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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

HEALDSBURG CITIZENS FOR SUSTAINABLE SOLUTIONS et al., Petitioners, Respondents, and Cross-Appellants, v. CITY OF HEALDSBURG et al., Defendants, Appellants, and Cross-Respondents.	A130374 (Sonoma County Super. Ct. No. SCV243748)

The trial court awarded attorney fees to petitioners Healdsburg Citizens for Sustainable Solutions (HCSS), Janis Grattan[1], and Millie Bisset (collectively, petitioners) after the court granted in part HCSS's petition for writ of mandate challenging an environmental impact report (EIR) under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA). In their appeal from the order awarding attorney fees, defendant City of Healdsburg (the City) and real party in interest Sonoma Luxury Resort LLC (SLR) (collectively, defendants) raise a number of challenges to the award. In the published portion of this opinion, we reject defendants' contention that the trial court erred in awarding attorney fees for the legal services provided by Grattan. In the unpublished portion, we reject the remainder of defendants'

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts II. B., and C.

[1] Grattan is named in the petition for writ of mandate as Janis G. Watkins. The parties do not dispute that Janis Grattan and Janis G. Watkins are one and the same person. For the sake of consistency, we will refer to her throughout as "Grattan."

challenges to the fee order, as well as petitioners' contention in their cross-appeal that the trial court should have used a multiplier to increase the award for Grattan's services. Finding no abuse of the trial court's discretion, we shall affirm the order awarding attorney fees.

I. BACKGROUND

Petitioners' first amended petition for writ of mandamus (the petition) challenged the certification of an EIR and project approvals for the Saggio Hills Resort development (the Project). SLR is the owner of the project site and the applicant for the project approvals, and the City owns a portion of the property proposed for wetlands mitigation. The project includes a resort, resort residences, a community park and trail system, a fire substation, and the dedication of land for future affordable housing. The petition alleged the City violated CEQA by approving the project without adopting feasible alternatives and mitigation measures to reduce the project's significant environmental impacts; that the EIR was inadequate and incomplete and neither its conclusions nor the City's findings certifying it, rejecting alternatives, and adopting a statement of overriding considerations were supported by substantial evidence; and the EIR did not respond adequately to comments or review a reasonable range of feasible alternatives.

The trial court granted the petition in several respects, finding the EIR defective in failing to study the water demand associated with vegetation to be planted as part of the mitigation measures, failing to consider the project's aesthetic effects on local vista points and trails, and failing to consider a sufficient range of viable, feasible alternatives. The court rejected HCSS's challenges to the EIR's analysis of greenhouse gas emissions, water supply and demand, mitigation of aesthetic impacts, impacts on oak habitat, and traffic mitigation, and to the statement of overriding considerations.

HCSS moved for attorney fees under Code of Civil Procedure[2] section 1021.5. The trial court granted the motion, ruling HCSS was entitled to attorney fees under section 1021.5 because the action had enforced an important right affecting the public, it

[2] All undesignated statutory references are to the Code of Civil Procedure.

had conferred benefits on a large group, and the necessity of the action and the financial burden made the award appropriate. The court concluded that for the purpose of determining fees, HCSS had been approximately 60 percent successful, and accordingly reduced most of the claimed fees by 40 percent. The court then applied a multiplier of 1.5 to the time claimed by one of HCSS's attorneys, Rachel Mansfield-Howlett, while declining to award the multiplier for the legal services provided by Grattan due to her involvement with HCSS and personal interest in the action, or to Susan Brandt-Hawley, an attorney who had consulted with petitioners' counsel but did not take the case on a contingent basis and had only limited involvement in the case. The total fee award was $382,189.73.

II. DISCUSSION

A. Award of Fees to Pro Per Litigant

1. *Background*

"Section 1021.5 codifies the private attorney general doctrine the Supreme Court adopted in *Serrano v. Priest* (1977) 20 Cal.3d 25 [(*Serrano III*)]. [Citation.] ' " 'The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public polities embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. [Citations.]' [Citation.] Entitlement to fees under section 1021.5 requires a showing that the litigation: '(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) [was necessary and] imposed a financial burden on plaintiffs which was out of proportion to their individual stake in the matter.' [Citation.]" [Citation.] In short, section 1021.5 acts as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring.' [Citation.] [¶] 'It is well settled that the private attorney general theory applies to an action to enforce provisions of CEQA.'

[Citations.]" (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 611-612, fn. omitted.)[3]

Defendants contend the trial court erred in awarding fees to one of the attorneys, Grattan, because she was a party to this action. The petitioners are HCSS, Grattan, and Millie Bisset. Grattan signed the verification included in the petition on behalf of HCSS, of which she was a member.

In her declaration in support of the motion for attorney fees, Grattan averred that the litigation was "exceptionally fact-intensive and legally-complex," and she had agreed to work on a contingent fee basis with Rachel Mansfield-Howlett, who was the lead attorney, in order to "help 'level the playing field' " with defendants, who were represented by "several very able and experienced attorneys."

