# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS PARIS DIVISION

LINDA FREW, et al.

<

Plaintiffs, \*

\*

v. \* CIVIL ACTION NO. 3:93CV65

JUDGE RICHARD A. SCHELL

\*

THOMAS SUEHS, et al.

\*

Defendants.

JOINT MOTION FOR AWARD OF INTERIM FEES, COSTS AND EXPENSES TO PLAINTIFFS' ATTORNEYS (2009) AND FOR RELATED PROCEDURAL ORDERS (UNOPPOSED)

Plaintiffs and Defendants jointly move the Court for an award of interim attorneys' fees, costs and expenses to Plaintiffs' counsel pursuant to 42 U.S.C. §1988. They make this Joint Motion in accordance with Joint Motions and Orders filed in recent years in this case. Docket Nos. 656, 660, ¶3 (procedures for annual resolution of fee issues), 662, 685, 718, 739. In support of this Joint Motion, the parties show the Court:

The parties agree that Plaintiffs are prevailing parties in this litigation and so entitled to be awarded their reasonable fees, costs and expenses against Defendants. Plaintiffs and Defendants have negotiated a proposed agreement and seek the Court's approval of it.

## **Claims Covered by Requested Award**

Through this Motion, the parties seek to resolve Defendants' liability to Plaintiffs' counsel for attorneys' fees, costs and expenses during the year 2009. The parties proceed according to this Court's Amended Order Granting Joint Motion in Connection with Remedial Order at 3, ¶3. Docket No. 660.

# **Requested Amounts and Supporting Documents**

The parties jointly ask the Court to approve payment to Plaintiffs' counsel in the total amount of \$413,641.40 for attorney time; and in the total amount of \$1225.99 for costs and expenses; as follows:

Susan F. Zinn	fees	\$199,891.40
Jane K. Swanson	costs/expenses	\$771.05
	fees	\$213,750.00
	costs/expenses	\$454.94

Counsels' declarations are attached as Exhibits 1 and 2. These declarations attest to the authenticity of Plaintiffs' counsel's time and expense records and to the reasonableness of their fee and expense claims. Counsels' time and expense records are attached to their declarations. Attached as Exhibit 3 is the supplemental affidavit of attorney Sam Baxter. This affidavit attests to the range of prevailing hourly attorney fee rates for complex litigation in the Eastern District federal courts.

Plaintiffs' assertions about what attorneys' fee rates would be reasonable, fair and in accord with prevailing market levels are reflected in the affidavit and declarations attached to this Joint Motion. Defendants dispute these assertions. Defendants acknowledge, however, that an attorneys' fee rate of \$380 per hour for Plaintiffs' counsel is not excessive.

Plaintiffs contend that all hours reflected in their attached declarations and time records were reasonably expended in this litigation and therefore are compensable. Defendants dispute this contention with respect to a small number of counsels' reported hours. The parties agree that a total attorneys' fee award of \$413,641.40 for Plaintiffs'

counsels' 2009 work in this case is reasonable. They also agree that counsels' 2009 cost and expense claims totaling \$1225.99 are reasonable and necessary.

#### **Notice to Class**

Since this is a class action, the class must be notified of this Motion. F.R.Civ. P. 23(h)(1). Attached as Exhibit 4 is a proposed class notice. Plaintiffs and Defendants ask the Court to approve this notice and to order its posting in the time and manner reflected in the attached proposed Order. This proposal reflects the same form and manner of notice that the Court approved in connection with previous Joint Motions concerning interim attorneys' fees. Docket Nos. 400, 423, 662, 685, 722, 725.

### **Submission of Proposed Findings of Fact and Conclusions of Law**

F.R. Civ. P. 23(h)(3) requires that the Court enter findings of fact and conclusions of law in support of a fee award to class counsel. These findings and conclusions should discuss any class comments received as a result of the class notice. The parties expect to submit agreed proposed findings and conclusions for the Court's approval, but cannot do so until the class notice period is completed. So, they jointly request the Court to require them to file an agreed proposed fee award Order, to include proposed findings of fact and conclusions of law, on or before September 30, 2010.

#### Conclusion

In conclusion, Plaintiffs and Defendants respectfully request that the Court:

(1) approve the proposed class notice submitted as Ex. 4 to this Motion and order its posting in the time and manner reflected in the attached proposed agreed Order;

- (2) require Plaintiffs and Defendants, after notice and opportunity for class comments, to submit proposed findings of fact and conclusions of law concerning the award requested herein; and
- (3) after notice and opportunity for class comments, approve an award of fees, costs and expenses as requested in this agreed Motion and enter findings of fact and conclusions of law supporting it.

Respectfully submitted,

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

\_\_\_\_/s/\_\_\_\_ James "Beau" Eccles

Office of the Attorney General Assistant Attorney General General Litigation Division P.O. Box 12548, Capitol Station Austin, Texas 78711-2548 (512) 463-2120 (512) 320-0667 (fax)

ATTORNEYS FOR DEFENDANTS

/s/Jane Swanson

Susan F. Zinn Plaintiffs' Attorney in Charge State Bar No. 07015500 P.O. Box 15126 San Antonio, Texas 78212 (210) 734-0425 (210) 734-3111 (fax)

Jane K. Swanson State Bar No. 19554800 P.O. Box 8302 The Woodlands, Texas 77387-8302 (281) 367-4483 (281) 419-5170 (fax)

John Heard Heard & Smith 3737 Broadway San Antonio, Texas 78212 (210) 820-3737 (210) 820-2777 (fax) PLAINTIFFS' ATTORNEYS

CERTIFICATE OF SERVICE

Case 3:93-cv-00065-RAS Document 757 Filed 04/29/10 Page 5 of 5

I, the undersigned, certify that today, April 29, 2010 I sent a copy of the above document and all attachments to Defendants' counsel of record by electronic means as required by the Eastern District Local Rules.

Jane K. Swanson