Exhibit F

TODD M. SCHNEIDER (State Bar #158253)
GUY B. WALLACE (State Bar #176151)
JOSHUA KONECKY (State Bar #182897)
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SCHNEIDER WALLACE
COTTRELL BRAYTON KONECKY LLP
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THOMAS W. FALVEY (State Bar #65744)
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Tel: (626) 795-0205
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Attorneys for Plaintiffs

Original
FILED
LOS ANGELES SUPERIOR COURT
SEP 24 2008
JOHN A. CLARKE, CLERK
BY ANDREA H. HOWARD, DEPUTY

RECEIVED
SEP 23 2008
Dept. 307

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DAT CHAU and DALE HILDEBRAND, individually, and on behalf of all others similarly situated, and GABE S. TONG, individually;

Plaintiffs,

v.

CVS RX SERVICES, INC.; and DOES 1 through 50, inclusive;

Defendants.

Case No.: BC349224

~~[Proposed]~~ **ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, REASONABLE ATTORNEYS' FEES AND COSTS AND SERVICE PAYMENTS TO THE CLASS REPRESENTATIVES**

Date: September 19, 2008
Time: 1:30 P.M.
Place: Dept. 307

The Honorable William F. Highberger

[COMPLEX CASE; CLASS ACTION]

ORDER

This Court, having considered the Motion of Plaintiffs Dat Chau and Dale Hildebrand ("Plaintiffs") for Final Approval of Class Action Settlement and the papers submitted in support of the Motion, and having heard oral argument of the parties, and in recognition of the Court's duty to make a determination as to the reasonableness of any proposed class action settlement, and to conduct a hearing as to good faith, fairness, adequacy, and reasonableness of any proposed settlement, HEREBY ORDERS as follows:

I. Background

On March 17, 2006, Gabe Tong, on behalf of himself and all others similarly situated, filed this class action alleging various violations of the California Labor Code, including denial of meal and rest periods, failure to pay wages for all hours worked, failure to pay overtime wages, failure to provide itemized wage statements, waiting-time penalties, and violations of California Business & Professions Code §§ 17200, *et seq*. Specifically, Plaintiffs allege that these violations are the result of Defendant's failure to adequately staff its retail pharmacies. Plaintiffs allege that Defendant maintains a policy that its pharmacies must remain open continuously and that at least one pharmacist be on duty at all times, however, it only schedules one pharmacist per shift. As a result, Pharmacists are unable to take the meal and rest periods to which they are legally entitled, and are denied proper compensation for all hours worked. Defendant denies these allegations.

On January 22, 2008, this Court granted Plaintiffs Motion for Leave to Amend Complaint, permitting Plaintiffs to add Dat Chau and Dale Hildebrand as Representative Plaintiffs.

Over a nine-month period, the parties engaged in discovery and three separate mediation sessions. Notwithstanding their adversarial positions in this matter, Plaintiffs and CVS RX Services, Inc. ("CVS" or "Defendant") have negotiated a settlement of this litigation. The terms of the proposed settlement ("Settlement") are set forth in the proposed Stipulation and Settlement Agreement of Class Action Claims ("Settlement Agreement").

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II. Definition of Settlement Class

The parties have entered into the Settlement Agreement solely for the purposes of compromising and settling their disputes in this matter. As part of the Settlement Agreement, CVS has agreed not to oppose, for settlement purposes only, final certification of the following settlement class:

> All individuals who are currently employed, or formerly have been employed, as Pharmacists at a CVS store in California, or at a stand-alone Sav-On drugstore acquired by CVS, at any time between March 17, 2002 and the Date of Preliminary Approval of Class Settlement

All members of the class allege the same claims and there are no subclasses.

III. Final Approval of the Terms of the Settlement Agreement

Except as otherwise specified herein, the Court for purposes of this Order adopts all defined terms set forth in the Settlement Agreement, attached as Exhibit A to the March 10, 2008 order granting preliminary approval.

The Court has reviewed the terms of the Settlement Agreement, and the parties' description of the Settlement in the Motion papers. Based on that review, the Court concludes that the Settlement is fair, reasonable, and adequate. Specifically, the proposed method of allocation is equitable and will accurately reflect the meal and rest periods denied and the unpaid wages earned by individual Class Members.

