UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-4524-GHK (VBKx)	Date	February 28, 2014
Title	*Mary Henderson v. The J.M. Smucker Company*		

Presiding: The Honorable	**GEORGE H. KING, CHIEF U.S. DISTRICT JUDGE**	
Kane Tien for Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: **(In Chambers) Order re:** Plaintiff's Motion for Attorneys' Fees and Costs (Dkt. 226)

This matter is before us on Plaintiff Mary Henderson's ("Plaintiff") Motion for Attorneys' Fees and Costs ("Motion"). We have reviewed the papers filed in support of and in opposition to this Motion, including Plaintiff's Response to our June 19, 2013 Order ("Pl.'s Response"), Defendant's Objections, and Plaintiff's Reply, and deem this matter appropriate for resolution without oral argument. L.R. 7-15. As the Parties are familiar with the facts, we will repeat them only as necessary. Accordingly, we rule as follows:

I. Background

On June 18, 2010, Plaintiff Mary Henderson ("Plaintiff") filed the above-captioned consumer class action against Defendant The J.M. Smucker Company alleging that Defendant violated California's Unfair Competition Law ("UCL"), False Advertising Law ("FAL"), and Consumer Legal Remedies Act ("CLRA") by making various health and wellness claims in marketing its Uncrustables and Crisco Shortening products. Henderson alleged that the health claims were false and misleading because both products contained amounts of trans fat from partially hydrogenated vegetable oil ("PHVO") and Uncrustables also contains high fructose corn syrup ("HFCS"), which made them unhealthful. On October 23, 2012, we granted Defendant's motion to dismiss Plaintiff's individual claims because she lacked standing to assert them after she reopened her bankruptcy proceedings. (Dkt. 219.)

On January 7, 2013, Plaintiff filed a Motion for Attorneys' Fees and Costs, seeking $3,270,374 in fees and $35,138.65 in costs under the fee-shifting provisions of California's Private Attorney General Act, Cal. Civ. Proc. Code § 1021.5 ("CCP § 1021.5").[1] (Dkt. 226.) She contended that she is entitled to fees under CCP § 1021.5 as a "successful" or "prevailing" party under the catalyst theory because this lawsuit prompted Defendant to make the following changes to its business practices: (1)

[1] Plaintiff also argued that she is entitled to fees under Cal. Civ. Code § 1780(e). We did not, and need not, reach the merits of this argument because we found that she is entitled to fees under CCP § 1021.5. (Fee Order at 2 & n. 3.)

removal of the "wholesome" and "homemade goodness" marketing claims from Uncrustables; (2) removal of trans fat from Uncrustables; and (3) removal of the bar chart comparing Crisco's saturated fat content to butter. In our June 19, 2013 Order ("Fee Order"), we concluded that Plaintiff is entitled to fees under CCP § 1021.5 because her lawsuit was a "catalyst" to Defendant's removal of trans fat from Uncrustables. (Dkt. 268.) But, we rejected Plaintiff's arguments that her lawsuit was a catalyst to the removal of the "wholesome" and "homemade goodness" claims, and the Crisco bar chart.

We did not make a determination as to the amount of fees and costs to which Plaintiff was entitled, however, because we could not determine whether the hours expended were reasonable based on the organization of the billing records (by timekeeper rather than task). Accordingly, in our Fee Order we ordered Plaintiff to file reorganized billing records that grouped entries by task and showed a subtotal of attorney, paralegal, and law clerk hours for each task. We also gave Defendant an opportunity to file objections, and Plaintiff an opportunity to reply to those objections. On July 17, 2013, Plaintiff submitted amended billing records. In addition to reorganizing billing records by task, Plaintiff also deleted 27.4 hours of duplicative entries and other errata, reducing her requested lodestar by $7,320. Accordingly, Plaintiff now seeks $3,253,902 in fees and $35,138.65 in costs.

