

CLASS ACTION ATTORNEY FEE DIGEST

THOROUGH. RELIABLE. OBJECTIVE.

SAMPLE EMPLOYMENT CASE ABSTRACT

Sims v. Downey Savings and Loan Association

No. C05-01293

(Cal. Super. Ct. Contra Costa Co. Apr. 18, 2007)

JUDGE: David Flinn

SUBSTANTIVE TOPIC: Employment—Wages & Benefits

PLAINTIFFS' COMPLAINT: Plaintiffs, underwriters and senior underwriters, alleged that Defendant violated various California state laws by: (1) misclassifying class members as "exempt" employees and failing to pay them overtime wages for all hours worked over 40 hours per week or eight hours in a day; (2) failing to provide meal periods during the class period; (3) failing to pay promised annual retention bonuses in 2002; (4) failing to pay overtime wages owed at the time their employment with Defendant terminated; (5) failing to furnish class members with timely and accurate wage statements showing the number of hours worked per pay period; and (6) violating the California Unfair Competition Law. The Plaintiffs were divided into two classes: Overtime Class—those members who worked at one any of Defendant's California offices as an underwriter or senior underwriter during the class period; Bonus Class—those who worked at one of Defendant's offices other than Walnut Creek or Rocklin as an underwriter or senior underwriter who remained employed by Defendant as of April 30, 2002, or who worked at Defendant's Walnut Creek or Rocklin office as an underwriter or senior underwriter who remained employed by Defendant as of September 30, 2002.

SETTLEMENT BENEFITS: \$900,000. (Net settlement is \$557,000 (\$900,000 less \$315,000 in attorney fees and expenses, \$15,500 to Rust Consulting for settlement notice and claims administration costs, and \$12,500 in bonus payments to two plaintiffs.) In addition, Defendant will pay its employer's share of applicable payroll taxes. Members of the Bonus Class will be allocated a bonus settlement award calculated as 20% of salary earned during a certain period in specific offices of Defendant, plus an additional 10% simple interest for approximately a 3-1/2 year period. Members of the Overtime Class will be allocated an overtime settlement award based on the number of weeks the class member worked during the class period, currently estimated to be about \$63.00/week. The settlement amounts will be allocated for tax purposes as 60% for wages and 40% as payment for interest and penalties.

ATTORNEY FEES: \$300,000 (the amount requested).

FEE AS % OF RECOVERY: 33-1/3%

EXPENSES: \$15,000

NAMED PLAINTIFF INCENTIVE AWARD: \$12,500 total in "participation payments." The Court awarded \$10,000 to named plaintiff Theresa Sims and \$2,500 to class member declarant Jill Brewster, in addition to their individual *pro rata* class distributions. Plaintiffs' supporting papers state that: (1) named plaintiff Sims initiated suit, assisted counsel in investigating the case and developing witnesses, produced documents and answered discovery, assisted counsel in preparing for depositions, and actively participated in the mediation; and (2) class member Brewster assisted counsel in investigating the case and developing witnesses and provided a declaration.

HOURS: 1,152

MULTIPLIER: The requested fee is significantly less than the \$409,808 lodestar.

COURT'S REASONING: The Court ruled that the settlement was fair, reasonable, and adequate to the class, noting that no class members objected to the settlement, requested exclusion, or disputed any of the estimated claims.

EDITOR'S NOTES: According to the claims administrator, Notice was mailed to 111 potential class members. As of April 9, 2007, 84 class members had filed a claim form, with one additional late claim form accepted as sufficient on hardship grounds (or approximately 76% of claimants filed a claim.) The submitted claims account for \$499,148.72 (or 90% of the net settlement fund available to the class).

Plaintiffs' supporting papers state that the average *pro rata* settlement award will be over \$5,000 per class member.

Plaintiffs' supporting papers state that class counsel expended a total of 1,152 hours for a total lodestar of \$409,808. The notice stated that counsel would seek no more than \$25,000 in expenses, but counsel reduced the estimate to \$15,000 in its fee brief "once it became clear that that amount should cover all costs incurred and to be incurred in finalizing this settlement." (\$13,756.29 was itemized as of the date of filing the brief). Goldstein, Demchak expended 758 hours, with hourly rates charged at 2006 levels, and ranging from \$100 for paralegals to \$550 for partners, amounting to a \$221,377 lodestar, and incurred \$12,014 in expenses. Davenport Gerstner expended 394 hours, with hourly rates

of \$410-\$500 for attorneys only, for a \$188,431 lodestar, and incurred \$1,743 in expenses.

Class counsel does not seek compensation for time expended since the grant of preliminary approval, nor will they seek compensation for work that will be necessary to complete the process of settlement administration (e.g., monitoring claims procedures and distributing the settlement funds). Plaintiffs' supporting papers state that from November 29, 2006 to March 30, 2007, Goldstein, Demchak spent 85 attorney and paralegal hours obtaining preliminary approval, facilitating the issuance of settlement notice, responding to numerous class member inquiries, and preparing for final settlement approval. This equates to an additional \$21,980 of time, but for which no fees will be sought. The settlement papers do not include fees, costs, and hours generated by Davenport, Gerstner since November 20, 2006.

Plaintiffs' supporting papers state that: (1) the parties exchanged over 40 interrogatories, 30 document requests, and 6,500 pages of documents; (2) class counsel contacted and interviewed numerous former and current underwriters and managers; (3) class counsel conducted the deposition of a Downey Senior Vice-President and the deposition of Plaintiff's direct supervisor; (4) class counsel prepared a

comprehensive damages analysis and a mediation brief; and (5) the parties engaged in arm's-length bargaining, including a full-day mediation session with mediator David Rotman of Gregorio, Haldeman & Piazza.

Plaintiffs requested fees, expenses, and costs as prevailing parties under, inter alia, California Labor Code §§ 218.5, 1194 and California Code of Civil Procedure § 1021.5.

Plaintiffs' fee award was requested under the lodestar/multiplier approach.

Objections/Opt-outs— The Court noted that not a single class member has objected to, opted out of, or disputed any of the estimated claims. Moreover, there were no objections to the requests for attorney fees, expenses, costs, or named plaintiff awards.

DATE CASE FILED: June 21, 2005

DATE FEE AWARDED: April 18, 2007

PLAINTIFFS' COUNSEL: Stephen T. Davenport, Jr., Neil M. Gerstner, Jeffrey G. McClure (Davenport Gerstner & McClure) (Walnut Creek, Cal.). Teresa Demchak, Laura L. Ho, James Kan (Goldstein Demchak Baller Borgen & Dardarian) (Oakland, Cal.).

DEFENDANTS' COUNSEL: Glenn L. Briggs (Hodel Briggs Winter) (Irvine, Cal.). Ω

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