The Court has also read the declarations of Guy B. Wallace in support of final approval. Based on review of these declarations, the Court concludes that the settlement was negotiated at arm's length, in good faith, and was not collusive. The Court further finds that Class Counsel were fully informed about the strengths and weaknesses of the Plaintiffs' case when they entered into the Settlement Agreement.

Accordingly, the Court concludes that the settlement is fair, adequate, and reasonable in all respects and confirms as final its approval of the terms of the Settlement Agreement.

IV. Appointment of Class Representatives and Class Counsel

The Court confirms as final the appointment of Dat Chau and Dale Hildebrand as class representatives. The Court confirms as final the appointment of the law firm of Schneider

Wallace Cottrell Brayton Konecky LLP ("Schneider Wallace") as Class Counsel.

V. Final Approval of the Form and Manner of Class Notice and Claim Form

The Class Notice and Claim Form distributed to Class Members, pursuant to this Court's Order, constituted the best notice practical under the circumstances, was accomplished in all material respects, and fully met the requirements of procedural due process and California Rule of Court 3.766.

VI. Response of the Class

Virtually all of the 1,946 class members were eventually contacted (1,941 of 1,946). There are no longer any objectors and only seven opt-outs. About half the class submitted timely claims (938) and an additional 20 untimely claims are now in hand, which the Court allows. All late claims received by September 19, 2008, are approved if otherwise complete. Uncompleted forms should not be paid unless they are made substantially complete by October 5, 2008, upon notice to the claimant given by September 25, 2008 (date of first class mailing to claimant).

This is a common fund such that all claimants with completed forms will absorb the full settlement amount available after court-approved administrative, legal and incentive expenses have been first deducted. **The basic settlement in terms of payments to the class members is thus reasonable and approved. Class counsel and class representatives are approved. The notice and claim form is approved.**

a. Ms. Craya Caron

On June 12, 2008, settlement class member Craya Caron filed an objection to the proposed class action settlement. On August 29, 2008, Ms. Caron filed a Request for Leave to Withdraw Objection to the Proposed Final Settlement Agreement Re: Chau, et al. v. CVS RX Service Inc. Counsel for Plaintiffs and Defendant both represent to the Court that no consideration has been paid to former Objector Craya Caron beyond her participation in the claims process as a regular class member who has not opted out. **Ms. Caron's request to withdraw her objection is granted.**

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VII. Method of Allocation

The Court finds that the plan of allocation is rationally related to the relative strengths and weaknesses of the respective claims asserted. The mechanisms and procedures set forth in the Settlement Agreement by which payments are to be calculated and made to class members filing timely claims are fair, reasonable, and adequate and shall be made according to those allocations and pursuant to the procedures set forth in the Settlement Agreement.

VIII. Distribution from the Settlement Fund

a. Payments of Attorneys' Fees and Costs

Plaintiff class counsel has now made a showing in support of a lodestar analysis of the value of their services. The lodestar amount sought is $1,243,980 with a request for an additional $75,000 for necessary future work to complete the settlement, in all its particulars, a total of $1,318,980. The senior lawyers seek $600/hour (Mr. Schneider, Mr. Wallace and Mr. Falvey), and other lawyers who helped seek $550-350/hour depending on experience. The senior lawyers appear to have been the largest time billers, which is acceptable as that tends to further efficient litigation. These rates are consistent with the applicable legal market (insofar as hourly billing services are provided by attorneys as opposed to "pure" contingency fee arrangements). If one references the "common fund" alternative analysis, the requested fee of $5,000,000 of the total anticipated recovery of $19,750,000 is 25.3% of the recovery, which is consistent with federal and state court fee approvals in similar class actions, and lower than the commonly applicable contingency fee agreements in the Southern California legal community.

While the Court has had to point out to senior plaintiff class counsel their repeated, careless errors in their recent motion practice, the Court recognizes that on balance the services provided by senior class counsel and their colleagues have been of great value in obtaining cash in hand for a large plaintiff class in a field of law where the prospects of success continue to be very uncertain. Cf. Brinker Restaurant v. Superior Court (2008) 165 Cal.App.4th 25, pet rev. pending. The Court will therefore exercise its discretion to reduce the lodestar amount by only one percent from $1,318,980 down to $1,305,790 to reflect the imperfections in the services provided by

plaintiff class counsel as against their desire for a full lodestar amount without adjustment for inefficiencies, do-overs and carelessness.