II. Attorneys' Fees

A. Legal Standard

To determine whether Plaintiff's requested fee amount is reasonable we use the "lodestar" method. *Ctr. for Biological Diversity v. Cnty. of San Bernardino*, 185 Cal. App. 4th 866, 895-96 (2010). We calculate the "lodestar" by multiplying the number of hours reasonably spent on the litigation by a reasonable hourly rate. *Id.* Then, we may adjust the lodestar upward or downward by a positive or negative multiplier based on reasonableness factors including: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 154 (2006) (quoting *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001)). We have discretion to reduce a fee award based on the plaintiff's "degree of success." *See Biological Diversity*, 185 Cal. App. 4th at 896. Such a reduction is appropriate "when a plaintiff has achieved limited success or has failed with respect to distinct and unrelated claims." *Hogar v. Cmty. Dev. Comm'n of Escondido*, 157 Cal. App. 4th 1358, 1359 (2007); *see also Chavez v. City of L.A.*, 47 Cal. 4th 970, 989 (2010) ("[U]nder state law . . . a reduced fee award is appropriate when a claimant achieves only limited success.").

B. Hours Expended

Plaintiff submits a lodestar of $1,446,179 based on 3,851.9 hours (2454.5 attorney hours and 1,397.4 paralegal and law clerk hours) billed over the course of 31 months of litigation. (*See* Pl.'s Response, Ex. A.) Defendant objects to Plaintiff's fee request as "entirely unreasonable." It argues that the claimed time is excessive, unnecessary, and unjustly seeks fees for aspects of the case where

Plaintiff was entirely unsuccessful. We agree. We find Plaintiff's request grossly excessive, especially in light of the limited success Plaintiff actually achieved in this lawsuit. We address Defendant's specific objections to Plaintiff's requests below. For ease of analysis, we have separated the hours into categories for each stage of the litigation.

1. Pre-Filing Investigation and Research

In this category, Plaintiff requests 8.1 hours (1.8 partner hours and 6.3 paralegal hours). Defendant does not object to this time, and after reviewing Plaintiff's billing records, we find that this time is reasonable.

2. Initial and First Amended Complaint

Plaintiff requests 46.5 hours–10.6 hours by two partners and 35.9 by two paralegals–for time spent drafting and editing the initial complaint. Defendant argues that this request is excessive because the complaint did not entail any novel issues, and Plaintiff's counsel purport to be "experts" in this area of litigation and have filed a number of substantially similar cases. After reviewing the billing records and the initial complaint, we find it should reasonably have taken no more than 26 hours (6 partner hours and 20 paralegal hours) to draft and edit the initial complaint. Plaintiff also requests 12.7 hours (6 partner hours, 0.4 associate hours, and 6.3 paralegal hours) spent drafting and editing the first amended complaint. Defendant does not challenge these hours, and the amount spent appears to be reasonable. Accordingly, we find that it was reasonable for Plaintiff to spend 12 partner hours, 0.4 associate hours, and 26.3 paralegal hours on this phase of the litigation.

3. Opposing Defendant's Motion to Dismiss and Motion to Strike

Plaintiff requests a total of 95.7 hours for time spent opposing Defendant's November 2010 motion to dismiss and motion to strike, and its December 2012 motion to dismiss for lack of standing, which was only 6 pages. These hours include 63.1 hours billed by three partners, 6.2 hours billed by two associates, and 26.4 hours billed by 4 paralegals and 1 law clerk. Defendant argues that the amount of time spent by Plaintiff's counsel is excessive. In reviewing the billing records and relevant oppositions in the record, it appears that poor staffing and duplication of efforts resulted in excessive billing in this category. For example, the billing records make clear that Fitzgerald drafted the oppositions to the November 2010 motions and Persinger drafted the opposition to the 2012 motion, yet Weston still billed 23.1 hours. As such, we find that the attorney and paralegal hours billed were excessive. We find Plaintiff's counsel should have expended no more than 35 partner hours, 6 associate hours,[2] and 20 paralegal hours in this category.

[2] We deducted 0.2 hours from associate hours because Persinger's billing records include duplicative 0.2 hour entries on December 31, 2012 for "reading reply in support of motion to dismiss filed by Smucker." (*See* Pl.'s Response, Ex. B at 12.)

