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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

NORTH SONOMA COUNTY HEALTHCARE DISTRICT et al., Plaintiffs and Appellants, v. COUNTY OF SONOMA et al., Defendants and Respondents; SUTTER WEST BAY HOSPITALS et al., Real Parties in Interest and Appellants, LUTHER BURBANK MEMORIAL FOUNDATION, Real Party in Interest and Respondent.	A134862 (Sonoma County Super. Ct. No. SCV-248271)

I.

INTRODUCTION

This appeal involves attorney fees awarded under Code of Civil Procedure section 1021.5 (section 1021.5), arising out of environmental and land use challenges to the

construction of a new hospital and medical office building in Santa Rosa.[1] The trial court granted in part, and denied in part, appellants' motion for attorney fees, and awarded $56,459.16, which was considerably less than the $668,386 appellants had requested. On appeal, appellants claim the court abused its discretion in failing to "follow the settled law under Section 1021.5," which would have resulted in an award of "fully [*sic*] compensatory attorneys' fees" to appellants. Sutter has filed a cross-appeal challenging the trial court's determination that appellants were successful parties as defined by section 1021.5, and therefore entitled to *any* attorney fees whatsoever.[2]

With respect to the cross-appeal, we find the trial court did not abuse its discretion in finding that appellants were entitled to attorney fees under section 1021.5. With respect to appellants' challenge to the amount of attorney fees awarded, our review of the appellate record has located no instance in which the court failed to follow the applicable rules of law governing an award of attorney fees under section 1021.5. In addition, we conclude that the amount of the attorney fees awarded was within the range established by the discretionary authority granted to the court. As a result, we affirm the trial court's order.

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[1] The parties to the underlying litigation are as follows: North Sonoma County Healthcare District, Transportation Solutions Defense and Education Fund, Palm Drive Health Care District, California Nurses Association, and Sierra Club (collectively appellants) brought an action against respondents Sonoma County and the Sonoma County Board of Supervisors (the County) alleging claims arising from the County's approval of the Sutter Medical Center of Santa Rosa/Luther Burbank Memorial Foundation Joint Master Plan (the Project). Respondents Sutter West Bay Hospitals, Sutter Medical Center of Santa Rosa, Sutter Health, Sutter West Bay Medical Foundation, and Sutter Medical Foundation (collectively Sutter) and Luther Burbank Memorial Foundation (Luther Burbank) were real parties in interest to that action.

[2] We note that although Luther Burbank is referenced as a cross-appellant in the parties' briefs, it was not named as a cross-appellant in Sutter's notice of cross-appeal, and it did not file a separate notice of cross-appeal.

II.

FACTS AND PROCEDURAL HISTORY

Since 1996, Sutter Medical Center of Santa Rosa has leased the Chanate campus hospital facilities located in Santa Rosa from the County. The Chanate campus is an acute care facility that was built in 1937 and is comprised mostly of buildings that carry a nonconformance seismic performance rating, which indicates that they could collapse during a strong earthquake. Seismic safety legislation (Sen. Bill No. 1953; Stats. 1994, 1993-1994 Reg. Sess., ch. 740, § 1, pp. 3638-3645) (SB 1953), amending the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, mandates seismic upgrade or replacement of all general acute care hospitals determined by the state to be at risk of collapsing during a strong earthquake. Pursuant to SB 1953, the Chanate acute care facility was mandated to close after January 1, 2013.

To comply with its obligations under SB 1953, Sutter proposed a business plan that allowed for the construction of a replacement hospital and medical office building on a parcel of land adjacent to the Wells Fargo Center in Santa Rosa, a performing arts center. On November 1, 2009, the County published the "Draft Environmental Impact Report" (EIR) for the Project. The Project proposed development of a new acute care inpatient hospital, a medical office building, a helistop, and parking. The draft EIR concluded that most of the potentially significant impacts of the Project could be mitigated to a less than significant level. Even with the implementation of all feasible mitigation measures, however, the Project would still result in significant and unavoidable impacts on air quality, including greenhouse gases, noise, and traffic. On May 2, 2010, the County published the final EIR, which responded to comments on the draft EIR.

The Sonoma County Board of Supervisors (the Board) conducted two publicly noticed hearings on the EIR and on the Project approval in August 2010. On August 24, 2010, the Board conducted its final deliberation on the Project. By unanimous vote, the Board decided to certify the EIR, adopt California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) findings and a statement of overriding

considerations, adopt a mitigation monitoring and reporting program, and approve the Project.

On September 22, 2010, appellants filed a petition for writ of mandate and complaint for injunctive relief (the Petition) in the Sonoma County Superior Court, challenging the Board's approval of the Project. Appellants alleged violations of CEQA, the state planning and zoning laws, and the Sonoma County Code. Appellants sought to have the EIR decertified, the Project approvals set aside, and construction stopped.

On June 28, 2011, following briefing and oral argument, the trial court issued a writ of mandate granting in part, and denying in part, the Petition. While finding against appellants' position on most issues, the court found that two of appellants' claims had merit.

First, with respect to greenhouse gases, the court found that the EIR contained an adequate analysis of the Project's contribution to greenhouse gases. However, the court found that *after* the final EIR "was completed and circulated, the County produced a memorandum which purported to consider the effect of closing the Chanate facility, and on the basis of this memorandum, recommended *reduced* mitigation" for greenhouse gases. (Italics added.) The court first noted that that "[t]he analysis in the EIR [did] not include an analysis of possible reduction in greenhouse gases based on the closure of the Chanate facility." Furthermore, the court found the revised calculations based on the closure of the Chanate facility that were used to support the reduced mitigation were "inconsistent with the County's position that future uses of Chanate are too speculative to be analyzed."

Consequently, the trial court held that "[t]he County's use of its [post-EIR] revised calculations to impose mitigation measures and in its adoption of a statement of overriding considerations is not supported by evidence in the record." The court directed the County to "[r]econsider the mitigation measures to be required as to greenhouse gas emissions based upon the finding of significance contained in the EIR" and "consider whether further mitigation measures are to be imposed on the Project or further statement of overriding considerations should be adopted."

Secondly, the court directed the County to "[c]larify whether the proposed medical office building will be owned or operated by a governmental agency or nonprofit entity . . . ." This directive was in response to the County's general plan, which requires that any facilities located within the land use category where the Project was situated be owned or operated by government agencies, nonprofit entities, or public utilities.

