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28UNITED STATES DISTRICT COURT  
For the Northern District of California

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

ROSMINAH BROWN and ERIC LOHELA,  
on behalf of themselves and all others  
similarly situated,

No. C 11-03082 LB

**ORDER REGARDING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES**

Plaintiffs,

v.

[Re: ECF No. 145]

THE HAIN CELESTIAL GROUP, INC., a  
Delaware Corporation,

Defendant.

**INTRODUCTION**

Plaintiffs claim that Hain Celestial falsely advertises, markets, and labels certain Jason and Avalon Organics brand cosmetics products as organic. *See* Complaint, ECF No. 1 at 9.<sup>1</sup> The parties had discovery disputes and raised them in joint letter briefs pursuant to the court's rules for discovery disputes. *See* Standing Order, ECF No. 3-1. After the court ruled in Plaintiffs' favor, Plaintiffs moved under Federal Rule of Civil Procedure 37(a)(5) for the fees they incurred in raising the disputes in the joint letter briefs. The court held a hearing on October 17, 2013, and denies in part and grants in part Plaintiffs' motion for fees.

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<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 **STATEMENT**

2 **I. FILING OF THE LAWSUIT AND INITIAL CASE MANAGEMENT CONFERENCE**

3 Plaintiffs filed this lawsuit in state court in May 2011, and Hain answered the complaint and  
4 removed the case to federal court. *See* ECF No. 1 at 1, 41. The initial case management conference  
5 was December 15, 2011, where the court set deadlines (with the parties' input) including a fact  
6 discovery deadline of October 15, 2012 (later extended in February 2012 at the parties' request).  
7 *See* Orders, ECF Nos. 3, 18 at 2. The parties filed a joint case management conference statement a  
8 week before the hearing and said – among other things – that they lacked sufficient information at  
9 that time to determine “whether they will request modification” of any discovery limitations and  
10 they reserved their rights to “move the Court to change the parameters of discovery should the scope  
11 of the case change or subsequent developments make such a motion necessary.” ECF No. 14 at 7.  
12 The joint case management statement also said that “if the parties cannot reach a prompt settlement,  
13 Defendant may bring a motion for judgment on the pleadings” concerning federal preemption of the  
14 California Organic Products Act (COPA) or an early summary judgment motion as to whether  
15 COPA applied to the labels at issue. *Id.* at 5.

16 On December 14, 2011, Hain served Plaintiffs with its Rule 26 initial disclosures. *See* Todzo  
17 Decl., ECF No. 105-1, ¶ 2; *id.* Ex. B. (“Initial Disclosures”), ECF No. 105-3. Hain disclosed four  
18 categories of documents about “relevant Hain Celestial Products” “during the relevant period” that it  
19 might use to support its claims or defenses, specifically, documents concerning (1) formulation of  
20 the relevant products, (2) labeling of the products, (3) the marketing and advertising of the products,  
21 and (4) price and sales of the products and pricing of their competitors. *Id.*, Ex. B. On December  
22 20, 2011, Plaintiffs served their first set of discovery requests on Hain. *See* Todzo Decl., ECF No.  
23 105-1, ¶ 3; Friedman Decl., ECF No. 143-1, ¶ 2; 7/2/2012 Joint Letter Brief Exs. 1-2, ECF No. 52-1.  
24 Plaintiffs' discovery requests sought information about all of Hain's Jason and Avalon Organics  
25 brand products, including the product labels, product advertising and marketing, the organic content,  
26 and sales data. *See* ECF No. 52-1, Exs. 1-2.

27 **II. THE MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

28 On February 17, 2012, just before their then-scheduled private mediation on February 22, 2012,

1 the parties stipulated to move their dates so that Hain could file a motion raising its preemption  
2 arguments. *See* 2/27/12 Stipulated Order (noting that mediation would not be productive until the  
3 issue si resolved). On March 2, 2012, Hain moved to dismiss the complaint on the ground that the  
4 federal Organic Foods Production Act of 1990 preempted the California Organic Products Act. ECF  
5 No. 27. At the April 26, 2012 hearing on the motion to dismiss, the court was not particularly  
6 receptive to the preemption arguments but ultimately allowed supplemental briefing on the primary  
7 jurisdiction arguments that Hain raised at the hearing. *See* RT 4/26/12, ECF No 42; 5/24/12 Order  
8 for Supplemental Briefing, ECF No. 47. Those briefs were filed in June. *See* Docket. On August 2,  
9 2012, the court denied the motion to dismiss.