4. Discovery

Plaintiff's counsel claim to have spent 1,766 hours on tasks related to discovery, which includes time spent on drafting and responding to discovery; expert reports; document review; preparing for attending, and summarizing depositions; and discovery-related motions. Defendant argues that these hours should be entirely noncompensable because the time expended on discovery was "entirely unrelated to the success Plaintiff achieved." (Def.'s Objections 13.) Alternatively, if we determine that discovery-related hours should be compensable, Defendant raises specific objections to the hours requested, including excessive billing. We disagree with Defendant's assertion that Plaintiff should not be able to recover for hours spent on discovery. We conclude that discovery is an inextricably intertwined part of the lawsuit that we determined to have been the catalyst for Defendant's decision to remove PHVO from Uncrustables. Still, we agree that the hours requested are excessive.

First, Plaintiff requests 122.2 hours for time spent preparing Dr. Wong's expert report.[3] Defendant objects to this as unreasonable, and further contends that the excessive amount of time calls into question whether Dr. Wong actually drafted his own report. (Def.'s Objections 18; Ranahan Decl. 13-14 & Ex. V.) In her reply, Plaintiff asserts that only 34 hours were expended on assisting Dr. Wong draft his report, which was necessary because Dr. Wong was unsure of how to properly format the report, and the bulk of the entries involve communications with Dr. Wong and internal discussions regarding Dr. Wong's report. (Pl.'s Reply 20.) Regardless, we find that the amount of time spent on this task is grossly excessive. We find that Plaintiff's counsel should have expended no more than 14 hours assisting Dr. Wong and reviewing his report, 8 hours communicating with Dr. Wong, and 8 hours on internal discussions. Accordingly, we find it was reasonable to spend no more than 30 hours on Dr. Wong's expert report, with 6 hours spent by partners, 10 hours spent by associates, and 14 hours spent by paralegals.

Second, Plaintiff seeks 148.9 paralegal hours for time spent summarizing twelve depositions taken in this case. (Pl.'s Response, Ex. A at 67-77, Ex B. at 80-94.) Defendant argues that this amount of time is unreasonable given the length of the depositions and amount of time spent on each summary. (Ranahan Decl. 12-13.) We have reviewed the length of each deposition submitted by Defendant and compared it to the amount of time Plaintiff's paralegals spent on each deposition summary. Accounting for the fact that the depositions of Plaintiff's and Defendant's experts may have been more technical, we find that Plaintiff's paralegals should have spent no more than 35 hours summarizing depositions.

Third, Defendant objects to Plaintiff's decision to send two attorneys to almost every deposition. We disagree with Defendant's assertion that having two attorneys attend the depositions was unnecessary. Sending two attorneys to a deposition is the common practice of many law firms, and we will not second-guess counsel's staffing choice. However, we find that sending Dave Newberry, a

[3] Defendant asserts Plaintiff spent 167.3 hours on Dr. Wong's expert report. However, this number included hours that were reported in the "Class Certification" and "Fee Motion" categories of Plaintiff's billing records. We deducted those hours to avoid double counting.

paralegal at the Weston Firm, to "tak[e] notes at deposition of Dr. Wong" was unnecessary. Weston and an associate also attended the deposition, and a paralegal later summarized it. Accordingly, we find that attendance by Newberry was redundant and unnecessary, thus resulting in a 7.4-hour reduction in paralegal hours.

Finally, Plaintiff requests 5.2 hours for work spent by the Marron Firm's legal assistants on various tasks, including case management, reviewing emails, and scanning and printing documents. We find that these tasks are merely administrative and therefore are not compensable. *See Bussey v. Affleck*, 225 Cal. App. 3d 1162, 1166 (1990), *abrogated on other grounds by Hsu v. Semiconducter Sys. Inc.*, 126 Cal. App. 4th 1330 (1995). Accordingly, we deduct Plaintiff's requested hours by 5.2 legal assistant hours.