The results obtained are such that a multiplier is fully warranted; the real question is how much. The excellent results were obtained here with relative efficiency, and the Court is experienced enough to know that a contested lawsuit is never the model of smooth efficiency even when one side is trying to reduce cost and time invested. The Court believes that the requested multiplier of 3.8 (which defendant agreed not to oppose, in terms of maximum potential attorneys fees paid and which no class member is now objecting to) is justified on the unique facts of this case when all considerations are evaluated. In particular, given the uncertainty of the law, there is a contingency risk which is not reflected in the hourly rates approved above which rates are now typical of rates paid without regard to actual success. **The resulting fee award which the Court will approve (apart from separately analyzed out-of-pocket costs) is $4,962,002 ($1,305,790 x 3.8).**

Disbursements of $75,720.60 are approved. Any future out-of-pocket expenses are to be borne by class counsel in recognition of the larger than normal lodestar multiplier awarded to them in the calculation of the attorney fee award.

b. Payment to the California Labor and Workforce Development Agency

The Court **approves** the payment of one percent of the settlement as Private Attorney General Act penalties split between the class (25 percent = $32,021.32) and the California Labor and Workforce Development Agency (75 percent = $96,063.97).

c. Appointment of Claims Administrator

The Court confirms the appointment of RG/2 Claims Administration, LLC as the settlement Claims Administrator. The claims administration request for $49,873.97 appears to be justified as below the anticipated cost and reasonable for the necessary services provided and is thus **approved**.

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d. Reserve Fund and Cy Pres

The Court approves the withholding of $250,000 from the total settlement fund to pay the 20 late claims received by the Claims Administrator. These claims amount to $237,748.49, which leaves a remainder of $12,251.51. In lieu of any *cy pres* from the residual fund, the Court directs that the claimants should be the beneficiaries of a pro rata distribution of any unanticipated residual funds beyond those originally expected to be available to pay class member claims.

e. Representative Plaintiffs' Service and Release Payments

The supplemental showings by named plaintiffs Dat Chau and Dale Hildebrand in support of their request for judicial approval of the agreed incentive payment of $20,000 each are persuasive, both as to the time invested and the inherent risks borne by bringing this successful class action, and **this is approved**.

IX. Entry of Final Judgment

The Second Amended Complaint filed in this action and all claims contained therein are dismissed in their entirety with prejudice as to all Class Members other than those who have filed timely requests for exclusion (Minah Bang, Thomas Doung, Mary Hong, Echo Jablonski, Jim Salamon, Silvana West, and Jamie Won).

By operation of the entry of this Order and the Final Judgment, all Released Claims are fully, finally, and forever released, relinquished and discharged, pursuant to the terms of the Settlement Agreement, as to all Class Members other than those listed above. The Court has reviewed the release in the Settlement Agreement, which is incorporated in the Claim Form, and the individual releases as to Plaintiffs Chau and Hildebrand, and finds that these releases are fair, reasonable, and enforceable under California law and all other applicable law.

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FAXED

X. Jurisdiction

This Court retains jurisdiction over the subject matter of this litigation and all matters relating thereto, and over the Plaintiffs and Defendant, for purposes of enforcing the settlement agreement.

IT IS SO ORDERED.

Dated: September 24, 2008

HON. WILLIAM F. HIGHBERGER
Judge of the Superior Court for Los Angeles County

Approved as to form

Douglas Hart, Esq.
Counsel for CVS RX Services, Inc.

PROOF OF SERVICE

Chau, et al v. CVS, Case No. BC 349224

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is 180 Montgomery Street, Suite 2000, San Francisco, CA 94104.

On September 23, 2008, I served the following document described as:

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, REASONABLE ATTORNEYS' FEES AND COSTS AND SERVICE PAYMENTS TO THE CLASS REPRESENTATIVES

BY U.S. MAIL: I served the said document on the interested parties by placing true copies thereof enclosed in sealed envelope, and deposited in the mail with the postage thereon fully prepaid addressed as follows:

Douglas Hart
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071-1448

Gabriel Tong
1201 South 2nd Avenue
Arcadia, CA 91006

Craya C. Caron
1200 Pacific Coast Hwy #421
Huntington Beach, CA 92648

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is executed on September 23, 2008, at San Francisco, California.

