did not recommend artificially inflating space rents** for purposes of calculating the rent differential amounts owed by the City.

Allowing CPI adjustments to the base rent is wrong for several reasons: (1) it punishes residents who've done nothing wrong, resulting in a $17,000 reduction in benefits per household; (2) the decline in the condition of the Park since the City took over operations in November 2003 actually supports a 10% *decrease* in space rent; and (3) the City never sought from this Court a modification of the Preliminary Injunction to allow a rent increase, which it could have requested through a properly-noticed motion.

First, rent has remained unchanged because the Preliminary Injunction preserved the *status quo*, including the rent rolls as of November 23, 2003. But the Preliminary Injunction was only necessary because the City proceeded to close the Park without sending the proper notices, without commissioning a Tenant Impact Report, without holding hearings on the sufficiency of the report, and without paying any mitigation before forcing residents out of the Park. Had the City adhered to its relocation duties under state and local laws, De Anza residents would have been paid and relocated in late 2003. Even contemplating a rent increase at that time would have been out of place, as the Park was closing. Moreover, the legal position taken by the City forced the Class to litigate—a process that has taken more than a decade to complete through no fault of the Class. In sum, space rent remains at 2003 levels *because* the City trampled all over the residents' rights and this Court enjoined the City from eviscerating what little the residents had left at the Park. The City has dirty hands and cannot seek what amounts to equitable relief at the financial expense of the Class. The economic impact of allowing the City to artificially raise space rents retroactively amounts to about $17,000 per home based on 84 months of rent differential. (Ex. 18, Kennedy

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Decl., ¶ 20.) That's an enormous loss for the Class.

Second, in support of its effort to increase space rent (in order to decrease relocation benefits), the City argued to the Special Master that current space rent is below market value. Of course, the City provided no evidence for this assertion. The City pushed for what amounts to a 27.6% rent increase, based on annual CPI adjustments from 2003 to present. However, the space rent in November 2003 reflected the state of the Park, the quality of the amenities, and resident access to the common areas as they existed before the City took over. And, as the Court will recall, upon assuming control of the Park on November 23, 2003, the City quickly set about tearing down the Park piece by piece. The City, among other things: removed all common area furniture, tore down the community playground, destroyed many of the laundry facilities, closed the Pavilion clubhouse and the onsite market, destroyed lush landscaping, removed the fountain in the entryway, removed the storage areas, prohibited parking in the overflow parking areas, towed and impounded resident cars and trailers, erected chain-link and barbed-wire fencing, cut down nearly 200 trees park-wide, installed ugly orange construction fencing all over the Park, constructed a guard shack at the entrance, prohibited free access to the park, hired armed guards, and discontinued community use of the pool for senior swim classes. (For a vivid refresher of these actions taken by the City, Plaintiffs refer the Court to the short DVD presentation that was submitted in support of Plaintiffs' request for the appointment of a receiver, included here as Exhibit 19 for the Court's convenience; see also Exhibit 43—before and after Park photos.)

These violations occurred, not because of an innocent mistake, but as part of the City's measured decision to side-step State law and manufacture additional motivation for residents to abandon the park. The City Attorney, himself, admitted as much in open court: "Your Honor, I think the concern is…that **Real Estate Assets was using the management company [Hawkeye] to pressure the residents to** basically try to **get out of the litigation by departing from the scene**, and I think that's what I can't come down and pretend that that didn't happen, and I'm not going to." (Ex. 20, Rptr. Trans., July 28, 2005, pp. 12:27–13:6 (emphasis added).)

Not surprisingly, when these dramatic changes are taken into account, no rent increase is warranted. In fact, having investigated similar situations at other parks, and having testified as an

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

expert in other such cases, Plaintiffs' expert, James Brabant, concluded that the destructive changes the City brought about to De Anza Cove would justify a **rent reduction of about 10% per home per month**! (See Ex. 21, Brabant Decl., ¶¶ 6-10.) In other words, the base rent used for calculating rent differential should actually be adjusted downwards, not upwards. However, in the interest of simplicity, Plaintiffs are not seeking a rent reduction, but are merely asserting that, at best for the City, the issue is a wash. So no artificial CPI adjustment should be made to the base rent for purposes of calculating (and thus artificially decreasing) the rent differential owed.