5. Class Certification

Plaintiff requests 708.7 hours spent on two class certification motions. Defendant objects to Plaintiff's attempt to recover for these unsuccessful motions because they were not "reasonably related" to Plaintiff's limited success in this lawsuit. We agree. First, Plaintiff seeks to recover 386.4 hours for her first class certification motion, which we denied because Plaintiff failed to meet and confer as required by Local Rule 7-3. Plaintiff argues that her counsel's work on this motion should nonetheless be compensable because although it was not successful, it was not unsuccessful either. (Pl.'s Reply, at 6 n.4.) This argument is without merit. It would not be reasonable to compensate Plaintiff for unnecessarily incurring expenses for failing to comply with Local Rules. Second, Plaintiff seeks 322.3 hours for her second class certification motion. We denied this motion because Plaintiff lacked standing to proceed as a class representative. (*See* Dkt. 219.) We find that Plaintiff's counsel should not be compensated for this motion because they should have known prior to filing this Motion that Plaintiff was an inadequate class representative due to her bankruptcy. Accordingly, we deduct 708.7 hours from Plaintiff's requested hours.[4]

6. Settlement Conferences, Mediation, and Other Negotiations

Plaintiff requests a total of 177.2 hours for time spent on settlement conferences, mediation, and negotiations. Plaintiff claims to have spent a staggering 112 partner hours, 29.3 associate hours, and 35.9 paralegal hours in this category. We find this request to be entirely unreasonable. Only one five-hour settlement conference and one forty-five minute follow-up phone conference were held in this case. We find that no more than 35 partner hours, 15 associate hours, and 15 paralegal hours should have been expended in this category.

7. Work on Unfiled Summary Judgment Briefing

[4] Moreover, Plaintiff's counsel can certainly use some or all of the work they did on these motions in seeking class certification in their related case, *Lucina Caldera v. J.M. Smucker Company*, CV 12-4936-GHK (VBKx), and may seek fees in that case, if appropriate.

Plaintiff seeks 353.4 hours for time spent on its portion of an unfiled summary judgment brief. Defendant argues that these hours should not be compensable because the summary judgment motion was never filed. (Def.'s Objections 12.) Plaintiff argues that these hours should be compensated because, even though the briefing was never filed, it exposed Defendant to Plaintiff's evidence and resulted in the success Plaintiff obtained. It is likely that this briefing exposed Defendant to the merits of Plaintiff's lawsuit and resulted in catalyzing the results achieved. Accordingly, we find Plaintiff's counsel should be compensated for hours they reasonably expended in this category. However, the 353.4 hours Plaintiff requests is excessive. We find Plaintiff's counsel should have expended no more than 20 partner hours, 60 associate hours, and 50 paralegal hours in this category.

8. Bankruptcy and Standing Issues

Plaintiff requests 156.2 hours relating to litigating standing and bankruptcy issues in this case. These matters are entirely tangential to the merits of this case. Had Plaintiff's counsel done their due diligence in investigating Ms. Henderson's adequacy as a class representative prior to filing this case, these hours would never have been expended. We find that it is not reasonable to compensate Plaintiff's counsel for unnecessarily incurring these expenses. Accordingly, we deduct 156.2 hours from Plaintiff's requested hours.

9. Fee Motion

Plaintiff seeks to recover 299.3 hours for time spent on its fee motion. We find this amount to be wholly unreasonable, and it appears that the excessive number can be attributed to substantial duplication of efforts. For example, 171.9 hours requested is for the work of four paralegals and a law clerk, which were spent mostly organizing billing records and calculating fees. Moreover, Weston billed 30.5 hours and Fitzgerald billed 21.1 hours on the motion, even though it appears that most of the drafting was completed by associates. Accordingly, we find that Plaintiff's counsel should have expended no more than 10 partner hours, 25 associate hours, and 25 paralegal hours on this motion.

10. Other Groupable Tasks

Finally, Plaintiff seeks 228.1 hours for hours expended on other groupable tasks, including team conferences, client communications, case administration, and website management. In this category, Defendant specifically objects to 15.4 hours that relate to counsel's dispute with their former co-counsel, Beck & Lee. Plaintiff argues that these hours should be compensated because Defendant makes no showing that counsel's choice to work with Beck & Lee was a "foreseeable mistake." (Pl.'s Reply 18.) This argument is unpersuasive. Plaintiff's counsel's internal dispute with their former co-counsel in no way advanced Plaintiff's lawsuit, and these hours cannot be said to have been reasonably spent on this litigation. Accordingly, Plaintiff's requested hours are reduced by 8.2 partner hours and 7.2 paralegal hours.