On August 23, 2011, the Board conducted a public hearing to comply with the writ by clarifying and making additional findings related to greenhouse gas emissions and to assure general plan consistency. After considering all relevant oral and written testimony, the Board, by unanimous vote, reapproved the Project after clarifying that the medical office building would be owned or operated by a nonprofit entity, and after adding additional mitigation measures to reduce the Project's greenhouse gas emissions. The County submitted a return and a supplemental return to the peremptory writ of mandate, and moved to discharge the writ. On April 26, 2012, the trial court found the County's approval of the Project was in compliance with CEQA and discharged the writ of mandate. The court's decision has become final, with an appeal taken, but voluntarily dismissed, from the court's ruling.

In the meantime, on October 28, 2011, appellants' counsel, the San Francisco firm of Shute, Mihaly & Weinberger LLP (Shute Mihaly), moved for attorney fees incurred as a private attorney general enforcing important rights affecting the public interest. (§ 1021.5.) To clarify, Shute Mihaly did not represent appellants for the portion of the case challenging the return on the writ. The record reflects that local counsel was hired for this portion of the case. Therefore, the trial court was asked to decide whether appellants' counsel was entitled to a fee award under section 1021.5 for work counsel had performed up to and including the trial court's June 28, 2011 issuance of the writ of mandate, but not for work on the return to the writ.

Sutter and Luther Burbank opposed appellants' motion for attorney fees. The matter was argued on December 21, 2011. On January 9, 2012, the trial court entered its order granting in part, and denying in part, appellants' motion for attorney fees. It awarded appellants $51,459.16 for fees incurred in preparing and arguing the Petition on

its merits, and $5,000 for fees incurred in preparing and litigating the motion requesting attorney fees.)

Appellants filed their notice of appeal on March 9, 2012, claiming the trial court abused its discretion in failing to compensate them fully in the amount of fees awarded. Sutter filed a notice of cross-appeal on March 28, 2012, claiming it was error to award appellants any attorney fees whatsoever.[3]

III.

DISCUSSION

A. Cross-Appeal—Are Section 1021.5 Fees Warranted in this Case?

The trial court found that appellants had satisfied the statutory requirements for an attorney fee award under section 1021.5 because they "conferred a benefit on the general public and enforced an important public right." Sutter and Luther Burbank dispute that finding. Although somewhat unconventional, we address the issues raised in the cross-appeal first because if we find that no fees were warranted under section 1021.5, we need not discuss the propriety of the amount awarded.

Section 1021.5 codifies California's version of the private attorney general doctrine, which is an exception to the usual rule that each party bears its own attorney fees. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147.) The purpose of the doctrine is to encourage lawsuits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565-566 (*Graham*).)

A successful party may recover attorney fees pursuant to section 1021.5 when the action " '(1) . . . "has resulted in the enforcement of an important right affecting the public interest," (2) "a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons" and (3) "the necessity and financial burden of private enforcement are such as to make the award

[3] The other respondents have not joined Sutter's cross-appeal; however, see footnote 2 above concerning real party in interest and respondent Luther Burbank only.

appropriate." '. . ." (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214 (*Whitley*), quoting *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935 (*Woodland Hills*).)

In considering whether to grant attorney fees under section 1021.5, " ' "[t]he trial court is to assess the litigation realistically and determine from a practical perspective whether [the statutory] criteria have been met." [Citation.]'. . ." (*Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1344 (*Lyons*).) A trial court's decision whether to award attorney fees under section 1021.5 is normally reviewed for an abuse of discretion, but de novo review is warranted where the determination of whether the statutory criteria were satisfied amounts to statutory construction and a question of law. (*Whitley*, *supra*, 50 Cal.4th at p. 1213.) Because the Legislature linked the criteria in section 1021.5 with the word "and," courts have interpreted section 1021.5 to require that each criterion be satisfied to justify an award of attorney fees. (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637, 648.)

1. Did the Litigation Confer a Significant Benefit to the Public?

Sutter and Luther Burbank first argue that "[a]ppellants did not qualify for attorneys' fees under section 1021.5 because their action did not result in a significant benefit to the public . . . ." In response, appellants claim their action "enforced important rights affecting the public interest and provided a significant benefit to the public or a large class of persons by ensuring full disclosure of the environmental impacts of the Project, full mitigation of those impacts, and consistency with the County General Plan."

"Determining whether a party is 'successful' within the meaning of section 1021.5 requires an analysis of the surrounding circumstances of the litigation and a pragmatic assessment of the gains achieved by a particular action. [Citation.]" (*Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th 488, 493.) The standard does not require a showing that the party seeking attorney fees achieved a favorable ruling on every claim brought in the case. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291 (*Maria P.*); *Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 846 (*Wallace*).) To be a successful party for purposes of a fee award,

the moving party must succeed on at least one " ' "significant issue in litigation" ' " which achieves some of the benefit the party sought in bringing the suit.[4] *(Maria P.*, at p. 1292; *Lyons, supra*, 136 Cal.App.4th at p. 1346.)

Sutter and Luther Burbank claim "[t]he clarifications sought by the writ did not enforce laws in a manner that conferred a significant public benefit to a large number of people or resulted in any substantive change in the project." However, " '[t]he extent of the public benefit "need not be great" to justify an attorney fee award'. . . ." (*Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 234 (*EPIC*).)" " '[T]he "significant benefit" that will justify an attorney fee award need not represent a "tangible" asset or a "concrete" gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy.' [Citation.] The benefit may be conceptual or doctrinal [citation], and the California Supreme Court has recognized that 'the litigation underlying the section 1021.5 award can involve rights or benefits that are somewhat intangible . . . .' [Citation.]" (*EPIC*, at p. 233.)

The Supreme Court has consistently found that informed public decision making and agency accountability are CEQA cornerstones, holding that an EIR is "intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' [Citations.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [an EIR's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made" (original italics)].) Only an informed public " 'can intelligently weigh the environmental consequences of any

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[4] However, we wish to emphasize that while a " ' 'party need not prevail on every claim presented in an action in order to be considered a successful party within the meaning of [section 1021.5,]" . . . "the fact that he or she has prevailed on some claims but not on others is a factor to be considered in determining *the amount of the fee awarded*." ' [Citation.]" (*Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 177-178 (*Bowman*), italics added; *Wallace, supra*, 170 Cal.App.3d at pp. 846-847.)

contemplated action and have an appropriate voice in the formulation of any decision.' [Citation.]" (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 938 (*Costa Mesa*).)