Cathy Vittoria

Exhibit G

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

MARY THOMPSON, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY, DOES 1-50, inclusive,

Defendants.

SILICON VALLEY TAXPAYERS ASSN., INC., HOWARD JARVIS TAXPAYERS ASSN., ERIC and VIVIAN BRACHER, THEODORE FELTON, MARY THOMPSON, B.F. HENSCHKE, RICHARD ORLANDO, individuals,

Plaintiffs,

vs.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY, DOES 1-50, inclusive,

Defendants.

Case No.: 1-02-CV-804474

[Consolidated with
1-03-CV-000705 and
1-07-CV-094261]

ORDER RE FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

Hearing Date: July 31, 2009
Time: 9:00 AM
Dept.: 17C (Complex Civil)

Judge: Hon. Jack Komar

The hearing on Plaintiffs' Motion for Final Approval of the Taxpayer and Class Action Settlement and for Attorneys' Fees and Litigation Expenses came on regularly for hearing on July 31, 2009 at 9:00 a.m. in Department 17C (Complex Civil Litigation), the Honorable Jack Komar presiding. The appearances are as stated in the record. The Court, having read and considered the supporting and opposing papers, and having heard and considered the arguments of counsel, and good cause appearing therefore, makes the following order:

ORDER

The court grants the requests for judicial notice in their entirety. The relevance is to demonstrate the history of this rather extensive litigation.

The court has reviewed the settlement agreement, considered the objections to the settlement, and concludes that the settlement is fair and reasonable and should be approved in the main.

The principal issue in this consolidated litigation, after the California Supreme Court decision finding that the assessments in District Two violated the provisions of Proposition 218, was the right of taxpayers who paid the assessment to receive a refund for the six year period during which assessments were paid. As the parties negotiated to resolve that issue, the questions involving assessments in District One became part of the negotiations. The settlement in this matter resolves both issues for all class members, eliminating future litigation for the Open Space Authority and the class members over those issues.

The court has received objections from approximately 30 class members to this settlement. The objections, for the most part, express dissatisfaction with the fact that the lawsuit was filed at all and would prefer that the Open Space Authority not have to repay assessments and that it continue to make future assessments. Many of the objections also object

to the amount of attorneys' fees. The court will view one objector's suggestion that the attorneys be *jailed* as frivolous and an example of free speech hyperbole.

The court does find the settlement and compromise of the issues in the case to be fair and reasonable under the circumstances of the case and therefore approves the settlement. Those objectors, and any others, who desire that the Open Space Authority retain their assessments have the option of not requesting reimbursement. The objections of those who object to the outcome of the litigation are overruled. The California Supreme Court decision is the law of the case.

As an integral part of the settlement, the court certifies the class as all those who paid the Open Space Authority's assessments during the class period. The court finds that the class is ascertainable, the claims are typical among class members, common issues of fact and law predominate, and there is a community of interest among the class members. There is value to a class action. The court further finds that the class representative is adequate and competent and has no interest antagonistic to the class members and that class counsel is adequate and competent to represent the class and has competently and effectively done so.

As to the question of reasonable attorneys' fees and costs, the court finds that the attorneys for the plaintiffs are entitled to reasonable fees and costs. This litigation was significant and rather monumental. The consequences of the outcome extend well beyond Santa Clara County. The decision of the Supreme Court is a binding interpretation of Proposition 218, settling a much debated legal issue. Whether one favors the outcome of the litigation or not (and it is certain that some members of the class would have desired that the suit not be filed), the final decision did create certainty in the law of special assessments. There is a very clear public benefit to having a binding interpretation of the law and it will doubtless save the citizens of this state from significant future litigation and other costs far into the future apart from the benefit that accrues to the class members.

The agreement of the defendant to pay attorneys' fees was negotiated by the parties as part of the overall settlement of the lawsuit. The amount to be paid does not come out of the settlement to be paid to the class members, all of whom will be reimbursed the full amount of the assessments paid, albeit without interest since that was the negotiated settlement. Accordingly, this is neither a common fund case nor a benefit to the class case, so far as the determination of what fees should be paid to counsel.

