

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Daniel Perez and Elizabeth Perez, on behalf
9 of themselves and all others similarly
10 situated,

No. CV-08-01184-PHX-DGC

ORDER

11 Plaintiffs,

12 v.

13 First American Title Insurance Company,

14 Defendant.

15
16 Plaintiffs have filed an unopposed motion for an award of attorneys' fees and costs
17 in the amount of \$300,000. Doc. 353 at 15. Defendant filed a response stating that the
18 motion is unopposed because the amount is consistent with the Settlement Agreement
19 reached by the parties and noting that the Court may, in its discretion, award a lesser
20 amount. Doc. 357 at 1-2; *see* Doc. 352 (order approving Settlement Agreement). For the
21 reasons set forth below, the Court finds the requested fee award appropriate and
22 reasonable and will grant Plaintiffs' motion.

23 **I. Appropriateness of Fees.**

24 "[T]he parties to a class action properly may negotiate not only the settlement of
25 the action itself, but also the payment of attorneys' fees." *Williams v. MGM-Pathe*
26 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (citing *Evans v. Jeff D.*, 475
27 U.S. 717, 734-35, 738 n. 30 (1986)). Plaintiffs brought claims on behalf of themselves
28 and class members, alleging that Defendant First American Title Insurance Company

1 (“First American”) overcharged them for the purchase of title insurance. After three
2 years of contested litigation, the parties negotiated a class settlement with the assistance
3 of a Ninth Circuit mediator. Doc. 353 at 3. Upon further mediated negotiations, the
4 parties agreed that Defendants would separately pay Plaintiffs’ attorneys’ fees and costs,
5 not to exceed \$300,000. *Id.*, Doc. 357 at 1, referencing Settlement Agreement § III. F.
6 Having reached this agreement through proper negotiations, the Court finds that
7 Plaintiffs’ fee request is warranted.

8 **II. Reasonableness of Fees.**

9 **A. Lodestar Amount.**

10 Where, as here, Defendants have agreed to pay attorneys’ fees separately from the
11 fund set aside for the class, the fees are based on the lodestar amount rather than a
12 percentage of the relief granted. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th
13 Cir. 1998) (explaining two methods of fee calculations). The lodestar amount consists of
14 the number of hours reasonably expended on the litigation multiplied by a reasonable
15 hourly rate. *Id.* The hours must be reasonable in relation to the success achieved.
16 *McGinnis v. Kentucky Fried Chicken of California*, 51 F.3d 805, 810 (9th Cir. 1994).

17 Plaintiffs have submitted declarations from counsel for three law firms,
18 representing a total of 2,875.49 hours expended on behalf of Plaintiffs in this litigation.
19 Doc. 354 at 2, 354-2 at 1; 355 at 8; 356-1 at 1. The Court is familiar with the facts of this
20 case and the manner in which it was litigated over the past three years and concludes that
21 this number is reasonable. As Plaintiffs point out, class counsel conducted extensive
22 discovery, issuing three sets of interrogatories and document requests, taking ten
23 depositions, reviewing over 90,000 pages of documents, and making site visits to First
24 American to retrieve electronic data. Docs. 353 at 10-11, 356, ¶ 12. Counsel also
25 achieved some success for their efforts, obtaining class certification and partial summary
26 judgment, resulting in a settlement projected to refund 100% of overcharges for
27 qualifying class members. Doc. 353 at 4, 11, 12.

28 The hourly rate for individual attorneys at the three firms ranges up to \$625

1 (Doc. 355 at 8), \$650 (Doc. 354-2 at 1) and \$675. Doc. 355 at 8. The Court finds these
2 rates to be at the high end of the reasonable range. The resulting lodestar amount for all
3 three firms is over \$1.4 million. Doc. 353 at 8. As Plaintiffs point out, however, the
4 \$300,000 cap in fees effectively reduces the average hourly rate to approximately \$105.
5 *Id.* Because the Settlement Agreement significantly reduces the lodestar amount, the
6 Court concludes that Plaintiffs' request for the full, allowable amount of fees is
7 reasonable.

8 **B. Other Guidelines.**

9 The Ninth Circuit has adopted a number of guidelines for determining the
10 reasonableness of attorneys' fees, many of which have been subsumed by the lodestar
11 analysis. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1972) (adopting the
12 twelve *Johnson* guidelines from the Fifth Circuit); *Morales v. San Rafael*, 96 F.3d 359,
13 364, 364 n. 9, 10, 11 (9th Cir. 1996) (noting that courts need not recite the *Kerr* factors,
14 but need only consider those not subsumed in the lodestar amount). Plaintiffs raise
15 several considerations in relation to these guidelines in addition to those discussed above,
16 including that the litigation presented complex technical issues of data retrieval and
17 interpretation and that the level of effort from class counsel precluded their work on other
18 cases while they assumed the risk of non-payment. Doc. 353 at 12-14. The Court agrees
19 that the novelty and complexity of the litigation and the risks and contingent nature of the
20 litigation also weigh in favor of granting Plaintiffs the full \$300,000 in attorneys' fees.

21 **C. Costs.**

22 Plaintiffs present evidence that they expended an additional \$555,205.78 in costs.
23 Doc. 353 at 15. The Court has already determined that Plaintiffs are entitled to the full
24 \$300,000 award. Because costs are subsumed in this amount, the Court will not
25 separately discuss the reasonableness of the claimed costs.

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

IT IS ORDERED:

1. Plaintiff's Unopposed Motion for Attorneys' Fees (Doc. 353) is **granted**. Pursuant to the Settlement Agreement between the parties, attorneys' fees and costs in the total amount of \$300,000 are awarded in favor of Plaintiffs and against Defendant.

Dated this 14th day of May, 2012.



David G. Campbell
United States District Judge