Additionally, Defendant objects to the 51 hours Plaintiff seeks for work done on its informational website. Plaintiff argues that its website should be compensable because it serves to inform the public and potential class members about the litigation. (Pl.'s Reply 18.) Although Plaintiff never achieved class certification in this action, we find that given the nature of this lawsuit, which was brought as a class action, some limited work spent informing the public of the nature and existence of the lawsuit is reasonable. Nevertheless, we find that the amount of time spent on the website for these limited pre-certification purposes to be unreasonable. Accordingly, Plaintiff's requested hours are reduced to 0.6 partner hours and 10 paralegal hours. Defendant also objects to 0.9 hours Plaintiff seeks for work on articles and a class action symposium. Plaintiff does not respond to this objection, and we do not see how this work could be said to reasonably relate to this lawsuit. Accordingly, we deduct 0.2 partner hours, 0.2 associate hours, and 0.5 paralegal hours from Plaintiff's requested hours.

Plaintiff also seeks 19.5 hours for administrative tasks performed by legal assistants. As we explained above, such hours are not compensable. Accordingly, we deduct Plaintiff's requested hours by 19.5 legal assistant hours.

Based on the foregoing, we find that Plaintiff should be compensated for 620.7 partner hours, 753.1 associate hours, and 681.9 paralegal hours.

C. Hourly Rate

In order to calculate the lodestar, we must determine the reasonable hourly rate for the services of Plaintiff's counsel. In making this determination, we look to the "prevailing market rate" in the community, taking into consideration "the experience, skill, and reputation of the attorney requesting fees." *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013). "Affidavits of the plaintiffs' attorney . . . regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *Id.* The court may also "rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate." *Id.*

Here, Plaintiff requests the following hourly rates: (1) $650 for Ronald Marron (a partner); (2) $525 for Gregory Weston and Jack Fitzgerald (partners); (3) $500 for Courtland Creekmore (an associate); (4) $450 for Margarita Salazar (an associate); (5) $385 for B. Skye Resendes (an associate); (6) $375 for Maggie Realin (an associate); (7) $300 for Melanie Persinger (an associate); (8) $225 for law clerks; (9) $215 for Marron paralegals; and (10) $195 for Weston paralegals. As evidence that these rates are reasonable, Plaintiff's attorneys submit evidence that other courts have approved the same or similar rates for their services, Fitzgerald Decl. ¶¶ 3-7; *see, e.g.*, *Gallucci v. Boiron, Inc.*, 2012 U.S. Dist. LEXIS 157039, at *25-26 (S.D. Cal. Oct. 31, 2012); *In re Ferrero Litig.*, 2012 U.S. Dist. LEXIS

94900, at *11 (S.D. Cal. July 9, 2012); and that these rates are consistent with rates awarded by courts for attorneys with comparable experience, Fitzgerald Decl. ¶¶ 8-13.[5]

We find that the rates requested for Plaintiff's attorneys are generally reasonable. Accordingly, using an average of Plaintiff's proposed figures, we conclude that the reasonable rate for partners should be $545 per hour,[6] and the reasonable rate for associates should be $375 per hour.[7] However, based on the Court's own knowledge and familiarity with the market, the rates requested for law clerks and paralegals appear to be slightly high. Accordingly, based on the evidence provided by Plaintiff and our own knowledge, we find that the reasonable hourly rate for paralegals and law clerks is $150. *See, e.g.*, *In re Nucoa Real Margarine Litig.*, CV 10-00917-MMM (AJWx) (C.D. Cal. Jun. 12, 2012) (approving $150 per hour rate for Weston paralegals).

