

FILED
Clerk of the Superior Court
MAR 18 2016

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

JOSEPH AGLIO, an individual, *et al.*;
JAMES C. GIACIOLLI, an individual, ON
BEHALF OF HIMSELF AND ALL OTHERS
SIMILARLY SITUATED;
ROES 1-250,

Plaintiffs,

v.

CITY OF SAN DIEGO, a California
municipality; and
DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2009-00081994-CU-EI-CTL

CLASS ACTION

Complaint Filed: January 23, 2009

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AWARD
OF ATTORNEYS' FEES AND COSTS**

Judge: Hon. Joel M. Pressman
Dept.: C-66
Date: **March 18, 2016**
Time: **10:30 a.m.**

The parties' Joint Motion for a final order approving the settlement of this action and awarding attorneys' fees and costs came on for hearing in Department C-66 of this Court on March 18, 2016 at 10:30 a.m. Peter Zamoyski, Esq. appeared on behalf of Plaintiffs and the Plaintiff Class and Timothy K. Branson, Esq. appeared on behalf of Defendant City of San Diego.

Having read and carefully analyzed the motion, the Settlement Agreement, declarations, and other exhibits filed by the parties, and having heard argument of counsel, the Court finds that the Settlement Agreement is fair, reasonable, and adequate, and final judgment should be entered in this class action based upon the parties' Settlement Agreement.

1 **IT IS THEREFORE ORDERED THAT:**

2 1. All conditions precedent of the settlement have been met, and the Court finds
3 that the Settlement Agreement and the settlement contained therein are fair, reasonable and
4 adequate based on, among other things, the strength of plaintiff’s case, the risk, expense,
5 complexity, and likely duration of future litigation, the risk of maintaining class status through
6 trial, the benefits offered and conferred upon the class by the settlement, the experience and
7 views of counsel, and reaction of class members to the proposed settlement. (See *Dunk v. Ford*
8 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer, Inc.* (2001)
9 91 Cal.App.4th 224, 244-245 [court is free to balance and weigh the factors depending on the
10 circumstances of the case].)

11 CLASS CERTIFICATION

12 2. The Court confirms its certification of the settlement class as follows (as set forth
13 in the Agreement and the Court’s Order Granting Preliminary Approval dated January 15, 2016,
14 “Preliminary Approval Order”):

15 **Aglio-eligible Master Settlement Class (“Aglío Class”):**

16 “As of October 22, 2003, and thereafter, all homeowners and/or residents—
17 and their heirs—of the approximately 509 homes within the mobilehome park
18 now known as Mission Bay Park and formerly known as De Anza Harbor
19 Resort (“Park”), located at 2727 De Anza Road, San Diego, California, who
20 were *not* class members within the *De Anza Cove* class action (San Diego
21 Superior Court, Case No. GIC 821191).”

22 **Subclass A (“Settlement Agreement Subclass”):**

23 “All homeowners and/or residents within the Aglio Class who signed release
24 agreements with the City of San Diego regarding the Park.” This subclass
25 will address the alleged unenforceability of these release agreements in light
26 of state law prohibiting any waiver of rights under the MRL, the false
27 pretenses under which such agreements were obtained, and the heavy-
28 handedness with which these agreements were secured.

Subclass B (“Eviction Subclass”):

“All homeowners and/or residents within the Aglio Class who were evicted
from the Park on or before September 4, 2007.”

Subclass C (“Current Resident Subclass”):

“All homeowners and/or residents within the Aglio Class who currently reside
at the Park (at any time during the period from January 14, 2015 through
July 1, 2016 or the revised Park Closure Date, whichever is later) and are not

1 part of Subclass A or B.” This Subclass will address what relocation benefits
2 may or may not be owed to those homeowners and residents who currently
3 reside at the Park, but did not reside in the Park on October 22, 2003, as
would be required to be a class member within the *De Anza Cove* class action
case.

4 CLASS NOTICE

5 3. The Court confirms that the Class Notice met the requirements of section 382 of
6 the Code of Civil Procedure, Rule 3.766 of the California Rules of Court, and due process. In
7 accordance with this Court’s Preliminary Approval Order, the Notice Administrator,
8 KCC/Gilardi & Co., timely and properly served the Class Notice and Settlement Agreement on
9 the Class Members by first-class U.S. Mail and establishing a webpage
10 www.AglionSettlement.com with these and other documents, Defendant City posted the Class
11 Notice and Settlement Agreement at the Park’s management office and clubhouse, and Class
12 Counsel posted the Class Notice and Settlement Agreement on Class Counsel’s website.

13 4. The Court notes that the deadline for Class members to mail a valid request for
14 exclusion from the Class (opt-out) or object to all or any part of the settlement was
15 March 1, 2016. The Court confirms that not a single putative class member sought to be
16 excluded from the class, and no one filed an objection to the settlement. Thus, there are no
17 impediments to final approval because all other conditions in the settlement have now been
18 satisfied.

