

**FILED**

FEB 27 2003

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEIDRE BROWN, LYNN CAIN, CHERYL  
GERALD, DEBRA JONES, DONNA  
KELSAY, ANNE M.Z. NOVOTNY and  
GLORIA SALAZAR, on behalf of  
themselves and all others  
similarly situated,

Plaintiffs,

NO. CIV. S-98-1719 LKK/JFM

v.

O R D E R

SACRAMENTO REGIONAL TRANSIT  
DISTRICT,

Defendant.

\_\_\_\_\_/

The above-captioned case came before the court on  
plaintiffs' motion for apportionment of attorneys' fees between  
former class counsel and present class counsel. I decide the  
matter on the pleadings and the papers on file therein and after  
oral argument.

This court has approved a class settlement in the instant  
case, which provides for \$900,000 in attorneys' fees and costs.

1 Both sets of attorneys agree that their documented costs should  
2 be awarded first, and that the remainder should be apportioned.  
3 At issue is what method of apportionment is appropriate.

4       There is little guidance concerning apportionment of  
5 stipulated fees between current and former counsel. Most  
6 relevant is a case in which the Ninth Circuit reviewed a  
7 district court's refusal to approve a fee allocation agreement  
8 between two sets of counsel. In In re FPI/Agretech Securities  
9 Litigation, 105 F.3d 469 (9th Cir. 1997), the Circuit affirmed  
10 the district court's decision not to approve a fee-allocation  
11 agreement that provided fees to an attorney who had done no real  
12 work on the portion of the case for which fees were awarded,  
13 holding that "the relative efforts of, and benefits conferred  
14 upon the class by, co-counsel are proper bases for refusing to  
15 approve a fee allocation proposal." Id. at 474. It stands to  
16 reason that the same factors are relevant in apportioning  
17 attorneys' fees in the first instance.

18       The only clear benefit conferred upon the class by former  
19 counsel was that they obtained class certification. As the  
20 current class counsel correctly recalls, however, this court  
21 came very close to decertifying the class, due to former  
22 counsel's inadequate representation. While it is true that,  
23 before the court could so rule, the parties entered into  
24 settlement negotiations and developed a proposed consent decree,  
25 it is unlikely the court would have approved the class  
26 settlement embodied in that decree. Notably, the attorneys' fee

1 provision was excessive in light of both the monetary and  
2 injunctive relief provided for the class. Likely, following the  
3 court's disapproval of the consent decree, the class would have  
4 been decertified and only that portion of the settlement  
5 providing relief to the named plaintiffs would have remained  
6 intact.

7       Accordingly, I find that an appropriate measure of the  
8 award merited by former counsel's efforts is a contingency of  
9 the monetary relief that former counsel had negotiated for the  
10 named plaintiffs, or 30% of \$280,000. In addition, however,  
11 because the former class counsel did initiate the lawsuit and  
12 obtain class certification, and because the court did not  
13 actually decertify the class, I find it appropriate to award  
14 former class counsel an additional \$40,000 in fees for their  
15 initiation of the class action.

16       Based on the foregoing, the allocation of the \$900,000  
17 award is as follows. Former counsel will be awarded costs in  
18 the amount of \$71,504 for the Thierman Law Firm and \$4,666 for  
19 Hoffman & Lazear.<sup>1</sup> Current counsel will be awarded costs in the  
20 amount of \$67,715. Of the remaining \$756,115, former counsel  
21 will receive a \$84,000 in fees as a contingency of that amount  
22 which they would have received for their proposed settlement on  
23 behalf of named plaintiffs plus \$40,000 for their initiation of

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25       <sup>1</sup> In arriving at these numbers, I am discounting former  
26 counsel's costs for the double-billed expert witness fee of \$4200  
as well as the double-billed photocopying fee of \$1750 and  
unreasonable fax fees of \$2538.

1 the class action. Current class counsel will receive the  
2 remaining \$632,115 in attorneys fees. The end result is that  
3 former counsel receives \$200,170 of the award while current  
4 counsel receives \$699,830.

5 Accordingly, the court hereby ORDERS that the award be  
6 apportioned as follows:

7 1. \$71,504 shall be paid to the Thierman Law Firm for  
8 costs.

9 2. \$4,666 shall be paid to Hoffman & Lazear for costs.

10 3. \$124,000 shall be paid to former counsel for attorneys'  
11 fees.

12 4. \$699,830 shall be paid to current class counsel for  
13 attorneys' fees and costs.

14 IT IS SO ORDERED

15 DATED: February 26, 2003.

16   
17 LAWRENCE K. KARLTON  
18 SENIOR JUDGE  
19 UNITED STATES DISTRICT COURT  
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United States District Court  
for the  
Eastern District of California  
February 27, 2003

\* \* CERTIFICATE OF SERVICE \* \*

2:98-cv-01719

Brown

v.

Sacramento Regional

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 27, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Jack L. Wagner, Clerk

BY:   
\_\_\_\_\_  
Deputy Clerk