

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LUIS M.,	) No. S207314
	)
Petitioner,	) 2d Dist. No.
	) B238460
v.	)
	) (LASC No.
THE SUPERIOR COURT OF THE STATE OF	) MJ20593)
CALIFORNIA FOR THE COUNTY OF	)
LOS ANGELES,	)
	)
Respondent.	)
	)
PEOPLE OF THE STATE OF CALIFORNIA,	)
	)
Real Party in Interest.	)
_____	)

SUPREME COURT  
FILED

MAR 18 2013

Frank A. McGuire Clerk

Deputy

**Original Proceedings**  
From the Superior Court of Los Angeles  
The Honorable Benny Osorio, Judge

**REAL PARTY'S OPENING BRIEF ON THE MERITS**

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	)	<b>(LASC No.</b>
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LOS ANGELES,	)	
	)	
Respondent.	)	
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PEOPLE OF THE STATE OF CALIFORNIA,	)	<b>OPENING BRIEF</b>
	)	<b>ON THE MERITS</b>
Real Party in Interest.	)	
	)	

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**ISSUE PRESENTED FOR REVIEW**

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?

**STATEMENT OF THE CASE AND FACTS**

On July 14, 2011, Petitioner Luis M. (hereafter Petitioner), pled to one count of felony vandalism in violation of Penal Code section 594, pursuant to a Welfare and Institutions Code<sup>1</sup> section 602 wardship petition.

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1. All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

(Exhibits A and B.)<sup>2</sup> He was placed on section 790 Deferred Entry of Judgment probation. (Exhibit B.)

On November 17, 2011, a restitution hearing was held in this matter, the Honorable Benny Osorio, judge presiding. (Exhibit C, p. 1:1-4.) During the hearing, Ms. Marlene Navarro (hereafter Ms. Navarro) testified that she was a crime prevention officer for the City of Lancaster (hereafter the City), which had been her job for four years. (*Id.* at pp. 2:25-3:3.) She stated that one of her job duties was to determine the costs of restitution for cleaning up graffiti in the City. (*Id.* at p. 3:3-7.) In this case, in order to determine the amount of restitution owed to the City, she relied upon a document called the City of Lancaster Graffiti Mitigation Cost Model (hereafter Cost Model). (Exhibit C, p. 3:8-11; Exhibit D.) The Cost Model was dated 9/5/2006 and was created with figures from 2006. (Exhibit C, p. 4:17-21; Exhibit D.)

The Cost Model reflected that the average cost to the City to clean up one incident of graffiti is \$431.32. (Exhibit C, pp. 7:26-8:1.) The Cost Model created five expense categories (labor, equipment, materials, contract services, and traffic control/risk management), attributable to graffiti removal by three of its departments (Public Works Abatement, Public Works Traffic, and Parks, Recreation, and Arts). (*Id.* at pp. 4:22-6:28.) The total amount of the five cost categories for the three departments was \$1,381,208. (*Id.* at p. 7:1-18.) The City then divided that number by the total number of calls for graffiti removal service that it received in 2006, which was 3,200 incidents, for an average cost of \$431.32 to repair one incident of graffiti. (*Id.* at pp. 7:18-8:1.) Ms. Navarro multiplied that number by the nine incidents of

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2. All exhibits referenced herein are attachments to Petitioner's Petition for Writ of Mandate.

graffiti attributable to Petitioner and requested a restitution award in the amount of \$3,881.88. (*Id.* at pp. 8:15-9:11.) Petitioner's conduct involved nine incidents of tagging in six different locations: on a street arrow sign, on a high voltage electrical box, on a green metal electrical box, and on multiple green and gray metal electrical boxes. (*Id.* at pp. 9:9-10:1.) Petitioner also tagged on a wall or a fence that did not belong to the City and that incident was not included in the restitution order. (*Id.* at p. 10:3-12.)

The trial court ordered restitution in the amount requested: \$3,881.88. (Exhibit C, p. 32:12-14.) In support of its order, the trial court explained that the purpose of using a cost model was to obtain a close estimate of the cost to repair property damage because the effort to ascertain the actual cost of repair could easily rise to an absurd level:

But this estimate that the city is using is based on a cost model of their annual costs divided by a certain amount to try to get as close as possible to what it should cost to fix the walls or the property damage.

