

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

DEBBIE BARRETT, INDIVIDUALLY)
AND ON BEHALF OF THOSE)
SIMILARLY SITUATED,)

Plaintiff)

VS.)

HEWLETT-PACKARD COMPANY,)

Defendant)

STEPHEN GRIDER and BEVERLY L.)
GRIDER, INDIVIDUALLY AND ON)
BEHALF OF THOSE SIMILARLY)
SITUATED,)

Plaintiffs,)

vs.)

COMPAQ COMPUTER CORPORATION,)

Defendant.)

Case No. CJ-2003-967 L
(surviving number)

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED In The
Office of the Court Clerk

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Rhonda Hall, Court Clerk
_____ DEPUTY

Case No. CJ-03-969 L

**ORDER GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

On December 11, 2007, this Court granted preliminary approval to the proposed class action settlement set forth in the Settlement Agreement.¹ The Court also provisionally certified a nationwide class for settlement purposes (the Compaq Settlement Class and the HP Settlement Class (collectively referred to as the "Class")), approved the procedure for giving notice to the members of the Class and set a final fairness hearing to take place on April 29, 2008. The Court

¹ Unless otherwise defined, capitalized terms in this Order have the definitions found in the Settlement Agreement.

finds that the Notice substantially in the form approved by the Court in its preliminary approval order was given in the manner ordered by the Court

On April 29, 2008, the Court held a duly noticed final fairness hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the named plaintiffs' complaints on the merits and with prejudice in favor of the Defendants and against all persons or entities who are Class members herein who have not requested exclusion from the Class; and (3) whether and in what amount to award counsel for the Class as attorneys' fees and expenses and whether and in what amount to award payments to the class representatives.

FINDINGS OF THE COURT:

1. Pursuant to the Settlement Agreement filed December 11, 2007, the following constitutes this Court's Supplemental Findings and Orders related to the Order Finally Approving Settlement Agreement and Final Judgment, which is being executed in the above styled matter.
2. Nothing in these findings of fact modifies the Settlement Agreement, which is approved and incorporated herein by reference. The findings stated herein are clarified by the terms of the Settlement Agreement and when any description herein of the terms of the Settlement Agreement is incomplete or conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.
3. All capitalized terms used in these findings that are not otherwise defined in these findings shall have the meaning as defined in the Settlement Agreement.
4. In making its determination that the Settlement Agreement is fair, reasonable and adequate, this Court considered all objections presented to the Court.
5. In the Settlement Agreement Settling Defendants agree to pay without objection attorneys' fees of \$40 million (\$40,000,000.00). This payment is independent of the remedies available to the class.

- a. A fee was recoverable as part of a litigated judgment under either fee shifting statutes or common fund.
- b. The Class Counsel provided the Court, in camera, with detailed time records which satisfy the requirements of *Burk v. Oklahoma City*, 1979 OK 115, 598 P.2d 659 (1979); and *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 171 P.3d 890 (2007).
- c. The Court reviewed these detailed time records.
- d. The fee of \$40 million is reasonable under the lodestar analysis.
- e. The base lodestar based on the standards announced in *Burk* and *Spencer* is \$32,540,000.00. *Burk v. Oklahoma City*, 1979 OK 115, 598 P.2d 659 (1979); and *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 171 P.3d 890 (2007). The following non-exclusive clarifications in the remainder of this paragraph do not limit this general finding. Attached to the fee application are summary sheets that show the hours and rates for each lawyer, legal assistant and other biller whose total time makes up the lodestar. The rates were supported by affidavits and expert opinions in the record. The hours were confirmed by the in camera review of the detailed time records. The hours expended by each particular biller and all billers combined were justified. The hours expended by and the hourly rates for each particular biller and all billers combined are reasonable. The hourly rates for each particular biller and all billers combined are the market rate for these services.
- f. The Court applies the *Burk* factors as follows.
 - i. Time and labor required. Prosecution of this case involved in excess of 70,000 hours of billable time by 58 lawyers, 27 legal assistants, and others. There were about 4 million (4,000,000) paper documents produced, 300 thousand (300,000) electronic documents produced, 122 depositions, 78 different experts, 10 formal FRCP 34(a) – type inspections resulting in over 600 hours of video inspection tape, 1,229 pleadings, 376 orders, 100 hearings, and 88 appellate briefs.
 - ii. The novelty and difficulty of the questions: The novel and difficult legal questions involved included certification of national classes and consequential questions of interstate comity, choice of law, whether malfunction is an element of a breach of an express warranty, proof of reliance in a class action, proof of notice in a class action, application of limitation of remedies contained in consumer product warranties, and other issues identified in the record. The number of pleadings, hearings, orders, and appellate proceedings attest to this. The novel and difficult legal questions of fact include understanding of computer and chip architecture, methods of detecting and demonstrating the alleged defect and its consequences and software patches and their limitations. This is