Here, appellants' action enforced CEQA's fundamental purposes and benefited the public in four ways: (1) the County was forced to prepare a revised analysis acknowledging the full extent of the Project's greenhouse gas emissions; (2) new mitigation measures were considered and adopted that would reduce these greenhouse gas emissions; (3) the public was given a chance to review and comment on these mitigation measures; and (4) given this new information, a better informed Board was required to weigh competing policy considerations when deciding to proceed with the Project after adopting its statement of overriding considerations.

Therefore, the additional public process with more accurate information on the mitigation of the Project's greenhouse gas emissions, standing alone, conferred a substantial public benefit. " '[P]ublic review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources." (*Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal.App.4th 556, 574.) The public holds a " 'privileged position' " in this regard. (*Costa Mesa*, *supra*, 42 Cal.3d at p. 936.) CEQA's public participation requirements are " 'based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making . . . .' [Citation.]" (*Ibid*.)

Similar to the procedural history of this case, the court in *Bowman*, *supra*, 131 Cal.App.4th at pages 180-181, found that a writ requiring new notice and hearing and resulting in new public comment and submissions regarding the project conferred a significant public benefit, even though the agency in that case simply reapproved the project without modification. (See also *Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 558.)

Furthermore, this litigation conferred an additional substantial benefit to the general public because the County may be less inclined, in the consideration and

preparation of EIR's for future projects, to "acknowledge a significant impact and approve the project after imposing a mitigation measure not shown to be adequate by substantial evidence." (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724.)

When judged by these standards, we conclude the court did not abuse its discretion in finding appellants were successful parties who had achieved a significant public benefit for purposes of section 1021.5. It is clear appellants prevailed on at least one " ' "significant issue" ' " which achieved some of the benefits appellants sought in bringing the lawsuit. *(Maria P., supra*, 43 Cal.3d at p. 1292.) In this case, the trial court identified the "significant issue," justifying an award of attorney fees, as requiring Sutter and Luther Burbank to comply with CEQA in properly mitigating greenhouse gas emissions. (*Ibid*.)

2. Did the Financial Burden of Private Enforcement Outweigh Any Pecuniary Benefit Reasonably Expected from this Lawsuit?

Sutter and Luther Burbank next argue section 1021.5 attorney fees were improperly awarded because appellants' lawsuit—while based on purported land use and CEQA violations—was actually brought to vindicate appellants' own economic interests. To clarify, Sutter and Luther Burbank do not assert that the Transportation Solution Defense and Education Fund, the Sierra Club, or the California Nurses Association have a financial interest in the outcome of this case. This argument is directed at North Sonoma County Healthcare District and Palm Drive Health Care District—the two public hospitals which, along with other entities, instituted the underlying litigation (the Hospital petitioners). Sutter and Luther Burbank claim the Hospital petitioners' primary motivation in bringing this lawsuit was to protect their own financial interest by attempting to avert the competition created by the construction of a new hospital and medical office building.

The "financial burden" element of section 1021.5 is met when " 'the cost of the claimant's legal victory transcends his [or her] personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff "out of proportion to

his [or her] individual stake in the matter." [Citation.]' " (*Woodland Hills, supra,* 23 Cal.3d at p. 941; see also *Whitley, supra,* 50 Cal.4th at p. 1215.)

"The *Whitley* decision makes clear that, in a private enforcement action, a court may not consider nonpecuniary interests when evaluating the financial burden criterion in section 1021.5." (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 432.) "[T]he holding of *Whitley* applies equally to both private and public litigants who seek attorneys' fees pursuant to section 1021.5." (*Id.* at p. 433.) The financial burden of private enforcement concerns not only the costs of litigation, but also the financial benefits reasonably expected by the successful party. (*Whitley, supra,* 50 Cal.4th at p. 1215.) The appropriate inquiry is whether the financial burden of the plaintiff's legal victory outweighs the plaintiff's personal financial interest. (*Ibid.*; *Woodland Hills, supra,* 23 Cal.3d at p. 941.) An attorney fees award under section 1021.5 is proper unless the plaintiff's reasonably expected financial benefits exceed by a substantial margin the plaintiff's actual litigation costs. (*Whitley, supra,* 50 Cal.4th at p. 1216.) The focus in this regard is on the plaintiff's incentive to litigate absent a statutory attorney fee award. " '[S]ection 1021.5 is intended to provide an incentive for private plaintiffs to bring public interest suits when their personal stake in the outcome is insufficient to warrant incurring the costs of litigation.' [Citation.]" (*Id.* at p. 1221.)

Sutter and Luther Burbank address the financial burden and benefits of this lawsuit with the following argument: The "Project made the already competitive [health care] market even more competitive." They point to comments in the record, expressing concern that "approval of the new Sutter hospital would threaten closure [or downsizing] of one or more of the existing hospitals in the County." From these scant, general references they make a comparison of the Hospital petitioners' annual revenues to their litigation expenses, and argue, "Hospital Appellants incurred litigation expenses of $668,386 to protect collective revenues of over $57.5 million per year. Given the amount of money at stake . . . the burden to the Hospital Appellants of this litigation was minor compared to their demonstrated financial interest."

We first point out that having a financial interest in the issues being litigated does not preclude recovery of attorney fees. (See, e.g., *Lyons, supra*, 136 Cal.App.4th at p. 1352 ["A pecuniary interest in the outcome of the litigation is not disqualifying"].) We also note that courts have frequently awarded fees under section 1021.5 to health care providers that bring public interest lawsuits. (See *Feminist Women's Health Care Center v. Blythe* (1995) 32 Cal.App.4th 1641, 1667-1668 [holding that a health center's financial interest in a public interest action did not disqualify it from receiving fees]; *Planned Parenthood v. Aakhus* (1993) 14 Cal.App.4th 162, 173 ["This action was brought to protect both respondent and its patrons; consequently, it cannot be exclusively characterized as a self-serving, private dispute commenced by respondent to protect its own pocketbook"].)