### 10 **III. DISCOVERY ACTIONS WHILE THE MOTION TO DISMISS WAS PENDING**

11 On March 13, 2012, while the motion to dismiss was pending, Hain responded to Plaintiffs’  
12 discovery requests generally with broad objections. *See* 7/2/2012 Joint Letter Brief Exs. 3-4, ECF  
13 No. 52-1. Hain objected that Brown’s discovery requests were “not reasonable or appropriate at this  
14 procedural stage of the case, given Hain Celestial’s pending motion to dismiss . . . . Accordingly, as  
15 set out below, Hain Celestial will not search for or produce documents in response to certain  
16 requests at this stage of the case.” *Id.* at 38-39. Hain agreed to produce a limited set of documents  
17 related to the Jason brand products “despite its belief that the foregoing and following objections  
18 release it from any obligation to so produce.” *Id.* at 39-40. According to Plaintiffs, on April 13,  
19 2012, Hain produced fewer than 300 pages of documents regarding the Jason line of cosmetics,  
20 including labels, a one-page summary of revenues, and several publicly-available promotional  
21 materials from the organic trade association. *See* Todzo Decl., ECF No. 105-1, ¶ 6.

22 According to Plaintiffs, in an April 17, 2012 letter, Hain said that it was entitled to a discovery  
23 stay pending resolution of its motion to dismiss. *Id.* ¶ 7. Hain does not dispute this. Plaintiffs asked  
24 to confer about the dispute. In the interim, as discussed above, the court had a hearing on the motion  
25 in April 2012 and ordered more briefing in May 2012. *See* ECF Nos 40., 41, 47.

26 On May 1, 2012, the parties met and conferred in person to resolve their discovery dispute. *See*  
27 *id.* ¶¶ 4-8; Friedman Decl. ¶ 4. Plaintiffs agreed to narrow their discovery requests and understood  
28 that Hain in turn “agreed to search for information and documents regarding those narrowed

1 requests.” Todzo Decl. ¶ 8 (citing Hain’s May 17, 2012 email promising to supplement the  
2 responses “soon”). Plaintiffs say that in the six weeks that followed the May 1 meet-and-confer,  
3 Hain promised three times to supplement its productions. *Id.* On May 29, 2012, Hain told Plaintiffs  
4 it would now supplement its responses by June 11. *Id.* On June 8, 2012, Hain stated that it would  
5 supplement its responses the next week. *Id.* On June 15, 2012, Hain e-mailed Plaintiffs and  
6 explained that it had been unable to complete the supplementation. *Id.* Hain does not contradict  
7 Plaintiffs’ summary of the discovery time line.

8 During this time period (on May 22, 2012), Hain raised the issue of a discovery stay, stating that  
9 “if the court is inclined to grant Plaintiff’s request [to extend the time period to amend the  
10 allegations in the complaint or add new parties], Hain Celestial hereby requests that all pending  
11 deadlines . . . be vacated pending resolution of the motion to dismiss, and any interlocutory appeal  
12 the court may certify.” *See* ECF No. 45 (explaining that Hain’s work on discovery would be  
13 unnecessary if the court granted a motion to dismiss). In its May 24 order extending time to amend  
14 the pleadings to 14 days after the ruling on the motion to dismiss, the court left all other deadlines in  
15 place “for now.” *See* ECF No. 48.

16 On July 2, 2012, the parties filed a joint letter brief regarding their discovery disputes. 7/2/13  
17 Joint Letter Brief, ECF No. 52. In the letter brief, Plaintiffs argued that the discovery it requested  
18 was reasonable and that Hain lacked authority to “unilaterally impose a stay on its discovery  
19 obligations simply because a there is a motion to dismiss pending.” *Id.* at 2. Hain countered that the  
20 letter was “premature” and Plaintiffs’ insistence on filing it “compels Defendant to elucidate its  
21 views on a global discovery stay.”<sup>2</sup> Hain then argued that the court should stay discovery pending  
22 any interlocutory appeal, argued conclusorily that there was no burden, and argued that there was no  
23 prejudice to Plaintiffs because discovery was not necessary for the motion to dismiss. *Id.* at 3-4.