The trial court found the action "successfully enforced important public rights, benefiting the public as a whole, and that the burdens and benefits of the lawsuit 'transcend' or outweigh Petitioners' personal interest, particularly their financial interest. Petitioners brought this action in order to require Respondent and Real Parties to fully comply with the requirements for an EIR, fully analyze and consider issues insufficiently addressed in the original EIR, and thus further the generally applicable CEQA policies of promoting transparent good government, full public disclosure, full public participation, and consideration for the environment." In denying a multiplier for Grattan's fees, the court noted that she "spent considerable time and effort, as a hired attorney, on behalf of

[3] Section 1021.5 provides in pertinent part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

Petitioners," but that she was "personally involved with Petitioners and somewhat personally interested in this action."

2. *Analysis*

In the context of contractual attorney fees, our Supreme Court has held that "an attorney who chooses to litigate in propria persona and therefore does not pay or become liable to pay consideration in exchange for legal representation cannot recover 'reasonable attorney's fees' under [Civil Code] section 1717 as compensation for the time and effort he expends on his own behalf or for the professional business opportunities he forgoes as a result of his decision." (*Trope v. Katz* (1995) 11 Cal.4th 274, 292 (*Trope*).) The court based this conclusion in part on the language of Civil Code section 1717, which provides for mutuality of attorney fees "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are *incurred* to enforce that contract, shall be awarded" to the prevailing party. (Italics added.) By its terms, reasoned the court, the statute applied to contracts providing for attorney fees *incurred* to enforce the contract, and "[t]o 'incur' a fee, of course, is to 'become liable' for it [citation], i.e., to become obligated to *pay* it. It follows that an attorney litigating in propria persona cannot be said to 'incur' compensation for his time and his lost business opportunities." (*Trope, supra,* 11 Cal.4th at p. 280.) The *Trope* court also looked to dictionary definitions of the terms "fee" and " 'attorney fees,' " and concluded that "the usual and ordinary meaning of the words 'attorney's fees,' both in legal and in general usage, is the consideration that a litigant actually pays or becomes liable to pay in exchange for legal representation. An attorney litigating in propria persona pays no such compensation." (*Ibid*.) However, attorney fees may properly be awarded even where legal services were provided at no personal expense to the client, such as when legal work is performed pro bono publico or by a public interest law firm. (See *Lolley v. Campbell* (2002) 28 Cal.4th 367, 374-375; *Serrano III*, *supra*, 20 Cal.3d at pp. 47-48.)

The court in *Trope* explained, however, that its decision was *not* based on any of the traditional equitable exceptions to the American rule that each party pay its own attorney fees, such as the private attorney general, substantial benefit, and common fund theories. (*Trope*, *supra*, 11 Cal.4th at p. 284.) In ruling on cases involving such equitable exceptions, the court's "authority to shape the various theories of recovery . . . derived from our traditionally broader and more flexible 'inherent equitable powers.' " (*Ibid.*)[4] The court specifically declined to express an opinion on the application of its rule in the context of the equitable exceptions to the American rule. (*Id*. at p. 292.)[5]

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[4] In doing so, the court distinguished *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891 (*Consumers Lobby*). (*Trope*, *supra*, 11 Cal.4th at pp. 283-284.) As the court noted, *Consumers Lobby* considered "whether the Public Utilities Commission has discretion under Public Utilities Code section 701 to award attorney fees to a pro se litigant in an administrative proceeding under any of the traditional *equitable* exceptions to the American rule." (*Trope*, *supra*, 11 Cal.4th at p. 284.) The court in *Consumers Lobby* concluded that certain fees were available under the common fund doctrine, and that they could be awarded to a nonattorney appearing in a representative capacity. (*Consumers Lobby*, *supra*, 25 Cal.3d at pp. 913-915.) The high court noted the general rule that an attorney representing himself may not recover the value of his services because he has neither paid fees nor incurred the obligation to do so, but concluded that equitable considerations provided "compelling grounds" for awarding such fees under the common fund theory despite that rule, since the nonattorney, though technically appearing on his own behalf, effectively represented the interests of taxpayers who ultimately benefited from the settlement he obtained. (*Id*. at p. 914.) In dictum, the court questioned the rationale of the past decisions that did not allow an attorney in propria persona to recover fees for his own services. (*Id*. at p. 915, fn. 13.)

[5] The equitable private attorney fee doctrine applies "when a litigant has successfully vindicated a right of *constitutional* dimension and has provided benefits to a large group of persons under circumstances in which subsidization of attorney fees is necessary if enforcement of the right is to be achieved." (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 930, italics added (*Woodland Hills*), citing *Serrano III*, *supra*, 20 Cal.3d at p. 47.) Section 1021.5, on the other hand, "provides explicit statutory authorization for a 'private attorney general' attorney fee award without regard to whether the public policy vindicated rests upon the Constitution or statute." (*Woodland Hills*, *supra*, 23 Cal.3d at pp. 930-931.)

Here, Grattan is a named party to the case challenging an EIR under CEQA, and a member of the environmental organization that is also a party to the case. She was not lead counsel, but carried out work for lead counsel. The parties have drawn our attention to no cases precisely on point, and our own research has disclosed none. We are guided, however, by other cases considering an award of attorney fees after successful litigation to vindicate an important public right.