Furthermore, numerous cases have held that an " 'indirect and uncertain' " pecuniary benefit does not outweigh a plaintiff's financial burden in bringing the lawsuit for the purposes of evaluating entitlement to attorney fees under section 1021.5. (*Monterey/Santa Cruz County etc. Trades Council v. Cypress Marina Heights LP* (2011) 191 Cal.App.4th 1500, 1523; *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 230-231.) "[T]he central calculus of the financial burden requirement—an evaluation of the costs of the litigation with its expected value [citation]—depends on an ability to quantify the gains realistically expected." (*Whitley, supra*, 50 Cal.4th at p. 1225.) Thus, a court should not deny plaintiffs' attorney fees where their potential financial incentive is indirect and largely speculative. (*Plumbers & Steamfitters, Local 290 v. Duncan* (2007) 157 Cal.App.4th 1083, 1099 [allowing fees in union action to enforce prevailing wage policy].)

Consequently, in order to outweigh the financial burden of litigation under section 1021.5, the financial benefits potentially realized by the Hospital petitioners must be *far less speculative* than the illusory financial benefits imagined and argued in this case by cross-appellants. Indeed, as the trial court recognized in awarding appellants' attorney fees, "[t]his matter involves difficult and complex litigation, a massive administrative record, and *the result was uncertain*." (Italics added.) (See, e.g., *Baggett v. Gates*

(1982) 32 Cal.3d 128, 143 [enforcement of procedural rights did not confer financial benefit outweighing costs of litigation, because there was no assurance that plaintiff would enjoy personal financial benefits from new procedure]; *Otto v. Los Angeles Unified School Dist.* (2003) 106 Cal.App.4th 328, 332-333 [fee award was appropriate, since there was "no guarantee" plaintiffs would ever "secure any financial benefit for themselves" from District's change of policy]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1127 [affirmed award of fees to financially interested land owners, because "there is no direct pecuniary benefit to petitioners in the judgment" and "any future money advantage for petitioners is speculative"].) Similarly, the record here did not show that the Hospital petitioners had the kind of personal pecuniary interest necessary to disqualify them from a fee award under section 1021.5.

B. Main Appeal—Trial Court's Calculation of Attorney Fees

As noted, the trial court awarded appellants a total of $51,459.16 in attorney fees under section 1021.5 for litigating the Petition (excluding the proceedings involving the return to the writ) and $5,000 to prepare and argue the motion for attorney fees. The amount awarded was far less than the $668,386 appellants requested. Appellants claim: "The law is clear. Section 1021.5 requires full compensation of successful parties at market rates, including full compensation for litigating the attorneys' fees motion."

First, when determining the amount of attorney fees to award under section 1021.5, courts begin with the lodestar figure. (*Graham*, *supra*, 34 Cal.4th at p. 579.) The lodestar figure is calculated by multiplying the hours reasonably expended by the attorney by that attorney's reasonable hourly rate. (*Ibid.*) The trial court was aware of the foregoing rule and applied it. Although Sutter and Luther Burbank argued that the 1,028 hours claimed by appellants' attorneys were unreasonable and excessive, the trial court found that the "hours for which Petitioners are billing are reasonable" and accepted appellants' figure of 1,028.2 hours.

However, the court did not accept the claimed hourly rate of appellants' out-of-town law firm, Shute Mihaly, ranging from $500 per hour for a senior partner to $300-

$415 per hour for associate attorneys, finding it was "in excess of reasonable attorneys' fees." Instead, the court found that "the hourly rate of $300" was a reasonable fee for comparable legal services in the local community and "does reflect . . . the higher end of local fees."

The lodestar was then computed by multiplying the time the court found to be reasonable by the hourly rate, which amounted to $245,043.62. Next, after calculating the lodestar figure, the court recognized that full compensation may be excessive if a plaintiff has achieved only partial or limited success and a court may appropriately reduce the lodestar calculation if the relief, however significant, is limited in comparison to the scope of the litigation as a whole. (*EPIC*, *supra*, 190 Cal.App.4th at pp. 238-239.) Here, the trial court found that appellants had only "limited success" in the underlying litigation and that 15 percent of the lodestar amount was reasonable to reflect their partial success.

The trial court also recognized it had the discretion to increase or decrease the lodestar amount by applying a positive or negative multiplier. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 833.) In deciding whether or not to award a positive multiplier, "[t]he question to be answered is whether the litigation required extraordinary legal skill or whether there are other factors justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services. [Citation.]" (*EnPalm, LCC v. Teitler* (2008) 162 Cal.App.4th 770, 784, dis. opn. of Cooper, P. J.) (*EnPalm*); accord, *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 454.) Rejecting respondents' arguments that a positive multiplier was inappropriate in this case, the trial court awarded a multiplier of 1.4 to take into account [Shute Mihaly's] expertise and [the] firm's experience."[5] When all these factors were computed, the court awarded appellants a total of $51,459.16 for their work in connection with the Petition.

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[5] Sutter and Luther Burbank "do not agree that the trial court should have awarded a positive multiplier to account for Shute, Mihaly's expertise and experience, but because the overall award is reasonable, the trial court's decision should be upheld." (Fn. omitted.)

Regarding appellants' request for an additional $85,788 to brief the attorney fees motion, the trial court found that the hours claimed were "outrageous" because of "the stock nature of a motion like this," given that the motion was "not unlike motions [Shute Mihaly has] filed in every other CEQA case [it has] brought." If a fee request appears unreasonably inflated, the trial court may reduce the award or deny it altogether. (*Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 455 (*Meister*).) Based on this reasoning, the trial court awarded appellants' attorneys $5,000 for work done on the motion requesting attorney fees, bringing the total amount of fees awarded to $56,459.16.

In light of those factors considered by the trial court, it is manifestly clear that the court followed the appropriate lodestar adjustment analysis and applied applicable rules of law governing an award of attorney fees under section 1021.5 to both enhance and diminish the award. The only question is whether the trial court's decisions on various components of the lodestar analysis, which served to diminish the amount of attorney fees awarded appellants, fell within the range of permissible outcomes committed to the court's discretion. (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831 [an "abuse of discretion standard . . . measures whether, given the established evidence, the act of the lower tribunal falls within the permissible range of options set by the legal criteria"]; *Vasquez v. State of California* (2008) 45 Cal.4th 243, 251 ["within the statutory parameters [of section 1021.5] courts retain considerable discretion"].)