24 On July 7, 2012, Plaintiffs served their second set of discovery requests. *See* Todzo Decl. ¶ 10;  
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26 <sup>2</sup> Hain now argues that the court’s page limitations prevented it from fully discussing its  
27 relevancy and burden objections. Opp’n, ECF No. 143 at 10. As the court explained at the August  
28 10, 2012 earlier hearing, the court’s procedures are to avoid invective and streamline resolution of  
disputes, and parties can file a letter brief per issue or ask for more space. *See* 8/10/12 Order, Ecf  
No. 6 at 5.

1 Friedman Decl. ¶ 6; *see also* 10/26/2012 Joint Letter Brief Exs. 5-6, ECF No. 88-1 at 56, 61. These  
2 requests sought information regarding (1) labeling and advertising claims that the Avalon Organics  
3 products contain 70% organic ingredients, (2) Hain’s profits from the products, and (3) Hain’s  
4 “uniform marketing plan.” *See* 10/26/2012 Joint Letter Brief Exs. 7-7, ECF No. 88-1 at 69, 81.  
5 Hain’s objections to 5 of the 7 interrogatories and 6 of the 13 requests for production concluded with  
6 a version of the following statement:

7 Subject to and without waiving the preceding general and specific objections, Hain Celestial  
8 is available to meet and confer with Plaintiffs. Depending on the outcome of the conferral  
9 process and appropriate guidance obtained from the Court under Fed. R. Civ. Pro.  
26(b)(2)(C), 26(c), and 26(e)(1), Hain Celestial may conduct a reasonable search for and  
supplement with any non-privileged responsive documents.

10 ECF No. 88-1, Exs. 7-8. In many other cases (e.g., interrogatories 33, 36-37, and 40-41), Hain  
11 agreed to produce only a fraction of what Plaintiffs requested. *See id.*

#### 12 **IV. DISCOVERY AND STAY ISSUES AFTER DENIAL OF MOTION TO DISMISS**

13 On August 1, 2012, the date it denied Hain’s motion to dismiss, the court also set a hearing on  
14 the discovery letter brief (and thus on the sufficiency of the responses to the December 2011  
15 discovery requests) for August 10, 2013. *See* Orders, ECF Nos. 58-59; 8/7/12 Clerk’s Notice.<sup>3</sup> On  
16 August 9, 2013, at 5:07 p.m. (the evening before the hearing), Hain filed a motion to certify for  
17 interlocutory appeal the undersigned’s order denying the motion to dismiss and also asked to stay  
18 the case and all discovery pending that appeal. *See* ECF No. 60.

19 The court held a discovery hearing on August 10, 2012, and ruled in Plaintiff’s favor regarding  
20 the December 2011 discovery requests. *See* 8/10/12 Order, ECF No. 62. First, the court ruled that it  
21 would not stay discovery entirely because some claims survived even with a successful interlocutory  
22 appeal. *Id.* at 2. Second, Hain challenged Plaintiffs’ discovery about Avalon Organics products that  
23 they did not purchase, but the court rejected that challenge on the ground that Hain never raised  
24 standing in its motion to dismiss. *Id.* Third, the court ruled that the discovery was relevant, and that  
25 there was no ascertainable burden. *See* Order, ECF No. 64 at II(C) (“Again on this record, the recipe

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27 <sup>3</sup> On August 21, 2012, pursuant to the parties’ stipulation and the court’s prior order  
28 extending the time to file an amended complaint until after the order on the motion to dismiss,  
Plaintiffs filed the operative First Amended Complaint. *See* Stipulated Order For Filing of First  
Amended Complaint, ECF No. 67; First Amended Complaint, ECF No. 68.

1 seems relevant to the actual composition of the products. There is no ascertainable burden.  
2 Discovery is appropriate.”), II(D) (“This is a false advertising case. The marketing information  
3 seems relevant.”), II(E) (“The information is relevant. The court cannot assess burden from what  
4 Defendant says.”). Fourth, the court noted Hain’s strategic day-before-hearing filing, observed that  
5 Hain’s main argument was about staying the case through an interlocutory appeal, said that disputes  
6 could be raised in sequential briefs (a point also discussed at the hearing), and said that the parties’  
7 arguments should not be buried in the attachments and needed to be brought out in the letter brief  
8 itself.