Plaintiffs anticipate that the City may argue that it already paid penance for the negative changes it inflicted upon the Park. It should first be noted that not once in the last 10+ years did the City ever approach the Court to seek permission to initiate an actual rent increase. If the City truly felt that rents were below market, the City could have tried to persuade the Court accordingly. But, although the City suggested years ago to Plaintiffs' counsel it might do so, the City never did. The City undoubtedly considered that any such attempt by noticed motion would have been met with a formidable opposition, highlighting the degree to which the City's actions had stripped away so much of the value that had previously justified the rents charged by the prior operator. Truth be told, the City's request to fictitiously increase space rent just for the blatant purpose of undermining the compensation that it owes to the residents who are losing their homes, is no different (or less offensive) than any other park operator trying to ask a City Council at the time of park closure to approve a retroactive rent increase just so it can siphon necessary relocation funds away from the people who are losing their homes.

Also, we've heard the City somewhat esoterically argue at a hearing to the Special Master that Class Counsel should not be permitted to contradict the City's artificial rent-increase request with actual evidence of the denuded condition of the park and reasonable market rents because of the individual emotional distress claims brought in the *Abbit* case. Suffice it to say, the individual plaintiffs in *Abbit* were compensated for the emotional distress and personal injuries they suffered as a result of the City's abuses. The residents were scared and anxious living at the park, and the *Abbit* settlement compensated them for the damage the City caused to their *personal* interests. On the other hand, the relocation benefits the City will pay to the entire Class, which is 273 households

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

in size, will redress a very different harm—the total loss of one's home due to park closure and the need to acquire a comparable replacement home in another park (the residents' *property* interests). Notably, the *Abbit* settlement—completely funded by the management company's insurance carrier—expressly reserved the City's and the De Anza homeowners' rights to enforce their continuing property rights:

> Plaintiffs and the City of San Diego recognize that many Plaintiffs presently reside in the De Anza Cove mobilehome park and will continue to reside in the park after the execution of this Agreement. Plaintiffs and the City of San Diego agree that nothing in this Agreement is intended to affect Plaintiffs' existing rental obligations or the City's rights to collect rents and utilities that are or may be in the future due and owing, or otherwise impair the City's rights to enforce rental agreements, the provisions of the Mobilehome Residency Law, and park rules and regulations. (Ex. 22, *Abbit* release agreement, ¶ 12.)

As the Court personally experienced throughout this case, there truly can be no just cause to grant the City's request to fictitiously increase the space rent for purposes of decreasing the rent differential component of relocation benefits. OPC didn't even suggest such a thing. If the Court were to genuinely consider granting the City's request for a fictitious space rent increase, which would cause the Class to lose $17,000 in needed benefits per home, then the Court should likewise grant a decrease of 10% per year based on the destroyed common areas and storage facilities, eliminated store and laundry facilities, and still-diminished condition of the Park. Instead, Plaintiffs respectfully request that the Court overrule the Special Master's recommendation and simply deny the City's request to increase the base rents for purposes of calculating rent differential.

D. OPC failed to correct a few simple math errors despite the parties' joint request—errors that take compensation away from the Class.

The parties and the Special Master sought to correct the mathematical, statistical, and methodological errors that arose during OPC's initial comparable rent survey in 2011. These efforts culminated in hearings before the Court and Special Master in January and February 2014. After eradicating a number of the errors and anomalies, unfortunately two errors remained in the 2014 updated survey delivered to the parties on March 21, 2014, and must be corrected before

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

going any further due to the potential negative impact on the Class. The first, and most harmful error to the homeowners, is OPC's subjective and incorrect application of a 15% markup to only one side of the comparable rent equation. The second error was the omission of the last home-size tier that represents the largest De Anza homes. If these errors were to go uncorrected, each homeowner would lose an average of $18,290—money the Class members need to help them find a new place to live.

1. OPC's arbitrary mark-up in break points for each tier.

Rather than using the median, or midpoints, consistently on both the home sizes (Column A) and comparable rents (Column C), OPC injected a subjective, unsupportable 15% markup only on the home-size break points for each tier—as shown in Column **B**, below. These artificially elevated break points in Column B cause many De Anza homes to fall into a lower comparable-rent tier than they otherwise naturally would, and the homeowners suffer a corresponding decrease in rent differential benefits.