Specifically, appellants claim the court abused its discretion when it: (1) "reduced the award by 85%" based on appellants' limited success in the underlying litigation; (2) reduced the hourly rates to $300 per hour to reflect the prevailing rate in the local legal community; and (3) "awarded only $5,000 for litigating the attorneys' fees motion, which is an amount equivalent to 17 hours at the $300 per hour rate selected by the court." We now turn to these three enumerated issues raised by appellants in this appeal.

1. Partial Success

Appellants first argue that the court abused its discretion in reducing their attorney fees to 15 percent of the lodestar amount to reflect the fact that appellants obtained only partial success in this litigation. Appellants claim this reduction was "without any reasonable basis in the evidence or in the law" and "subverts the important public policies of Section 1021.5 and constitutes an abuse of discretion."

As a threshold matter, appellants are simply incorrect that there is no support in the law for reduction of fees based on partial success. "[T]he degree or extent of [the plaintiffs'] success in obtaining the results which they sought must be taken into consideration in determining the extent of attorney fees which it would be *reasonable* for them to recover." (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 248, original italics (*Sokolow*); *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989 [where claimant achieves only limited success, a reduced fee award is appropriate].) For this purpose, success is measured by analyzing the objectives the plaintiff sought to achieve through the litigation and the objectives they actually achieved. (*Sokolow*, *supra*, at p. 250; *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 975 [court did not abuse its discretion in reducing the lodestar by 35 percent due to lack of success].)

The trial court is given wide discretion in deciding these matters. In *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, the court explained: "While a court has discretion to reduce fees [awarded] in a CEQA case based on degree of success [citation], it is, of course, not required to do so." (*Id.* at p. 897.) Furthermore, "a court is not required to follow a formulaic reduction in CEQA cases based on the number and percentage of unsuccessful claims raised." (*Id.* at p. 898.)

When the court reduced the lodestar amount to reflect appellants' limited success, it sized up appellants' success in the underlying litigation, noting that the County had "to go back and consider additional mitigation on global warming," but remarked "aside from that, [appellants] basically lost on every other environmental issue."

The record supports the trial court's observation. Appellants did not gain any relief on most of the claims that they raised in the Petition, including: (1) challenging the Project description based on a claimed understatement of the number of employees; (2) claiming the Project description was improperly segmented; (3) claiming the EIR's analysis of greenhouse gas emissions was inadequate, was not supported by substantial evidence, and had significant environmental effects that were not sufficiently mitigated; (4) claiming there was not a sufficient analysis of alternatives, and that a city-centered, transit-oriented alternative should have been considered; and (5) claiming the EIR did not adequately describe existing uses at the Wells Fargo Center. Appellants also alleged that the Project was inconsistent with the County's general plan and was approved in violation of the County's design review procedures.

The trial court ruled for appellants on two issues relating to the County's findings on greenhouse gas emissions (while finding the analysis of greenhouse gases in the EIR was adequate) and general plan consistency. The court rejected the rest of appellants' claims.

Moreover, the principal remedy sought by appellants was a peremptory writ of mandate setting aside the certification of the EIR, vacating all Project approvals, and imposing an injunction prohibiting Project construction. It is clear they did not achieve their primary litigation objectives as the trial court did not set aside the EIR, vacate the Project approvals, or stop construction, as appellants had requested.

The trial court's reduction of attorney fees reflects a reasoned analysis and pragmatic view of appellants' limited success in the present action. No abuse of discretion has been shown.

2. Reasonable Hourly Rate (Local Rate)

Here, appellants hired attorneys from San Francisco as lead counsel, with certain of appellants' attorneys charging $500 per hour. The trial court concluded these rates were excessive for Sonoma County; and instead calculated the fee award using a rate of $300 per hour, which the court believed better reflected the rate charged by the local

legal community for comparable legal services. Appellants claim the trial court abused its discretion in selecting the $300 hourly rate.

Generally, in calculating the lodestar, "[t]he reasonable hourly rate is that prevailing in the community for similar work. [Citations.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*).) However, "in the 'unusual circumstance' that local counsel is unavailable," a trial court may award an out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399 (*Horsford*).) In such rare cases, the justification for awarding the higher rate is that out-of-town rates are needed "to attract attorneys who are sufficient to the cause." (*Ibid*.) At a minimum, therefore, the party seeking out-of-town rates is required to make a "sufficient showing . . . that hiring local counsel was impracticable," and the exception is accordingly inapplicable where "no effort was made to retain local counsel." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244 (*Nichols*).)

We believe appellants have failed to carry their threshold burden of showing that it was necessary to retain out-of-town counsel to handle this case. In *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223 (*Rey*), the appellants hired out-of-town attorneys from a higher fee area, with several attorneys charging over $760 per hour. (*Id*. at p. 1231, 1240.) The trial court concluded these rates were excessive for the Central Valley and instead calculated the fee award using a local rate of $325 per hour. (*Id*. at p. 1240.) In affirming the trial court's decision, the Court of Appeal found the evidence before the trial court attempting to justify the higher out-of-town rate to be "speculative" in that it "did not establish that appellants ever attempted to retain local counsel." (*Id*. at p. 1241; accord, *Nichols*, *supra*, 155 Cal.App.4th at p. 1244 [court reversed an award of higher out-of-town rates because plaintiff had failed to show she was unable to hire local counsel].)

Likewise, appellants' evidence here contained bare assertions that local counsel could not handle the matter but did not contain any facts establishing that appellants ever attempted to locate and retain local counsel. Appellants seek to justify their choice of

Shute Mihaly by indicating that no local firm "had the resources, the depth of experience, and the reputation for successful CEQA litigation that [Shute Mihaly] has." But section 1021.5 does not guarantee plaintiffs the best counsel money can buy—it guarantees them competent counsel. Under these circumstances, the trial court did not abuse its discretion in applying local rates rather than counsels' out-of-town rates.

