

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**COPY**

LUIS M.,  
 Petitioner,  
 v.  
 SUPERIOR COURT OF THE  
 COUNTY OF LOS ANGELES,  
 Respondent,  
 PEOPLE OF THE STATE OF  
 CALIFORNIA,  
 Real Party in Interest.

No. S207314  
 Second District No. B238460)  
 LASC CASE NO. MJ20593

**SUPREME COURT  
FILED**

MAY 20 2013

**ANSWER BRIEF**

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LUIS M.,	)	<b>No. S207314</b>
	)	
Petitioner,	)	SECOND DISTRICT NO.
	)	B238460
v.	)	
	)	LASC CASE NUMBER
SUPERIOR COURT OF THE	)	MJ20593
COUNTY OF LOS ANGELES,	)	
	)	
Respondent,	)	
	)	
PEOPLE OF THE STATE	)	<b>ANSWER BRIEF</b>
OF CALIFORNIA,	)	
	)	
Real Party in Interest	)	

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**ISSUE PRESENTED FOR REVIEW**

The Real Party In Interest, the People of the State of California (herein "the People") stated in their Opening Brief On The Merits (herein "BOM") that the issue presented for review in this matter is:

Where a large city is the victim of graffiti vandalism and where that city is tasked with the removal of thousands of acts of graffiti from city property each year, making it nearly impossible and highly impractical to assess the exact cost to remove each individual act of graffiti, may the city create a cost model for the average cost per unit of measure for the removal, cleanup, or repair of graffiti and may that cost model serve as a rational basis for calculating restitution?

(BOM, p. 1.)

This Court characterized the issue as the following:

Could the restitution order in this case of felony vandalism for acts of graffiti be based on the victim city's average cost of removing, cleaning, and repairing incidents of graffiti on an

annual basis, or was proof of the actual costs of mitigating the graffiti at issue in this case required?<sup>1/</sup>

## STATEMENT OF THE CASE AND FACTS

Petitioner pled to one count of Felony Vandalism (Pen. Code, § 594) on July 14, 2011. (Exhibit B.) Petitioner was not made a ward of the juvenile court, but was placed on Welfare and Institutions Code section 790 Deferred Entry of Judgment probation. (Herein referred to as DEJ.) (Exhibit B.) On November 17, 2011, a restitution hearing was held to determine the restitution amount Petitioner would be responsible for while on DEJ probation. (Exhibit C.) During that hearing, the prosecution provided testimony by Marlene Navarro, Crime Prevention Officer for the City of Lancaster. (Exhibit C.) During her testimony, Ms. Navarro introduced a 2006 Graffiti Mitigation Cost Model, which takes the entire amount of vandalism costs paid for by the City of Lancaster in 2006 and divides this number by the calls for graffiti clean-up service in 2006. (Exhibit D.) The result is an average cost per incident of \$431.32. (Exhibits C and D.) In addition, this cost model includes costs incurred by law enforcement, which appear to be costs that occur in the normal course of duty and also includes other expenses by the City of Lancaster without any verification of how these costs are calculated and how

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<sup>1/</sup> Obtained from <http://appellatecases.courtinfo.ca.gov>, Case Summary for Case No. S207314.

they relate to the specific acts of Petitioner. (Exhibit C.) In addition, the cost model includes charges for amortization of government vehicles. (Exhibit D.)

Relying on this cost model, the court ordered Petitioner to pay \$3,881.88 based on nine incidents of vandalism that occurred in six different locations at an average cost per incident of \$431.32. This was over Petitioner's objection. Petitioner then filed a Petition for Writ of Mandate in the Court of Appeal contesting the restitution award. On October 31, 2012, the Court of Appeal granted the petition in a published opinion. Subsequently, this Court granted review.

## **ARGUMENT**

### **I**

#### **THE USE OF A COST MODEL IS REASONABLE AS LONG AS THE COSTS INCLUDED ARE ATTRIBUTABLE TO A DEFENDANT'S CONDUCT**

Petitioner agrees with the People that the City of Lancaster is entitled to restitution for the damage caused by Luis M. As the People have stated in their BOM, pursuant to Welfare and Institutions Code section 730.6, the City of Lancaster is entitled to restitution for Petitioner's conduct. (BOM, pp. 5-6.) Moreover, the case law is abundantly clear that the standard for review of a restitution order is abuse of discretion. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.) The key issue in this matter is whether it is an abuse of discretion to order Petitioner to pay restitution based on a cost model,



which includes costs that cannot be imputed to Petitioner for his conduct, and, which are improper pursuant to California restitution caselaw.