Were it otherwise, the court would begin the inquiry be examining the lodestar computation method in evaluating what is a reasonable attorneys' fees in this case. Counsel has submitted billing records and the court has reviewed them. The Tanke firm shows a total lodestar computation based upon its hourly rate structure of $2,446,347.50. The Bittle and Copal firm shows billings of $151,775. The hourly rate of $650 is at the very high end of acceptable billing rates. However, based upon the extensive experience and quality of work of counsel, the court finds the lodestar computation to be reasonable. Further, based upon the outcome, the contingent nature of the litigation, and the benefit to the class and the public, the court finds that a multiplier is warranted. Because the fees do not in any way diminish the reimbursement to the class members, and are paid by the defendant as part of the negotiation of the settlement, the court will not engage in a discussion regarding the size of the multiplier. Counsel shall receive fees as prayed for.

The attorneys are entitled to actual costs expended, in accordance with the agreement, up to a maximum of $75,000.

The court authorizes counsel to pay an incentive award to class representative Mary Thompson of $5000. The court denies the request to pay an incentive award to the Silicon Valley Taxpayers Association. The law does not permit payment to a party to the lawsuit who is

not a class representative. The Association's lawsuit, consolidated with the class action, was on behalf of the Association only and it was not a class representative.

Counsel for plaintiffs shall prepare a judgment in conformity with this order. Among other matters to be placed in the judgment, the judgment must name the parties who have opted out of this litigation and should specify that all sums not paid to satisfy claims or to pay the attorneys' fees and costs or incentive payments remain the funds of the Santa Clara County Open Space Authority. Plaintiffs' request for special findings is denied.

SO ORDERED.

Dated: September 18, 2009

Honorable Jack Komar
Judge of the Superior Court

Exhibit H

Tony J. Tanke, SBN 74054
LAW OFFICES OF TONY J. TANKE
2050 Lyndell Terrace, Suite 240
Davis, California 95616
Telephone: (530) 758-4530
Facsimile: (530) 758-4540
appeals@tankelaw.com

Attorney for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

MARY THOMPSON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY, DOES 1-50 INCLUSIVE,

Defendants.

_____/

SILICON VALLEY TAXPAYERS ASSN., INC., HOWARD JARVIS TAXPAYERS ASSN., ERIC and VIVIAN BRACHER, THEODORE FELTON, MARY THOMPSON, B.F. HENSCHKE, RICHARD ORLANDO, individuals,

Plaintiffs,

v.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY, DOES 1-50 INCLUSIVE,

Defendants.

_____/

CASE NO. 1-02-CV804474 (Consolidated with 1-03-CV000705 & 1-07-CV-094261)

FINAL JUDGMENT BY COURT

This consolidated taxpayer and class action came before the court on July 31, 2009 on plaintiffs' motions for final approval of a class action settlement and an award of attorney's fees and litigation expenses as provided in the settlement.

Tony J. Tanke of the Law Offices of Tony J. Tanke appeared for plaintiffs Silicon Valley Taxpayers Association, Inc. (SVTA), Howard Jarvis Taxpayers Association (HJTA), Eric Bracher, Vivian Bracher, Theodore Felton, Mary Thompson, B.F. Henschke, and Richard Orlando. James R. Parrinello and Christopher Skinnell of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP and William Parkin of Wittwer & Parkin LLP appeared for defendant Santa Clara County Open Space Authority (OSA). Objectors filed written objections as shown by the record.

On June 12, 2009, the court granted plaintiffs' motion for preliminary approval of class action settlement, provisionally certified a class, appointed the Garden City Group as the Claims Administrator, directed notice to the class, and set a briefing schedule for a final approval and fairness hearing on July 31, 2009. On June 30, 2009, the court approved the final version of the class notice. The Claims Administrator has filed proof of mailing of the Settlement Hearing Notice and Refund Claim to class members whose addresses could be ascertained. The court finds that due notice has been given to the class.

After considering the objections to the settlement and to the fee-and-expense award and the evidence and arguments presented by the parties and the objectors, both oral and written, the court issued on September 21, 2009 its Order re: Final Approval of Class Action Settlement and for Attorneys' Fees and Litigation Expenses. That order is incorporated by reference herein. Good cause appearing, the court hereby directs final judgment to be entered as follows:

1. As an integral part of the settlement, the court certifies the following class: "Any person who paid the District Two Assessment between tax years 2002-03 to 2007-08, who does not exclude himself or herself from the class." The court finds that the class is ascertainable, the claims are typical among Class Members, common issues of

fact and law predominate, and there is a community of interest among Class Members. There is value to a class action. The court further finds that the class representative is adequate and competent and has no interest antagonistic to the Class Members and that class counsel is adequate and competent to represent the class and has competently and effectively done so.