Because at a certain point in time we can be going back and forth as to the cost of the paint; whether it was made in the United States or whether it was made in a foreign country. Was the labor cost in a foreign country cheaper than it was here? Was the packaging? The production? The marketing? All that.

(*Id.* at p. 29:1-10.)

Petitioner filed a Petition for Writ of Mandate in the Court of Appeal contesting the restitution award. He contended that the average cost of repair of graffiti, as computed by the City, included costs that were not attributable to him and did not reflect the actual losses incurred by the City for his conduct.

Real Party, the People of the State of California (hereafter the People), opposed the Petition for Writ of Mandate arguing as follows: (1) that the standard of review of a trial court's restitution order is for abuse of

discretion and such order may not be overturned unless arbitrary or capricious; (2) that the trial court's reliance on the City's average cost per incident of graffiti removal was indeed rational; (3) that the trial court's reliance on the average cost model was neither arbitrary nor capricious; and (4) that there is no requirement that a restitution order be limited to the exact amount of loss.

On October 31, 2012, the Court of Appeal granted the Petition, holding as follows:

Here, the estimate was based on an average of all costs of graffiti cleanup, with no consideration of *any individualized facts*, such as the type of graffiti Luis placed on public property *and the extent of the efforts necessary to remove it...*[¶] In sum, the City's restitution model cannot provide the basis for calculating a restitution award, in that it includes sums which are not economic losses by the direct victim of Luis's graffiti vandalism, and the sums included for cleanup do not reflect the *actual cost* of the graffiti cleanup.

(Slip Opn.,<sup>3</sup> pp. 7-8, italics added.)

On November 15, 2012, the People filed a Petition for Rehearing, which was denied on November 30, 2012. (Docket, Case No. B238460, found at the official website of the California Court of Appeal at <http://appellatecases.courtinfo.ca.gov>.) The People sought Review of the Court of Appeal's decision by this Court in a Petition which was granted on February 13, 2013. This brief is submitted on the merits in support of reversing that opinion.

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3. The Court of Appeal's opinion is attached to the People's Petition for Review.

## ARGUMENT

### I

WHEN A LARGE CITY IS THE CRIME  
VICTIM IN A GRAFFITI CASE, THE USE  
OF AN AVERAGE COST MODEL TO  
CALCULATE RESTITUTION IS  
REASONABLE

### A

Pursuant To The California Constitution And  
To Section 730.6, Restitution Is Mandatory To  
Any Legal Entity Which Has Suffered An  
Economic Loss Due To Crime, Including In  
Juvenile Delinquency Matters

Following the passage in 1982 of Proposition 8, the state Constitution was amended, as follows, to create a constitutional right to restitution for victims of crime:

It is the *unequivocal intention* of the People of the State of California that all persons who suffer losses as a result of criminal activity *shall have the right to restitution* from the persons convicted of the crimes for losses they suffer. [¶] Restitution *shall* be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.

(Cal. Const., art. I, section 28, subd. (b), italics added.)

Section 730.6, governs restitution in cases where a minor is found to be a ward of the court pursuant to section 602. The statute parallels Penal Code section 1202.4, which governs adult restitution. In pertinent part, section 730.6 provides:

- (a)(1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct *shall* receive restitution directly from that minor. [¶]
- (2) The court *shall* order the minor to pay, in addition to any

other penalty provided or imposed under the law, both of the following: [¶] ... [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

(Section 730.6, subs. (a)(1) & (a)(2)(B), italics added.)

Clearly, therefore, pursuant to both the California Constitution and to statutory law, restitution to crime victims is mandatory, even in delinquency juvenile matters. In addition, restitution is available not just to *persons* who are victims of crime but to “any legal entity.” (Section 730.6, subdivision (k).)

## B

### **Courts Have Broad Discretion in Awarding Restitution; The Award Must Be Logical And Rational, But Need Not Be Exact, And A Large City’s Reliance Upon An Average Cost Model To Calculate Restitution In Graffiti Cases Is Both Logical And Rational**

“The juvenile court is vested with discretion to order restitution in a manner that will further the legislative objectives of making the victim whole, rehabilitating the minor, and deterring future delinquent behavior.” (*In re Tommy A.* (2005) 131 Cal.App.4th 1580, 1587-88; *In re Brian N.* (2004) 120 Cal.App.4th 591, 593-594.) The standard of review of a restitution order is abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132 (hereafter *Johnny M.*)) A victim’s restitution right is to be broadly and liberally construed. (*In re Brian N., supra*, 120 Cal.App.4th at pp. 593-594.) “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” (*In re Brian N., supra*, 120 Cal.App.4th at pp. 593-594; *Johnny M., supra*, 100 Cal.App.4th at p. 1132.) The court abuses its discretion when it acts contrary to law or fails to “use a rational

method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.” (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) The California Court of Appeal has also stated:

While the amount of restitution cannot be arbitrary or capricious, *there is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable*, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action.

