

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MARY THOMPSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SANTA CLARA COUNTY OPEN SPACE
AUTHORITY, DOES 1-50, inclusive,

Defendants.

SILICON VALLEY TAXPAYERS ASSN.,
INC., HOWARD JARVIS TAXPAYERS
ASSN., ERIC and VIVIAN BRACHER,
THEODORE FELTON, MARY THOMPSON,
B.F. HENSCHKE, RICHARD ORLANDO,
individuals,

Plaintiffs,

vs.

SANTA CLARA COUNTY OPEN SPACE
AUTHORITY, DOES 1-50, inclusive,

Defendants.

Case No.: 1-02-CV-804474

[Consolidated with
1-03-CV-000705 and
1-07-CV-094261]

**ORDER RE FINAL APPROVAL OF
CLASS ACTION SETTLEMENT
AND FOR ATTORNEYS' FEES
AND LITIGATION EXPENSES**

Hearing Date: July 31, 2009
Time: 9:00 AM
Dept.: 17C (Complex Civil)

Judge: Hon. Jack Komar

Exhibit A

1 The hearing on Plaintiffs' Motion for Final Approval of the Taxpayer and Class Action
2 Settlement and for Attorneys' Fees and Litigation Expenses came on regularly for hearing on
3 July 31, 2009 at 9:00 a.m. in Department 17C (Complex Civil Litigation), the Honorable Jack
4 Komar presiding. The appearances are as stated in the record. The Court, having read and
5 considered the supporting and opposing papers, and having heard and considered the arguments
6 of counsel, and good cause appearing therefore, makes the following order:

7
8 **ORDER**

9 The court grants the requests for judicial notice in their entirety. The relevance is to
10 demonstrate the history of this rather extensive litigation.

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12 The court has reviewed the settlement agreement, considered the objections to the
13 settlement, and concludes that the settlement is fair and reasonable and should be approved in
14 the main.

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16 The principal issue in this consolidated litigation, after the California Supreme Court
17 decision finding that the assessments in District Two violated the provisions of Proposition 218,
18 was the right of taxpayers who paid the assessment to receive a refund for the six year period
19 during which assessments were paid. As the parties negotiated to resolve that issue, the
20 questions involving assessments in District One became part of the negotiations. The settlement
21 in this matter resolves both issues for all class members, eliminating future litigation for the
22 Open Space Authority and the class members over those issues.

23
24 The court has received objections from approximately 30 class members to this
25 settlement. The objections, for the most part, express dissatisfaction with the fact that the
26 lawsuit was filed at all and would prefer that the Open Space Authority not have to repay
27 assessments and that it continue to make future assessments. Many of the objections also object
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1 to the amount of attorneys' fees. The court will view one objector's suggestion that the
2 attorneys be *jailed* as frivolous and an example of free speech hyperbole.

3
4 The court does find the settlement and compromise of the issues in the case to be fair
5 and reasonable under the circumstances of the case and therefore approves the settlement.
6 Those objectors, and any others, who desire that the Open Space Authority retain their
7 assessments have the option of not requesting reimbursement. The objections of those who
8 object to the outcome of the litigation are overruled. The California Supreme Court decision is
9 the law of the case.

10
11 As an integral part of the settlement, the court certifies the class as all those who paid
12 the Open Space Authority's assessments during the class period. The court finds that the class is
13 ascertainable, the claims are typical among class members, common issues of fact and law
14 predominate, and there is a community of interest among the class members. There is value to a
15 class action. The court further finds that the class representative is adequate and competent and
16 has no interest antagonistic to the class members and that class counsel is adequate and
17 competent to represent the class and has competently and effectively done so.

18
19 As to the question of reasonable attorneys' fees and costs, the court finds that the
20 attorneys for the plaintiffs are entitled to reasonable fees and costs. This litigation was
21 significant and rather monumental. The consequences of the outcome extend well beyond Santa
22 Clara County. The decision of the Supreme Court is a binding interpretation of Proposition 218,
23 settling a much debated legal issue. Whether one favors the outcome of the litigation or not (and
24 it is certain that some members of the class would have desired that the suit not be filed), the
25 final decision did create certainty in the law of special assessments. There is a very clear public
26 benefit to having a binding interpretation of the law and it will doubtless save the citizens of this
27 state from significant future litigation and other costs far into the future apart from the benefit
28 that accrues to the class members.

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2 The agreement of the defendant to pay attorneys' fees was negotiated by the parties as
3 part of the overall settlement of the lawsuit. The amount to be paid does not come out of the
4 settlement to be paid to the class members, all of whom will be reimbursed the full amount of the
5 assessments paid, albeit without interest since that was the negotiated settlement. Accordingly,
6 this is neither a common fund case nor a benefit to the class case, so far as the determination of
7 what fees should be paid to counsel.

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9 Were it otherwise, the court would begin the inquiry by examining the lodestar
10 computation method in evaluating what is a reasonable attorneys' fees in this case. Counsel has
11 submitted billing records and the court has reviewed them. The Tanke firm shows a total lodestar
12 computation based upon its hourly rate structure of \$2,446,347.50. The Bittle and Copal firm
13 shows billings of \$151,775. The hourly rate of \$650 is at the very high end of acceptable billing
14 rates. However, based upon the extensive experience and quality of work of counsel, the court
15 finds the lodestar computation to be reasonable. Further, based upon the outcome, the contingent
16 nature of the litigation, and the benefit to the class and the public, the court finds that a multiplier
17 is warranted. Because the fees do not in any way diminish the reimbursement to the class
18 members, and are paid by the defendant as part of the negotiation of the settlement, the court will
19 not engage in a discussion regarding the size of the multiplier. Counsel shall receive fees as
20 prayed for.

21
22 The attorneys are entitled to actual costs expended, in accordance with the agreement,
23 up to a maximum of \$75,000.


24
25 The court authorizes counsel to pay an incentive award to class representative Mary
26 Thompson of \$5000. The court denies the request to pay an incentive award to the Silicon
27 Valley Taxpayers Association. The law does not permit payment to a party to the lawsuit who is
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1 not a class representative. The Association's lawsuit, consolidated with the class action, was on
2 behalf of the Association only and it was not a class representative.

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4 Counsel for plaintiffs shall prepare a judgment in conformity with this order. Among
5 other matters to be placed in the judgment, the judgment must name the parties who have opted
6 out of this litigation and should specify that all sums not paid to satisfy claims or to pay the
7 attorneys' fees and costs or incentive payments remain the funds of the Santa Clara County
8 Open Space Authority. Plaintiffs' request for special findings is denied.

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10 SO ORDERED.

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12 Dated: September 18, 2009

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15 Honorable Jack Komar
16 Judge of the Superior Court
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