9 On August 29, 2012, Plaintiffs filed an administrative motion asking the court to order Hain to  
10 produce discovery by September 15, 2012. ECF No. 71. Plaintiffs explained that the court had not  
11 set a deadline in its prior order and absent a deadline, Hain was refusing to produce discovery  
12 “pending the September 20, 2012 hearing on the defendant’s motion for an interlocutory appeal.”  
13 *Id.* at 2. Hain responded that the August 10 order addressed only the motion for a stay of discovery  
14 and “cannot be construed as one that compels Defendant’s document production.” ECF No. 74 at 2-  
15 3; *see* Friedman Decl. ¶ 9, ECF No. 143-1 (similarly arguing that the August 10 order was  
16 preliminary). Hain explained that it was not refusing to produce discovery “but has only declined to  
17 provide a definite date for document production due to the pending motion for certification of  
18 interlocutory appeal (ECF No. 60) and the remaining discovery disputes that the court has not  
19 addressed.” *Id.* at 3. Hain did not address its continuing failure to provide supplemental  
20 interrogatory responses.

21 On September 6, 2012, the court denied Plaintiffs’ motion to require production by September  
22 15, 2013, noting that (1) it previously told Hain it would permit it “to raise objections more  
23 specifically”, (2) the court’s intent was to have joint letters address issues such as burden, and (3)  
24 the process was not meant to “be a tool to delay discovery.” 9/6/12 Order, ECF No. 75 at 1. The  
25 court observed that Hain had made “some relevance objections and high-level burden objections.”  
26 *Id.* The order noted that the court had rejected the relevancy objections and “already ruled that the  
27 discovery is relevant.” *Id.* at 1-2.

28 On September 18, 2012, the parties met and conferred regarding Hain’s objections to Plaintiffs’

1 second set of discovery requests made in July 2012. *See* Todzo Decl., ECF No. 105-1, ¶ 12;  
2 Friedman Decl., ECF No. 143-1, ¶ 11. Hain agreed to supplement its responses regarding the  
3 following: (1) the organic content of the products; (2) public representations regarding the products  
4 accessible to California residents during the relevant time period; (3) the definition of “Pure,  
5 Natural, and Organic” from Jason labels during the time period; (4) Hain’s labeling and advertising  
6 claims that its Avalon Organics products contain at least 70% organic products; (5) certification  
7 standards and documentation for the products and an ingredient called Aloe Barbadensis Leaf Juice;  
8 and (6) certain sales, marketing, and distribution information. Plaintiffs say Hain memorialized this  
9 in a letter sent to Hain nine days later. *See* ECF No. 88-1. Hain refused to produce any information  
10 about the pricing of the products, Defendant’s profits, and products that Plaintiffs did not purchase.  
11 *Id.*, Ex. 9; *compare* 8/10/12 Order, ECF No. 64 at 3 (rejecting objections to discovery on standing  
12 grounds).

13 **V. CERTIFICATION OF CASE FOR APPEAL AND DENIAL OF DISCOVERY STAY**

14 Following a hearing on September 20, 2012, on Hain’s motion to certify the case for appeal and  
15 stay the case, the court certified the appeal and denied the motion to stay the case (and discovery).  
16 9/24/12 Order, ECF No. 79. In denying the stay, the court observed that Plaintiffs’ discovery  
17 requests were “generally reasonable” and that “[f]or much of this litigation, Hain has unilaterally  
18 imposed a stay of discovery that has unnecessarily delayed the proceedings.” *Id.* at 8. The court  
19 also observed, as it had previously, that a successful interlocutory appeal would not dispose of the  
20 entire case. *Id.* at 7.

21 **VI. POST-CERTIFICATION DISCOVERY ISSUES**

22 On October 11, 2012, Hain had not supplemented its production or asked the court for relief, and  
23 Plaintiffs then sent Hain their portion of another joint letter brief. Todzo Decl. ¶ 13.<sup>4</sup> Hain  
24 responded on October 18 with four letter briefs, and the parties filed their final joint letter briefs on  
25 October 26, 2012. *See* Todzo Decl. ¶ 13; ECF Nos. 88-91. The briefs addressed the following

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27 <sup>4</sup> During this time period in October 2012, Hain moved to strike Plaintiffs’ allegations  
28 regarding products they did not purchase and also moved to dismiss for failure to state a claim. *See*  
ECF Nos. 85, 87. The court denied these motions on December 22, 2012. *See* ECF No. 104.