In *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505 (*Families Unafraid*), overruled on another ground by *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1226, fn. 4, the court considered a related issue. A plaintiff organization and others brought a successful CEQA action challenging the approval of a residential subdivision, and were awarded attorney fees under section 1021.5. (*Families Unafraid, supra,* 79 Cal.App.4th at pp. 509-511.) One of the plaintiffs' attorneys, referred to as Attorney Barrow, was also a member of the organization, and lived on a road that would be affected by the project. (*Id*. at pp. 518-519.) The appellate court rejected the respondents' argument that Barrow should not receive attorney fees because he was a beneficiary of the litigation. In doing so, it rejected the respondents' argument that fees were improper under *Bruno v. Bell* (1979) 91 Cal.App.3d 776 (*Bruno*) (relied on by petitioners here) on the ground that in *Bruno*, "the only plaintiff was an attorney pursuing a legal technicality of de minimis societal importance." (*Families Unafraid*, *supra*, 79 Cal.App.4th at pp. 521-522, citing *Bruno*, *supra*, 91 Cal.App.3d at p. 786.) In response to the argument that Barrow should not profit from litigation in which he was the largest beneficiary, the *Families Unafraid* court reasoned: "Section 1021.5's requirements that an important public right be enforced and a significant public benefit be conferred act as legal safeguards in this respect." (*Families Unafraid*, *supra*, 79 Cal.App.4th at pp. 521-522.) Furthermore, the court noted, there were factual safeguards, viz., there was a large number of member plaintiffs; Barrow was not "self-dealing"—he took on the case only after other counsel were

unavailable; and Barrow had spent significant time on the matter, although he did not normally work on a contingency basis. (*Id*. at p. 522.)

Families Unafraid relied in part on *Kern River Public Access Com. v. City of Bakersfield* (1985) 170 Cal.App.3d 1205, 1212, 1225-1226 (*Kern River*), in which the appellate court concluded attorney fees were properly awarded under section 1021.5 to an attorney who represented a nonprofit corporation he had helped to organize. (*Families Unafraid*, *supra*, 79 Cal.App.4th at pp. 521-522.) The court in *Kern River* concluded that the award advanced the purpose of section 1021.5 " 'to encourage suits effectuating a strong [public] policy' "—in that case to provide access to the rivers of California—and that "[w]hen a local agency . . . fails to enforce this law, private suits like this one are the only practical way to effectuate the policy, so attorney's fee awards are appropriate." (*Kern River*, *supra*, 170 Cal.App.3d at p. 1226.)

Thus, *Families Unafraid* and *Kern River* teach that an attorney who is a member of an organization may recover attorney fees under section 1021.5 if the attorney meets the requirements of the private attorney general doctrine. Defendants argue, however, that these cases are inapposite because here, not only was Grattan a member of HCSS, but she was also a named party whose interests were the same as those of the organization. They rely upon *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44 (*Gorman*), in which a husband's law firm represented both the husband and his wife in an action against a contractor and others alleging defective construction of a residence; the husband and wife were later awarded contractual attorney fees. (*Id*. at pp. 52-53, 93.) On appeal, the contractor contended the husband and wife were not entitled to recover legal fees for legal work by the husband's law firm. (*Id*. at p. 93.) The appellate court concluded that under *Trope*, to the extent the fees were attributable to the work of the husband, the husband and wife were not entitled to them. (*Id*. at pp. 93-97.) In response to the contention that there was an attorney-client relationship between the firm and the wife, the court said, "We can certainly imagine cases in which a true

attorney-client relationship exists between spouses. However, in this case, husband and wife sued for and obtained recovery for the defective construction of their residence. There is no indication that [the wife] suffered any damages apart from those suffered by her husband. Their interests in this matter appear to be joint and indivisible. There is no claim that [the husband] spent extra time in this case representing his wife in addition to the time he spent representing himself. . . . Since [the husband's] billable hours appear to be entirely attributable to representing his common interests with [the wife], we conclude that the rule of *Trope* applies to this situation." (*Gorman, supra,* 178 Cal.App.4th at p. 95.)

A different result was reached in *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510 (*Ramona*), in which an attorney who was also a party to an action performed legal work to assist in the legal defense of both her codefendants and herself. After an organization, of which the attorney was a member, unsuccessfully challenged a school construction project under CEQA, the school district brought an action for abuse of process and barratry against the organization, its principals, and its attorney in the underlying CEQA action, Julie Hamilton. (*Ramona, supra,* 135 Cal.App.4th at pp. 514, 517.) The defendants moved successfully to strike the complaint under the anti-SLAPP statute (strategic lawsuit against public participation, § 425.16), and the trial court awarded them attorney fees. (*Ramona, supra,* 135 Cal.App.4th at p. 514.) On appeal, the school district challenged the award to Hamilton because under *Trope*, a self-represented attorney is not entitled to an award of attorney fees. (*Ramona, supra,* 135 Cal.App.4th at p. 523.) In rejecting this challenge, the court noted that all defendants had retained special counsel James Moneer to pursue the anti-SLAPP motion, and "Hamilton continued to represent [the organization and its principals] by assisting Moneer's pursuit of that motion . . . to aid in the legal defense of [the organization and its principals] (as well as herself) against [the district's] complaint." (*Ramona, supra,* 135 Cal.App.4th at pp. 523-524.) The court concluded that because an attorney-client relationship existed

between Hamilton and the other defendants, "*Trope* does not preclude the award of attorney fees merely because Hamilton was a codefendant with the nonattorney clients to whom she provided legal assistance." (*Ramona, supra,* 135 Cal.App.4th at p. 525.)