**A. Although Courts May Have Broad Discretion In Awarding Restitution, Such Discretion Does Not Permit Courts To Award Restitution When It Is Not Attributable To The Conduct Of A Defendant.**

In their BOM the People essentially argue that because the court has broad discretion in awarding restitution, a cost model that includes costs not attributable to Petitioner's conduct is logical and reasonable. (BOM pp. 6-10.) The People have confused two separate issues.

There is no doubt that courts do not have to ascertain the exact dollar amount of loss, but may award restitution as long as the methodology in computing the restitution is logical and rationally based. (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016; *In re Dina V.* (2007) 151 Cal.App.4th 486, 489; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391.) Petitioner is not requesting that this court hold that cities and municipalities ascertain the exact amount of paint used, or mileage driven, etc., to compute the appropriate restitution award. However, Petitioner is requesting that the restitution he is being ordered to pay be based on services actually rendered by the city in repairing the damage he caused.

The prosecution cites numerous cases to support its claim that the broad discretion of the court in fashioning restitution allows the City of Lancaster to recoup for expenses not attributed to Petitioner. (BOM pp. 8-9.)

First of all, none of these cases are cost model cases; second they are factually distinguishable from Petitioner's case.

For instance the People cite *People v. Ortiz* (1997) 53 Cal.App.4th 791, 794, *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046, and *People v. Baker* (2005) 126 Cal.App.4th 463, 467. All of these cases find that the court has broad discretion in fashioning restitution; however, not one of them addresses imputing to a defendant costs associated with services *not* rendered or improperly attributed to a defendant in contravention to established caselaw. Likewise, the People cite *In re Alexander A.* (2011) 192 Cal.App.4th 847, 851-853 and *People v. Stanley* (2012) 54 Cal.4th 734, 739; however, these cases address repair costs versus replacement costs, an issue not applicable to Petitioner's case.

The People also cite cases from other jurisdictions to support their contention of the broad discretion of the courts to award restitution. (BOM, pp. 9-10.) Again, not one of these cases addresses cost models, and moreover, one case *People v. Robb* (Colo.App. 2009) 215 P.3d 1253, specifically supports Petitioner's point. In that case the Colorado Court of Appeals stated, "Payment of restitution is authorized only as to the victim of a defendant's conduct, and only for the actual pecuniary damage the victim sustained as the direct result of the defendant's conduct." (*Id.* at p. 1264.)

In presenting cases from other jurisdictions, the People failed to mention *Wetherington v. State* (Fla.App. 1996) 672 So.2d 586. In this case, the

Florida Court of Appeal struck down a restitution order for a vandalism case. In this case, the court found that to impute to the defendant in that matter the cost of painting the entire wall “corner to corner,” would be appropriate if the walls, before appellant's action, had been in good repair. (*Wetherington, supra*, 672.So.2nd 586, 587.) However, the evidence in the case demonstrated that other graffiti appeared on the walls and previous partial repainting of the walls were evident. (*Ibid.*) As the court noted, “if the walls were in need of painting even before appellant's action, a proper apportionment of the costs should be allocated as restitution so that the ordered restitution would be the amount of the loss sustained by any victim *as a result of the offense.*” (*Ibid.*, emphasis in original.) Clearly the reasoning of the Florida Court of Appeal supports Petitioner’s contention that the only costs that should be imposed are the ones directly attributable to his conduct.

The People are trying to equate broad discretion with imposing costs not attributable to Petitioner’s conduct. Despite a court’s “broad discretion,” there is simply no case that permits courts to award restitution for actions that are not attributable or a direct consequence of a defendant’s conduct. For instance, in a vandalism case, a court would never award restitution to a victim for repainting a sidewalk when the sole damage caused by a defendant was a broken window. The reasoning is simple—the court is concerned with compensating the victim for economic losses incurred as a result of a defendant’s conduct. The court is not interested in providing the victim with

a greater reward than the victim is entitled to receive. It is immaterial whether the victim is a municipality or individual; the principle behind restitution, which is to ensure that the economic losses incurred as a result of a defendant's conduct are reimbursed, remains the same. The City of Lancaster is not required to provide the detailed amount of paint used, etc., but it is also not to be compensated for costs that the City did not expend when abating the graffiti.

