

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**  
ALAMEDA COUNTY

NOV 12 2008

CLERK OF THE SUPERIOR COURT

By  Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

LISA L. CONNELL, an individual, on behalf  
of herself, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

SUN MICROSYSTEMS, INC, a Delaware  
Corporation with its principal place of  
business in California, and Does 1 to 100.

Defendants.

Case No. RG06252310

~~PROPOSED~~ ORDER AWARDING  
ATTORNEYS' FEES AND LITIGATION  
EXPENSES TO CLASS COUNSEL

[C.R.C. § 3.769]

Date: November 12, 2008

Time: 3:00 p.m.

Dept: 17

Judge: Hon. Steven Brick

Complaint filed: January 25, 2006

Trial date: None set


This matter having come before the Court for hearing, pursuant to the order of this Court dated July 24, 2008, on the application of Plaintiff for consideration of approval of the settlement and for consideration of the award of attorneys fees and costs. Due and adequate notice having been given to the Class as required

  
~~PROPOSED~~ ORDER AWARDING ATTORNEYS' FEES AND LITIGATION EXPENSES TO  
CLASS COUNSEL

1 in said order, and the Court having considered all papers filed and proceedings had herein and otherwise  
2 being fully informed of the premises and good cause appearing therefor, it is

3 **HEREBY ORDERED THAT:**

4 1. The total settlement is a reasonable compromise of the claims. The estimated maximum  
5 theoretical total loss was \$9,586,727, so the settlement was 5.8/9.6 (60%) of the theoretical recovery  
6 (assuming no fee shifting statute). The settlement was 3.8/9.6 (40%) of the theoretical recovery (assuming  
7 an applicable fee shifting statute). There is no reversion to the settling defendant. The plan of distribution  
8 reasonably allocates the settlement fund among the class members. Class counsel seeks \$1,740,000 in fees  
9 (30% of the total recovery) and \$49,437.52 in costs. Four separate firms worked on this case, spending as  
10 total of 3,232 hours and seek fees based on a total recovery of \$5,800,000. When fees are to be paid by the  
11 losing party the Court must award fees under the lodestar approach. Ketchum v. Moses (2001) 24 Cal. 4th  
12 1122, 1132; Horsford v. Board of Trustees (2005) 132 Cal. App. 4th 359, 393-395. Applying the lodestar  
13 analysis, the Court finds that counsel and their paralegals reasonably spent 3,232 hours at an average  
14 reasonable rate of \$420/hour. The Court has not decreased the requested number of hours. The Court uses  
15 an average or median hourly rate because it reflects an apportionment of work among lawyers of different  
16 skill levels. This results in a lodestar of \$1,357,440. The case was taken on a contingent basis and counsel  
17 obtained a good result for the class given the facts and the law. The contingent nature of the case warrants  
18 a multiplier in the range of 1.28 and could support a fee award of \$1,740,000. When fees are to be paid by  
19 clients through a common fund the Court may award fees under a percentage of recovery basis. Apple  
20 Computer, Inc. v. Superior Court (2005) 126 Cal. App. 4th 1253, 1270 ("attorney fees awarded under the  
21 common fund doctrine are based on a "percentage-of-the-benefit" analysis"). Applying the percentage of  
22 a common fund analysis, the Court starts with the presumption that a fee award of 25-33% is usually  
23 reasonable. The percentage can change depending on whether the case is settled or tried, whether the case  
24 involves a mega-fund, and other variables. Based on the Settlement Amount of \$5,800,000, this analysis  
25 supports a fee award of between \$1,450,000 and \$1,933,300. In a settlement, the distinction between  
26 fee-shifting and fee-spreading is often blurred, particularly where class counsel negotiates a comprehensive  
27

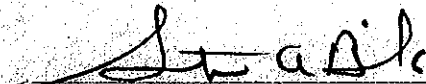
28 

1 settlement rather than negotiating first on behalf of the class and then separately negotiating for themselves  
2 regarding the amount of fees. Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451. Considering  
3 both the lodestar and common fund analysis, the Court awards fees in the requested total amount of  
4 1,740,000. The Court approves payments of \$ 49,437.52 to counsel for costs. The Court approves payment  
5 to notice and claims administrator Rosenthal as billed but not to exceed \$40,000 for claims administration.  
6 The Court approves payment of \$25,000 to the named Plaintiff, Lisa Connell. Plaintiffs submitted a detailed  
7 declaration on 7/21/08 detailing Ms. Connell's participation in discovery, three days of deposition, and a  
8 day of mediation. The declaration also notes that Ms. Connell might have obtained a significantly larger  
9 individual recovery had she pursued an individual action. The Court will order that counsel retain \$150,000  
10 of the fee award in a trust fund until the completion of the settlement fund distribution process and an  
11 accounting hearing. As required by C.C.P. 384(b) the Court sets an accounting hearing for  
12 March 16, 2009 <sup>(at 3:00 p.m.)</sup> to discuss the results of the claims process, to address the distribution of any  
13 residual, and to release the retained counsel fees.

14 2. For the reasons set forth above, the Court makes the following awards: class counsel is awarded  
15 fees of \$1,740,000 and costs of \$49,437.52. Plaintiff is awarded \$25,000 as an incentive award, and  
16 Administrator's fees as billed but not to exceed \$40,000.00 shall be paid. Out of the fee award, \$150,000.00  
17 shall be set aside pending further order of the court.

18 **IT IS SO ORDERED.**

19 Dated: November 12, 2008

  
HON STEVEN BRICK  
JUDGE OF THE SUPERIOR COURT  
FOR THE COUNTY OF ALAMEDA  
STATE OF CALIFORNIA

20  
21  
22  
23  
24  
25  
26  
27  
28 