SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

v.

CITY OF SAN DIEGO,

Defendant.

Case No. GIC821191

**DECISION ON MATTER UNDER SUBMISSION**

Judge: Hon. Charles R. Hayes
By Special Appointment

The court has read and considered the following three reports by Special Master Thomas E. Sharkey: (1) "Report Re: (A) Rent Differential And (B) Date Class Membership Is Determined Re: Residents Evicted After September 4, 2007" ( "1st SM Report"), dated November 9, 2012; (2) "Second Report Re: Multiple Issues Pertaining To Closure of De Anza Cove Park" (henceforth, "2nd SM Report"), dated June 25, 2013; and (3) "Recommendation Of Special Master That Court Grant Approval To (A) Stipulation And Findings Re: Class Membership Eligibility And Certain Relocation Benefits And Order Thereon; (B) Order On Class Member Status Of Certain Signed Settlement Agreements And Evictions Based On Evidence Presented At Trial" (henceforth, "3rd SM Report"), dated February 2, 2014.

The court has also read and considered the objections by plaintiffs De Anza Cove Homeowners Association, Inc., et al (plaintiffs) and by defendant City of San Diego (defendant City) to recommendations made by the Special Master in the above reports. These objections are found in plaintiffs' and defendant City's respective opening, opposition and reply briefs, including voluminous lodgments.

On May 6, 2014, after hearing three hours of argument by plaintiffs' and defendant City's respective counsel, the court took the matter under submission. After careful consideration of the foregoing evidence and argument, the court hereby files its decision regarding issues in controversy as follows:

## I. CLASS MEMBERSHIP

The court adopts the Special Master's recommendation, to which no objection was filed, "[t]hat the date of class membership should be modified to include residents who were members of the class as of September 4, 2007 but were later evicted." (Special Master's Report dated Nov. 9, 2012 ("1st SM Report"), p. 13:19-20.)

## II. RENT DIFFERENTIAL

Government Code section 65863.7(e) requires owners and operators of mobilehome parks proposing to close a mobilehome park "to take steps to mitigate any adverse impact of ... closure ... 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."

In its Statement of Decision issued May 21, 2008 ("SOD"), the court found "that San Diego Mobilehome Park Discontinuance and Tenant Relocation Ordinance is applicable to De Anza notwithstanding the City's attempt to exempt De Anza by ordinance and contract. (See San Diego Municipal Code § 143.0610 and § 143.0615 and Long Term Lease Agreements.) The Court [found] defendant City of San Diego [was] required to comply with the same ordinance as other park operators in similar situations within the City." (SOD, p. 11:5-9.) The court also found "the Relocation Standards and Procedures of the San Diego Housing Commission" adopted in 1995 as "an administrative guideline to implementing the relocation section of Policy # 300.401 Revised" ("SDHC Guideline") "apply to the closure of De Anza Park." (SOD, p. 12:5-9.)

The City's financial obligation to De Anza residents is not unanticipated. As early as 1981, the City was informed that recent state legislation, i.e., the Mobilehome Residency Law (MRL), obligated the City to provide funds to De Anza residents to mitigate harm caused by park closure. At about that time, the City Manager informed the City Council that it was estimated that the amount required to compensate De Anza Cove park residents at closure could be many millions of

dollars. With this knowledge the City elected to keep the park in operation for twenty years until 2003 under a long term lease that increased rent income to pay the mitigation funds to De Anza residents at closure.

The SDHC Guideline provides that "[i]n cases where it is not feasible to relocate a mobile home" upon park closure, the park operator shall provide the mobilehome park "residence [sic]" with "reasonable relocation expenses" which are defined in the SDHC Guideline as 48 months of rent differential (i.e., the difference between "current space rent" and "rent for a comparable apartment unit of a size appropriate to accommodate the displaced household"), along with other incidental moving expenses. The San Diego Housing Commission determined payment of these "reasonable relocation expenses" (along with temporary lodging, where applicable) to satisfy the mitigation requirements of Government Code section 65863.7(e) while not exceeding the "reasonable costs of relocation."