**B. Contrary to the People's Contention, It Is Not Unduly Burdensome Nor Nearly Impossible For A City to Compute The Costs Of Graffiti Abatement**

The People in their BOM proffer a parade of horrors if this court were to affirm the opinion by the Court of Appeal in this matter. (BOM, pp. 11-13.) Simply put, the People have mischaracterized the opinion and have a rather dramatic interpretation of potential consequences.

As the Court of Appeal noted:

Luis also contends that the juvenile court erroneously based its restitution order on the City's restitution model because there was no evidence as to which components of the model were used to abate Luis' graffiti *or* as to the actual cost of the abatement. Therefore, he claims, there was no factual or rational basis for the order. Again, we agree.

(Slip Opn., p. 6, emphasis added.)

The Court of Appeal is not requiring the City of Lancaster to provide receipts detailing the amount of paint used, or miles driven, etc. The Court of Appeal is simply asking that if the City of Lancaster is going to rely on a Cost

Model, that they establish which aspects of the Cost Model were used in abating Petitioner's graffiti *or* if the City wants, the City can provide the actual losses.

Contrary to the People's contention, Petitioner is not disputing the general proposition that labor costs would be part of the restitution order pursuant to established caselaw (See *In re Johnny M.* (2002) 100 Cal.App.4th 1128); however Petitioner is contending that certain costs included in this particular cost model are inappropriate because they were not related either to Petitioner's conduct or they are costs that are in contravention to established precedent.

The People state that it is "impractical and unduly burdensome to require a large city to specifically track the extent of its graffiti removal efforts..." (BOM, p. 11.) They then go on to detail how cities would have to hire additional employees, and then maintain a database and that "the burden of the effort would most likely outweigh a large city's desire to try to recoup its losses and cause it to simply opt out." (BOM, p. 12.) They then claim that the city would have to create a graffiti damages assessment team and that this would "increase the amount of restitution a minor would owe." (*Ibid.*)

The problem with the People's argument is that Petitioner is already being assessed for the costs of a "graffiti damages assessment team." As the cost model demonstrates, costs for "Program Administration/Overhead" are included. (Exhibit D, under Labor Section.) Although these costs are being

imputed to Petitioner, as the testimony at the restitution hearing demonstrates, Ms. Navarro, who states part of her job description is “determining the cost of restitution” for graffiti matters for the City of Lancaster (Exhibit C, p. 3:4-7), cannot provide a single detail about which services were used for Petitioner’s case. The Cost Model provided by the City of Lancaster already includes charges for such overhead, but unfortunately for Petitioner he is expected to pay for such overhead, even though the city cannot detail which services were used in his case. Although the People argue that such tracking is burdensome, the City of Lancaster already includes costs for some sort of overhead and cost determination, however, the city fails to provide any details of what services were expended to abate the graffiti, while still charging Petitioner for such services.

After discussing how burdensome it is to track services already listed on their cost model, the People come to the interesting conclusion that if this Court were to require cities to rely on a cost model and ask the city to note which services on the cost model were used, that such a process would be so arduous that “graffiti vandals would escape the payment of criminal restitution.” (BOM, p. 13.) These conclusions defy logic and reasoning. Moreover, if accepted they present another significant problem.

If the People’s proposition were true, that it is simply “impractical and unduly burdensome” to have cities track which services listed on a cost model were used in abating graffiti, then that would create the even more

burdensome situation of requiring defense attorneys to subpoena every city employee involved in the abatement of graffiti and have them sit in court to testify whether they were involved or not in a particular abatement and the extent of the efforts expended. If it is so “unduly burdensome” to track at the time of abatement, how can the city then address issues at restitution hearings? Surely the burden of having employees sit in court repeatedly would outweigh simply noting which services were used on an already created cost model. Is “too burdensome” a proper legal justification for imputing costs to individuals when services were not rendered?

