

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re BLACK FARMERS DISCRIMINATION
LITIGATION

)
) Misc. No. 08-0511 (PLF)
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)

OPINION

This matter is before the Court on class counsel's updated motion for an award of attorneys' fees and expenses. The Settlement Agreement that was approved by the Court following a Fairness Hearing provides that class counsel will receive an award equal to at least 4.1% but no more than 7.4% of the common fund that has been established for the payment of successful claims in this action. Class counsel, who have devoted an immense number of hours to this case while incurring many millions of dollars in unreimbursed out-of-pocket expenses, have moved for an award set at 7.4% of the fund, or \$90,835,000. Having carefully considered the matter, and for the reasons explained below, the Court will grant class counsel's motion for an award of attorneys' fees and expenses set at 7.4% of the common fund. Pursuant to the Settlement Agreement, class counsel will receive their fee award at the same time that successful claimants are paid on their claims.¹

¹ The papers considered by the Court in connection with this matter include the following: Updated Motion by Class Counsel for Award of Attorneys' Fees and Expenses ("Mot.") [Dkt. No. 306]; Memorandum of Law in Support of Class Counsel's Updated Motion for Award of Attorneys' Fees and Expenses ("Mem.") [Dkt. No. 306-1]; Defendant's Response to Class Counsel's Updated Motion for an Award of Attorneys' Fees and Expenses ("Opp.") [Dkt. No. 321]; Reply Brief in Support of Class Counsel's Updated Motion for Award of Attorneys' Fees and Expenses ("Reply") [Dkt. No. 325]; and Supplemental Filing in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Supp. Filing") [Dkt. No. 368].

The term "common fund," as used here with reference to the fund established in this case, refers specifically to the "Fee Base" as defined in the Settlement Agreement, which

This was only the tip of the iceberg for class counsel, who committed to providing assistance to all class members in the completion and submission of their claim forms. Carrying out this task entailed developing a systematic program of meetings held across the country, a program that strategically located and scheduled meetings to maximize counsel's efforts and reach the largest possible number of claimants. Class counsel report that during the claims period they held 384 group meetings in 66 cities and 23 states and in Washington, D.C., which allowed counsel to assist nearly 22,000 potential claimants in person. Ombudsman Report at 26. These group meetings were staffed by multiple attorneys and paralegals to assure that putative class members had access to in-person assistance from legal professionals. And the in-person meetings were supplemented by a system of toll-free telephone assistance, through which class counsel spoke with over 3,600 claimants. *Id.* at 25.

Providing these services demanded that the meetings be designed with sufficient care to run smoothly and ensure that all potential claimants received attention. It also required that the attorneys assisting these thousands of claimants be sufficiently knowledgeable about the underlying USDA farm loan programs to offer effective assistance. Making such assistance available to this large and disparate class was indeed an arduous undertaking. See generally Reply, Ex. B (Declaration of Stephen M. Coe); *id.*, Ex. C (Declaration of Eric J. Sanchez) (recounting diverse challenges of designing and implementing strategy for claimant assistance meetings).

In addition, as class counsel have accurately explained on their own behalf, they have devoted thousands of hours over the past year and a half to, among other things, "working with the Claims Administrator to refine the claims process and to address difficult issues as they arose," "interfacing with the Track A and B Neutrals to ensure that the claims adjudication

last September, or the additional hours they will have to devote on behalf of the class “until all of the Settlement Funds have been distributed in accordance with this Court’s orders.” Supp. Filing at 1. It also does not take into account class counsel’s out-of-pocket expenditures, which they now report to be over \$18 million. *Id.*

A fee award set at 7.4% of the common fund (*i.e.*, \$90,835,000) would come to less than twice the \$50 million lodestar figure supplied by class counsel — a figure that itself is incomplete because it does not include any of class counsel’s work over the past nine months. Such a multiplier — less than two times the lodestar — is unremarkable in common fund cases. In fact, “multiples ranging up to ‘four are frequently awarded in common fund cases when the lodestar method is applied.’” Lorazepam & Clorazepate Antitrust Litig., 2003 WL 22037741, at *9 (quoting In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 341 (3d Cir. 1998)); see In re Baan Co. Sec. Litig., 288 F. Supp. 2d at 19-20 (reviewing counsel’s reported lodestar and finding “that a multiplier of 2.0 or less falls well within a range that is fair and reasonable”); see also Swedish Hosp. Corp. v. Shalala, 1 F.3d at 1263, 1272 (approving fee award approximately 3.3 times the lodestar amount). Applying a lodestar cross-check, therefore, confirms that the award sought by class counsel is neither unusual nor unreasonable, in light of the considerable time and expertise devoted to this case by class counsel.

IV. CONCLUSION

Class counsel have undertaken the immense challenge presented by this action with the utmost professionalism and integrity, exhibiting skill, diligence, and efficiency in all aspects of their duties. As noted earlier, they also have committed themselves to devoting

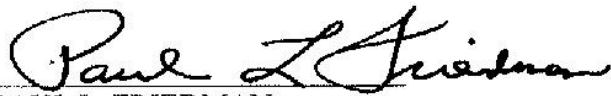
“whatever additional time and effort is necessary going forward to bring the claims and payment process to a successful conclusion.” Mem. at 37; see also Supp. Filing at 1 (noting that class

counsel “will continue to devote substantial time on behalf of the Class, until all of the

Settlement Funds have been distributed in accordance with this Court’s orders”). For the reasons stated above, class counsel’s updated motion for an award of attorneys’ fees and expenses will be granted in the full amount requested. An Order consistent with this Opinion will issue this same day.

SO ORDERED.

DATE: 7/11/13


PAUL L. FRIEDMAN
United States District Judge