It thus appears that in *Ramona* the attorney's work inured to the benefit of the attorney and also, *independently*, to her codefendants with whom she had an attorney-client relationship. In *Gorman*, the husband/plaintiff/attorney's interests in the outcome of the action were identical to and interchangeable with the interests of the wife/coplaintiff. Accordingly, there could be no true attorney-client relationship by which husband represented some interest of wife's, distinct from his own. In the case before us, the record supports the conclusion that a genuine attorney-client relationship existed between Grattan and her copetitioners, as the court implicitly found when it concluded she was a "hired attorney." Even though Grattan may have enjoyed the benefits conferred by the litigation in common with her copetitioners and the public, she is not in the kind of legal relationship with her copetitioners that would make her own interests interchangeable with, or legally indistinct from theirs.

Another distinction from *Gorman* lies in the fact that here, we are not considering contractual attorney fees incurred in an action to enforce a private right, but, rather, fees incurred in an action to enforce an important right affecting the public, which conferred benefits on a large group. Our Supreme Court has noted that "[s]ection 1021.5 codifies the court's 'traditional equitable discretion' concerning attorney fees [citation], and within the statutory parameters courts retain considerable discretion." (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 251; see also *Woodland Hills, supra* 23 Cal.3d at p. 938 [court's traditional equitable discretion codified in section 1021.5].) In the circumstances of this case, we believe the trial court could properly award attorney fees for Grattan's services.

Defendants contend Grattan did not have an attorney-client relationship with HCSS and Bisset. However, both Grattan and petitioner's lead counsel, Rachel

Mansfield-Howlett, were of counsel at the law firm of Provencher & Flatt LLP, and Grattan, who was experienced in CEQA litigation, agreed to work with Mansfield-Howlett on a contingent fee basis.[6] The trial court could reasonably conclude each had an attorney-client relationship with HCSS and Bisset. Moreover, it appears that HCSS has over 100 members,[7] and there is no cause for concern that Grattan is self-dealing. Rather, she was seeking to vindicate an important public interest in ensuring compliance with CEQA, and at the same time taking the risk that she would not be compensated for her time. (See *Families Unafraid*, *supra*, 79 Cal.App.4th at p 522; see also *Trope*, *supra*, 11 Cal.4th at p. 290.) The trial court therefore did not err in awarding fees for her work under the private attorney general doctrine codified in section 1021.5.

B. Challenges to Lodestar Calculation[*]

Defendants contend the trial court erred both in setting Mansfield-Howlett's hourly rate and in failing to take into account what they characterize as excessive fees. Our Supreme Court has explained that in awarding attorney fees, "the trial court has broad authority to determine the amount of a reasonable fee. [Citations.] . . . 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong'—meaning that it abused its discretion. [Citations.] [¶] . . . [T]he fee setting inquiry in California ordinarily begins

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[6] Grattan averred in her declaration that she agreed to work with Mansfield-Howlett on a contingent fee basis. Mansfield-Howlett corroborated this statement during oral argument, when she told the trial court, "[Grattan] did take it on a contingency basis. That was our agreement. I hired [Grattan], and that also takes it out of the in pro per situation."

[7] Mansfield-Howlett declared that she had personal knowledge of the "contributors and supporters of HCSS," that its "[s]upporters" numbered just over 100 individuals, and that to her knowledge, none of the members lived close enough to the project to have a private pecuniary interest in the litigation.

[*] See footnote, *ante*, page 1.

with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . The reasonable hourly rate is that prevailing in the community for similar work. [Citation.] The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095 (*PLCM*).)

The determination of a reasonable fee is committed to the discretion of the trial court, which " 'makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' [Citation.]" (*PLCM, supra,* 22 Cal.4th at p. 1096.) As noted in *MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13 (*MBNA*), "the moving party may satisfy its burden [to prove the appropriate market rate] through its own affidavits, without additional evidence. [Citation.] Moreover, in assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status." (See also *Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 903.)

1. Mansfield-Howlett's Hourly Rate

The trial court set Mansfield-Howlett's hourly rate at $300 per hour, finding that the requested rate "may be on the high end of the range of reasonableness but does not appear to be unreasonable." In support of the motion for attorney fees, Mansfield-Howlett submitted declarations stating that she began working as an attorney in 2007; that she had previously worked as a law clerk and later as an associate attorney with the Brandt-Hawley law group and had gained extensive experience in CEQA litigation; that in 2008 her hourly rate was $275 per hour; and that she raised her rate to $300 a hour in 2009. She also submitted a declaration of Rose Zoia, an attorney specializing in land use public-interest law, based in Santa Rosa, California, who stated that she was familiar with

the rates charged by attorneys in California, and that "the rates charged by attorneys [of] the same level of skill and experience as Rachel Mansfield-Howlett are in the range of $275.00 per hour and higher and that amount is a reasonable market rate." She also submitted declarations of Brandt-Hawley, a Sonoma County attorney with extensive experience representing public-interest groups in environmental litigation, who opined that Bay Area market rates for CEQA attorneys included a rate of $300 an hour for attorneys with three years' experience. Brandt-Hawley also pointed out that Mansfield-Howlett had her own law practice, with its consequent overhead costs,[8] and several years of immersion in CEQA litigation. Grattan, who had practiced law in Sonoma County since 1977, declared that a rate of $300 per hour for Mansfield-Howlett was at or below the market rate for attorneys of comparable skill in the area. She provided additional declarations from Daniel DeVries that $300 per hour was at or below the market rate for the Bay Area, and from Gail Flatt, that Mansfield-Howlett's hourly rate was "well within the average rates charged by attorneys in specialty practices in Sonoma County and the San Francisco Bay Area."