19 APPOINTMENT OF SPECIAL MASTER/REFEREE

20 5. The Court finds that good cause exists and hereby grants the Parties’ request to
21 appoint Thomas Sharkey, Esq. as Special Master/Referee given his familiarity with the unique
22 circumstances of the related cases. (Agreement, ¶ 29.) The Court appoints Thomas Sharkey,
23 Esq. as Special Master/Referee under Code of Civil Procedure section 638 due to the
24 exceptional circumstances of this case, including the complexity of the issues and large number
25 of affected parties. The City shall pay the cost and expense of the Special Master/Referee. In
26 accordance with the terms of the Agreement, the Court also confirms that, with respect to any
27 award of benefits greater than those that the Claims Administrator agrees should be paid or that
28 the parties agree upon, such awards of greater benefits shall be paid exclusively out of the Aglio

1 Class Relocation Compensation Fund, and under no circumstances shall the City be required to
2 pay any amount of relocation compensation, moving expenses, temporary lodging, and interest
3 in excess of the total amount of \$14.0 million.

4 ATTORNEYS' FEES AND COSTS

5 6. The Court carefully and independently considered the amount of attorneys' fees
6 and costs to be awarded to Class Counsel based on the evidence presented in the motion, the
7 duration Class Counsel has worked on this action and the related De Anza class action since
8 2003, the skill and advocacy exhibited by Plaintiffs' Class Counsel, the significant benefits
9 conferred on the Class by the settlement, and the lack of any objection by any class member or
10 any party hereto as to the fees and costs to be awarded to Class Counsel. The Court further
11 notes that pursuant to the Agreement, the Aglio Class shall not bear the responsibility to pay
12 any attorneys' fees or costs through this settlement, and none of the attorneys' fees or costs shall
13 come from the common fund or from any part of the relocation compensation owed to the Aglio
14 Class. The City is ordered to pay Plaintiff Class Counsel's reasonable attorneys' fees and costs
15 *in addition* to the relocation compensation that the City owes hereunder to the Aglio Class. The
16 Court hereby orders that the Defendant City shall pay Plaintiffs' Class Counsel's reasonable
17 attorneys' fees of \$4,666,667 (which is 33⅓ percent of the \$14.0 million in potential claim
18 payments) under the same general terms as the Court ordered in the *De Anza* Action case via the
19 "Parties' Stipulation to Award Prevailing Party Attorneys' Fees; Order Thereon" entered by the
20 *De Anza* Court on or about November 14, 2014. The Defendant City shall pay Plaintiffs' Class
21 Counsel costs in the amount of \$140,000. The Court orders that Defendant shall pay these
22 attorneys' fees and costs immediately, and no later than Friday, April 15, 2016.

23 7. Once Defendants have paid all attorneys' fees and costs as ordered, the Court
24 hereby finds all parties and Class Members bound by the terms of the Settlement Agreement,
25 this Order, and will enter Final Judgment in accordance with the Settlement Agreement.

26 FINAL NOTICE TO CLASS

27 8. Pursuant to California Rule of Court, Rule 3.771, final notice must be served on the
28 class members. At Defendant's cost and within 14 calendar days of the filing of Notice of Entry

1 of Judgment, the Court-appointed Notice Administrator, KCC/Gilardi & Co., shall serve a final
2 notice by first-class U.S. Mail to all known Aglio Class members at the most current address
3 reflected in the Notice Administrator, Plaintiffs, and the City's records with the notation
4 "Address Correction Requested." The final notice will be comprised of a Notice of Entry of
5 Judgment—which will include the Court's final Judgment and accompanying Settlement
6 Agreement. The Notice Administrator shall also post said documents on its webpage
7 www.Agl.ioSettlement.com. A Claim Form will be included with the final notice. If any notice
8 is returned with a new address, the final notice will be re-mailed to the new address. The
9 Defendant City shall not be responsible for the failure of the U.S. Postal Service to timely
10 deliver or return a class notice.

11 9. The Notice Administrator shall also publish the Notice of Entry of Judgment,
12 Judgment, and Settlement Agreement on its webpage www.Agl.ioSettlement.com so that any
13 Class Members and the public may access, download, and review them. Defendant City shall
14 keep Copies of the Notice of Entry of Judgment (with the Judgment and Agreement) at the
15 Park's management office at all times through and until the complete removal of all
16 mobilehomes from the Park.

17 FINAL PARK CLOSURE AND CLAIM SUBMITTAL DEADLINE

18 10. The Court orders that within 14 days of entry of this Order—and as required by the
19 Mobilehome Residency Law and the Agreement (§ 12)—the Defendant City, through the Court-
20 appointed Relocation Coordinator, Overland Pacific & Cutler, shall serve an updated Six-Month
21 Notice of Park Closure and an Amended Relocation Impact Report ("Amended RIR") on the
22 Aglio Class members still residing at the Park. The Defendant City shall be responsible for and
23 pay all costs associated with preparing and serving the Six-Month Notice of Park Closure and
24 Amended RIR.

25 11. Claim Forms shall be mailed to the Class and will also be available to any potentially
26 eligible Class Member through the Court-appointed Relocation Coordinator/Claims
27 Administrator, Overland Cutler & Pacific. Claim Forms must be submitted to the
28 Relocation/Claims Administrator, Overland Pacific & Cutler, by **June 1, 2016**. (Agreement,

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¶ 13.)

12. After completion of the claims processing and park-closure procedures, the Court-appointed Relocation Coordinator/Claims Administrator, Overland Pacific & Cutler, shall provide the parties and the Court with a final accounting and report.

13. The Court shall retain jurisdiction over this case, the parties, and the class members to enforce and interpret the terms of the settlement and Judgment. (Cal. Rules of Court, Rule 3.769(h); Civ. Proc. Code § 664.6.)

IT IS SO ORDERED.

Date: MAR 18 2016

JOEL M. PRESSMAN

JUDGE OF THE SUPERIOR COURT