

1 Beau R. Burbidge (SBN 267267)
2 WALKER, HAMILTON & KEARNS, LLP
3 50 Francisco Street, Ste. 460
4 San Francisco, CA 94133
5 Telephone: (415) 986-3339
6 Facsimile: (415) 986-1618
7 Email: beau@whk-law.com

8 Attorneys for Plaintiffs and Petitioners

Electronically
RECEIVED

2/21/2023

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

10
11 BRAD BARUH, KATHY BARUH,
12 CHARLES BOLTON, ELDRIDGE GRAY,
13 JOHN LOCKTON, DAVID MARQUARDT,
14 PAUL ROCHESTER, ARTHUR
15 STROMBERG, CHARLES SYERS,
16 individually and on behalf of all others
17 similarly situated,

18 Plaintiffs and Petitioners,

19 v.

20 TOWN OF HILLSBOROUGH and DOES 1-
21 100, inclusive,

22 Defendants and Respondents.

Case No. 16CIV02284

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL TO CLASS ACTION
SETTLEMENT, AND AWARDED
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARD; FINAL JUDGMENT**

Date: ~~March 20, 2023~~ 8/14/2023

Time: 3:00 p.m.

Dept.: Hon. V. Raymond Swope
Dept. 23

23 On March 20, 2023, this Court conducted a Fairness Hearing in accordance with its
24 August 24, 2022, Order Preliminary Approving Class Action Settlement and Directing Notice to
25 Class ("Preliminary Approval Order"), and heard Plaintiffs' motion for final approval of class
26 settlement ("Final Approval Motion") and motion for award of attorneys' fees, reimbursement of
27 expenses, and payment of service award ("Fee Motion").

28 Upon reviewing the Final Approval Motion and Fee Motion, and supporting declarations,
including the pleadings filed in support of the Motion for Preliminary Approval of Class Action

1 Settlement, and having reviewed and considered the Settlement Agreement, and having considered
2 all timely-filed objections to the settlement, and good cause appearing thereon, the Court makes
3 the following findings and determinations and **FINDS AND ORDERS** as follows:

4 1. Unless otherwise specified, defined terms in this Final Order have the same
5 definitions as the terms in the Settlement Agreement.

6 2. The Court has continuing and exclusive jurisdiction over the Settlement and all
7 Parties hereto for the purposes of construing, enforcing, and administering the Settlement
8 Agreement.

9 3. The Court, in its Order of May 17, 2021, granted class certification and appointed
10 class representatives and class counsel. The certified classes, class representatives, and class
11 counsel are accurately reflected in the Settlement Agreement.

12 4. Class Notice to the Class was provided in accordance with the Preliminary
13 Approval Order and satisfied the requirements of due process, California Code of Civil Procedure
14 section 382 and Rule 3.76 of the California Rules of Court and (a) constituted the best notice
15 practicable under the circumstances, (b) constituted valid, due, and sufficient notice to all
16 members of the Class, and (c) was reasonably calculated under the circumstances to apprise
17 Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right
18 to appear at the Fairness Hearing, their right to object to the Settlement, and their right to exclude
19 themselves from the Settlement.

20 5. Out of 3,066 Settlement Class Members, 9 served timely objections to the
21 Settlement or the Fee Motion. Having considered the arguments set forth in those objections, as
22 well as Plaintiffs' response to those objections, and good cause appearing, the objections are
23 hereby overruled.

24 6. The Settlement Agreement was arrived at following serious, informed, adversarial,
25 and arms'-length negotiations conducted in good faith by counsel for the parties and facilitated by
26 an experienced mediator, and it is supported by the majority of the members of the Class. This
27 Court hereby finally approves the Settlement as fair, adequate, reasonable, and in the best interests
28

1 of the Class.

2 7. The parties to the Settlement are hereby directed to perform its terms. The Parties
3 shall take all steps necessary and appropriate to provide Class Members with the benefits to which
4 they are entitled under the terms of the Settlement Agreement and pursuant to this Final Order.

5 8. In accordance with paragraph 7.1 of the Settlement Agreement, and for good cause
6 shown in Plaintiffs' supporting filings, Plaintiffs' request for dismissal with prejudice of all claims
7 made by the Drought Penalty Class, as defined in the Court's May 20, 2021, Order on Plaintiffs'
8 Motion for Class Certification, is granted and all claims brought by the Drought Penalty Class are
9 hereby dismissed with prejudice.