Defendants argue, however, that the record is devoid of evidence that $300 was the prevailing hourly rate for an attorney who had been practicing law less than three years in Sonoma County, and point to the evidence they submitted that the prevailing rate for such attorneys was between $225 and $240 per hour. This evidence included a declaration by a paralegal at a law firm that represented Sonoma Luxury Resort, LLC, stating that the 2009 billing rates for associates at the firm with four years or less experience ranged from $180 per hour to $225 per hour, and a declaration by a Sonoma County attorney that his firm employed two attorneys admitted to the bar in 2007, and that their billing rates were $225 per hour until June 2008, and $240 per hour thereafter.

[8] The record does not disclose the relationship between Mansfield-Howlett's "of counsel" status at the law firm of Provencher & Flatt LLP and her expenses for her own law practice.

Our review is constrained by the rule that the trial judge is the best judge of the value of services rendered in the trial court, and we may not disturb the trial court's judgment unless it is clearly wrong. (*PLCM, supra*, 22 Cal.4th at p. 1095.) On this record, we cannot say the court's judgment on the value of Mansfield-Howlett's services was clearly wrong. There was evidence that Mansfield-Howlett had significant experience in CEQA litigation, that practitioners in Sonoma County with comparable skills or specialty practices charged similar rates, and that Mansfield-Howlett's general billing rate in 2009 was $300 per hour.[9] The evidence supports a conclusion that a rate of $300 was "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work" (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 783), and we find no abuse of discretion in the trial court's determination.

2. Alleged Overbilling

Defendants challenge the amount of time petitioners' attorneys spent on a number of tasks: opposing an amicus curiae brief, responding to four questions the trial court asked the parties to be prepared to address at oral argument, drafting the petition for writ of mandate and accompanying documents, preparing a cost bill, opposing a motion to tax costs, and filing documents. Defendants characterize some of that time as "padding, duplication, and inappropriate billing."

"Prevailing counsel are entitled to compensation for all hours 'reasonably spent unless special circumstances would render an award unjust.' [Citations.] Time is compensable if it was reasonably expended and is the type of work that would be billed to a client. [Citation.]" (*MBNA, supra*, 147 Cal.App.4th Supp. at p. 12; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 446.) A trial court

[9] Our Supreme Court has recognized that current billing rates may be used when making an attorney fee award to compensate for the delay in payment of the fees. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 583-584.)

determines whether time was necessarily spent "when it reviews the billing records and eliminates ' "padding" ' in the form of 'inefficient or duplicative' services in setting the lodestar. [Citation.]" (*Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 349.)

Petitioners' counsel collectively spent more than 100 hours reviewing an amicus brief (including an application for leave to file the brief), preparing an objection to the application, and preparing a separate response to the amicus brief, with an accompanying declaration and request for judicial notice. The response to the amicus brief was nine pages long. Defendants argue that the amicus brief contained no legal or factual issues different from those raised in the petition for writ of mandamus, and point out that petitioner's counsel Grattan opined that preparation of the amicus pleadings likely took 25 to 50 hours. They argue that it "defies reason and common sense" to say petitioners reasonably spent more than 100 hours responding to the pleadings.

We reject this contention. The amicus brief discussed two major issues: whether the EIR disclosed cumulative impacts relating to greenhouse gas emissions, and whether the EIR considered a reasonable range of alternatives. These were significant issues in the litigation: petitioners were ultimately successful on the alternatives argument, and the trial court specifically rejected their contentions related to greenhouse gas emissions and reduced the fee award in part to account for this unsuccessful theory. Moreover, the petitioners' response to the amicus brief included a discussion of proposed amendments to the CEQA Guidelines. Bearing in mind the trial court's broad discretion in setting the lodestar, we cannot say it was an abuse of discretion not to reduce these hours beyond the 40 percent by which all of petitioners' hours were reduced.

We reach the same conclusion with respect to the time counsel spent preparing to respond to four issues the court indicated it wished discussed at the hearing on the

petition for writ of mandate.[10] Defendants argue the trial court should have reduced this amount because counsel for petitioners spent significantly more time responding to those questions than did their own counsel. Petitioners counter that defendants rely on a chart that summarizes the hours spent by some, but not all, of defendants' attorneys on this issue. Regardless of the total amount spent by defendants' counsel, we cannot say the trial court abused its discretion in not reducing these fees. Petitioners bore the burden of proof, and the court raised questions related to the very issues on which petitioners prevailed.