Appellants further claim that, "[e]ven . . . if Sonoma County rates were appropriate, the Superior Court abused its discretion by ignoring the evidence in the record of what those rates are." Appellants point to declarations they submitted to support their argument that the rates charged for legal work in Sonoma County were comparable to the rates charged in San Francisco. They claim the trial court abused its discretion in disregarding their proffered evidence on the applicable market rate in Sonoma County and "reducing the hourly rates to a rate unsupported by any evidence."

In this case, it has not been shown that the trial court failed to consider appellants' evidence when it set the reasonable hourly rate at $300 per hour. Instead, in rejecting appellants' evidence, it is clear the court drew upon its own knowledge of reasonable hourly rates prevailing in the local community for similar work. When the matter was argued, appellants' counsel stated that the local rate, as stated in a supporting declaration, "would be $650 an hour for a partner in Sonoma County, commercial rate." The court observed, "That's not my experience. I thought $300 was generous." In a similar vein, when the court announced its decision on attorney fees, the court found the $300 rate was "the higher end of local fees."

Judges generally possesses a great wealth of knowledge about reasonable attorney rates in the local legal community and, absent an arbitrary ruling, the case law appears to give the judge great discretion in using that knowledge to reach an appropriate conclusion on " ' "the value of professional services rendered in his [or her] court" ' " even without the necessity of expert testimony. (*PLCM*, *supra*, 22 Cal.4th at p. 1095; *Thayer*, *supra*, 92 Cal.App.4th at p. 832; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.)

In this regard, in determining the prevailing rate in the local community for comparable legal services, it is relevant that qualified local counsel appeared in this case on behalf of appellants and that she charged an hourly rate of $300. Specifically, local attorney Rachel Mansfield-Howlett, an attorney at Provencher & Flatt, LLP in Santa Rosa, represented appellant Sierra Club throughout the litigation on the merits. Mansfield-Howlett also became the attorney for appellants Transportation Solutions Defense and Education Fund, California Nurses Association, and Sierra Club during the return to the writ phase of the case. These entities were previously represented by Shute Mihaly.

Appellants claim the $300 rate charged by Mansfield-Howlett for her work on this case was irrelevant in setting the local rate because she has limited experience as compared with the senior partner from Shute Mihaly working on this case. We disagree that this single factor renders local counsel's hourly rate totally irrelevant. The rate to be applied in determining the lodestar has been defined as "[t]he reasonable hourly rate . . . prevailing in the community for similar work. [Citations.]" (*PLCM, supra*, 22 Cal.4th at p. 1095.) Since this definition puts the focus on prevailing rates charged for comparable services, we believe the typical hourly rate charged by local counsel for services rendered *in this case* could be used as evidence of the prevailing rate in the relevant community. The fact that she was not as experienced as some of the other counsel working on the case is simply a factor to be taken into the court's consideration in determining a reasonable hourly rate.

While appellants couch their appellate claim of error on the trial court's selection of $300 as the reasonable hourly rate, they ignore the fact that in calculating the attorney fee award, the trial court took "into account [Shute Mihaly's] expertise and [the] firm's experience" by using a positive multiplier of 1.4 to grant an upward fee adjustment. As acknowledged in numerous cases, the application of a positive multiplier provides another way, besides calculating the initial lodestar figure, for the court " 'to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.' [Citation.]" (*Northwest Energetic Services, LLC v. California*

Franchise Tax Bd. (2008) 159 Cal.App.4th 841, 882, italics omitted.) In fact, the application of a positive multiplier has been recognized as an alternative, besides enhancing the hourly rate in calculating the lodestar, to adequately compensate out-of-town counsel who charges a higher hourly rate. (See *Nichols*, *supra*, 155 Cal.App.4th at p. 1244 [analyzing court's "[u]se of a fee multiplier to compensate for the higher rates of out-of-town-counsel"]; *Horsford*, *supra*, 132 Cal.App.4th at p. 399 [court may "award an enhancement multiplier to a lodestar initially calculated using local hourly rates" to compensate out-of-town counsel who charges higher fee rates].) Accordingly, when we consider *all* aspects of the trial court's attorney fee award, it is apparent that appellants were awarded additional attorney fees over the prevailing rate in the local community, in the form of a positive multiplier, to reflect their counsels' special skill and experience. Accordingly, we find this is one more factor contributing to our decision that the court's imposition of a $300 hourly rate was not an abuse of discretion.

3. Litigating the Attorney Fees Motion

As noted, appellants requested $85,788 for work done to recover their attorney fees, which included filing an opening and reply brief, two opposition briefs, and preparing a series of declarations. The trial court disallowed the fee request finding it to be "outrageous." In its written order, the court further explains, "[t]he hours Petitioners claim for preparation of this motion is excessive. The court awards $5,000 to compensate Petitioners for preparation of this motion." Appellants claim that the trial court's blanket reduction of fees was an abuse of discretion, because at the $300 hourly rate, they were compensated for only 17 hours for litigating their fee award.

As the court observed in *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315: "Where, as here, the trial court severely curtails the number of compensable hours in a fee award, we presume the court concluded the fee request was padded. [Citations.] An attorney's chief asset in submitting a fee request is his or her credibility, and where [an inflated fee request] destroy[s] an attorney's credibility with the trial court, we have no power on appeal to restore it. [Citation.]" (*Id*. at pp. 1325-1326; *Rey*, *supra*, 203 Cal.App.4th at pp. 1243-1244 [court's reduction of compensable

hours in litigating fees motion was not an abuse of discretion when court could reasonably find the request was inflated].)

In this matter, the trial court was similarly troubled by appellants' request for $85,788 in attorney fees to litigate the fee motion, especially given their limited success on the merits of the case. We find this case to be similar to *Meister*, *supra*, 67 Cal.App.4th 437. In *Meister*, the plaintiff's attorneys attempted to justify more than $500,000 in fees for a case which achieved a modest financial award and stipulated injunctive relief which required defendants to do little, if anything, more than obey the law in the future. The *Meister* court found no abuse of discretion in concluding that the attorney fees incurred in attempting to justify this unreasonable request were not hours "reasonably spent" on the fee litigation. (See also *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 [unreasonably inflated fee request is a "special circumstance" permitting reduction of award or denial of fees altogether].)

As in *Meister*, the trial court here properly exercised its discretion to cut significantly the fees sought for litigating a fee motion where the amount claimed to litigate that motion was found to be "outrageous" by the trial court in light of the limited results achieved by this litigation.

