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District Court Judge Applies 'Negative Multiplier' To Reduce Requested Attorneys' Fees

On February 28, 2014, Chief Judge George King of the United States District Court for the Central District of California issued an *In Chambers Order* reducing requested attorneys' fees from a whopping \$3,253,902 to a mere \$91,715 by, among other things, drastically reducing billable hours and applying a "negative multiplier," or a "reduction of the lodestar based on the limited success Plaintiff achieved" in the suit. *Id.* [1]

In the underlying dispute, plaintiff sued the J.M. Smucker Company ("Smuckers")*, alleging it violated various California consumer protection statutes by representing that certain products containing high fructose corn syrup ("HFCS") and partially hydrogenated vegetable oil ("PHVO") were "all vegetable" and "wholesome." *Id.* When plaintiff moved for class action certification, Smuckers argued that she could not serve as an adequate or typical representative because she failed to disclose her interest in the lawsuit in a prior bankruptcy.[2] The court agreed and ultimately dismissed plaintiff from the action but allowed plaintiff's attorneys to seek fees, finding she "prevailed" in prompting Smuckers to make at least one business practice change—removing PHVO from a product.[3]

Although the procedural path of this case is somewhat unique, the court's method of analysis of the requested attorneys' fees is not: the court assessed the reasonableness of the request by using the

"lodestar method," which multiplies "the number of hours reasonably spent on the litigation by a reasonable hourly rate." [4] The court noted that, when applying the lodestar method, it may "adjust the lodestar upward or downward by a positive or negative multiplier" based on a variety of factors, including *inter alia*, "the novelty and difficulty of the questions involved," and "the skill displayed in presenting them." [5] Plaintiff's counsel maintained that it billed nearly 4,000 hours throughout the 31-month litigation, resulting in their submitted lodestar of \$1,446,179.[6] Counsel additionally requested that the court apply a 2.25 multiplier to reach the desired fees of \$3.25 million.[7]

The court challenged the lodestar amount by closely scrutinizing counsel's requested hours and considering the time spent on each task. The court rejected, for example, counsel's assertion that it took 46.5 hours to draft and edit the initial complaint, finding instead that "it should reasonably have taken no more than 26 hours...[.]".[8] The court found the 95.7 hours submitted for opposing defendant's dispositive motions to be similarly inflated, attributing the "excessive billing" to "poor staffing and duplication of efforts." [9] The court also reduced hours billed for efforts related to discovery, settlement, and various other motions.[10] Having found the overall number of hours "grossly excessive, especially in light of [plaintiff's] limited success," the court then turned to the reasonableness of counsel's requested

CONTINUED ON NEXT PAGE

District Court Judge Applies 'Negative Multiplier' To Reduce Requested Attorneys' Fees CONTINUED

hourly rates.^[11] While the court adjusted the rates for paralegals and law clerks, it ultimately found that the attorney rates—\$545 per partner hour and \$375 per associate hour—were reasonable.^[12]

Using the revised hour and rate totals, the court calculated a new lodestar of \$722,979. The court then discussed the common technique of applying a multiplier to the lodestar amount, but noted that plaintiff failed to demonstrate that her case “warrants a *positive* multiplier.”^[13] Rather, the court exercised its discretion to apply a negative multiplier, which is “appropriate when a plaintiff has achieved limited success or has failed with respect to distinct and unrelated claims.”^[14] The court dismissed the notion that plaintiff’s result was “exceptional,” given that she obtained “a small fraction of the relief she sought in the lawsuit.”^[15] “Considering the totality of the circumstances and the extremely limited success plaintiff achieved in this action,” the court stated, “we find that her attorneys’ fees should be limited to 10% of the lodestar.”^[16] After applying the “negative multiplier,” the court ultimately awarded \$72,297.90 in attorneys’ fees and \$19,417 in costs, for a total award of \$91,715—just 2.82% of counsel’s original request.

* Wiggin and Dana LLP did not represent either party in this matter.

^[1] *Henderson v. The J.M. Smucker Co.*, No. 2:10-cv-4524, dkt. no. 226, (C.D. Cal. Feb. 28, 2014).

^[2] *Henderson v. The J.M. Smucker Co.*, No. 2:10-cv-4524, dkt. no. 218 (C.D. Cal. Oct. 23, 2013).

^[3] *Henderson v. The J.M. Smucker Co.*, CV 10-4524-GHK VBKX, 2013 WL 3146774 (C.D. Cal. June 19, 2013)(granting plaintiff’s right to seek fees as a prevailing party under the “catalyst theory.”).

^[4] *Henderson*, No. 2:10-cv-4524, dkt. no. 226, at 2 (C.D. Cal. Feb. 28, 2014).

^[5] *Id.* (citing *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 154 (2006)).

^[6] *Id.*

^[7] *Id.* at 9.

^[8] *Id.* at 3.

^[9] *Id.*

^[10] *Id.* at 4-7.

^[11] *Id.* at 8.

^[12] *Id.* at 9.

^[13] *Id.* (emphasis added).

^[14] *Id.* at 2 (citing *Hogar v. Cmty. Dev. Comm’n of Escondido*, 157 Cal. App. 4th 1358, 1359 (2007)).

^[15] *Id.* at 9.

^[16] *Id.*

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