Nor are we persuaded by defendants' challenge to the 51 hours counsel for petitioners spent drafting the petition for writ of mandamus and the accompanying civil case cover sheet, notice of election to prepare administrative record, and notice of commencement of action. The petition, which was 15 pages long, detailed the history of

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[10] The "issues of interest" that the court asked the parties to discuss were: "1. Concerning the irrigation water demand, Real Party in Interest in essence argues that the initial water required to support the planting of the trees and shrubs required for mitigation, suggested to be 2-3 years and also 3-5 years, would not overlap the increase [*sic*] water demand occasioned by the occupation of the new residences. Does the Administrative Record adequately support this contention? [¶] 2. The court requests clarification of the issue of the cumulative water supply demand as the projected demand for 2025 is 3,372 acre feet per year while the City indicates that the final demand will be 3,527 acre feet per year for the year 2025. The court requests that the parties clarify this inconsistency with references to the Administrative Record. [¶] 3. Accepting that Guideline 15126.2(a) states that the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time of notice of preparation is published, is the EIR required to consider the Fox Pond/Healdsburg Ridge System of Trails as a 'reasonably anticipated future project'? Additionally, is it required to consider the preserve as an existing part of the environment even though the trails were not themselves in place? [¶] 4. Concerning the requirement to consider alternatives, did the EIR consider a viable reduced-project alternative or only consider reduced-project alternatives that were clearly insufficient and inferior[?] Guideline 15126.6(b) requires the EIR to focus on alternatives which are capable of avoiding or substantially lessening any significant [effects] on the project even if these alternatives would impede to some degree the attainment of the project objective, or would be more costly."

the project and the environmental review process and specified the areas in which petitioners alleged the City failed to comply with CEQA. The time spent was not so clearly excessive that the trial court abused its discretion in not reducing the award.

We likewise reject respondents' challenges to the time petitioners expended in preparing a cost memorandum and responding to a motion to tax costs. Petitioners claimed more than $22,000 in costs, the bulk of that for the costs of preparing the administrative record, including the costs of scanning, copying, numbering and binding, outside staff time, and in-house paralegal time. We have no reason to conclude the time spent assembling this information and researching allowable costs was excessive, or that petitioners overbilled in their opposition to the motion to tax costs. Nor do we have any reason to doubt petitioners' counsel's explanation that five hours spent "filing" documents were actually spent finalizing the documents in preparation for filing.

Finally, aside from any specific challenges to billing entries, defendants contend it was an abuse of discretion for the trial court to "ignore [the] significant discrepancy" between the total number of hours petitioners spent and the number of hours counsel for each of the opposing parties—that is the City and SLR—spent separately. Counsel for petitioners claimed more than 1400 hours for the litigation, and counsel for the City and SLR averred they had *each* spent approximately 700 hours on the case. Defendants point out that the City and SLR prepared separate briefs on the merits of this action, each responding to all of the issues raised in petitioners' opening brief in support of the petition for writ of mandamus, and argue that petitioners could not reasonably have spent more than 900 hours on the litigation.

The trial court rejected this argument, finding the fees "facially reasonable." We cannot fault this finding. Petitioners were responsible for exhausting their administrative remedies, carrying out the preliminary investigation and research, drafting the petition, preparing the administrative record, preparing both opening and reply briefs, responding to two sets of opposition briefs, and responding to the amicus brief. Moreover, they

carried the burden of proof below. We cannot conclude the trial court abused its discretion in finding the fees of petitioners' counsel reasonable.

3. Limited Success

The trial court reduced the fees to 60 percent of the amount petitioners claimed in order to account for their limited success, then applied a multiplier to the reduced amount. Defendants contend this was an abuse of discretion and that in doing so, the trial court in effect applied a multiplier twice.

In considering the extent of petitioners' success, the trial court explained: "Here, . . . Petitioners prevailed on only a portion of the issues or arguments raised. Because Petitioners achieved their basic ultimate goal and successfully enforced important public rights, this does not greatly affect the ultimate amount of fees recoverable. Nevertheless, the court finds it appropriate to reduce the possible fee recovery due to the fact that Petitioners were not entirely successful. Rather than factoring this consideration into a multiplier, however, the court chooses to reduce the basic fees requested by what appears to be a reasonable amount consistent with the degree of success before applying a multiplier, and then applying the multiplier to this reduced fee base." The court determined that, based on the number of pages and "volume of arguments" devoted to the various issues, the arguments on which petitioners prevailed represented roughly 36 percent of the arguments presented in their briefs. The court concluded, however, that this number did not represent the extent of petitioners' success: "First, although not succeeding on roughly 54% [*sic*] of the arguments according to the pages in the opening brief, Petitioners clearly achieved the bulk of what they actually sought, namely setting aside the EIR and requiring further study, explanation, and public participation. This basic result would have been the same if Petitioners had prevailed on more issues presented. [¶] Second, the primary point on which Petitioners prevailed, the analysis of alternatives, was a clear success and of fundamental importance. This issue goes to the very heart of CEQA, the very heart of the

EIR and the project consideration and is not simply one specific environmental effect to consider. [¶] . . . [¶] The result is that Petitioners' success on the issue of alternatives is far out of proportion to the actual amount of pages or citations it involved. The court thus considers this issue in particular much more heavily in determining the relative extent of Petitioners' overall success." Noting, however, that petitioners had presented several arguments on which they did not prevail, particularly their argument on greenhouse gases, and that these arguments reflected "a significant portion of the time and work involved on this case," the court determined that petitioners had achieved roughly a 60 percent success rate. The trial court then applied a modifier of 1.5 to hours claimed by Mansfield-Howlett after they had been reduced to reflect petitioners' partial success.

Defendants contend the trial court acted improperly in finding petitioners 60 percent, rather than 36 percent, successful, and that in going on to apply a multiplier of 1.5, the court in effect enhanced the fee twice based on the same factors.

