

Oct 7, 2009 3:07 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-02-CV-804474 Filing #G-18452
By R. Walker, Deputy

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8 *Attorney for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

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

13 *Plaintiffs,*

14 v.

15 **SANTA CLARA COUNTY OPEN**
16 **SPACE AUTHORITY, DOES 1-50**
17 **INCLUSIVE,**

18 *Defendants.*

19 **SILICON VALLEY TAXPAYERS**
20 **ASSN., INC., HOWARD JARVIS**
21 **TAXPAYERS ASSN., ERIC and**
22 **VIVIAN BRACHER, THEODORE**
23 **FELTON, MARY THOMPSON, B.F.**
24 **HENSCHKE, RICHARD ORLANDO,**
25 **individuals,**

26 *Plaintiffs,*

27 v.

28 **SANTA CLARA COUNTY OPEN**
SPACE AUTHORITY, DOES 1-50
INCLUSIVE,

Defendants.

CASE NO. 1-02-CV804474
(Consolidated with 1-03-CV000705 &
1-07-CV-094261)

FINAL JUDGMENT BY COURT

1 This consolidated taxpayer and class action came before the court on July 31, 2009
2 on plaintiffs' motions for final approval of a class action settlement and an award of
3 attorney's fees and litigation expenses as provided in the settlement.

4 Tony J. Tanke of the Law Offices of Tony J. Tanke appeared for plaintiffs Silicon
5 Valley Taxpayers Association, Inc. (SVTA), Howard Jarvis Taxpayers Association
6 (HJTA), Eric Bracher, Vivian Bracher, Theodore Felton, Mary Thompson, B.F.
7 Henschke, and Richard Orlando. James R. Parrinello and Christopher Skinnell of
8 Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP and William Parkin of Wittwer
9 & Parkin LLP appeared for defendant Santa Clara County Open Space Authority (OSA).
10 Objectors filed written objections as shown by the record.

11 On June 12, 2009, the court granted plaintiffs' motion for preliminary approval of
12 class action settlement, provisionally certified a class, appointed the Garden City Group
13 as the Claims Administrator, directed notice to the class, and set a briefing schedule for a
14 final approval and fairness hearing on July 31, 2009. On June 30, 2009, the court
15 approved the final version of the class notice. The Claims Administrator has filed proof
16 of mailing of the Settlement Hearing Notice and Refund Claim to class members whose
17 addresses could be ascertained. The court finds that due notice has been given to the
18 class.

19 After considering the objections to the settlement and to the fee-and-expense
20 award and the evidence and arguments presented by the parties and the objectors, both
21 oral and written, the court issued on September 21, 2009 its Order re: Final Approval of
22 Class Action Settlement and for Attorneys' Fees and Litigation Expenses. That order is
23 incorporated by reference herein. Good cause appearing, the court hereby directs final
24 judgment to be entered as follows:

25 1. As an integral part of the settlement, the court certifies the following class:
26 "Any person who paid the District Two Assessment between tax years 2002-03 to
27 2007-08, who does not exclude himself or herself from the class." The court finds that
28 the class is ascertainable, the claims are typical among Class Members, common issues of

1 fact and law predominate, and there is a community of interest among Class Members.
2 There is value to a class action. The court further finds that the class representative is
3 adequate and competent and has no interest antagonistic to the Class Members and that
4 class counsel is adequate and competent to represent the class and has competently and
5 effectively done so.

6 2. Based on written requests for exclusion submitted to the Claims
7 Administrator, the court finds that each of the following persons has voluntarily opted out
8 of the class, is not bound by the terms of the Settlement Agreement or this final judgment,
9 and retains whatever rights, duties, or obligations are otherwise provided by law, if any:

10 Raymond and Marlys Aldana
11 4474 Tomrick Ave.
San Jose, CA 95124

Janet Arsenault
1312 Meadowlark Ave.
San Jose, CA 95128

12 Mahmoud Ascarie
13 Parvaneh Pourakbar
14 1000 Empey way
San Jose, CA 95128

Murielle Baillin
2423 Jubilee Lane
San Jose, CA 95131

15 James & Claudine Baxter
16 2655 Warburton Ave.
Santa Clara, CA 95051

Warren E. Bent
1890 Creek Drive
San Jose, CA 95125-1842

17 Jack & Helen Bohan
18 1116 Waterton Lane
San Jose, CA 95131-2779

Jack L. Bohan
Aren Newkirk
5555 Felter Road
San Jose, CA 95132-3432

19 Sidney D. Capillas
20 Anna Maria M. Capillas
1835 Platinum Ct
San Jose, CA 95116

Elsie M. Cataldo
P.O. Box 36071
San Jose, CA 95158

21 Rollin C. Chew
22 And Nancy L. Gilbert Trustee
23 7828 Creeklane Dr
Cupertino, CA 95014

Kelvin & Nancy Chung
716 Cimity Court
San Jose, CA 95138

24 Antoinette Colla
25 290 E. Mission St.
San Jose, CA 95112-5010

Eleanor L. Cullen
880 Villa Teresa Way
San Jose, CA 95123

26 Jeanne Davies
27 1172 Lynbrook Way
San Jose, CA 95129

Gordon and Leeanne Denise Tam
5844 Alcazar Drive
San Jose, CA 95123

1	Randolph L. Douglas	Ramona-Alday Espinoza
2	W. Joan Tatem Douglas	P.O. Box 273
3	860 Tybalt Drive	Alviso, CA 95002
4	San Jose, CA 95127-3646	
5	Leona and Manuel Fernandez	Jose & Maria Flores
6	1201 W. Campbell Ave.	10244 Ash Creek Lane
7	Campbell, CA 95008	Fort Worth, TX 76177
8	Loren & Terri Gessell	Scott D. Henderson
9	279 Bayview Ave.	1070 Vista Del Mar
10	San Jose, CA 95127-2202	San Jose, CA 95132
11	Mark & Linda Hinkle	Robert M. Hintz
12	17545 Chesbro Lake Drive	2029 Emory Street
13	Morgan Hill, CA 95037	San Jose, CA 95128
14	Ruth & Wesley Kyles	Beatrice F. Perez
15	P.O. Box 864	327 Washington St
16	Morgan Hill, CA 95038	San Jose, CA 95112
17	George & Jenny Rhoten	Anthony & Judith Rizzuto
18	70 Valleyhaven Way	5672 Park Crest Drive
19	San Jose, CA 95111	San Jose, CA 95118
20	Ricardo and Celia Salinas	The Estate of Henry Sato
21	2746 Swan Lane	c/o Jonathan Sato Trustee
22	Los Banos, CA 93635-9451	681 Charmain Drive
23		Campbell, CA 95008-1823
24	Andrew E. and Bonnie J. Voorhies	Daniel Cramer Washabaugh
25	609 La Maison Dr	2779 Aldworth Dr
26	San Jose, CA 9512	San Jose, CA 95148
27	Virginia White	
28	6238 Valroy Drive	
	San Jose, CA 95123	

20 No other timely requests for exclusion were received.

21 3. Except as expressly provided below, plaintiffs' motion for final approval of
22 the Settlement Agreement, attached hereto as Exhibit A and incorporated herein by
23 reference, is granted. The objections to the settlement are overruled. In the exercise of its
24 discretion, the court finds that the settlement terms are fair and reasonable to the class and
25 hereby enters final judgment embodying those terms, including, inter alia, the following
26 major items:

27 (a) Taxpayer refunds, attorney's fees, litigation expenses, class representative
28 incentive fees, mediation expenses, and class administration expenses will be paid from a

1 fund created and maintained by OSA containing OSA's collections of the District Two
2 Assessment and described in the October 16, 2008 report of OSA's accountant attached
3 as Exhibit B to the Settlement Agreement ("the fund"). All sums not paid to satisfy
4 refund claims or to pay any other amounts provided for in the Settlement Agreement and
5 approved by the court shall remain the funds of OSA, to be used in its discretion for OSA
6 purposes.

7 (b) All Class Members who submit valid and timely claims will receive a full
8 refund of their District Two Assessment payments. The fee-and-expense payment will not
9 decrease the amount of any Class Member's refund unless the total amount of all refund
10 claims uses up the funds available for claims after all authorized expenses have been paid.
11 In that situation, each taxpayer will receive a prorated portion of his or her claim. OSA
12 has waived any defense to these claims by Class Members based upon the statute of
13 limitations or failure to comply with administrative claim requirements.

14 (c) Those Class Members who filed administrative refund claims prior to the
15 execution of the Settlement Agreement by all parties will receive interest at the rate of
16 three percent (3%) from the date the claim was filed to the date of the entry of the Final
17 Order and Judgment, except insofar as the fund proves inadequate to satisfy all refund
18 claims in addition to the attorney's fee and litigation expense award, class administration
19 costs, and the distribution to OSA of the retained interest, in which case each refund
20 claim shall be prorated accordingly.