	A	**B**	**C**
	De Anza home sizes (based on actual median midpoints)	De Anza home sizes + *OPC's arbitrary 15% markup*	Median rents for apartments of comparable size and location (Feb 2014)
	1-575 sf	1-664 sf	$1,300
	576 sf	665 sf	$1,750
	920 sf	1060 sf	$2,600
	1202 sf	1380 sf	$3,395
Missing tier =>	1412 sf	1700 sf	$3,595

OPC's "markup" error then gets *seriously* compounded when multiplied by 84 months to calculate total rent differential. For example, Homeowner Jane has a home at De Anza Cove that measures 1,000 square feet and she pays $1,000 per month in space rent. Based on Column A, Jane's home would naturally fall into the third tier (because her 1,000 s.f. home is larger than the

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

median 920 square feet) and the correlating median comparable rent of $2,600 per month. One month of rent differential would therefore be $1,600 ($2,600 comp rent minus $1,000 space rent). But, using OPC's artificially-inflated break points in Column B, Jane's home is smaller than the tier break-point that is now 1,060 square feet and her home is, therefore, relegated down to the second tier. That lower tier has a corresponding comparable rent of only $1,750 per month, resulting in a drop of one month's worth of rent differential from $1,600 to $750. Only once you multiply OPC's error out by the number of months of expected rent differential does the affect become truly mind-warping. In Homeowner Jane's scenario, when multiplied by an 84-month rent differential like that required in the Mission Valley Village park closure, she's losing a heart-stopping $71,400. Instead of getting $134,400, as she was supposed to get when proper mathematics and methodology are applied ($1,600 rent diff'l x 84 mos. = $134,400), OPC's arbitrary markup causes her to receive only $63,000 ($750 rent diff'l x 84 mos. = $63,000). As detailed below, a 15% mark-up in the break points finds no basis in mathematics, statistics, the Relocation Guidelines, or State law.

Plaintiffs' expert economist, Patrick Kennedy, Ph.D., analyzed OPC's survey, the presentation of data, and the manner in which OPC created its tiers for compensation. After careful study, Dr. Kennedy concluded that OPC's artificial mark-up completely lacks merit and is scientifically unsupportable: "**It is my opinion 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.)

By contrast, Dr. Kennedy reasoned that the break points reflected in Column A (which the parties agreed upon) are more logical delineations for 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. The median is a common statistical concept that reflects the midpoint of the underlying distribution.

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

The underlying data reflecting the median size of the De Anza Cove homes should therefore govern the cut-offs for each tier." (Ex. 18, Kennedy Decl., ¶¶ 21-27.) In sum, OPC's relocation analysis has to be mathematically sound—grounded in a consistent, scientific basis—so as not to saddle the Class with arbitrary losses or favor the park owner unfairly.

2. The last tier for the largest homes—and that both parties agreed upon—is missing.

The second error is that OPC simply failed to include the last tier of home sizes, which corresponds to the largest De Anza homes (that range from 1,412 to 2,140 s.f.), and has a slightly higher comparable rent of $3,595. The parties noticed that this last tier was missing from OPC's spreadsheet and agreed it needed to be added. (See shaded tier on table, above.) Similar to the prior gaffe, this omission has the effect of relegating De Anza homes to a smaller tier than warranted—because the largest homes will otherwise be pancaked into the tier of homes that range from 1,202 to 1,411 square feet. The net impact is an unnecessary, and unsupported, loss of rent differential benefits for the Class members with the largest homes.

Perhaps these two errors might have initially seemed trivial or innocuous. But when these errors are multiplied by 84 months, for example, the magnitude of the errors becomes more readily apparent: these errors, combined, on average take $18,290 away from each homeowner—money class members need to help them find a new place to live. The Class spreadsheet, which is Exhibit 2, corrects these two errors and shows the rent differential and total relocation benefits owed in a mathematically and methodologically sound manner. Plaintiffs respectfully request that the Court order that the natural median break points be used throughout without any markup (as shown in Column A, above) and that the missing tier representing the larger homes and corresponding comparable rent be added (as correctly applied in Exhibits 1 & 2).

E. Four nights of Temporary Lodging allows a realistic amount of time for hundreds of residents to relocate to their new homes.

OPC determined that a reasonable allowance for temporary lodging in today's dollars would be $139 per night. (The 2010 Housing Commission Guidelines call for $147 per night (Ex. 36); the

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

1995 Guidelines call for $40 per night (Ex. 33).) However, OPC does not believe anyone at De Anza will need temporary lodging, because it interpreted the Guidelines as allowing temporary lodging benefits only for those with a mobilehome capable of being moved to another park, and none of the De Anza homes can be moved. OPC reasons that the Class will simply be able to transition, seamlessly, from De Anza Cove directly to their new homes without needing an interim place to stay.