C. Conclusion

It has been observed that "[t]he 'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' [Citations.]" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *PLCM*, *supra*, 22 Cal.4th at p. 1095.)

Here, the judge who awarded attorney fees was also the judge who heard and decided the Petition. Therefore, he was extremely familiar with this case and with the quality of services performed by appellants' counsel and the amount of time counsel devoted to the case. The trial court did not rubber-stamp either appellants' fee request or Sutter and Luther Burbank's opposition. Instead, appellants won on some of the issues (the entitlement to attorney fees under section 1021.5, the number of hours reasonably

spent litigating the Petition, and the multiplier) and lost on others (reduction for partial success, the local rate, and the award for the fee motion). Overall, the trial court made a balanced decision, and case law confirms the court acted well within its discretion on each point.

IV.

DISPOSITION

The attorney fees order is affirmed. Costs to respondents.

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RUVOLO, P. J.

I concur:

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REARDON, J.

Rivera, J.

I cannot agree with my colleagues with respect to two issues. First, I would conclude that the trial court abused its discretion in deciding that $300 was a "reasonable" hourly rate upon which to calculate the lodestar. Second, I would conclude that the trial court abused its discretion in awarding only $5,000.00 for the attorney fee motion. Accordingly, I respectfully dissent.

A. Reasonable Hourly Rates

Petitioners requested fees to be awarded based on hourly rates ranging from $500 per hour for the senior attorney on the case to $355 for junior lawyers. The record evidence supporting this request is uncontroverted.

Ms. Brandt-Hawley, a highly experienced CEQA attorney in Sonoma County, averred that she regularly receives private attorney general fees under Code of Civ. Proc. Section 1021.5 at hourly rates of up to $650, and in many cases has received multipliers of up to 2.0 when working on a partial contingency. She further opined that the rates requested by the petitioners in this action were "reasonable and well within the range of commercial rates charge[d] for attorneys with specialized land use and environmental experience in the San Francisco Bay area, including Sonoma County."

Both Ms. Garber (petitioners' counsel) and Mr. Drury, an expert declarant, provided consistent evidence that the rates requested by petitioners are at the low end of commercial rates for the San Francisco Bay Area. Ms. Mansfield-Howlett, a four-year attorney in Sonoma County, who requested compensation for 16.5 hours of work during the administrative proceedings at $300 per hour, described her fee as being "at or below the current market rate for Sonoma County attorneys *of like experience*." (Emphasis added.)

Finally, there was evidence that the City of Stockton had retained private counsel from the Walnut Creek office of a San Francisco law firm to represent the City in CEQA litigation in 2007 at a "blended rate" of $475 per hour, and that Sonoma County itself retained private counsel in 2006—four years prior to this litigation—paying $470 and $460 for the two senior lawyers, and $395 and $330 for the two junior lawyers.

I have scoured the record for any *evidence* proffered by respondents that disputes any of these numbers. None was submitted. Instead, respondents offered only the following: (1) an article from the Boston Business Journal in 2011 reporting that "average" billing rates in "the West"—*i.e.*, the entire western part of the U.S.—had risen to $298; and (2) counsel's unsworn assertion during oral argument that he did not "know anybody who does complex litigation in Sonoma County that charges $650 an hour." These are not evidence of anything, much less of the actual billing rates in Sonoma County. (*In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 11 ["It is axiomatic that the unsworn statements of counsel are not evidence"]; see also Rules Prof. Conduct, rule 5–200(e) [attorneys must not "assert personal knowledge of the facts at issue, except when testifying as a witness"].) In fact, there appeared to be a studied reluctance on the part of respondents to provide *any* evidence tending to prove the actual billing rates in Sonoma County.[1]

The trial court, for its part, appears to have relied upon its own comfort level of what it "[woul]d say" was "the higher end of local fees" which it pegged at $300. There is not an iota of evidence to support this finding. The majority nevertheless concludes the finding should be affirmed because a judge has discretion to use his or her own knowledge to reach an appropriate conclusion on " ' " 'the value of professional services rendered in his [or her] court' " ' even without the necessity of expert testimony." (Maj. opn. at p. 19.) For this principle the majority relies on *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–1096 (*PLCM*), *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832 *(Thayer*), and *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.

The principle is sound but it does not apply here. In none of those cases was the court determining the community hourly rate for attorneys. In *PLCM*, for example, the court made the point that a trial judge has his or her " 'own expertise' " in determining

[1] Nor did either of the private counsel retained by Real Parties offer up their billing rates as examples of what would be reasonable.

the " 'value' " of professional services, and in doing so should consider "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." (*PLCM*, *supra*, 22 Cal.4th at p. 1096; see also *Thayer, supra,* 92 Cal.App.4th at pp. 832–833 [" ' "The 'experienced trial judge is the best judge of the value of professional services rendered in his court.' " ' "]). Thus, we can rely on a trial court's knowledge of the "value" of a lawyer's professional services because it is in a unique position to appraise the relative level of difficulty of a case, the relative skill of the lawyer, and the lawyer's overall method of handling the matter, including the results, in which case its judgment will rarely be disturbed. But that was not the analysis undertaken by this trial court. Here, the judge did not determine the "value" of the attorneys' services based upon the factors discussed in *PLCM,* but instead made a finding, based on his "experience," that the hourly rate of $300 reflected "the higher end of local fees." Neither *PLCM* nor any other case holds that a court can decide what is the hourly rate in the community based solely on the judge's personal opinion and contrary to all record evidence. (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549–550 ["An abuse of discretion is shown when the award. . . is not supported by the evidence."]; *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 452 ["We do not defer to the trial court's ruling when there is no evidence to support it."].)

The majority also notes that Ms. Mansfield-Howlett "represented . . . the Sierra Club throughout the litigation on the merits," and represented all petitioners with respect to the return to the writ. (Maj. opn. at p. 20.) Therefore, the majority concludes, Ms. Mansfield-Howlett's hourly rate was properly considered "evidence of the prevailing rate in the relevant community" for comparable legal services based on "services rendered *in this case.*" (Maj. opn. at p. 20.) Ms. Mansfield-Howlett, however, did not represent the Sierra Club "throughout the litigation on the merits" but spent only 16.5 hours working for the Sierra Club during the administrative proceedings. She did become petitioners' counsel with respect to the return on the writ, but there is no

evidence in the record reflecting the time spent or the hourly rate requested by Ms. Mansfield-Howlett for that work.