D. Lodestar

Due to the adjustments described above, we find that the following table shows reasonable attorneys' fees in this case:

	TOTAL HOURS	HOURLY RATE	LODESTAR
Partner	620.7	$545	$338,281.50
Associate	753.1	$375	$282,412.50
Paralegal/Law Clerk	681.9	$150	$102,285.00
TOTAL:	2055.1		$722,979.00

[5] They also assert that a 2010 National Law Journal survey confirms the reasonableness of their requested rates, given that the survey shows firms in Los Angeles charge between $495 and $820 for partners and $270 and $620 for associates. *Id.* ¶¶ 14-15. This survey, however, only solicited responses from the nation's 250 largest law firms and does not provide rates specific to Southern California.

[6] For the purposes of this calculation, we took into account the fact that Gregory Weston and Jack Fitzgerald, whose requested hourly rate is $525, performed approximately 85% of "partner work" and Ronald Marron, whose requested hourly rate is $650, performed approximately 15% of "partner work."

[7] This number was calculated by averaging the proposed rates for each associate who worked on this case.

E. Multiplier

As explained above, we may also adjust the lodestar upward or downward based on various factors. *See Ctr. for Biological Diversity*, 185 Cal. App. 4th at 899. Plaintiff requests that we apply a 2.25 multiplier to the lodestar because (1) exceptional results were obtained given that the removal of PHVO from Uncrustables produces a public health benefit; (2) Plaintiff's counsel took the litigation on a contingency basis; (3) litigating this case required Plaintiff's counsel to withdraw from representation in another case; (4) the case involves complex issues, including federal labeling regulations; and (5) Plaintiff's counsel are uniquely skilled in the area of mislabeling litigation.

None of the factors advanced by Plaintiff—exceptional results, contingency risk, preclusion from other employment, difficulty of the litigation, or counsel's skill—warrants a positive multiplier. Plaintiff's result was not "exceptional," given that she obtained only a small fraction of the relief she sought in this lawsuit. Further, Plaintiff's counsel's performance in this action does not warrant an upward adjustment. Some examples of counsel's questionable handling of this case include: their failure to conduct due diligence on Plaintiff prior to filing the lawsuit and their failure to write the CLRA notice accompanying the Complaint on Plaintiff's behalf. Moreover, counsel's attempt to assert such a high multiplier given the limited relief obtained in this lawsuit demonstrates poor judgment. Thus, despite the contingency risk and Plaintiff's assertion that this lawsuit precluded them from taking some other cases, we conclude that a positive multiplier is not appropriate here under the totality of the circumstances.

Rather, a reduction of the lodestar based on the limited success Plaintiff achieved in this action is appropriate. *See Hogar*, 157 Cal. App. 4th at 1359. In filing this lawsuit, Plaintiff sought to remedy Defendant's misleading marketing of both Uncrustables and Crisco as healthful because both products contained PHVO, and Uncrustables also contained HFCS. The only success that has been catalyzed by this lawsuit is the removal of PHVO from Uncrustables. From a practical standpoint, this is only a small fraction of the relief sought and this lawsuit is far from over. Everything else is still ongoing in another lawsuit filed by Plaintiff's counsel. Considering the totality of the circumstances and the extremely limited success Plaintiff achieved in this action, we find that her attorneys' fees should be limited to 10% of the lodestar. Accordingly, we award Plaintiff $72,297.90 in attorneys' fees, which reflects the effort reasonably expended in obtaining the removal of PHVO from Uncrustables.

III. Costs

Plaintiff also seeks $35,138.65 in costs pursuant to California Code of Civil Procedure § 1033.5. Section 1033.5(a) allows the prevailing party to recover specific litigation costs, including filing fees; deposition costs, including travel expenses to attend depositions; service of process fees; and ordinary witness fees. Section 1033.5(b) prohibits recovery of "[f]ees of experts not ordered by the court," "[i]nvestigation expenses," "[p]ostage, telephone, and photocopying charges, except for exhibits," and non-court ordered transcripts, unless such costs are expressly authorized by law. Other non-prohibited

costs may be allowed in the court's discretion. *Id.* § 1033.5(c)(4). But, all allowable costs must be "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation," and must be "reasonable in amount." *Id.* § 1033.5(c)(2), (3).