First, OPC's worldview is optimistic, as anyone who has moved can attest. The Class is composed of many senior citizens leaving homes that are packed with a lifetime of belongings. Some temporary lodging will certainly be required.

Second, the Guidelines actually require temporary lodging benefits without regard to the feasibility of moving the mobilehome: "During relocation, the park owner…shall pay to each mobilehome tenant hotel or temporary lodging cost in the amount of $147 per night up to seven nights." (Ex. 36, 2010 Guidelines, ¶ 2.)

A practical solution in this class action scenario is to simply pick a reasonable number of nights and apply the resulting figure across the entire Class. Since the City's Guidelines allow up to 7 nights, Plaintiffs request that the Court award 4 nights of temporary lodging at OPC's suggested nightly rate of $139, which amounts to $556 per household (4 nights x $139).

F. Relocation benefits must be paid to the Class in a lump sum.

At the conclusion of an eleven-year legal battle to mitigate the difficulty of finding replacement housing, the City must pay relocation benefits in a lump sum, not as a monthly stipend spread out over many years. Although he felt shackled by the language in the Relocation Guidelines that he interpreted as allowing the City to pay mitigation on a monthly basis for 84 months, Special Master Sharkey made a point to credit Plaintiffs with having the most common sense approach:

> **[P]laintiffs' argument for a lump sum payment is appealing**…If plaintiffs received a lump-sum payment, it would increase their options to either acquire replacement mobilehomes or flexibility in relocating to an apartment. It would also eliminate the cost to the City in keeping track of plaintiffs over 84 months and sending them monthly checks." (Ex. 4, Sp. Mstr. 2nd Rpt., p. 12, lines 1-4.)

That administrative cost, bureaucratic nightmares, and potential liability are legitimate concerns and

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

why—according to OPC—the custom and practice is to pay relocation benefits in a lump sum. (See Ex. 34, Tatro Decl., ¶¶ 2-3.) Accordingly, Mr. Sharkey suggested, as a reasonable alternative, that the City pay a lump sum discounted to present value. Plaintiffs will demonstrate, below, that a straight lump sum payment is both the correct method to use and the common practice that's been applied in other park-closure cases. At worst, though, the Court should adopt the recommendation of discounting the lump sum payment to present value which—based on rates that are historically low—would result in little-to-no reduction overall. (See Ex. 18, Kennedy Decl., ¶¶ 3-14.)

1. The very purpose of the MRL is to ensure that displaced homeowners have the financial capacity to find replacement housing—something that can only be achieved when mitigation is paid in a lump sum.

The express intent of the MRL—to mitigate the hardships caused by park closure—is only realized by payment of a lump sum that enables the displaced family to go out and find replacement housing. As former Senator Joseph Dunn, Chair for the Senate Select Committee on Mobile and Manufactured Homes between 1998 and 2006, explained: "The intent behind the MRL and its relocation provisions is **to provide financial and other benefits** to homeowners and residents **at, or prior to**, the time of **park closure**. Doing so **aids them in establishing new homes** in a comparable setting before park closure." (Ex. 35, Ltr. from Senator Dunn, dated June 21, 2007, p. 1 (emphasis added).) Senator Dunn's insights are consistent with the express purpose of the MRL's park closure provisions, which require the City "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**." (Gov't Code § 65863.7(e).)

Plaintiffs' relocation expert, Phillip Schwartze, highlighted the uniformity with which local jurisdictions endeavor to translate this MRL mandate into a seamless transition for displaced homeowners:

> I have personally been involved with about 10 mobilehome park closures. In each of these park closures, the common goal of the different authorities involved has been to ensure that the people losing their homes have the means to find safe replacement housing. Doing so helps protect the homeowners facing the largest adverse effects of park closure—the total loss of their home—and protects the availability of affordable housing generally, especially for seniors. (Ex. 55, Schwartze Decl., ¶ 6.)

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

In furtherance of this State mandate, relocation payments are made in a lump sum. "In all of my work involving mobilehome park closures over the course of three decades, I have never seen relocation benefits paid out over time, much less over several years. It is always paid as a lump sum, which makes sense because monthly payments would be much smaller than the lump sum and would not allow displaced homeowners to buy any replacement housing. Homeowners need enough money up front to be able to make a down payment on another mobilehome." (Ex. 55, Schwartze Decl., ¶ 9.)