Clearly this court has to balance the practicalities that victims of graffiti face with the due process concerns of assessing costs for services not rendered or improperly assessed. However, the People cannot use “too burdensome” as an excuse to impute improper costs and services to Petitioner. Moreover, the People’s wild imaginations of how burdensome this would be are not grounded in any facts and, if believed, would lead to the more burdensome effect of numerous city employees being subpoenaed to court on a regular basis to determine which services were rendered in abating graffiti.

**C. Statutory Law Does Provide For A Cost Model, But Such Provision Does Not Eviscerate The Requirement That Victims Of Vandalism Only Be Awarded Restitution For Damages Suffered**

The People reason that because Welfare and Institutions Code sections 742.14 and 742.16 allow cities to recoup costs based on an average cost of

units per measure that it is not an abuse of discretion for the court to rely on the cost model provided by the City of Lancaster in this case. (BOM, 14-15.)

There are several problems with this argument. First of all there is no evidence in this case that the city of Lancaster has adopted such an ordinance pursuant to Section 53069.3 of the Government Code.<sup>2/</sup> Second, even if the city did adopt such an ordinance, the legislation does not nullify the precedent about appropriate costs that are subject to restitution, nor does it eviscerate the due process and equity concerns that courts must consider when evaluating restitution claims. Third, Section 742.14 requires a review of at least once every three years of the average costs per unit of measure being used for the basis of determining restitution. (Welf. & Inst. Code, § 742.14, subd. (b).) Clearly the use of a 2006 cost model in a 2011 proceeding does not comply with this requirement. Lastly, the statute specifically states that the costs may include, but are not limited to “findings of the hourly costs of employee time and of the costs per mile of operating patrol vehicles.” (*Ibid.*) Although this statute does not list the specific items to be included in the cost findings per incident, it clearly does not give *carte blanche* to include every imaginable expense.

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<sup>2/</sup> A cursory check on-line seems to indicate that the City of Lancaster has not adopted such an ordinance. See City of Lancaster, Municipal Code [http://library.municode.com/HTML/16042/level2/TIT9PUPEMOWE\\_CH\\_9.24GR.html](http://library.municode.com/HTML/16042/level2/TIT9PUPEMOWE_CH_9.24GR.html); last accessed on May 14, 2013.



Again since Petitioner has no problem with a cost model being used to calculate restitution, the issue is the type of expenses used in the cost model and whether such expenses are related to the specific acts of Petitioner.

## II

**IT IS AN ABUSE OF DISCRETION TO ORDER PETITIONER TO PAY RESTITUTION BASED ON THE CITY OF LANCASTER GRAFFITI MITIGATION COST MODEL SINCE THERE ARE COSTS INCLUDED IN THE MODEL THAT ARE NOT DIRECTLY ATTRIBUTABLE TO PETITIONER'S CONDUCT AND THERE IS NO EVIDENCE ABOUT WHICH SERVICES WERE RENDERED BY THE CITY OF LANCASTER IN ABATING PETITIONER'S GRAFFITI**

During the restitution hearing the prosecution's witness, Marlene Navarro (herein Navarro) referred to the City of Lancaster Graffiti Mitigation Cost Model when testifying about the cost of graffiti repair to the City of Lancaster. (Exhibit D.) The model has numerous items and extrapolates the annual cost of these items for the Public Works Abatement, Traffic, and Parks and Recreation departments. The sum total of all of these items for each department amounted to \$1,380,208 in costs for 2006. (Exhibit C, p. 7:18; Exhibit D.) The City of Lancaster then takes this amount and divides it by 3,200, which is the number of Graffiti Calls for service in 2006. The result is \$431.32, which is considered the average cost of a graffiti incident for the City of Lancaster. (Exhibit C, pp. 7:19-8:1; Exhibit D.)

There are numerous problems with this approach, the first being that the average cost of a graffiti incident to the City of Lancaster does not inform us of the actual losses suffered, nor the services rendered by the City of Lancaster in abating Petitioner's graffiti. Nor does this approach provide any information about which services the City of Lancaster expended to abate the graffiti. Second, as explained further herein, the average amount of a vandalism incident in 2006 as calculated by the City of Lancaster includes costs that are either not directly related to petitioner, nor are they subject to recovery by the City of Lancaster. As such, the amount of restitution ordered by the court is improper because it includes costs that should not be attributed to Petitioner.