**A. Number of months of rent differential – 48 month multiplier**

The court, for the reasons stated herein, declines to deviate from the 48 month rent differential multiplier set forth in the court's SOD and the SDHC Guideline and declines to accept either the 84 months approved by the San Diego City Council in the closure of Mission Valley Village Park ("MVV") or the 109.7 months urged by plaintiffs' counsel.

The court has viewed the digital recording of the proceedings of the San Diego City Council in the MVV closure hearing and has reviewed the transcript of the proceedings. The court finds insufficient evidence to conclude that the City Council's decision to require 84 months of rent differential in the closure of MVV was intended by the council as a rejection of the SDHC Guideline's 48 months or that it was intended to set or establish a new standard or precedent regarding the required number of months necessary to mitigate harm caused by park closures.

The factual situations surrounding the closures of De Anza Cove Park and of MVV are substantially different. The California Lands Commission found De Anza Cove Park to be a nonconforming and unlawful use of the state tidelands. This finding that the residential park was an impermissible use of publicly owned state tidelands resulted in a decision by the state that De Anza Cove Park be closed. De Anza Cove Park was only permitted to extend its operation until 2003,

after which it was required to close, by virtue of state legislation enacted in the early 1980s. In contrast to the De Anza Cove Park closure, the MVV closure involved a business decision of the Archstone Company to close a mobilehome park in order to change its use to a private development consisting of about 150 residential condominiums on privately owned land with an anticipated cost in excess of $120,000,000. This is not the "similar situation" contemplated by the SOD.

Moreover, in addition to public discussions in open session describing the agreements between the parties to negotiations, much of the discussion and negotiation between the owner-developer of MVV and representatives of the City of San Diego in arriving at the terms of closure was done in private, the details of which are not available.

Finally, the SDHC Guideline was changed sometime after the MVV closure, reducing the rent differential to 42 months from 48 months.

In view of the factual disparity between the MVV and De Anza Cove Park closures, the absence of available information regarding negotiations leading to the terms of the MVV closure, and the subsequent change of San Diego Housing Commission guidelines reducing the number of months of rent differential rather than increasing it, it would be merely speculative to find that the MVV closure established a precedent applicable to the De Anza Cove Park closure. Accordingly, the court declines to so find, and adopts the then existing SDHC Guideline's 48-month multiplier.

**B. "Current space rent" - Proposed C.P.I. adjustment**

The court declines to either apply an annual CPI adjustment to increase the "current space rent" or apply any downward adjustment to the "current space rent" as suggested by counsel for plaintiffs. The rent differential shall be calculated according to the "current space rent" as it existed in November 2003 and exists to the present day.

All of the mobile homes in De Anza Cove were bound by the provisions of a long term lease originally executed in 1983 that called for lease termination and park closure in November 2003. The rental rates had been established in 1982 and were subject to annual increases according to the Consumer Price Index or a set 4 percent until 2003.

The SDHC Guideline formula calculates the monthly rent differential as the difference between what the displaced mobilehome park resident is currently paying and not a derived "fair

market value," and what he or she will have to pay for a comparable apartment unit. Moreover, even assuming the SDHC Guideline's "current space rent" could be interpreted as meaning "fair market value space rent," defendant City has not established that use of the lease's CPI-4% formula reflects "fair market value" in light of the post-November 2003 unstable nature of the tenancy and the change in the physical condition of the park as noted hereafter.