OPC did *not* make any recommendation for monthly or periodic payments. In fact, at the hearing in front of Special Master Sharkey and Judge Hayes in January 2014, OPC's representative—**Vince McCaw—stated very clearly that it would be highly unusual to pay relocation benefits over time** and that the administrative costs, alone—not to mention the potential bureaucratic liability—would make it a totally impractical approach. (Ex. 34, Tatro Decl., ¶¶ 2-3.)

2. The origin and evolution of the City's own relocation ordinance highlight the fact that—when private park owners are closing a mobilehome park—the City requires them to pay mitigation in a lump sum.

A closer look at the City's relocation ordinance and Housing Commission Guidelines, particularly the clarifications that have issued over the last several years, reveals that the City intended mitigation to be paid as a lump sum. The City updated its Housing Commission policies and relocation guidelines in 2010, and clarified that **the entire rent differential payment must be made *in one lump sum***, not monthly or periodically over time. (Ex. 36, 2010 Guidelines, § 1.b(1).)

Michael O'Neil, one of the members of the Mobile Home Community Issues Committee (MHCIC) that was largely responsible for shaping these clarifications to the City's Housing Commission policies and guidelines, explained that the updated language made it clear "that relocation benefits were to be paid up front to residents in a lump sum, even though rent differential was calculated over a period of 42, 48, or some other number of months. This clarification was important because, generally, a mobilehome owner's mobilehome is their only asset, so they do not have the funds to secure replacement housing when forced to relocate." (Ex. 37, O'Neil Decl., ¶ 4.)

Although the City has previously argued that its Guidelines are based on the Federal Relocation

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

Act and, therefore, should be paid month by month, **rent differential payments made under the Federal Relocation Act are**, by default, **made in a lump sum with no discount**: "A rental computation will be computed based on a determination of the…rent for the acquired dwelling compared to a comparable rental dwelling available on the market…. **The rental assistance will be paid in a lump sum** unless the Agency determines that the payment should be paid in installments." (Ex. 38, Fed. Publ. No. FWHA-HEP-05-031, "Your Rights & Benefits Under Fed. Reloc. Assistance Program", p. 21.)

Again, **this lump sum approach makes sense because the goal is to assist the displaced homeowner in realizing *an actual ability to find replacement housing and pay for it*, not just to come up with some theoretical construct**. If monthly payments *were* permitted, how can someone realistically close escrow to acquire a mobilehome in another park? One could never buy a home today without a substantial down payment. Mortgage loans are increasingly difficult to get, particularly for mobilehome purchases. In fact, lump sum payment is the real-world custom and practice in local park closures. The residents of the La Mesa Terrace Mobilehome Park—the closure of which this Court cited as instructive because the City of La Mesa looked to San Diego's Relocation Guidelines for guidance—received their relocation benefits in a lump sum. (Ex. 39, Emig Decl., ¶ 4.) And, in the Mission Valley Village park closure, the homeowners received their compensation in a lump sum. (Ex. 29, Barrs Decl., ¶ 18.) Despite the City's suggestion of month-by-month payments based on its esoteric reading of a former Guideline that's been replaced by an updated, crystal-clear Guideline unequivocally requiring lump sum payment, the City has offered no evidence of OPC suggesting payment here be made month-by-month, and there is no evidence of any San Diego mobilehome park closure where it was done is such a fashion.

3. Even if the City were permitted to pay the Class on a monthly basis beginning on the date of park closure in November 2003, the City would have paid out all mitigation by no later than 2010.

Even assuming, hypothetically, that the City *could* have paid rent differential on a monthly basis for 84 months, that period of time began no later than November 2003, and elapsed 84-months later in November 2010. Thus, even giving the City the fictitious ability to make monthly payments—an

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

ability unsupported by its own Guidelines—those payments are still long overdue and owing *in full* at this point in time. After making the De Anza Cove homeowners litigate for more than 10 years, it is ludicrous for the City to suggest that the Class should wait another 7+ years for full compensation.