**A. Labor Costs**

During the restitution hearing, Navarro testified to the following regarding the "Labor Costs" components of the cost model:

**Q.** Calling your attention to that model, is there a labor component in that model?

**Navarro.** That is correct.

**Q.** Can you describe what that labor component is?

**Navarro.** Basically the labor component is for the public works personnel that work at the city cleaning up the graffiti, and for the Sheriff's department deputy that is investigating the actual call.

**Q.** So would it be fair to say that the labor component involves the cost not only of the public works personnel who actually go out and clean up the graffiti, but also the Sheriff's

department that is involved in photographing the graffiti, finding graffiti, et cetera?

**Navarro.** Correct.

(Exhibit C, p. 8:12-26.)

Navarro's own testimony, coupled with the Exhibit D, clearly demonstrate that law enforcement investigatory costs are included in this cost model and constitute a portion of the restitution order in Petitioner's case. It is established that costs by law enforcement are not generally recoverable as restitution under Penal Code section 1202.4 or Welfare and Institutions Code section 730.6 unless the government agency is a direct victim. (See *People v. Martinez* (2005) 36 Cal.4th 384; *People v. Ozkan* (2004) 124 Cal.App.4th 1072; *In re Johnny M.* (2002) 100 Cal.App.4th 1128; *People v. Torres* (1997) 59 Cal.App.4th 1.) Because the evidence adduced at the restitution hearing indicates that the law enforcement labor costs attributed to Petitioner are the result of "investigating the call," "photographing graffiti," and "finding graffiti," as a matter of law these costs cannot be attributed to Petitioner.<sup>3/</sup>

In addition, in reviewing Exhibit D, there are seven different types of labor for three different departments listed in the cost model. Three of these are listed as "Law Enforcement." It is unclear from the model what the

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<sup>3/</sup> It should be noted that the City of Lancaster does not have its own police force but contracts with the Los Angeles County Sheriff's Department for all law enforcement issues. See City of Lancaster, Sheriff's Department <http://www.cityoflancasterca.org/index.aspx?page=810>

distinctions between the different law enforcement categories are, or how they relate to Petitioner's conduct. Moreover, it appears that in Petitioner's case the Parks, Recreation and Arts Department did not abate any of the graffiti in Petitioner's case, but nonetheless, Petitioner is being held accountable for their services and subsequently charged. (Exhibit C, p. 21:13-15; Exhibit D, Labor Section, PR&A Direct Labor) In addition, there was no testimony about how the Program Administration/Overhead category listed in under "Labor" in Exhibit D related to Petitioner's conduct at all. And Petitioner would contend that such "overhead" is not an expense that should be attributable to him.

Moreover, there was no evidence about the amount of time any laborer spent on repairing the damage attributed to Petitioner. Instead, the testimony elicited during the hearing was that for the year 2006, the City of Lancaster spent \$965,280 in labor costs relating to graffiti cleanup. (Exhibit C p. 4:9-10.) Therefore, to impute an average of these labor costs to Petitioner is not factually or rationally related to his conduct and is an abuse of discretion.

## **B. Equipment**

Navarro testified that a second element of the cost model is the equipment that is used to abate graffiti. (Exhibit C, p. 5:2-7.) She testified that there were two graffiti trucks owned by the City of Lancaster and that the equipment costs include the sprayers and other equipment that is used to remove graffiti. (*Ibid.*) There was absolutely no testimony if equipment was used to abate the graffiti attributed to Petitioner and if so, which pieces of

equipment. In fact, in the direct testimony of Navarro, shows that the equipment costs listed within Exhibit D are not incurred in *using* the equipment (i.e. mileage, gas, etc.) to abate Petitioner's graffiti, but are costs that deal *solely* with the *amortization*<sup>4/</sup> of the equipment. Upon cross-examination Petitioner's counsel asked Navarro the following:

**Q.** Now at this point in 2006, for the equipment, there is an item for a vehicle that's listed at \$31,025, and it indicates that it is amortized over five ears. Correct?

**Navarro.** Correct.

**Q.** So is your understanding that the cost of the vehicle is divided between the three departments, and the cost is recovered by the city over the next following five years?