1 issues: (1) Hain’s long-delayed supplemental production, ECF No. 89; (2) pricing information, ECF  
2 No. 89; (3) information regarding Hain’s profits, ECF No. 90; and (4) documents and information  
3 pertaining to products Plaintiffs did not purchase, ECF No. 91.

4 On December 11, 2012, the court ordered the discovery at issue in the four briefs.  
5 See 12/11/2012 Order, ECF No. 102. First, as to the production that Hain agreed (but failed) to  
6 produce, the court ordered its production in seven days. *Id.* at 1 (Hain’s argument was only that the  
7 production was “premature” and said it would supplement production by October 29). Second, with  
8 regard to the pricing information, the court reiterated its “previous conclusion” that the discovery is  
9 relevant and rejected Hain’s contrary relevance arguments.<sup>5</sup> *Id.* at 2. Third, as to information about  
10 Hain’s profits, the court rejected Hain’s arguments that profits were not relevant to damages and  
11 ordered Hain to respond. *Id.* Fourth, as to products not purchased, the court reiterated that it  
12 previously rejected the standing argument, appreciated that it was raised now in the pending motion  
13 to strike, rejected Hain’s cited authority as inapposite, and said that any issue was for the class  
14 certification stage. *Id.* at 3.

15 **VII. NINTH CIRCUIT DECISION AND SUBSEQUENT PRODUCTIONS**

16 On December 17, 2012, the Ninth Circuit denied Hain’s petition to appeal. See Docket, No. 12-  
17 80186 (9th Cir. Dec. 17, 2012). Hain claims that it supplemented its production on December 18,  
18 2012. Friedman Decl. ¶ 13.

19 **VIII. THE MOTION FOR FEES AND THE OCTOBER 17, 2013 HEARING**

20 Plaintiffs filed the pending motion for attorney’s fees on December 27, 2012. At the parties’  
21 request, the court deferred ruling on the motion because the parties were engaged in settlement  
22 discussions. In their fees motion, Plaintiffs ask the court to award \$44,480 in fees for the 106 hours  
23 they spent compelling the discovery reflected in the July 2, 2012, and October 26, 2012 joint letter  
24 briefs. See Motion at 15. These fees are attributable to the attorneys’ work beginning on June 18,  
25 2012. See Todzo Decl. Ex. A, ECF No. 105-2 at 2. Plaintiffs do not request their fees for “the  
26 substantial meet and confer correspondence that took place preceding Plaintiffs’ initiation of the first  
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28 <sup>5</sup> Hain framed these as burden arguments, but its argument was that the requests were burdensome because the information requested was minimally relevant. See, e.g., ECF No. 89 at 3.



1 joint letter brief regarding Plaintiffs' first motion to compel." Todzo Dec., ECF No. 105-1, ¶ 16.

2 At the October 17, 2013 hearing, Hain said (among other things) that ordinarily, Plaintiffs agreed  
3 to stay discovery when substantial case-dispositive motions were pending. Plaintiffs did not  
4 disagree. Plaintiffs also pointed to Hain's pattern of delay from the case's inception, its  
5 identification of relevant categories of discovery as early as December 2011, and its behavior  
6 (including its promises to supplement discovery in May and June 2012 and failure to do so).

7 **ANALYSIS**

8 Under Rule 37(a)(5)(A), if the court grants a motion to compel discovery, it "must" require the  
9 party whose conduct necessitated the motion to pay to the moving party the reasonable costs,  
10 including attorney's fees, incurred in making the motion. There are three exceptions to the "loser  
11 must pay" sanctions rule. The court "must not" order payment if:

- 12 (i) the movant filed the motion before attempting in good faith to obtain the disclosure or  
13 discovery without court action;  
14 (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or  
15 (iii) other circumstances make an award of expenses unjust.

16 Fed. R. Civ. P. 37(a)(5)(A). The party that loses the motion to compel bears the affirmative burden  
17 of demonstrating that its position was substantially justified. *See* Fed. R. Civ. P. 37(a)(4) Advisory  
18 Comm. Notes (1970); *see Ruff v. Cnty. of Kings*, No. CVF05-0631 OWW LJO, 2006 WL 1716652  
19 (E.D. Cal. June 21, 2006); *see also* William W. Schwarzer, A. Wallace Tashima & James M.  
20 Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial § 11:2382 (The Rutter Group 2012); *accord*  
21 *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001) (party opposing  
22 sanctions bears burden of showing substantial justification under Fed. R. Civ. P. 37(c)(1)); *Pineda v.*  
23 *City and County of San Francisco*, 280 F.R.D. 517, 520 (N.D. Cal. 2012) (same burdens under Fed.  
24 R. Civ. P. 37(b)).