The change in the physical plant of De Anza Cove Park began sometime after November 23, 2003 and continued for a number months until the issuance of a temporary restraining order and later a preliminary injunction. Defendant City began to systematically destroy park amenities located primarily in the De Anza Cove Park common areas. For example, defendant City destroyed over 20 separate laundry facilities, showers, rest rooms and storage areas located throughout the park that had been available for use by park residents. The children's playground located on the bay front, also available to park residents, was bulldozed and the destroyed playground equipment placed in large dump trucks and hauled away. Several hundred mature trees in the common area, and also within the curtilage of the mobile homes, were cut down with chain saws and hauled away. Furniture within the Bay Club and Pavilion, the two recreational facilities available to residents, was removed as were lawn chairs and chase lounges surrounding the swimming pool. The onsite convenience store which had been previously available to park residents was also permanently closed. (See Plaintiffs Exh. 19.)

A number of months after November 23, 2003, with the consent of the parties, the court conducted a site visit of De Anza Cover Park to determine its condition. The condition of De Anza Cove amenities observed by the court might best be described as poor to nonexistent. What had been a desirable and attractive bay front resort community prior to defendant City's efforts at destroying common area amenities, had become something much less desirable. The basic condition of the park is accurately depicted in the DVD marked as Plaintiffs' Exhibit 19. While the undersigned has not visited the park since the site visit, nothing has been presented to the court establishing that the condition of the park has changed since that time. The court declines to speculate as to whether defendant City has rebuilt the children's park and reinstalled the playground equipment or rebuilt the twenty or so laundry facilities, rest room and storage areas that it caused to

be destroyed or reopened the convenience store.

Defendant City's destruction of so many of the park amenities substantially diminished the value of benefits received by residents for their "current space rent," although there has never been any evidence that rents were reduced. The "current space rent" continued unabated after the termination of the agreements.

Finally, defendant City's argument is not persuasive that the rent would have increased post-November-2003 if not for the court-imposed preliminary injunction. The preliminary injunction does not explicitly "freeze" rents. Even if the preliminary injunction were interpreted to implicitly "freeze" rents, defendant City did not seek relief therefrom in order to increase rents, as it did seek relief on several occasions in order to evict certain tenants.

**C. "Rent for a comparable apartment unit" - Determination thereof**

The court adopts the Special Master's recommendation regarding the determination of "rent for a comparable apartment unit" (see, 2nd SM Report, pp. 3:4-6, 31:21-33:10), but with the modification that Overland Pacific & Cutler ("OPC") shall exercise its expertise on this issue and, in its best judgment, use information from Internet websites, interviews and site visits, and may also consult, if necessary, the San Diego County Apartment Association ("SDCAA") data.

OPC has proposed four tiers of square-footage ranges, each with its own comparable apartment unit rent amount. In accordance with the immediately preceding paragraph, the court adopts OPC's proposal, but with the addition of a fifth tier which plaintiffs' and defendant's agree should be added (albeit with disagreement as to the lower end of the range). Thus, the court adopts the following:

| De Anza Cove Park mobilehome size | Rent for comparable apartment unit |
|---|---|
| 1-664.9 sf | $1,300 |
| 665-1059.9 sf | $1,750 |
| 1060-1379.9 sf | $2,600 |
| 1380-1629.9 sf | $3,395 |
| 1630+ sf | $3,595 |

The upper end of the ranges in each of the first four tiers is the rounded product of 1.15

times the median square footage for, respectively, 1-, 2-, 3-, and 4-bedroom De Anza Cove Park mobilehomes. The fifth tier captures the larger mobilehomes ranging up to approximately 2100 square feet.

For those class members who have vacated De Anza Cove Park pre-judgment, the Special Master and the parties agree that the "comparable apartment rent" should be determined as of the date the class member vacated the park. (See, e.g., 2nd SM Report, p. 26:18-26, City's Opening brief, p. 25:11-26, Pltfs' Oppos., pp. 27:14-28:12.) However, neither the Special Master's reports nor OPC's De Anza Harbor Resort Relocation Impact Report dated December 2011 ("De Anza RIR") propose how to determine these historical "comparable apartment rents."