**Navarro.** Yes.

(Exhibit C, p. 12:21.)

Counsel then reviewed the amortization for each item of equipment listed in the cost model. (Exhibit C, pp. 15:22-16:22.) There are two issues regarding the amortization of the equipment owned by the City of Lancaster. First, the issue is whether amortization of equipment already in possession of the City of Lancaster prior to Petitioner's conduct constitutes a direct loss pursuant to Welfare and Institutions Code section 730.6 and Penal Code section 1202.4. Although counsel could not find a case on point regarding

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<sup>4/</sup> It should be noted that although the cost model includes amortization it fails to include residual value. Common sense dictates that the equipment is not valueless after the amortization period  
[http://en.wikipedia.org/wiki/Amortization\\_\(business\)](http://en.wikipedia.org/wiki/Amortization_(business))

this issue, it is doubtful whether amortization is a cost that can be attributed to Petitioner for restitution purposes. For instance in every restitution matter the victim or entity involved probably has used a computer, a cell phone, or office equipment in some aspect of repairing the damages caused by a defendant. However, such amortization of office equipment, etc., that is used should not be awarded because it has no causal relationship to the actions of the defendant. Arguably, perhaps there would be a nexus if special equipment was purchased solely to remove graffiti attributed to Petitioner. However, amortization occurs regardless of Petitioner's conduct and should not be attributable to him. Because amortization of pre-existing equipment has no causal relationship to Petitioner's conduct, this expense should not be attributed to Petitioner.

The second issue is even if amortization is a cost directly attributable to petitioner, three of the four items listed in Exhibit D under equipment were fully amortized within two years, meaning that as of 2008, the cost of amortization should not be attributable to anyone, let alone Petitioner, whose conduct occurred in 2011. (Exhibit D, Equipment Section.) In addition, at the time of Petitioner's acts of vandalism the cost of the vehicle with a five-year amortization was almost fully amortized. (*Ibid.*) Therefore it was an abuse of discretion to attribute these costs to Petitioner and include them in the restitution award.

Because there was no evidence about which equipment was used to abate Petitioner's vandalism, and there was no evidence of the costs to the City of Lancaster for the use of the specified equipment, the court abused its discretion by including an average of equipment amortization costs, because those costs are not directly attributable to Petitioner. Moreover, because four out of the five pieces of equipment listed in Exhibit D had been fully amortized by 2008, there was no rational or factual basis to have those amortization costs attributed to Petitioner.

### **C. Materials**

Included in the cost model are yearly costs of six different types of materials used by the City of Lancaster for graffiti abatement. During the hearing Navarro testified in more detail about what exact types of materials are generally used. (Exhibit C, pp. 5:24-6:7.) However, she never testified about the materials used to repair the graffiti caused by Petitioner. In fact, the only testimony that was introduced on this issue is that in 2006 the City of Lancaster spent \$164,022 for graffiti abatement materials. Therefore the court abused its discretion when it adopted the City of Lancaster cost model because it assumes materials costs to Petitioner when there was no evidence of the actual cost of materials used by the City of Lancaster when abating Petitioner's graffiti.

#### D. Contract Services

Another cost that is included in the City of Lancaster Cost Model is contract services that the City of Lancaster uses for graffiti cases. The first is “Graffiti Tracker<sup>5/</sup>.” As Navarro noted in her testimony, this is a program that is used by the Sheriff’s Department and the city to keep track of the graffiti that is going on in Lancaster. (Exhibit C, p. 6:12-17.) According to Navarro they pay Graffiti Tracker to keep track of the photos of Graffiti that they upload on their site. (*Ibid.*) Navarro testified that that annual cost for 2006 was \$41,000. (*Id.* at line 24.) However, she did not detail how the costs are incurred and what if any costs were specifically attributable to Petitioner. Moreover when specifically asked on cross if Graffiti Tracker was used in Petitioner’s case, Navarro could not answer the question because she had no personal knowledge. (*Id.* at p. 17:11-21.)<sup>6/</sup>

Navarro also did not provide any testimony about the camera and computer equipment costs that were listed in Exhibit D under Contract

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<sup>5</sup> For more information on Graffiti Tracker, please see:  
<http://graffititracker.net/>.