2. Based on written requests for exclusion submitted to the Claims Administrator, the court finds that each of the following persons has voluntarily opted out of the class, is not bound by the terms of the Settlement Agreement or this final judgment, and retains whatever rights, duties, or obligations are otherwise provided by law, if any:

Raymond and Marlys Aldana
4474 Tomrick Ave.
San Jose, CA 95124

Janet Arsenault
1312 Meadowlark Ave.
San Jose, CA 95128

Mahmoud Ascarie
Parvaneh Pourakbar
1000 Empey way
San Jose, CA 95128

Murielle Baillin
2423 Jubilee Lane
San Jose, CA 95131

James & Claudine Baxter
2655 Warburton Ave.
Santa Clara, CA 95051

Warren E. Bent
1890 Creek Drive
San Jose, CA 95125-1842

Jack & Helen Bohan
1116 Waterton Lane
San Jose, CA 95131-2779

Jack L. Bohan
Aren Newkirk
5555 Felter Road
San Jose, CA 95132-3432

Sidney D. Capillas
Anna Maria M. Capillas
1835 Platinum Ct
San Jose, CA 95116

Elsie M. Cataldo
P.O. Box 36071
San Jose, CA 95158

Rollin C. Chew
And Nancy L. Gilbert Trustee
7828 Creekline Dr
Cupertino, CA 95014

Kelvin & Nancy Chung
716 Cimity Court
San Jose, CA 95138

Antoinette Colla
290 E. Mission St.
San Jose, CA 95112-5010

Eleanor L. Cullen
880 Villa Teresa Way
San Jose, CA 95123

Jeanne Davies
1172 Lynbrook Way
San Jose, CA 95129

Gordon and Leeanne Denise Tam
5844 Alcazar Drive
San Jose, CA 95123

Randolph L. Douglas
W. Joan Tatem Douglas
860 Tybalt Drive
San Jose, CA 95127-3646

Ramona-Alday Espinoza
P.O. Box 273
Alviso, CA 95002

Leona and Manuel Fernandez
1201 W. Campbell Ave.
Campbell, CA 95008

Jose & Maria Flores
10244 Ash Creek Lane
Fort Worth, TX 76177

Loren & Terri Gessell
279 Bayview Ave.
San Jose, CA 95127-2202

Scott D. Henderson
1070 Vista Del Mar
San Jose, CA 95132

Mark & Linda Hinkle
17545 Chesbro Lake Drive
Morgan Hill, CA 95037

Robert M. Hintz
2029 Emory Street
San Jose, CA 95128

Ruth & Wesley Kyles
P.O. Box 864
Morgan Hill, CA 95038

Beatrice F. Perez
327 Washington St
San Jose, CA 95112

George & Jenny Rhoten
70 Valleyhaven Way
San Jose, CA 95111

Anthony & Judith Rizzuto
5672 Park Crest Drive
San Jose, CA 95118

Ricardo and Celia Salinas
2746 Swan Lane
Los Banos, CA 93635-9451

The Estate of Henry Sato
c/o Jonathan Sato Trustee
681 Charmain Drive
Campbell, CA 95008-1823

Andrew E. and Bonnie J. Voorhies
609 La Maison Dr
San Jose, CA 9512

Daniel Cramer Washabaugh
2779 Aldworth Dr
San Jose, CA 95148

Virginia White
6238 Valroy Drive
San Jose, CA 95123

No other timely requests for exclusion were received.

3. Except as expressly provided below, plaintiffs' motion for final approval of the Settlement Agreement, attached hereto as Exhibit A and incorporated herein by reference, is granted. The objections to the settlement are overruled. In the exercise of its discretion, the court finds that the settlement terms are fair and reasonable to the class and hereby enters final judgment embodying those terms, including, inter alia, the following major items:

(a) Taxpayer refunds, attorney's fees, litigation expenses, class representative incentive fees, mediation expenses, and class administration expenses will be paid from a

fund created and maintained by OSA containing OSA's collections of the District Two Assessment and described in the October 16, 2008 report of OSA's accountant attached as Exhibit B to the Settlement Agreement ("the fund"). All sums not paid to satisfy refund claims or to pay any other amounts provided for in the Settlement Agreement and approved by the court shall remain the funds of OSA, to be used in its discretion for OSA purposes.