(*In re Dina V.* (2007) 151 Cal.App.4th 486, 489 (hereafter *Dina V.*); *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391, italics added (hereafter *Brittany L.*))

Specifically, *Dina V.* held that judges are not limited by the rigid application of tort law and instead have broad discretion to determine the amount of restitution. (*Dina V., supra*, 151 Cal.App.4th at p. 489.) In *Dina V.*, the minor challenged the order directing her to pay \$4,419.72 in restitution to repair a car valued at \$3,000.00. Noting that section 730.6, subdivision (h), and Penal Code section 1202.4, subdivision (f), each specifically permits the trial court to order restitution in the amount of the costs of repair, the *Dina V.* court rejected the application of rigid civil tort damages assessments to restitution and agreed with the victim’s contention that he should not have to find a replacement vehicle on his time and at his expense, merely because the cost of repair was higher than the replacement cost. (*Ibid.*)

Also, specifically, in *Brittany L.*, the juvenile court found that the minor, who had thrown eggs at her neighbor’s house for not handing out Halloween candy, committed felony vandalism in excess of \$400.00. (*Brittany L., supra*, 99 Cal.App.4th at p. 1384.) The eggs had damaged the neighbor’s house and driveway, and it cost \$3,500.00 to clean and repaint the

house and \$3,800.00 to repair the driveway, which had to be resurfaced with epoxy and pebble stones because power washing did not remove the egg stains. (*Id.* at p. 1385.) The insurance deductible on the house was \$500.00, but the neighbor did not submit the cost for repairing the driveway to his insurer because he believed that the additional claim would increase his insurance premium. (*Ibid.*) The juvenile court ordered the minor to pay restitution in the amount of the \$500.00 deductible, but nothing for the driveway repair. (*Ibid.*) The Court of Appeal reversed the disposition order and remanded with directions to conduct a new restitution hearing, holding that the juvenile court had erred in failing to order restitution in an amount necessary to fully reimburse the victims without regard to reimbursement from other sources. (*Id.* at p. 1392.) In so ruling, the *Brittany L.* court again rejected the application of civil tort damages assessment to restitution, restated that there is no requirement that a restitution order be limited to the exact amount of loss in which the defendant is actually found culpable, and reiterated that the court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole. (*Id.* at p. 1391.)

The court's broad discretion has specifically been applied to permit the use of a sales cost estimate in awarding restitution in a music piracy case. In *People v. Ortiz* (1997) 53 Cal.App.4th 791, 794 (hereafter *Ortiz*), the defendant was convicted of one count of selling pirated music cassette tapes. A trade association formed by individual Latin America music labels to combat recording piracy was held to be the direct victim of defendant's crimes. (*Id.* at pp. 795-796.) The Court of Appeal awarded restitution to the trade association in the amount of \$2,000.00, representing the estimated number of pirated music cassette tapes sold by the defendant (2,000) multiplied by a conservative estimated loss of \$1 per tape. (*Id.* at p.

799.) The court's broad discretion in determining restitution has otherwise been expansively applied in California. (See, e.g., *Johnny M.*, *supra*, 100 Cal.App.4th at p. 1133 [reasonable value of employee work product lost upheld]; *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046 [estimated cost of a Hmong healing ceremony upheld]; *People v. Baker* (2005) 126 Cal.App.4th 463, 467 [substantial evidence supported finding that stolen cows bore calves each year while in defendant's possession and quadrupling restitution under Food and Agriculture code was not an abuse of discretion]; *People v. Mearns* (2002) 97 Cal.App.4th 493, 514-515 [relocation expenses incurred by rape victim upheld]; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1126-1127 [restitution upheld for property damaged in an accident from which the defendant unlawfully fled]; *In re Alexander A.* (2011) 192 Cal.App.4th 847, 851-853 [restitution upheld for a vandalized car's repair cost of \$8,219.00, rather than the replacement cost which ranged from \$1,795.00 to \$5,300.00.] *People v. Stanley* (2012) 54 Cal.4th 734, 739 [restitution upheld for cost to repair victim's vandalized truck, which was higher than the amount the victim had spent to buy the truck].)