More importantly, Ms. Mansfield-Howlett herself stated that, based upon her experience with environmental attorneys statewide, the "rates for public interest and land use attorneys range from $275 to $700 an hour, depending on length of experience and expertise," and that her own rate of $300 per hour is "at *or below* the current market rate for Sonoma County attorneys *of like experience* [a four-year attorney]." (Emphasis added.) Petitioners' primary counsel, Ms. Garber and Ms. French, are not attorneys "of like experience." At the time of the hearing, Ms. Garber, the senior attorney representing petitioners, had been an attorney for more than 23 years, practicing almost entirely in the field of land use and CEQA litigation; this is in addition to seven years of work as an urban planner. Ms. French was a 17-year attorney, also practicing exclusively in the fields of CEQA, NEPA and land use. [2]

Finally, the majority finds significant the fact that the 1.4 multiplier can effectively operate to bring the $300 hourly rate up to $420, citing cases that suggest a multiplier is another means to compensate for the higher rates of out-of-town counsel. (See, e.g., *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) (Maj. opn. at pp. 20–21.) While I do not necessarily agree with the majority's legal analysis, the trial court here was clear in its articulation of the grounds for the fee enhancement: "This matter involves difficult and complex litigation, a massive

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[2] Respondent County argues that petitioners cannot credibly distinguish their experience from Ms. Mansfield-Howlett's because in *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988, 992 (*Healdsburg*) this court described "*Mansfield-Howlett* [as] *the 'lead attorney' for Petitioners* specifically hired in order to 'help "level the playing field"['] with defendants, who were represented by 'experienced attorneys.' " That is a misreading of the case. While Ms. Mansfield-Howlett was, indeed, the lead attorney, it was *another* attorney, Janis Grattan, a far more experienced attorney, who was brought in to help level the playing field. (*Ibid*.) Respondent County's reference to the *Healdsburg* case also implies that the *court* concluded that action was an "exceptionally fact-intensive and legally complex" CEQA case. In fact, the court was merely reciting the contents of Ms. Grattan's declaration in support of the fee award. (*Ibid.*)

administrative record, and the result was uncertain. Representation by Petitioners' attorneys demonstrated a high level of skill and experience. On this basis, the court utilizes a Lodestar multiplier of 1.4." Nothing in the record supports a conclusion that the multiplier was intended to close the supposed gap between local and out-of-town rates. (Cf. *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244 [abuse of discretion to use a fee multiplier to compensate for higher rates of out-of-town counsel where no showing that hiring local counsel was impracticable].)

In sum, in my view, the trial court abused its discretion in setting the reasonable hourly rate based upon its own opinion of rates in the County, contrary to all the evidence presented.

B. Amount of Fees Awarded for Attorney Fee Motion

Petitioners requested more than $85,000 for their attorney fee motion. The trial court found this request to be "excessive" and "outrageous, frankly, given the stock nature of a motion like this." Respondents' counsel similarly argued, "How many hours did it take to do this kind of motion? . . . This is a pretty simple motion to put together. It's a matter of pulling the billing records together and putting those as exhibits. ¶ We all know the cases. . . . I think anywhere between 15 and 20 hours is not an unreasonable amount of time to get the motion together." The court concluded that 17 hours was its "best approximation of how many hours should be spent on a motion like this," and then *speculated* that this was "not unlike motions [petitioners' counsel] filed in every other CEQA case [it has] brought, probably."

I agree that petitioners' request for attorney fees on the fee motion would have been manifestly excessive if this were a "stock" motion that required only "pulling the billing records together and putting those [in] as exhibits." Even a cursory review of the record, however, demonstrates that petitioners' motion was not a routine attorney fee motion. I also disagree with the approach of the majority which appears to make no assessment of the nature and complexity of the motion, but simply subscribes to the trial court's finding that the fee request was excessive and therefore the court was within its discretion to dramatically reduce or outright deny a fee award. (Maj. opn. at pp. 21–22.)

In my view, it is our task to review the record to determine whether the trial court abused its discretion in concluding the fees requested were so "outrageous" or "excessive" as to warrant a virtual wholesale denial. Thus, for example, in *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223 (*Rey*), the appellate court did not merely defer to the trial court's view, but examined the record to determine whether it supported that view.

Here, petitioners' motion was decidedly *not*, as the court characterized it, a "stock" motion for attorney fees. Rather, this was a complex and hard fought motion in which the respondents challenged every aspect of petitioners' fee request. Respondents claimed petitioners were not entitled to attorney fees *at all* because (1) "petitioners failed to achieve their strategic objective" and the relief provided was "insignificant compared to the relief sought by petitioners," (2) the lawsuit did not enforce important rights affecting the public interest or confer a significant benefit on the public, and (3) petitioners' pecuniary interest outweighed their financial interest. Respondents also disputed (4) the reasonableness of the hours spent, (5) the attorneys' hourly rates, and (6) the application of a multiplier. In the circumstances, far more was required of petitioners than just "pulling their billing records together."

Conspicuously absent from this record is *any contention* by respondents that the fees they incurred with respect to the attorney fees motion were so dramatically lower than petitioners' as to support the notion that petitioners' fees were excessive. Indeed, respondent County makes no argument at all about the issue on appeal, and Real Party contends only that because the *trial court* concluded the hours spent litigating the motion were so excessive it was justified in significantly reducing the fees. Respondents *themselves*, however, do not take the position that petitioners' hours were excessive, and judging from the points and authorities, declarations and exhibits filed in their two separate oppositions to petitioners' motion, totaling 90 pages, one can fairly assume they could not credibly make such an argument. It was therefore disingenuous at best for respondents to contend at oral argument that "this is a pretty simple motion to put together." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 638–639 [defendants " 'cannot

litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.' "].)

On this record, I would conclude that the trial court's characterization of petitioners' fee request as a "stock" attorney fee motion that could have been handled in 15 to 20 hours is unsupportable.

I would reverse the award and remand the matter to the trial court with directions to enter a new award consistent with these views.

I dissent:

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Rivera, J.