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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 AWARDING ATTORNEYS'  
FEES AND COSTS**

Before the Court is plaintiffs' Motion for Attorneys' Fees and Costs. Plaintiffs' seek an award of \$107,920.81 in attorneys' fees and \$10,579.19 in litigation costs and expenses incurred. Originally premised on an award of about 30% of the common fund, plaintiffs now also premise it on their lodestar.

The total settlement provides for a maximum payment by the defendant of \$395,000. Included in the \$395,000 is up to \$107,920.81 for attorneys' fees and \$10,579.19 for costs incurred, up to \$10,000 for settlement costs, up to \$15,000 as

1 an incentive payment to the named plaintiff, and up to  
2 \$251,500 to compensate class members.

3 In the Ninth Circuit, district courts presiding over  
4 common fund cases have the discretion to award attorneys' fees  
5 based on either the lodestar method or the percentage method,  
6 which was proposed here. In Re Wash. Pub. Power Supply Sys.  
7 Sec. Litig., 19 F.3d 1291, 1296 (9th Cir. 1994). In my  
8 discretion, I have decided to adopt the common fund approach  
9 in this case, given that the lodestar claimed by plaintiffs,  
10 \$462,320, is much greater than the total settlement amount.

11 The Ninth Circuit has established that in common fund  
12 cases, the "benchmark" award is 25 percent of the recovery  
13 obtained. Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d  
14 268, 272 (9th Cir. 1989). Selection of the benchmark, or any  
15 other rate, must be supported by findings that take into  
16 account all of the circumstances of the case. Vizcaino v.  
17 Microsoft Corp., 290 F.3d 1043, 1048 (9th Cir. 2002). The  
18 benchmark may be adjusted when special circumstances indicate  
19 that the percentage recovery would be either too small or too  
20 large in light of the hours devoted or other relevant factors.  
21 Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301,  
22 1311 (9th Cir. 1990).

23 The Ninth Circuit has approved a number of factors to  
24 guide the district court's determination of the reasonable  
25 percentage recovery: (1) the results achieved; (2) the risk of  
26 litigation; (3) the skill required and the quality of work;  
27 (4) the contingent nature of the fee and the financial burden  
28 carried by the plaintiffs; and (5) awards made in similar

1 cases. In Re Omnivision Techs., Inc., 559 F. Supp. 2d 1036,  
2 1046 (N.D. Cal. 2007).

3 For purposes of determining a fee award, I consider the  
4 common fund to be \$380,000, excluding the \$15,000 incentive  
5 award which was earmarked for the named plaintiff personally  
6 and does not revert to the class. After balancing the  
7 relevant factors, I conclude that an attorneys' fees award of  
8 \$95,000, or 25% of the common fund, is reasonable and  
9 justified. This award recognizes that the common fund was  
10 created for the class through the efforts of counsel, and that  
11 class counsel have litigated this case despite having received  
12 no compensation for their efforts and having no guaranty that  
13 they would ever be paid for their efforts. It also recognizes  
14 a result which I have found beneficial to the class members.  
15 It is also consistent with awards in similar cases.

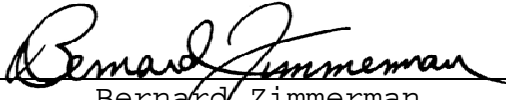
16 Based on the record, I find no special circumstances to  
17 justify plaintiffs' request of \$107,920.81, roughly 28.4  
18 percent of the common fund, especially given the concerns I  
19 expressed at the preliminary approval hearing about whether  
20 plaintiffs' attorney fully understood some of the issues that  
21 were presented by the proposed settlement. At the final  
22 hearing, Mr. Cole, lead counsel, assured the Court that he had  
23 been responsible for negotiating the terms of the settlement;  
24 this relieved the Court of some of its concerns.

25 The \$10,579.19 in litigation costs and expenses incurred  
26 by class counsel through October 16, 2008 appear to have been  
27 reasonably incurred for the benefit of the class. I find that  
28 their reimbursement is reasonable and justified.

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**IT IS HEREBY ORDERED THAT** defendant shall pay class  
counsel attorneys' fees in the amount of \$95,000 and  
reimbursement of costs and expenses in an amount not to exceed  
\$10,579.19 from the settlement fund.

Dated: December 22, 2008

  
\_\_\_\_\_  
Bernard Zimmerman  
United States Magistrate Judge

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FEES.wpd