Other jurisdictions are in accord with the finding that courts have broad discretion in awarding restitution. (See, e.g., *Jones v. Commonwealth* (Ky. 2011) 382 S.W.2d 22, 32 [The trial court has broad discretion in determining restitution.]; *In re Earl F.* (2012) 208 Md.App. 269, 276 [56 A.3d 553] [It is long established that in Maryland, juvenile courts have broad discretion to order restitution, either against a juvenile himself, a parent, or both.]; *In re William L.* (2005) 211 Ariz. 236, 239 [119 P.3d 1039] [To ensure that the victim is made whole, the court has broad discretion in setting the restitution amount based on the facts of the case.]; *State v. Kinneman* (2005) 155 Wash.2d 272, 282 [119 P.3d 350] [Courts have broad discretion when determining the restitution amount.]; *State v. Tenerelli*

(Minn.1999) 598 N.W.2d 668, 672 [Broad applicable statutory language gives sentencing court wide discretion when ordering resituiton.]; *In re J.G.* (Pa. Super. 2012) 45 A.3d 1118, 1120 [Court enjoys broad discretion when deciding whether to impose restitution as part of overall goal of apportioning responsibility and accountability.]; *People v. Robb* (Colo.App. 2009) 215 P.3d 1253, 1264 [Trial court has broad discretion in determining the appropriate terms and conditions of restitution, and the court's ruling will not be disturbed absent an abuse of discretion.]; *State v. Schultz* (Ct.App. 2008) 148 Idaho 884, 886 [231 P.3d 529] [Decision whether to require restitution is committed to the trial court's discretion, whose findings will not be disturbed if supported by substantial evidence.]

Accordingly, trial courts have broad discretion in ordering restitution. Indeed, in California, a restitution order does not have to reflect the exact amount of a victim's actual loss, it merely has to be logical and rationally based. (*In re Anthony M., supra*, 156 Cal.App.4th at p. 1016; *Dina V., supra*, 151 Cal.App.4th at p. 489; *In re Brittany L., supra*, 99 Cal.App.4th at p. 1391.) Particularly under circumstances as in this case where it is impractical or nearly impossible to obtain the exact amount of restitution, a large city's reliance on an average cost model to calculate a restitution award is both logical and rational.

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## C

### Requiring A Large City to Prove The Actual Costs Of Graffiti Removal In Every Graffiti Vandalism Case Would Be Unduly Burdensome, Nearly Impossible, And Would Almost Guarantee That Vandals Would Escape The Payment Of Restitution In Such Matters

The Court of Appeal's opinion disapproved of the City's Cost Model, stating that it "was based on an average of all costs of graffiti cleanup, with no consideration of *any individualized facts*, such as the type of graffiti Luis placed on public property *and the extent of the efforts necessary to remove it.*" (Slip Opn., p. 7, italics added.) In addition, the Court of Appeal's opinion stated that the City's restitution model cannot provide the basis for calculating a restitution award because "...the sums included for cleanup do not reflect the *actual cost of the graffiti cleanup.*" (Slip Opn., p. 7, italics added.) The impact and intent of the statements, particularly those in italics, are contrary to prior court rulings on restitution and create a conflict in the case law. Indeed, without specifically stating that the use of cost models are prohibited, the language indicates that the use of an average cost model by a large city is never appropriate in a graffiti case and that a restitution award would always require the inclusion of, individualized facts, specific information about the extent of the city's efforts to remove the graffiti, and the city's actual costs of removal and repair. As discussed below, this creates an untenable situation.