(b) All Class Members who submit valid and timely claims will receive a full refund of their District Two Assessment payments. The fee-and-expense payment will not decrease the amount of any Class Member's refund unless the total amount of all refund claims uses up the funds available for claims after all authorized expenses have been paid. In that situation, each taxpayer will receive a prorated portion of his or her claim. OSA has waived any defense to these claims by Class Members based upon the statute of limitations or failure to comply with administrative claim requirements.

(c) Those Class Members who filed administrative refund claims prior to the execution of the Settlement Agreement by all parties will receive interest at the rate of three percent (3%) from the date the claim was filed to the date of the entry of the Final Order and Judgment, except insofar as the fund proves inadequate to satisfy all refund claims in addition to the attorney's fee and litigation expense award, class administration costs, and the distribution to OSA of the retained interest, in which case each refund claim shall be prorated accordingly.

(d) All named plaintiffs in these combined actions and all Class Members who do not exclude themselves from the class settlement have waived any rights they may have to sue the Open Space Authority for both the District Two Assessment and another ongoing Open Space Authority assessment known as the District One Assessment. The District One Assessment was approved by voters and first imposed in 1994, before Proposition 218 (a constitutional provision that changed the law governing real estate assessments) became effective. It imposes a $12 per year assessment on single-family homes and higher amounts for other properties. The California Courts decided that the

District One Assessment was valid and could be legally collected in a lawsuit brought by taxpayers entitled *Coleman v. Santa Clara County Open Space Authority*, Sixth District, Appeal Case No. H014730, filed October 20, 1997. Review of that decision was denied by the California Supreme Court and the United States Supreme Court. It has been renewed annually by the Open Space Authority and paid by taxpayers since 1994.

(e) All named plaintiffs in these combined actions and all Class Members who do not exclude themselves from the class settlement, have also agreed to a waiver in the Open Space Authority's favor of rights under Civil Code section 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

4. In evaluating the attorney's fees provided for in the Settlement Agreement, the court has reviewed and considered the legal factors governing fee awards (including those governing lodestar and fee enhancement) and the legal discussion and evidence submitted on fees in the extensive original, responsive, objecting, reply, and supplemental papers. The court has noted that fees are to be paid by defendant OSA over and above the refunds paid to each Class Member who files a refund claim. Based on the record, the relevant fee factors, and the applicable law as well as the reasons discussed at the July 31, 2009 hearing and in the Order re: Final Approval of Class Action Settlement and For Attorneys' Fees and Litigation Expenses, the court finds the fee amount stipulated by OSA to be reasonable and payable to plaintiffs' counsel.

5. Plaintiffs' motion for an award of attorney's fees in the amount of $7.4 million and litigation expenses not to exceed $75,000 is granted as prayed. The objections to the fee-and-expense award are overruled. The $7.4 million fee award shall be paid to class counsel Tony J. Tanke, and further allocated and paid by him as follows:

- $35,000 to attorney Jack Bohan for his services;
- $450,000 to the Howard Jarvis Taxpayer Foundation for the services of

attorney Timothy Bittle;

- $5,000 to class representative plaintiff Mary Thompson for incentive fees; and
- The balance to Mr. Tanke for his services.

6. The expense award is to be paid to Mr. Tanke, and further allocated and paid by him as follows: $16,500 to the Silicon Valley Taxpayer Association and the remainder to Mr. Tanke.

7. All attorney's fees and expense payments shall be made from the fund.

8. The court denies plaintiffs' request to pay an incentive award to plaintiff SVTA. The law does not permit payment to a party to the lawsuit who is not a class representative. SVTA's lawsuit, consolidated with the class action, was on behalf of SVTA only. SVTA was not a class representative.

9. In accordance with the Court of Appeal's direction of September 24, 2008, on remand from the Supreme Court in *Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 450, 458, OSA's District Two Assessment is declared unconstitutional and invalid for the reasons discussed in the Supreme Court's opinion.