10 9. Upon the Effective Date of this Order, each and every released claim of each and
11 every Settlement Class Member are and shall be deemed to be conclusively released as against the
12 Releasees, pursuant to the terms and conditions of the Release as set forth in paragraphs 7.2 and
13 7.3 of the Settlement Agreement.

14 10. Persons who timely and properly excluded themselves, as set forth in **Exhibit A**,
15 attached hereto, are not Class Members and not bound by this Final Order or by the Final
16 Judgment or the Release.

17 11. For the reasons set forth in their application for attorneys' fees and reimbursement
18 of expenses, the Court hereby awards Class Counsel attorneys' fees in the amount of \$400,000.00,
19 and reimbursement of expenses in the amount of \$10,982.09. For the reasons set forth in the Class
20 Representatives' requests for a service award, the Court hereby awards in the following amounts:
21 \$8,000.00 to John Lockton, \$8,000.00 to David Marquardt, \$5,000.00 to Charles Syers, \$5,000.00
22 to Charles Bolton, and \$5,000.00 to Paul Rochester. The foregoing shall be paid from the
23 Settlement Fund in accordance with the Settlement Agreement.

24 12. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of
25 the California Rules of Court, the Court reserves exclusive and continuing jurisdiction over this
26 Action, the Plaintiffs, the Class Members, and Defendant for purposes of administering,
27 consummating, enforcing, and interpreting the Settlement Agreement, the Final Judgment, and for
28

1 any other necessary purpose, and to issue related orders necessary to effectuate the final approval
2 of the Settlement Agreement.

3 13. This document shall constitute a Judgment for purposes of California Rule of Court
4 3.769(h). This Court hereby enters Judgment in accordance with, and subject to the terms set forth
5 in the Settlement Agreement and this Final Order.

6 14. The Class Administrator shall post this Final Order and Final Judgment on the
7 settlement website, www.hillsboroughclassaction.com, forthwith.

8 15. No later than 180 days from the Effective Date of this Order, the Parties shall file
9 with the Court a status update as to (i) how the Settlement Fund moneys have been distributed, or
10 the status of the distribution if it is not yet completed; (ii) their nomination of qualified *cy pres*
11 recipient, and supporting documents; and (iii) a proposed amended judgment. When the
12 distribution is complete, the Court will amend its judgment pursuant to Code of Civil Procedure
13 section 384 to direct all residual funds to a qualified *cy pres* recipient.

14 **IT IS SO ORDERED.**

15
16
17 DATED:

By: _____

Honorable V. Raymond Swope
Judge of the Superior Court

1 **PROOF OF SERVICE**

2 ***Baruh, et al. v Town of Hillsborough***
3 San Mateo County Superior Court Case No. 16CIV02284

4
5 My business address is 50 Francisco Street, Suite 460, San Francisco, California 94133. I
6 am employed in the County of San Francisco, where this mailing occurs. I am over the age of 18
7 years and not a party to the within cause. On the date set forth below, I served the foregoing
8 document(s) described as:

9 **[PROPOSED] ORDER GRANTING FINAL APPROVAL TO CLASS ACTION
10 SETTLEMENT, AND AWARDED ATTORNEYS' FEES, REIMBURSEMENT OF
11 EXPENSES, AND SERVICE AWARD; FINAL JUDGMENT**

12 on the following person(s) in this action by placing a true copy thereof enclosed in a sealed
13 envelope addressed as listed below.

14 **[X] [X] BY ELECTRONIC SERVICE – E-MAIL** On **February 21, 2023**, based on an
15 agreement or stipulation of the parties to accept electronic service and/or CCP §1010.6(e), I
16 caused said document(s) to be sent via electronic mail to the email addresses listed below from my
17 email address: serena@whk-law.com.

18 Harriet A. Steiner, Esq. 19 James Gilpin, Esq. 20 Christopher Diaz, Esq. 21 BEST BEST & KRIEGER LLP 22 500 Capitol Mall, Suite 1700 23 Sacramento, CA 95814 24 Tel: (916) 325-4000 25 Fax: (916) 325-4010 26 <i>Attorneys for Defendant Town of Hillsborough</i>	harriet.steiner@bbklaw.com James.Gilpin@bbklaw.com Christopher.Diaz@bbklaw.com Jannine.South@bbklaw.com
--	--

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct, and that this declaration was executed on **February 21, 2023** at San
Francisco, California.

By: *Serena L. Broussard*
Serena L. Broussard