"While a court has discretion to reduce fees in a CEQA case based on degree of success [citation], it is, of course, not required to do so. The California Supreme Court has also instructed that attorney fee awards under section 1021.5 'should be fully compensatory,' and absent 'circumstances rendering the award unjust, an . . . award should ordinarily include compensation for *all* the hours *reasonably spent*.' [Citation.]" (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 897 (*Center for Biological Diversity*).) As explained in *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 782-783 (*RiverWatch*), "[c]ourts take a 'broad, pragmatic view of what constitutes a "successful party" ' in order to effectuate the policy underlying section 1021.5. [Citation.] The party seeking attorney fees need not prevail on all its claims alleged in order to qualify for an award. [Citations.] The litigant is considered 'successful' under section 1021.5 if the litigation 'contributed substantially to remedying the conditions at which it was directed.' [Citation.] The critical fact is the impact of the litigation. [Citation.] In other words, the

'successful' party under section 1021.5 is generally the 'prevailing' party, that is, the party that ' " 'succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.' " [Citation.]' [Citations.] Prevailing counsel who qualify for an award under section 1021.5 are entitled to compensation for all hours reasonably spent. [Citation.]"

The facts of *RiverWatch* and *Center for Biological Diversity* are instructive. The appellate court in *RiverWatch* rejected a contention that the trial court should have reduced an attorney fee award by 50 percent to account for the plaintiffs' lack of success on numerous issues; the petition had alleged CEQA violations under 14 subheadings and included causes of action for violation of the California Code of Regulations, the county general plan and zoning ordinance, and a measure approved by county voters, and the trial court granted relief as to only three of the deficiencies alleged in the petition. (*RiverWatch*, *supra*, 175 Cal.App.4th at pp. 772-773, 782.) The appellate court concluded that defendants' argument urging a reduction in the fees "fail[ed] to account for the qualitative as opposed to quantitative significance of the issues included in the writ of mandate." (*Id*. at p. 783.) The petition's intent was to enforce compliance with CEQA, the California Code of Regulations, and local laws, and the trial court was in the best position to assess the significance of the issues remanded for further consideration and action. (*RiverWatch, supra,* 175 Cal.App.4th at p. 783.) In *Center for Biological Diversity*, the plaintiffs had brought a CEQA challenge to a project, alleging the EIR failed to analyze adequately a variety of environmental impacts, including air quality, greenhouse gas emissions, effects on protected species, and cumulative impacts, and that the EIR did not adequately describe certain aspects of the project. The trial court ruled the EIR's finding that an alternative was infeasible was unsupported by substantial evidence, and that the EIR did not adequately identify the source of water for the project or contain a required water supply assessment. The court rejected the other challenges to the EIR. (*Center for Biological Diversity*, *supra*, 185 Cal.App.4th at p. 879-880.) In

considering a request for attorney fees, the trial court reduced the requested fees based on excessive rates and hours claimed, and applied a multiplier of 1.5 based on the contingent nature of the fee award. (*Id.* at p. 897.) The Court of Appeal rejected the contention that the hours should have been reduced further based on limited success in the challenges to the EIR, concluding that "an additional fee reduction based on the specific number of CEQA issues that were unsuccessful would impede the Legislature's intent of 'encouraging attorneys to act as private attorneys general and to vindicate important rights affecting the public interest.' [Citation.]" (*Center for Biological Diversity*, *supra*, 185 Cal.App.4th at pp. 895, 898.) Moreover, the appellate court noted, the plaintiffs had achieved their primary objective, the rescission of the conditional use permit and the requirement that the county give further consideration to the proposed project. (*Id.* at p. 898.)

Defendants here contend the trial court acted arbitrarily in reducing the lodestar to 60 percent of the claimed fees when it found only 36 percent of the arguments in petitioners' briefs related to the issues on which they prevailed. We will not second guess the trial court's determination. As in *RiverWatch* and *Center for Biological Diversity*, petitioners achieved their goal of requiring the City to comply with CEQA and to reconsider the project. Moreover, petitioners succeeded in their argument that the City had failed to study a range of reasonable alternatives, a matter that is at "[t]he core of an EIR"; as our Supreme Court has explained, one of an EIR's major functions is to ensure that the responsible officials thoroughly assess all reasonable alternatives to a project. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-566.) Bearing in mind the qualitative as well as the quantitative aspects of petitioners' success, we find no abuse of discretion in not reducing the lodestar further.

Nor are we persuaded that the trial court improperly used the same factor—the level of success—both to set the lodestar and to enhance the fee award. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139 [trial court should not consider same factors

both to set lodestar and determine enhancement].) The trial court stated that it considered the level of success in setting the lodestar, *rather than* in setting the multiplier. And indeed, it is clear from the manner in which the trial court applied the multiplier only to Mansfield-Howlett's fees that the multiplier was based on the risk Mansfield-Howlett took in bringing the case on a contingency basis, a factor our Supreme Court has found appropriate as a basis to enhance a fee award. (*Id*. at p. 1136, 1138; see also *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 428-429 (*Greene*).)