It would be impractical and unduly burdensome to require a large city to specifically track the extent of its graffiti removal efforts and its actual costs in every single one of thousands of incidents it handles in a year. As previously stated, the City responded to 3,200 incidents of graffiti in 2006. (Exhibit C, p. 7.) Seven years later, the problem of juvenile graffiti continues

and if anything, those numbers are likely to have risen; one only has to drive through certain parts of any large city to form this conclusion. Employees, who are hired by any city to clean, remove, or repair graffiti, are unlikely to be equipped to make a reliable record of their efforts. Therefore, if cost models are prohibited and actual cost records become necessary, a city would be required to hire other employees, supervisors with training in this regard, to keep track of the size and location of the graffiti, how long it took to remove it, what work was done to remove it, whether a sprayer, sandblaster, high water pressure or other equipment was used, how much/what kind of solvent was used to remove it, or paint to cover it. A city would also have to hire employees to create a computer database to preserve that information, as well as employees responsible for inputting the information into the database and for maintaining the database and to make it searchable if the perpetrator is apprehended. 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. Then, the costs of maintaining a graffiti damages assessment team would also become another reimbursable cost to the city, actually increasing the amount of restitution a minor would owe. Such labor costs were upheld in *Johnny M.*, *supra*, 100 Cal.App.4th at p. 1134. In that case, a minor was declared a ward of the juvenile court following his admission to destruction of school property. The juvenile court ordered the minor to pay restitution in an amount that included not only reimbursement for property damage, but also the labor costs of salaried employees who repaired the damage. (*Ibid.*) The minor appealed and the Court of Appeal affirmed the restitution order, holding that a restitution award may properly include the reasonable value of employee work product lost as a result of the criminal conduct of another. (*Id.* at p. 1134.) The Court of Appeal reasoned as follows:

Any other rule would encourage public entities and other victims to incur out-of-pocket expenses rather than try to repair

damage to property in-house, an anomalous result given that the likelihood of actually receiving reimbursement from a criminal defendant via restitution order is problematic at best. No public policy is served by such a rule....

*(Ibid.)* The Court of Appeal also observed in that case:

Particularly in light of restitution being available to “any legal entity” (Sec. 730.6, subd. (k)), courts must remain mindful of real world business considerations in calculating loss.

*(Id. at p. 1133.)*

Numerous anomalous results are inherent in the creation of an actual cost scheme so burdensome that cities are likely to opt out of any recoupment efforts. The costs of determining the amount of restitution would outweigh the restitution. Graffiti vandals would escape the payment of criminal restitution, even though full victim restitution is both constitutionally and statutorily mandated. The gravity of the harm would not be fully imposed upon the vandal and there would be no deterrent effect on offenders or their parents if they are not required to bear the cost of their deeds. Finally, such a scheme would fail to protect a large city’s fiscal integrity by requiring it to hire and pay more specially trained employees and expend more money in order to recoup its losses for the removal, cleanup, and repair of graffiti.

Accordingly, the People urge this Court to reverse the decision of the Court of Appeal and determine that an average cost model may serve as a rational basis for calculating restitution in graffiti cases where a large city is the crime victim.

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## D

**Since Statutory Law Already Provides That A City May Rely Upon A Cost Model To Recover For Graffiti Removal Through Probation, A Trial Court Should Also Be Permitted To Rely Directly Upon A Cost Model To Calculate Restitution**

Sections 742.14 and 742.16 are parts of the Graffiti Removal and Damage Recovery Program enacted by the Legislature in 1994. (Stats. 1994, ch. 909, § 11, p. 4603, et seq.) The Program requires minors who have committed acts of vandalism and other malicious mischief to pay for the damage they cause. (Section 742.16, subd. (b); Section 742.14 subds. (a) and (c).) It also provides for a city to create a cost model if the city elects by ordinance to have the probation officer of the county recoup its losses due to a minor's act of graffiti vandalism. (Section 742.14, subd. (a).) The statute states in pertinent part on that subject:

(c) If a city enacts an ordinance pursuant to ... subdivision (a), the ordinance ... shall contain findings ... of the average cost to the city ... per unit of measure of removing graffiti and other inscribed material and of repairing and replacing property of the types frequently defaced with graffiti or other inscribed material that cannot be removed cost effectively. ... Findings of costs per unit of measure include, but are not limited to, findings of the costs per square inch of removing painted graffiti or of the costs per item of replacing items that have been etched.

(Section 742.14, subd. (c).)

Because it is lawful for the probation department, in order to collect restitution for a city, to rely on the city's findings of its average costs to clean up vandalism, then it should not be an abuse of discretion for a trial court to also directly rely on such an average. Accordingly, the People urge this Court to reverse the decision of the Court of Appeal and

determine that an average cost model may serve as a rational basis for calculating restitution in graffiti cases where a large city is the crime victim.