4. As a soon-to-be "judgment debtor," the City has no legal right to periodicize its liability to the Class.

The long-awaited conclusion of this litigation will produce a monetary judgment, not an administrative finding. While the Court has done its best to have the parties emulate the park closure process through the commission and review of a Tenant Impact Report, in the end, this is a lawsuit seeking monetary and equitable relief. When judgment is ultimately rendered, the City will transition from a "defendant" to a "judgment debtor." Under California law, there are only two instances where a public agency can satisfy a judgment utilizing periodic payments instead of a lump sum (Gov't Code § 984). The first involves judgments in medical malpractice cases. (Civ. Proc. Code § 667.7). The second requires judicial findings of undue hardship on the part of the public entity. (Gov't Code § 970.6). Neither exception applies here. As such, **there is no legal basis to allow the City to pay the judgment over time in lieu of a lump sum**.

In conclusion, the Court should rule that the Class is to be paid in a lump sum and deny the City's request to make some sort of monthly payment scheme. The Court's ruling would be consistent with the intent and purpose of State law, the undeniable language of the revised Guidelines expressly mandating lump sum payment, and the custom and practice of OPC and others at the time of park closure to issue lump sum payment. If the City were allowed to pay a fractional monthly amount of mitigation over time, the purpose of the MRL and the City's relocation ordinance would again be subverted because these homeowners would not have the money to buy a home in another mobilehome park—not even enough for a down payment. Also, it should not be forgotten that most Class members are senior citizens, and—for some—forcing them to wait 7 years—in addition to the 10 years they've already waited—will mean that they never see their mitigation. As to those homeowners, the City will have won yet again by attrition.

///

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

G. As an alternative to using current relocation costs, the City should pay the relocation costs that were owed in November 2003, adjusted forward through the addition of prejudgment interest.

If the Court were to entertain the City's positions that space rent should be artificially increased from the time of 2003, along with the City's other machinations, a streamlined and fair "cure" to those alleged problems would be to determine the mitigation owed as of the park-closure date of November 23, 2003. Doing so would be straightforward and objective (see Ex. 18, Kennedy Decl., ¶ 28) by using the known inflation rates that have existed from 2003 to the present. Once the 2003 relocation values are determined, then prejudgment interest at a rate of no less than 7% simple per year would be awarded from November 23, 2003 until the day judgment is entered.

Alternatively, if the Court denies the City's artificial rent increases and the like as Plaintiffs have requested *supra*, and wishes to adhere to the 2014 rent differential and relocation benefit determination process that we've been honing-in on for the past three years, then prejudgment interest should be awarded, as recommended by the Special Master, only for those certain Class members who have already vacated the Park before entry of judgment. (See, e.g., Ex. 18, Kennedy Decl., ¶ 28, and Ex. C thereto.)

H. State law warrants the assessment of Statutory Penalties against the City for its numerous, already-proven violations of the MRL.

In a civil action arising from the Mobilehome Residency Law, the violating party is subject to statutory penalties of up to $2,000 per person, per violation. (Civ. Code § 798.86; *see also* Friedman et. al, *Cal. Prac. Guide—Landlord-Tenant (The Rutter Group)* ¶¶ 11:269.3-11:269.4.) Recognizing the fact that park owners typically have more leverage and resources to bear than homeowners, the Legislature added this penalty provision to promote effective enforcement of the MRL by low-income tenants, and to deter and ultimately sanction violators of the MRL. (*De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890.)

Here, the City committed multiple violations of the MRL in at least three major categories, and

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

did so before even closing the Park on November 23, 2003: (a) Unlawful notices sent to Park residents; (b) Tenant Impact Report-related violations; and (c) Mitigation violations.

(a) Unlawful Notices. Every notice that was sent prior to park closure was a separate violation of the MRL in that each notice failed to state a legally-permissible ground for termination of tenancy as required under Civil Code section 798.56, and a tenant impact report was never attached as required. (Civ. Code § 798.56; Gov't Code § 65863.7(c); See, e.g., Notices dated November 15, 2002 (12-month notice), May 6, 2003 (6-month notice), and September 22, 2003 (60-day notice), Exs. 5-7, previously admitted as Trial Exs. 43, 82, and 45, respectively.) As the Court already noted: "The City violated the Mobilehome Residency Law…by failing to…serve lawful Notices that complied with the MRL's timing and content requirements." (Ex. 40, MSA Order, ¶ 6(c).) These illegal notices represent violation numbers 1, 2, and 3.