According to Graffiti Tracker it is “A comprehensive, web-based system designed to help you **identify, track, prosecute** and seek **restitution** from graffiti vandals.” (Emphasis in original.) Moreover according to its website it is primarily used by law enforcement and public works agencies.

<sup>6/</sup> Even if the City of Lancaster could provide evidence that Graffiti Tracker was used in Petitioner’s case, Petitioner would still contend that expenses from Graffiti Tracker should not be imputed to Petitioner, since those expenses arise out of law enforcement investigation.



Services. There was no testimony about who operates the equipment and how it was used (if at all) in Petitioner's case and the direct costs resulting therefrom. Because there was no evidence of either of these contract services being used in Petitioner's case, there was no rational or factual basis to include these costs. Therefore, it was an abuse of discretion to order restitution and attribute these costs to Petitioner.

#### **E. Traffic Control/Risk Management**

Navarro testified that traffic control is the cost of workers having to go to the site where graffiti is being abated and direct traffic. (Exhibit C, p. 7:13-16.) However, there was no testimony of whether traffic control was needed for any of the sites where graffiti by Petitioner was abated. In addition, there were nine instances of graffiti in six different locations. (*Id.* at p. 9:16-18.) However, since the court ordered the cost model average for each incident, Petitioner *is paying for nine incidents of traffic control when there were only six locations to address*. There was no factual or rational basis to attribute these costs to petitioner, and as such it was an abuse of discretion for the court to include these costs in the restitution award.

The prosecution presented evidence of what losses the City of Lancaster incurred in 2006 and then presented the average amount of what a graffiti incident in 2006 cost the City of Lancaster; however as each of the aforementioned different categories show, the prosecution failed to introduce any evidence of actual losses or services rendered by the City of Lancaster for

Petitioner's conduct in 2011. Pursuant to Welfare and Institutions Code section 730.6, the court must order restitution that reimburses victims for "all determined economic losses incurred as the result of the minor's conduct..." (Welf. & Inst. Code, § 730.6, subd. (h).) Presenting the average cost of a graffiti incident in 2006 maybe helpful to the City of Lancaster for actuarial purposes, but it does not demonstrate "the economic losses incurred as the result of the minor's conduct."

### CONCLUSION

The juvenile court abused its discretion when it computed Petitioner's restitution based on an average cost to the City of Lancaster for vandalism incidents in 2006. The average amount consisted of labor charges, amortization costs, and other factors that should not be borne by Petitioner. Moreover, there was no factual showing that the average cost of a vandalism incident in 2006 reflected actual losses or services rendered by the City of Lancaster, which were directly attributable to Petitioner's conduct.

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As such, the court abused its discretion and the restitution order must be vacated and a new restitution hearing conducted where only the losses suffered by the City of Lancaster in abating Petitioner's graffiti are ordered as restitution.

Respectfully submitted,

RONALD L. BROWN, PUBLIC DEFENDER  
OF LOS ANGELES COUNTY, CALIFORNIA

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## CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to California Rules of Court, the ANSWER BRIEF in this action contains 5,170 words, including footnotes, and is produced using 13 point Roman type. Counsel relies on the word count program of Microsoft Office, 2008, for Macintosh, which was used to prepare this brief.

A handwritten signature in black ink, appearing to read 'R. Durke F. Stacy', written over a horizontal line.

R. DURKE F. STACY  
Deputy Public Defender

**DECLARATION OF SERVICE**

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012;

That on May 17, 2013, I served the within ANSWER BRIEF, L. M., on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

ATTORNEY GENERAL  
STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

PRESIDING JUDGE  
EDMUND EDELMAN CHILDREN'S COURT  
210 CENTRE PLAZA DRIVE  
MONTEREY PARK, CA 91754-2158

HON. BENNY C. OSORIO, JUDGE  
LOS ANGELES SUPERIOR COURT  
LANCASTER JUVENILE COURT  
DEPARTMENT 265  
1040 W. AVENUE J  
LANCASTER, CA 93534

CLERK, CALIFORNIA COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

JACKIE LACEY, DISTRICT ATTORNEY  
APPELLATE DIVISION  
320 WEST TEMPLE STREET, SUITE 540  
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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 17, 2013, at Los Angeles, California.

  
ZENNAIDA GAETOS