- attested to by the large number of experts, the special testing and demonstrative software that was developed, the number and duration of FRCP 34(a) – type inspections, and the approximately \$8 million in out of pocket expenses incurred by Class Counsel. Three other FDC cases brought by other lawyers were disposed of on motions to dismiss and summary judgment.
- iii. The skill requisite to perform the legal service properly. The novelty of both the legal questions and the fact issues required extraordinary and specialized skill. Likewise, the blue-chip global economic and legal resources defending the cases demanded commensurate skill. Three other FDC cases brought by other lawyers were disposed of on motions to dismiss and summary judgment. The evidence of the cost of defense paid by the Settling Defendants also shows the demands on Class Counsel and the skill necessary to match the defense effort.
 - iv. The preclusion of other employment by the attorney due to acceptance of the case. The hours spent by the core attorneys involved establish that employment in other cases was significantly precluded.
 - v. The customary fee. Customary fees for such cases are contingent on award by the Court, thus, entailing risk for counsel. There is evidence that the cost of defense paid by the Settling Defendants well exceeded to fees sought by Class Counsel.
 - vi. Whether the fee is fixed or contingent. The fee agreements with all Class Counsel were, in fact, contingent on award by the Court, thus, entailing risk for counsel.
 - vii. Time limitations imposed by the client or the circumstances. The press of massive discovery, and intense motion and appellate practice imposed a requirement of almost full time dedication to this case to have any hope of bringing the case to trial in a timely manner.
 - viii. The amount involved and the results obtained. A class size of 3.9 million Affected Computer units speaks for itself. The settlement provided remedies consistent with the warranty remedies and the parties agreed that the total value of the settlement exceeded \$630 million.
 - ix. The experience, reputation and ability of the attorneys. The attorneys are accomplished lawyers with significant class action and litigation experience and the highest of reputations.
 - x. The 'undesirability' of the case. The demonstrated out-of-pocket expense and large numbers of hours – all at risk and contingent – make this case highly undesirable. Three other FDC cases brought by other lawyers were disposed of on motions to dismiss and summary judgment.
 - xi. The nature and length of the professional relationship with the client. This is a one-shot case. There is no past relationship with the client and no reasonable prospect of continuing professional relationship of a significant degree.
 - xii. Awards in similar cases. The request for \$40 million in fees for a team of 58 lawyers and 27 legal assistants who worked on these cases for over eight years is reasonable in light of awards in similar cases.

1. The Settlement Agreement, including the definitions contained therein, is incorporated by reference into this Final Judgment.

2. The Court finds that the prerequisites for a class action under 12 Okl. St. Ann. § 2023 have been satisfied for each of the Compaq Settlement Class and the HP Settlement Class in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent; (d) the Plaintiffs have and will fairly and adequately represent the interests of the Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact common to the Class Members predominate over any questions affecting any individual Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to 12 Okl. St. Ann. § 2023, this Court hereby finally certifies the Compaq Settlement Class and the HP Settlement Class.

4. The Court appoints Niemeyer, Alexander, Austin & Phillips, P.C., The Reaud Law Firm, Benckenstein & Oxford, L.L.P. P.C., DeWayne Layfield, Olen Ken Dodd, Orgain, Bell & Tucker, L.L.P., Herum Crabtree Brown, G. Kip Edwards, and their respective members, as counsel for the Certified Settlement Classes. The Court designates named plaintiffs Stephen Grider, Beverly L. Grider, and Debbie Barrett and those named plaintiffs in the Batiste, Schultz, Alvis and LaPray Cases who support the Settlement Agreement and who requested to be added as Certified Class Representatives in the Consolidate Action as the Class Representatives.

5. The Notices met the requirements of 12 Okl. St. Ann. § 2023, due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

6. The Settlement Agreement is approved as fair, reasonable and adequate.
7. Pursuant to 12 Okl. St. Ann. § 2023, the Court hereby awards Class Counsel attorneys' fees and expenses in the amount of \$48,250,000.00 less the stipends approved below for each Class Representative payable pursuant to the terms of the Settlement Agreement. The Court also awards stipends in the amount of \$ 25,000.00 to each Class Representative payable pursuant to the terms of the Settlement Agreement.
8. The Consolidated Action, the Grider Case and the Barrett Case are dismissed with prejudice as of the date the Court enters an Order closing the Claims Administration pursuant to the Settlement Agreement.
9. Upon the Effective Date, Plaintiffs and all Class Members are permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all of the Released Claims against any of the Released Persons.
10. Pursuant to and as set forth in the Settlement Agreement, the Released Persons shall be fully, finally, and forever released, relinquished, and forever discharged by the Releasing Persons from the Released Claims. .
11. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:
 - (a) offered by any person or received against the Defendants as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by the Defendants of the truth of the facts alleged by any person or the validity of any claim that has been or could have been asserted in the Litigation or in any litigation, or other judicial or administrative

proceeding, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any litigation, or of any liability, negligence, fault or wrongdoing of the Defendants;

- (b) offered by any person or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Defendants or any other wrongdoing by the Defendants;
- (c) offered by any person or received against the Defendants or as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason against any of the settling parties, in any civil, criminal, or administrative action or proceeding; provided, however, that nothing contained in this paragraph shall prevent the Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto) or the Final Judgment, or in which the reasonableness, fairness, or good faith of the parties in participating in the Settlement Agreement (or any agreement or order relating thereto) is an issue, or to enforce or effectuate provisions of the Settlement Agreement, the Final Judgment, or the Claim Forms and Release as to the Settling Defendants, Plaintiffs, Certified Class Representatives or the Certified Class members; or

(d) offered by any person or received against any Plaintiff or Class Representative as evidence or construed as or deemed to be evidence that any of their claims in any of the cases consolidated herein lack merit.

12. Without affecting the finality of this Final Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) the disposition of the settlement benefits; and (b) the settling parties for purposes of construing, enforcing and administering the Settlement Agreement.

13. Without further order of the Court, the settling parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

14. In the event that the Effective Date does not occur, this Order and Final Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

DONE this 9th day of May, 2008.



Judge Tom Lucas