21 (d) All named plaintiffs in these combined actions and all Class Members who
22 do not exclude themselves from the class settlement have waived any rights they may
23 have to sue the Open Space Authority for both the District Two Assessment and another
24 ongoing Open Space Authority assessment known as the District One Assessment. The
25 District One Assessment was approved by voters and first imposed in 1994, before
26 Proposition 218 (a constitutional provision that changed the law governing real estate
27 assessments) became effective. It imposes a \$12 per year assessment on single-family
28 homes and higher amounts for other properties. The California Courts decided that the

1 District One Assessment was valid and could be legally collected in a lawsuit brought by
2 taxpayers entitled *Coleman v. Santa Clara County Open Space Authority*, Sixth District,
3 Appeal Case No. H014730, filed October 20, 1997. Review of that decision was denied
4 by the California Supreme Court and the United States Supreme Court. It has been
5 renewed annually by the Open Space Authority and paid by taxpayers since 1994.

6 (e) All named plaintiffs in these combined actions and all Class Members who
7 do not exclude themselves from the class settlement, have also agreed to a waiver in the
8 Open Space Authority's favor of rights under Civil Code section 1542, which provides:

9 A general release does not extend to claims which the creditor does not
10 know or suspect to exist in his or her favor at the time of executing the
11 release, which if known by him or her must have materially affected his or
12 her settlement with the debtor.

13 4. In evaluating the attorney's fees provided for in the Settlement Agreement,
14 the court has reviewed and considered the legal factors governing fee awards (including
15 those governing lodestar and fee enhancement) and the legal discussion and evidence
16 submitted on fees in the extensive original, responsive, objecting, reply, and
17 supplemental papers. The court has noted that fees are to be paid by defendant OSA over
18 and above the refunds paid to each Class Member who files a refund claim. Based on the
19 record, the relevant fee factors, and the applicable law as well as the reasons discussed at
20 the July 31, 2009 hearing and in the Order re: Final Approval of Class Action Settlement
21 and For Attorneys' Fees and Litigation Expenses, the court finds the fee amount
22 stipulated by OSA to be reasonable and payable to plaintiffs' counsel.

23 5. Plaintiffs' motion for an award of attorney's fees in the amount of \$7.4
24 million and litigation expenses not to exceed \$75,000 is granted as prayed. The
25 objections to the fee-and-expense award are overruled. The \$7.4 million fee award shall
26 be paid to class counsel Tony J. Tanke, and further allocated and paid by him as follows:

- 27 • \$35,000 to attorney Jack Bohan for his services;
- 28 • \$450,000 to the Howard Jarvis Taxpayer Foundation for the services of

1 attorney Timothy Bittle;

2 • \$5,000 to class representative plaintiff Mary Thompson for incentive fees;
3 and

4 • The balance to Mr. Tanke for his services.

5 6. The expense award is to be paid to Mr. Tanke, and further allocated and
6 paid by him as follows: \$16,500 to the Silicon Valley Taxpayer Association and the
7 remainder to Mr. Tanke.

8 7. All attorney's fees and expense payments shall be made from the fund.


9 8. The court denies plaintiffs' request to pay an incentive award to plaintiff
10 SVTA. The law does not permit payment to a party to the lawsuit who is not a class
11 representative. SVTA's lawsuit, consolidated with the class action, was on behalf of
12 SVTA only. SVTA was not a class representative.

13 9. In accordance with the Court of Appeal's direction of September 24, 2008,
14 on remand from the Supreme Court in *Silicon Valley Taxpayers Association, Inc. v. Santa*
15 *Clara County Open Space Authority* (2008) 44 Cal.4th 431, 450, 458, OSA's District
16 Two Assessment is declared unconstitutional and invalid for the reasons discussed in the
17 Supreme Court's opinion.

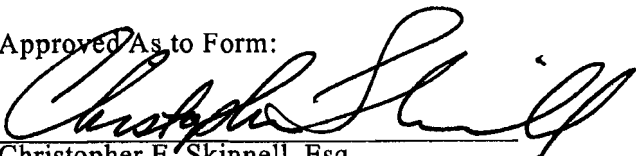
18 10. Except as expressly specified above, the court hereby orders final judgment
19 implementing the terms of the Settlement Agreement attached hereto as Exhibit A.

20 11. The court reserves jurisdiction to interpret, enforce, or resolve disputes
21 concerning the Settlement Agreement or the final judgment.

22 DATED: **OCT - 7 2009**

23 
24 _____
Honorable Jack Komar
Judge of the Superior Court

25
26 Approved As to Form:

27 
28 _____
Christopher E. Skinnell, Esq.
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
Attorneys for Defendant Santa Clara County Open Space Authority