Furthermore, on October 22, 2003, when the City announced its euphemistic "transition plan," informing residents that they had to enter into release agreements with the City or face immediate eviction—the City committed one of its most flagrant violations of the MRL park closure requirements. The City threatened residents, in writing, with the following misstatement of law: "…in light of the expiration of the ground lease and the Sublease, the Mobilehome Residency laws pursuant to California Civil Code sections 798 *et seq*., will no longer govern Resident's occupancy/possession of the Premises." (See Notice to Residents, dated Oct. 22, 2003, Ex. 8, previously admitted as Trial Ex. 85.) This statement—made under color of authority—was completely untrue. As the Court reaffirmed on summary adjudication, the alleged expiration of the ground lease did not excuse the City from complying with all of the MRL's notice, reporting, and relocation mandates—all of which affect the residents' "occupancy/possession of the Premises." That's violation number 4.

(b) TIR-related violations. This Court has already determined as a matter of law that, at a minimum, the City violated the MRL by failing to prepare a Tenant Impact Report—violation number 5. Moreover, it is undisputed that the City failed to hold public hearings regarding the sufficiency of the TIR, or lack thereof, pursuant to Government Code section 65863.7(d). That's violation number 6.

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

(c) <u>Mitigation violations</u>. The City failed to mitigate the adverse impacts of park closure by first providing reasonable mitigation for the massive loss of homes *prior to* initiating the park closure process and attempting to evict the entire Class—in violation of the MRL. (Gov't Code § 65863.7(e), (i).) That's violation number 7.

All of these violations relate exclusively to this class action case and the City's unlawful attempt to avoid properly compensating residents as required prior to initiating park closure. Under the MRL, every one of these 7 stated violations supports the imposition of a statutory penalty as to each class member. In fact, some courts have imposed a statutory penalty against the park owner for each violation *each month it occurred*, even if it was the same violation being repeated over and over again. (*See People ex rel. Kennedy v. Beaumont Investments, Ltd*. (2003) 111 Cal.App.4th 102, 128 ["the trial court counted 14,124 statutory violations arising from two different patterns of conduct on defendant's part"].)

Accordingly, under Civil Code section 798.86, the Court has discretion to assess a penalty of up to $2,000 per violation per resident each time such violation occurred.[1] In this instance, the City's exposure could be expressed as follows: 7 violations x $2,000 = $14,000 per class member *per month of occurrence*.

The City committed at least an equal number of MRL violations post-November 2003 when it systematically began tearing down the Park, unlawfully stripping away amenities to encourage residents to leave. However, in the interest of simplicity and moderation, Plaintiffs focus here on only the pre-closure violations prior to November 2003—and ask the Court to simply assess statutory penalties for the first 7 violations, for each class member. This simplified approach equates to: 7 violations x $2,000 = **$14,000 per class member.**

Plaintiffs anticipate the City will argue that it lacked the requisite willfulness to trigger statutory penalties under the MRL. However, in this context, the term "willful" does not require a showing of malice as may be required for punitive damages under Civil Code section 3294; rather, it equates to a lesser showing of "intentional conduct undertaken with knowledge or consciousness of its

[1] Per the Court's Order after Statement of Decision, assessing statutory penalties was beyond the scope of the Special Master's task. Instead, the Court reserved the opportunity to make the assessment prior to entry of judgment.

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

probable results." (*Patarak v. Williams* (2001) 91 Cal. App. 4th 826, 829.) For example, where the park owner failed to properly maintain the park septic system, the court assessed statutory penalties for willful violations of the MRL even absent evidence that the owner intended to cause flooding, contamination, or sewage back-ups. The court reasoned that those consequences were reasonably foreseeable to follow from the park owner's deliberate decision not to tend to septic maintenance. "While landlord did not have the specific intent to achieve septic system failures, these occurrences resulted not from accident or simple negligence." (*Id*. at 830.)

Similarly, in this case, the City certainly knew that the MRL applied to mobilehome parks, that De Anza Cove was operated as a mobilehome park, and that local attempts to exempt the itself from State law would be preempted by the MRL. Furthermore, the MRL's park-closure provisions expressly apply to charter cities like San Diego. (Gov't Code § 65863.7(h).) The MRL's provisions permeated all of the Long Term Rental Agreements at De Anza, as well as the City's own internal memoranda wherein City staffers calculated in advance the total amount of relocation benefits the City would have to pay if the City decided to maintain land use control of De Anza and undertake the concomitant relocation obligation. So any attempt by the City to argue that it didn't realize the MRL would apply lacks merit and common sense.