Defendant City proposes using the appropriate SDCAA bi-annual survey. Plaintiffs propose using "the U.S. Government's Consumer Price Index (CPI) for San Diego rents dating back to 2003" (Pltfs' Oppos., p. 28:1-2).

Given the lack of foundation for the SDCAA survey, the "comparable apartment rent" for class members who have already vacated shall be calculated by applying the appropriate "United States Department of Labor Consumer Price Index, U.S. City Average – All Urban Consumers" (referenced in the paragraph 2.9 of the Long Term Rental Agreements) to the current "comparable apartment rents" charted above.

The above ruling addresses the so-called "math errors" listed in plaintiffs' opening brief, i.e.: (1) "OPC's subjective and incorrect application of a 15% markup to only one side of the comparable rent equation"; and (2) "the omission of the last home-size tier that represents the largest De Anza homes." The first purported "math error" is not an *error*, but rather a difference of opinion as to how best to calculate the square-footage ranges. The second purported "math error" is cured by the inclusion of a fifth tier.

## III. TEMPORARY LODGING

Paragraph 2 of the SDHC Guideline provides for payment of "hotel or temporary lodging cost in the amount of $40 per night up to seven nights." Paragraph 4 provides "[a] specific dollar amounts mentioned above will be adjusted in conformance with changes in the Consumer Price Index, All Urban Consumers."

The court adopts the Special Master's recommendations that allowable lodging costs be in "an amount to be determined by OPC and the involved [class member] based on reasonable and verifiable lodging costs at the time of the move not to exceed $147 per night for seven nights" (2nd SM Report, p. 19:2-4) and that "temporary lodging benefits need not be set forth in OPC's detail. spreadsheet but should be left to determination by OPC and the involved [class member] on a cases-by-case basis" (*id.*, p. 19:15-17).

The court adopts the Special Master's recommendation that "only resident owners of mobile homes which can be relocated should receive the lodging benefit" (*id.*, p. 19:7-8), but with the modification that other members of the class may also receive the lodging benefit upon a showing to OPC of reasonable necessity for temporary lodging (up to seven days not to exceed $147 per night).

## IV. NON OWNER RENTERS

In the SOD (p. 13:9-13), the court found "the mitigation approach to non-owner renters used in the La Mesa Relocation Impact report to be fair, reasonable and consistent with the intent of the legislative [sic] and sufficient to satisfy the Mobilehome Residency Law's mandate regarding mitigation. The Court adopts this method of mitigation of economic impact as applicable to non-owner renters on the closure of De Anza."

The court adopts the Special Master's recommendation that, as proposed in OPC's De Anza RIR, non-owner renters receive relocation benefits of two months comparable apartment unit rent, plus a personal property moving allowance of $1,610. (See, 2nd SM Report, pp. 3:2-3, 29:21-31:20.)

## V. NON RESIDENT OWNERS

As stated in the Special Master's Second Report, "[i]n its SOD, the Court has ruled that nonresident mobile home owners who never lived in their units at De Anza and purchased them for a stream of rental income are 'investors' who are excluded from this class action and are not provided mitigation under the MRL or the SDHC guidelines. However, the Court has also ruled that mobile home owners who lived in their mobile homes for a period of time but later moved out, and used it as a second home/vacation home or subleased it for a period of time when not being used, are not included in the definition of 'investors' and are entitled to mitigation benefits (SOD

pg. 14-15; Transcript of proceedings 8-21-08 pg. 4:1-5:26)." (2nd SM Report, p. 27:7-14).

The Special Master's recommendation regarding "nonresident owners" (2nd SM Report, pp. 2:27-3:1, 27:5-29:20) is moot in light of the Stipulation and Findings Re: Class Membership Eligibility And Certain Relocation Benefits" signed by the parties on January 31, 2014, and the court order entered thereon.