25 The court granted Plaintiff's requests to compel discovery, and Plaintiff attempted to meet in  
26 good faith to obtain discovery without court action, as required by Fed. R. Civ. P. 37(a)(5)(A)(i).  
27 Thus, the court must award costs (here in the form of fees) unless Hain's non-disclosure was  
28 substantially justified or because other circumstances make a fee award unjust.

1 Hain’s main argument is that courts routinely stay discovery in cases where a substantial case-  
2 dispositive motion is pending on legal grounds such as its preemption and primary jurisdiction  
3 arguments. *See* Opposition, ECF No. 143 at 13. Courts do stay discovery sometimes when  
4 potentially dispositive motions are pending. *See Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir.  
5 2002). Whether a stay is appropriate depends on the circumstances of the motion, including the  
6 nature of the motion, whether it might resolve the case as a matter of law, the posture of the  
7 litigation, and what kind of discovery is sought.

8 The problem here is that Hain should have raised the issue directly with the court. It mentioned  
9 a stay only on May 22, 2012, and it did so in one line without any legal authority, arguing only that  
10 if the court extended Plaintiffs’ deadline to amend the pleadings, then it should stay the case. Hain  
11 did point out that granting the pending motion to dismiss would render discovery “unnecessary  
12 work.” But the court treated the remark as a throwaway argument. *See* Order, ECF No. 48. It was  
13 not until the July 2, 2012 joint letter brief that Hain made the argument explicitly. It should have  
14 done so earlier by asking for a protective order.

15 That being said, asking for a stay was substantially justified. Indeed, the undersigned deferred  
16 ruling on the discovery letter brief until August 1, 2012, when it denied the motion to dismiss and set  
17 a discovery hearing for a week later. That was the equivalent of granting a stay. In retrospect, it  
18 would have been a better marker for the parties if the court had issued an order in July. But the  
19 context is that the court’s views on discovery turned on its ruling on the motion to dismiss.

20 The court finds, however, that Hain’s failure to produce discovery after August 10, 2013 was not  
21 substantially justified. It is true that the court employs a case management process to facilitate  
22 cooperative discovery and avoid motions to compel when possible. But that does not excuse Hain’s  
23 continued delaying of discovery after the court issued its discovery order on August 10, 2013. The  
24 court expressly rejected an argument that a stay was appropriate through an interlocutory appeal,  
25 holding that some claims would survive Hain’s preemption and primary jurisdiction arguments.  
26 8/10/13 Order, ECF No. 62 at 2. The court also rejected Hain’s standing argument for products not  
27 purchased. *Id.* The court rejected relevance arguments, twice. *Id.*; 9/6/12 Order, ECF No. 75 at 1-2.  
28 Thereafter, Hain dragged its feet and delayed discovery until after the Ninth Circuit rejected the

1 interlocutory appeal in December 2012. Also, Hain had a responsibility to ask for a protective order  
2 by at least April 2012 if it wanted to stay discovery. Its failure to do so and its promises to produce  
3 discovery in May and June 2012, *see supra* pages 3 and 4, also support the conclusion that Hain  
4 strategically delayed discovery.<sup>6</sup>

5 The court thus orders payment of fees under Rule 37(a) for Plaintiff's counsel's work after  
6 August 10, 2013. That amount is \$26,520. *See* ECF No. 105-1.

7 **CONCLUSION**

8 The court **DENIES in part** and **GRANTS in part** Plaintiffs' motion for fees. This disposes of  
9 ECF No. 145.

10 **IT IS SO ORDERED.**

11 Dated: October 28, 2013

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13 LAUREL BEELER  
14 United States Magistrate Judge

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28 <sup>6</sup> It was not ideal that Mr. Friedman – the architect of the discovery strategy – did not appear  
at the October 17 hearing. New counsel from Morrison & Foerster did a good job, but it was not her  
responsibility to explain Mr. Friedman's actions.