Defendants argue, however, that the trial court failed to carry out the analysis outlined in *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407 (*Harman II*). There, Division One of the First Appellate District considered the propriety of an award of attorney fees under title 42 United States Code section 1988, relying on factors articulated in *Hensley v. Eckerhart* (1983) 461 U.S. 424 (*Hensley*). (*Harman II*, *supra*, 158 Cal.App.4th at pp. 415-418.) The court laid out a two-step analysis for partially prevailing plaintiffs in such cases. First, the lodestar figure is calculated by multiplying the number of hours expended by a reasonably hourly rate, adjusting as necessary to fix the fee at the fair market value. Hours spent on claims unrelated to those on which a party was successful are excluded from the lodestar calculation, but fees need not be apportioned if incurred on an issue common to a cause of action in which fees are proper and one in which they are not allowed, or when the issues in the fee and nonfee claims are inextricably intertwined. (*Id*. at pp. 416-417.) If the successful and unsuccessful claims are found to be related, the court proceeds to the second step, and evaluates the significance of the overall relief the plaintiff obtained in relation to the hours reasonably expended on the litigation. Full compensation may be appropriate if the plaintiff obtained excellent results, and may be excessive if there was only partial or limited success. (*Id*. at pp. 417-418.) The court may reduce the lodestar calculation " ' "if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." [Citation.] . . . "[T]he most critical factor is the degree of success

obtained." [Citation.]' [Citation.]" (*Id*. at p. 418, quoting *Harman v. City and County of San Francisco* (2006) 136 Cal.App.4th 1279, 1312 (*Harman I*); see also *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 238-239 [applying *Hensley* and *Harman I* and *II* approach to section 1021.5 case].)

Although the trial court did not articulate this two-step analysis, we are satisfied that the court considered the appropriate factors. The court looked to the degree of success obtained to set the lodestar and reduced the fee claim significantly because of petitioners' partial success. We will not disturb the trial court's exercise of its broad discretion.

C. Cross-Appeal—Denial of Multiplier for Grattan's Work[*]

In their cross-appeal, petitioners contend the trial court abused its discretion in declining to apply the 1.5 enhancement to the hours worked by Grattan. In making its ruling, the trial court stated: "The court finds that Petitioners should recover fees for Ms. Grattan . . . but it does not, however, find it appropriate to apply an enhancement modifier to [her] claimed hours. Ms. Grattan has apparently spent considerable time and effort, as a hired attorney, on behalf of Petitioners but at the same time the record does reveal that she is personally involved with Petitioners and somewhat personally interested in this action. She should be able to recover fees, but awarding her a multiplier under the circumstances appears improper and the fact that she has a personal interest in the action negates much of the policy behind awarding a multiplier." Petitioners contend Grattan's personal interest in the action—or her "environmental preservation motivation"—was an improper factor to consider in deciding whether to enhance her hours, and that the court mistakenly failed to consider the contingent nature of Grattan's services.

[*] See footnote, *ante*, page 1.

As we have explained, the determination of what is a reasonable fee is entrusted to the trial court's broad discretion, and we will not reverse such a determination unless there has been a manifest abuse of that discretion. (*PLCM, supra*, 22 Cal.4th at pp. 1095-1096; see also *Serrano III, supra*, 20 Cal.3d at p. 49.) We discern no abuse of discretion here. In referring to Grattan as a "hired attorney," the trial court showed its awareness of the terms of her representation; as defendants point out, the evidence that Grattan had been hired to represent petitioners is found in her declaration that she "agreed to work on a contingent fee basis with Rachel Mansfield-Howlett, who has acted as lead attorney, in [this] litigation." The trial court was also aware that it was proper to consider contingent risk in determining whether to enhance a fee award; in fact, it included such an enhancement in the award for Mansfield-Howlett's fees. (See *Ketchum, supra*, 24 Cal.4th at pp. 1136-1139; *Greene, supra*, 101 Cal.App.4th at pp. 428-429.)

Our Supreme Court has made clear that the trial court "is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk, . . . although it retains discretion to do so in the appropriate case." (*Ketchum, supra*, 24 Cal.4th at p. 1138.) Here, the trial court could reasonably conclude that Grattan's personal interest in the action as a named petitioner and a member of HCSS "negate[d] much of the policy behind awarding a multiplier." As explained in *Ketchum*, the policy behind an enhancement for contingent risk is that " '[t]he experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk.' [Citation.]" (*Id.* at p. 1136.) Such a problem is less likely to occur when the lawyer in question has Grattan's personal interest in the action.

Nor is there any reason to conclude, as petitioners suggest, the trial court mistakenly believed it was impermissible to apply an enhancement where the interest of the litigant was nonpecuniary, as Grattan's was here. As petitioners point out, shortly after the trial court issued its attorney fee order, the California Supreme Court held in

Conservatorship of Whitley that "a litigant's personal nonpecuniary motives may not be used to disqualify that litigant from obtaining fees under [] section 1021.5." (*Conservatorship of Whitley*, *supra*, 50 Cal.4th at p. 1211.) In doing so, it disapproved earlier cases (including *Families Unafraid*) to the extent they had suggested otherwise. (*Id*. at p. 1226, fn. 4.) Here, it is clear the trial court was not under the impression that a litigant with nonpecuniary motives may not receive attorney fees; it *awarded* fees to petitioners (including fees for Grattan's services), despite their nonpecuniary interests. Nothing in the record suggests that, having awarded these fees, the court believed that Grattan's nonpecuniary interests barred her from receiving an enhancement. Rather, the trial court appears to have exercised its discretion to refuse such an enhancement, and we see no ground to disturb its ruling.

III. DISPOSITION

The order appealed from is affirmed.

_____
RIVERA, J.

We concur:

_____
RUVOLO, P. J.

_____
SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court: Superior Court of Sonoma County

Trial Judge:	Honorable Robert S. Boyd
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