The City also knew that a tenant impact report should have been done. In fact, as this Court found, the prior park operator "advised the City that a tenant impact report was advisable and offered to prepare and pay for the report**. The City said no**." (Ex. 40, MSA Order, ¶ 7(q) (emphasis added).) The City decided not only to *not* do an impact report, but to reject the prior operator's offer to commission the report at no charge to the City. That was a willful act, and the consequence was foreseeable. In fact, we're still paying the price for that decision, having spent the better part of this case trying to retroactively duplicate the reporting, notice, and mitigation process that was supposed to have been done in 2002, a full year before the Park closure date.

These violations had a palpable impact on the Class, as many residents were fearful of the loss of their homes, their lack of options, and the uncertainty of when they would be thrown out on the street. Some even grew very ill from the stress. The effects of the City's violations and threats to evict were timely documented in the midst of November 2003 in numerous resident declarations.

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

(See Decls. of Peltcher, Ruffato, Anthony, Epstein, Stevens, Smithwick, and Gloudeman, attached here collectively as Ex. 42.)

In sum, there is ample evidence that the MRL violations cited stem from deliberate actions and decisions made by the City sufficient to support a finding of willfulness: "consequences [that] were reasonably foreseeable to follow from the park owner's deliberate decision" and "occurrences [that] resulted not from accident or simple negligence." Moreover, from the vast array of actionable violations, many of which were repeated multiple times, Plaintiffs focus on only seven—all related to the pre-November 23, 2003 time frame—and suggest that the Court conservatively assess penalties against the City in the resulting amount of $14,000 for each class member.

Conclusion

Hundreds of class members await entry of judgment in this case. They have been patient, despite shouldering the uncertainty of where they will be living next year, and despite the fact that the City handled the closure of this Park so badly. Your Honor has the wherewithal to fix what the City has broken, to restore faith to those whose faith in government has been shaken by this extraordinarily long experience, and to ensure a measure of security for those in this community, long after their community is gone. The massive loss of hundreds of homes is going to be painful, but we can at least make the move to another home less painful. The men and women of De Anza Cove have done nothing wrong. And they deserve to be treated fairly and with dignity.

Plaintiffs, accordingly, request that the Court rule as follows:

1. The Park Closure date was November 23, 2003, and compensation is presently owed to all Class Members based on the updated 2014 survey, with Judgment and Permanent Injunction to follow imminently;

2. The Class is entitled to at least 84 months' rent differential, and up to 109.7 months' rent differential, paid in a lump sum;

3. The mathematical / clerical errors of OPC shall be corrected (15% markup eliminated; missing home-size tier added);

4. The City's request for an artificial space rent increase, which would decrease the rent differential owed to the homeowners, is denied;

///

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032

5. Temporary Lodging of $556 (4 nights at $139 per night) is awarded per household;

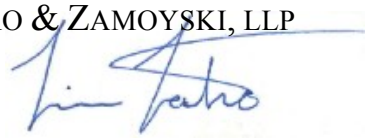
6. 7% Prejudgment Interest shall accrue from the date of move-out on the relocation benefits and compensation owed to those homeowners who have already vacated the Park prior to entry of judgment; and

7. Plaintiffs are entitled to Statutory Penalties of $14,000 per Class Member based on the City's violations of the MRL.

Respectfully Submitted,

DATE: April 2, 2014

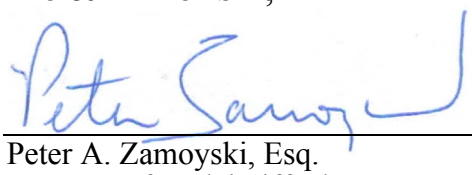
TATRO & ZAMOYSKI, LLP



By: _____
Timothy J. Tatro, Esq.
Attorneys for Plaintiff Class

DATE: April 2, 2014

TATRO & ZAMOYSKI, LLP



By _____
Peter A. Zamoyski, Esq.
Attorneys for Plaintiff Class

DATE: April 2, 2014

THORSNES, BARTOLOTTA & MCGUIRE

By: /s/ Vincent J. Bartolotta, Jr.
Vincent J. Bartolotta, Jr., Esq.
Karen R. Frostrom, Esq.
Attorneys for Plaintiff Class

Tatro & Zamoyski, LLP
12760 High Bluff Drive
Suite 210
San Diego, CA 92130
(858) 244-5032