## VI. RECOMMENDATIONS TO WHICH NO OBJECTIONS WERE FILED

### A. Advance relocation payment

The Special Master's recommendation, to which no objection was filed, to approve the parties' stipulation for a $5,000 advance relocation payment (see, 2nd SM Report, p. 2:3-4) is rendered moot by the court's decision regarding Lump Sum Payment (*infra*, § VII).

### B. Disability modification

The court adopts the Special Master's recommendation, to which no objection was filed, to approve the parties' stipulation that disability modifications be included in relocation benefits (see, 1st SM Report, p. 2:7-8).

### C. Sale of mobile homes to City

The court adopts the Special Master's recommendation, to which no objection was filed, that defendant City not be required to purchase mobile homes from Class members (see, 2nd SM Report, p. 2:9-10).

### D. Transfer of Rights

The court adopts the Special Master's recommendation, to which no objection was filed, that class members shall not transfer right to relocation benefits (see, *id.*, p. 2:11-12).

### E. Relocation consultant

The court adopts the Special Master's recommendation, to which no objection was filed, that defendant City be required to provide class members the services of a relocation consultant (see, *id.*, p. 2:13-14).

### F. Rental proceeds offset

The court adopts the Special Master's recommendation, to which no objection was filed, that the profits received by mobile home owners who rented their units after 2003 shall not be an

offset to the rent differential calculation (see, *id.*, p. 3:7-9).

## VII. LUMP SUM PAYMENT OF MITIGATION BENEFITS

The court declines the recommendation for monthly rent differential payments to residents of De Anza Cove Park (see, 2nd SM Report, pp. 1:28-2:2, 5:13-12:11).

The Special Master noted that, "[i]f the plaintiffs received a lump-sum payment, it would increase their option to either acquire replacement mobile homes...." This is precisely what Government Code section 65863.7(e) intended to take place as discussed below. Accordingly, instead of monthly payments of benefits, the court orders all relocation benefits be paid in a lump sum at the outset.

Government Code section 65863.7(a) provides that a mobilehome park owner or operator proposing to close a park shall prepare a Relocation Impact Report that shall be timely served upon each park resident and the legislative body considering closure. The Report is required to "address *the availability of adequate replacement housing in mobilehome parks* and relocation costs" (emphasis supplied).

Government Code section 65863.7(e) obligates the operator of a mobilehome park proposing to close the park "to take steps to mitigate any adverse impact of the ... closure ... on the ability of displaced mobilehome park residents to *find adequate housing in a mobilehome park*" (emphasis supplied).

Paragraph 1.b. of the SDHC Guideline does not require payment of the rent differential component of the "reasonable location expenses" be paid over a period of 48 months, neither does it prohibit a lump sum payment. It is a guideline. The court finds that, particularly under the present circumstances, and in view of the above quoted language from Government Code sections 65836.7 (a) and (e), the legislative intent of section 65863.7(e) is best served by a lump sum payment. Since a lump sum payment is neither prohibited nor required by the Housing commission, the lump sum payment need not be discounted to present value.

Moreover, those class members who have already vacated the park have accrued several (if not all 48) months toward the SDHC Guideline's 48-month multiplier and would be entitled to a lump-sum of the accrued months. (This appears to be contemplated by the Special Master's

recommendation, adopted above, that class members who have vacated the park shall receive prejudgment interest.) Under this ruling, all class members will receive a non-discounted lump sum payment.

## VIII. PREJUDGMENT INTEREST

**A. Class members who have not vacated the park:** The court adopts the Special Master's recommendation, to which no objection was filed, that "…[w]ith respect to De Anza class members who have not vacated the park, prejudgment interest be denied." (2nd SM Report, pp. 21:24, 22:1-2.)

**B. Class members who have vacated the park:** The court adopts the Special Master's recommendation, to which no objection was filed, that "…[w]ith respect to class members 'who voluntarily vacated the park without entering into settlement agreements …, the Court … award prejudgment interest at 7 percent on expenses they have incurred for benefits to which they are entitled under [the SDHC Guideline]." (*Id.*, p. 2:4-8.)

