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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAMARA PARTRIDGE,)
individually, and on behalf)
of all others similarly)
situated,)
)
Plaintiff(s),)
)
v.)
)
SHEA MORTGAGE INC.,)
)
Defendant(s).)
_____)

No. C 07-4230 BZ

**ORDER DENYING PLAINTIFFS'
MOTION FOR AN ENHANCEMENT
AWARD TO THE CLASS
REPRESENTATIVE**

Before the Court is plaintiffs' Motion for an Order Granting an Enhancement Award to the Class Representative. Plaintiffs seek a \$15,000 incentive payment for the class representative for her services to the class.

In the Ninth Circuit, a court has discretion to award a class representative a reasonable incentive payment. Staton v. Boeing Co., 327 F.3d 938, 977 (9th Cir. 2003); Mego Fin'l Corp. Sec. Litig. Nadler, 213 F.3d 454, 463 (9th Cir. 2000). Many courts have approached such incentives cautiously as they

1 tend to undermine the class representative's incentive to
2 monitor suboptimal or collusive settlements, at the expense of
3 other class members whose interests the named plaintiff has a
4 duty to protect. Staton, 327 F.3d 975 and cases cited
5 therein.

6 A court may consider the following criteria in
7 determining whether to award an incentive payment: "(1) the
8 risk to the class representative in commencing suit, both
9 financial and otherwise; (2) the notoriety and personal
10 difficulties encountered by the class representative; (3) the
11 amount of time and effort spent by the class representative;
12 (4) the duration of litigation; and (5) the personal benefit
13 (or lack thereof) enjoyed by the class representative as a
14 result of the litigation. Van Vranken v. Atlantic Richfield
15 Co., 901 F.Supp. 294, 299 (N.D.Cal. 1995).

16 Here, Partridge has not established any of the factors
17 that support an incentive. Because she was substituted as
18 class representative only after a tentative settlement was
19 reached, she faced little, if any, risk. Her job was not at
20 risk. She was then no longer employed by the defendant and
21 was engaging in conduct defendant desired. She has made no
22 showing that her participation as class representative could
23 damage her in the future.

24 Partridge has made no showing that she encountered any
25 personal difficulties or notoriety over her role as class
26 representative which is not surprising since she was
27 participating in a settlement both sides wanted. While she
28 spent some personal time helping counsel on the case,

1 performing such tasks as submitting a declaration,
2 corresponding via email and teleconference with class counsel,
3 and producing documents, it does not appear that her
4 participation justifies additional payment beyond that which
5 she will receive as a class member. Much of her participation
6 was undertaken before she was substituted as named plaintiff.
7 Plaintiffs' counsel assert that many other class members
8 volunteered their time to the case, none of whom have asked
9 for any incentive. Finally, as a class member she stands to
10 receive a substantial payment as a result of the litigation,
11 thus minimizing any need to provide an incentive payment.

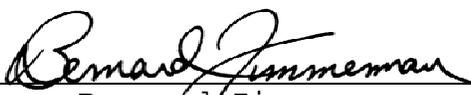
12 A judge of this court, in denying preliminary approval
13 of a class action settlement, had this to say about incentive
14 payments:

15 So-called "incentive payments" are a recent
16 invention by those who handle class actions. Class
17 actions did much justice without them for many
18 decades. While there is a theoretical rationale for
19 incentive payments, there is also a major downside.
20 The downside is that the payments lend themselves
21 for use as side payments to induce named plaintiffs
to go along with sweetheart deals. Ordinarily,
named plaintiffs ought to receive no more or less
than the absent class members they purport to
represent. In this way, they are incentivized, out
of self interest, to achieve the best possible
result for the class.

22 Kakani et al. V. Oracle Corporation, Case No, 06-06493 WHA,
23 Doc. 72 (Order Denying Preliminary Approval of Proposed Class
24 Settlement) (June 19, 2007). Were Partridge to receive
25 \$15,000, the facts discussed above could be seen as presenting
26 the unfortunate appearance that the incentive was a reward to
27 a class member who was willing to accept the settlement after
28 the class representative rejected it.

1 For all of the foregoing reasons, the court finds that
2 Tamara Partridge is not entitled to any incentive payment.

3 Dated: December 22, 2008

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5 _____
6 Bernard Zimmerman
7 United States Magistrate Judge

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