Plaintiff seeks $21,873.46 in "allowable" costs under § 1033.5(a), and an additional $13,265.19 in discretionary costs as "reasonably necessary" under § 1033.5(c). First, Defendant argues that Plaintiff's costs should be limited to $400, the costs expended in filing and serving her complaint, because these are the only costs that "catalyzed" the limited success Plaintiff achieved in this lawsuit. This argument is based on Defendant's assertion that the timeline of events we found in our Fee Order shows that soon after Plaintiff filed her complaint, Defendant began looking into reformulating Uncrustables. Defendant, however, ignores that the actual removal of PHVO did not occur until September 2012. Accordingly, Defendant's suggestion that all costs after filing and service should be unrecoverable is without merit.

Defendant also raises specific objections to Plaintiff's requested costs. First, Defendant objects to those costs Plaintiff seeks under § 1033.5(a) that are "merely convenient" and not "reasonably necessary to the conduct of the litigation." In this category, Defendant objects to: (1) Plaintiff's attempt to collect duplicate costs for the depositions of John Russell, Karen Milley, and Paul Wagtaff; (2) hotel room costs for Marron, Weston, and Ms. Henderson to attend Ms. Henderson's Los Angeles deposition; and (3) costs for two attorneys to attend each deposition, when one would have been sufficient. It appears that Defendant is correct that Plaintiff duplicated the costs associated with the depositions of Russell, Milley, and Wagstaff, as Plaintiff's list of expenses includes two identical entries seeking $3,166. (Dkt. 264, App'x 2.) Further, in her Reply, Plaintiff does not assert that these costs are not duplicative. Accordingly, we reduce Plaintiff's requested costs by $3,166. Additionally, we find that it was not "reasonably necessary" for Weston and Marron, who live in San Diego, or Ms. Henderson, who lives in Claremont, to stay in a hotel for Ms. Henderson's deposition in Los Angeles. Accordingly, we reduce Plaintiff's requested costs by $229.47. However, we will not second guess Plaintiff's staffing decisions with respect to the depositions.

Second, Defendant objects to discretionary costs Plaintiff seeks that are prohibited by § 1033.5(b). Defendant argues that Plaintiff cannot recover for (1) $11,550 in expert witness fees, and (2) $457.11 in FedEx charges. Section 1033.5(b) prohibits the recovery of expert witness fees that are not either ordered by the court or otherwise authorized by law. In this case, we did not order Plaintiff's expert, nor does Plaintiff argue these fees are otherwise authorized by law. Section 1033.5(b) also prohibits postage fees. Accordingly, Plaintiff's costs are reduced by $12,007.11.

Third, Defendant objects to Plaintiff's request for non-deposition travel expenses, which includes: (1) $457.30 spent by Mr. Fitzgerald relating to travel between Los Angeles and San Francisco, and (2) $781.78 spent by Plaintiff's counsel on mileage, parking, and tolls. Defendant argues that § 1033.5(a)(3) limits recovery to "travel expenses to attend depositions." This is not true. Rather, *Ladas v. California State Auto Ass'n*, 19 Cal. App. 4th 761, 775-76 (1993), provides that expenses for

local travel unrelated to depositions are not recoverable. Here, neither Mr. Fitzgerald's travel from San Francisco nor counsel's travel from San Diego is "local." Thus, Plaintiff is not prohibited from recovering them. We are equally unpersuaded by Defendant's argument that Plaintiff's local counsel, not Mr. Fitzgerald, should have attended the meet and confer and settlement for which Plaintiff seeks reimbursement. Again, we will not, in hindsight, second guess Plaintiff's staffing decisions. However, because one of Mr. Fitzgerald's trips was for a meet and confer regarding Plaintiff's Motion for Class Certification, which we already determined was not compensable, Plaintiff's costs are reduced by the $318.70 associated with this trip.

Based on the foregoing deductions, Plaintiff's requested costs are reduced by $15,721.28. Accordingly, we award Plaintiff $19,417.37 in costs.

IV. Conclusion

In light of Plaintiff's relatively limited success in this lawsuit, we find that Plaintiff is entitled to $72, 297.90 in attorneys' fees and $19,417.37 in costs, for a total award of $91,715.27.

IT IS SO ORDERED.

_____ : _____

Initials of Deputy Clerk KTI