## IX. STATUTORY PENALTIES

The SOD provides that "the Plaintiffs' claim for statutory penalties under the Mobilehome Residency Law shall be held in abeyance and will be subject to further hearing after receipt of the Special Masters' report and recommendation regarding mitigation." (SOD, p. 15:20-22.) At plaintiffs' urging, and with defendant City's acquiescence, the court now addresses plaintiffs' claim for statutory penalties pursuant to Civil Code section 798.86. The court considered the parties' oral argument on May 6, 2014, as well as the parties' written briefs filed before the May 6 hearing and the letter briefs filed, at the court's request, on May 23.

For the reasons explained below, the court denies plaintiffs' claim for statutory penalties pursuant to section 798.86 because defendant City is immune from these penalties under Government Code section 818.

"Governmental immunity is a jurisdictional question, and thus is not subject to the rule that failure to raise a defense by demurrer or answer waives that defense." (*Paterson v. City of Los Angeles* (2009) 174 Cal.App.4th 1393, 1404, n. 5, citations omitted.)

Government Code section 818 provides: "Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant." In light of 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.)

Section 818 was "added to the code upon a recommendation of the California Law Revision Commission, which commented, 'Public entities shall not be liable for punitive or exemplary damages. Such damages are imposed to punish a defendant for oppression, fraud or malice. They are inappropriate where a public entity is involved, since they would fall upon the innocent taxpayers.' [Citations.]" (*State Dept. of Corrections v. Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885, 887.) "[T]he purpose behind the statutory ban on punitive damages against public entities [is] to protect their tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party[.]" (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1196, fn. 20.) "[D]amages which are punitive in nature, but are not simply or solely punitive in that they fulfill legitimate and fully justified compensatory functions, have been held *not* to be punitive damages within the meaning of Government Code section 818." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 145, emphasis in original.) Thus, under these principles, statutory penalty provisions that are primarily punitive in nature and not intended to fulfill compensatory functions do not apply to public entities.

A plain reading of section 798.86 and its legislative history demonstrates the statutory penalties authorized by section 798.86 are not intended to compensate an injured party, but are primarily punitive in nature. Second, like punitive damages pursuant to section 3294, their imposition is discretionary and they may, but are not required to be imposed, for willful violation of the MRL. Third, in 2003, the legislature expressed its intent that punitive damages and statutory penalties serve the same remedial purpose, i.e., "for the sake of example and by way of punishing the defendant" (Gov. Code, § 818), by clarifying that, while punitive damages are recoverable for violation of the MRL, a plaintiff must elect between punitive damages and statutory penalties to avoid double recovery. (See, Bill Analysis for the Assembly Committee on Judiciary explains in

pertinent part regarding AB 693 [amending § 798.86].) As such, they are not an exception to the general rule of governmental immunity from imposition of statutory penalties. Accordingly, the court finds defendant City immune from the statutory penalty provision found in Civil Code section 798.86. Essentially, punitive damages and the statutory penalty, may have a different standard of proof, but they serve the same purpose and defendant City is immune from the imposition of its sanction.

## X. STATEMENT OF DECISION

Plaintiffs' recent request for a second statement of decision is denied. The only issue requiring a statement of decision is statutory penalties, which was held in abeyance until now in the 2008 Statement Of Decision (SOD, p. 15). The decision regarding statutory penalties set forth above is one of law only not requiring a statement of decision. In any event, the requested issues are adequately addressed above.

## XI. PREPARATION OF JUDGMENT

After meeting and conferring with opposing counsel, plaintiffs' counsel is to prepare and submit a proposed judgment within 14 court days of the date of service of this DECISION ON MATTER UNDER SUBMISSION.

**IT IS SO ORDERED.**

Dated: MAY 30 2014

**CHARLES R. HAYES**

HON. CHARLES R. HAYES (Ret.)
Judge of the Superior Court
Sitting by Special Assignment