E

**A City's Average Cost Model Should Be Based On The Average Cost To A City Per Unit Of Measure Of Removing, Cleaning, Or Repairing Graffiti And Should Include, But Not Be Limited To, The City's Labor Costs, Property Damage Costs, And Law Enforcement Costs Associated With Correcting Property Damage**

The Court of Appeal's opinion specifically disapproved of the City's Cost Model due to some of its components, including law enforcement costs (because according to the opinion, they included investigatory costs and not just the costs of correcting the consequences of vandalism), the general costs of maintaining vehicles and equipment used in graffiti abatement, and the costs of contract services for tracking graffiti. (Slip Opn., pp. 6-7.) A cost average should include, but not be limited to, a city's labor costs of employees who repair graffiti damage as well as the costs to repair the damage (e.g., the costs of solvents or paint or replacement). As previously discussed *infra*, the Court of Appeal held in *Johnny M.*, *supra*, 100 Cal.App.4th at p. 1134, that a restitution award may properly include the reasonable value of employee work product lost as a result of the criminal conduct of another.

Accordingly, a cost model should include, but not be limited to, labor costs and the costs of fixing, repairing, or replacing the damaged property. In the case at bar, the City hired sheriff deputies to respond to graffiti calls to identify, photograph, and investigate it. (Exhibit C, p. 3:17-26.) To the extent that law enforcement is involved in a graffiti matter in a manner which is outside of the scope of their ordinary duties (e.g., arrest and

investigation), and which assists with the repair or replacement of the defaced property, then such law enforcement costs should also be included in a cost model.

The Court of Appeal criticized the City Cost Model for not taking any individualized facts into consideration. (Slip Opn., p. 7.) An average cost model should be based upon the average cost per unit of measure to remove, clean, or repair damaged property. Petitioner in this case placed graffiti on one street sign and eight electrical boxes. (Exhibit C, pp. 9:9-10:1.) These property items, though somewhat numerous, were likely to have all been relatively small objects versus a case where a minor defaces an entire wall. Therefore, a cost model should be based on the average cost to a city per a unit of measure (e.g., a square inch or square foot) to remove, clean, or repair graffiti. As also previously discussed *infra*, sections 742.14 and 742.16 already provide for a city to create such a cost model if the city elects by ordinance to have the probation officer of the county recoup its losses due to a minor's act of graffiti vandalism. (Section 742.16, subd. (a).) Similarly, if a city creates a cost model to collect directly for itself restitution for property damaged due to graffiti rather than try to recoup its losses through the county probation officer, the cost model should be based on the average cost per unit of measure to remove, clean, or repair the graffiti.

Accordingly, the People urge this Court to reverse the decision of the Court of Appeal, determine that an average cost model may serve as a rational basis for calculating restitution in graffiti cases where a large city is the crime victim, and determine that a city's average cost mode should be based on the average cost per unit of measure to remove, clean, or repair the graffiti and should include but not be limited to the city's labor costs, property damage costs, and to those law enforcement costs specifically associated with correcting property damage.

**CONCLUSION**

For the foregoing reasons, the decision of the Court of Appeal below should be reversed.

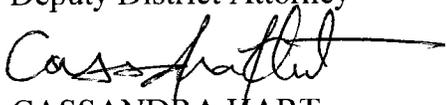
Respectfully submitted,

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**CERTIFICATE OF WORD COUNT**

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed Petition for Review contains approximately 4,714 words including footnotes, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.



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DECLARATION OF SERVICE BY MAIL

The undersigned declares under the penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple, Suite 540, Los Angeles, California 90012-3266. On the date of execution hereof I served (“**OPENING BRIEF ON THE MERITS**”) the attached document by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the County of Los Angeles, California, addressed as follows:

HONORABLE BENNY C. OSORIO, JUDGE  
Los Angeles Superior Court  
Lancaster Juvenile Court  
Department N-285  
1040 W. Avenue J  
Lancaster, California 93534

PRESIDING JUDGE  
Edmund Edelman Children’s Court  
210 Centre Plaza Drive  
Monterey Park, CA 91754-2158

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300 South Spring Street  
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I, further declare that I served the above referred-to document by hand, delivery a copy thereof addressed to:

ROURKE, STACEY, Public Defender’s Office  
Appellate Branch  
320 West Temple Street, Room 590  
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Executed on March 15, 2013, at Los Angeles, California.

  
MARTHA PAEZ