10. Except as expressly specified above, the court hereby orders final judgment implementing the terms of the Settlement Agreement attached hereto as Exhibit A.

11. The court reserves jurisdiction to interpret, enforce, or resolve disputes concerning the Settlement Agreement or the final judgment.

DATED: OCT - 7 2009

Honorable Jack Komar
Judge of the Superior Court

Approved As to Form:

Christopher E. Skinnell, Esq.
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
Attorneys for Defendant Santa Clara County Open Space Authority

Exhibit I

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Attorneys for Plaintiff,
BRUCE HOPE

89

LOS ANGELES SUPERIOR COURT

APR 21 2006

JOHN A. CLARKE, CLERK

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MAR 23 2006

L.A. SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BRUCE HOPE,

Plaintiff,

v.

STATE OF CALIFORNIA, DEPARTMENT OF YOUTH AUTHORITY, a public entity, and DOES 1 through 100, Inclusive

Defendants

CASE NO.: BC 258985
[Assigned to the Hon. Judith Chirlin Department 89]

~~[PROPOSED]~~ ORDER RE: AWARD OF APPELLATE ATTORNEY FEES PURSUANT TO GOVERNMENT CODE § 12965

Date: March 13, 2006
Time: 8:30 a.m.
Dept.: 89

The hearing on Plaintiff's motion for appellate attorney fees pursuant to Government Code § 12965, came on for hearing in Department 89 of this Court on March 13, 2006, at 8:30 a.m.

Appearing on behalf of Plaintiff was the Law office of Victor L. George by Victor L. George, Esq., Wayne C. Smith, Esq., and the Law Office of Pine & Pine by Norman Pine, Esq. Appearing on behalf of Defendant was the California Attorney General's Office by Michelle Logan-Stern, Esq.

ORIGINAL

Upon consideration of all moving papers and the argument of counsel:

IT IS HEREBY ORDERED THAT:

1) The amount of $329,392 shall be awarded to Pine & Pine. This amount is calculated based on the lodestar of $164,696.00 (319.65 hours reasonably incurred by Pine & Pine at a reasonable hourly rate of $525.00 for Norman Pine, Esq., and $475.00 for Beverly Pine, Esq.) multiplied by what the Court determined was the appropriate multiplier of 2.0 given the circumstances of this case; and,

2) A separate and additional amount of $ 194,340.50 shall be awarded to The Law Offices of Victor L. George. This amount is calculated based on a lodestar of $98,939.00(134.25 hours reasonably incurred by The Law Offices of Victor L. George at a reasonable hourly rate of $750.00 for Victor L. George, Esq., $475.00 for Wayne C. Smith, Esq., and $250.00 for Motaz M. Gerges, Esq.) multiplied by what the Court determined was the appropriate multiplier of 2.0 given the circumstances of this case.

The amounts awarded ($329,292 to Pine & Pine and $194,340.50 to the Law Offices of Victor L. George) shall be added to the judgment in this case.

As of March 13, 2003 prior to the award of appellate attorney fees, the judgment ($1,917,104.00 entered on July 22, 2003, the October 3, 2003 award of $400,984.37 for attorneys fees through trial, the December 11, 2003 supplemental award of $73,179.68 for attorneys fees incurred in connection with Defendant's post-trial motions, and the award of $11,811 in costs), plus 7% interest totaled $2,853, 994.55.

Following the award of appellate attorneys fees ($329,292 to Pine & Pine and $194,340.50 to the Law Offices of Victor L. George), the judgment totals $3,377,627, and shall continue to accrue 7% simple interest ($569.10 per day) from March 13, 2006 until satisfied. The state is to receive credit for the amounts already paid on the judgment.

Dated: ~~March~~ April 21, 2006

By: Judith C. Chirlin
HON. JUDITH CHIRLIN
JUDGE OF SUPERIOR COURT

Exhibit J

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

UPHOLD OUR HERITAGE,

Petitioner,

vs.

TOWN OF WOODSIDE,

Respondent.

_____/

STEVEN JOBS and Does 1 to 10,

Real Parties in Interest.

_____/

Civil No. 444270

Assigned CEQA Judge
Hon. Marie S. Weiner, Dept. 2
Pursuant to Public Resources Code
Section 21167.1(b)

ORDER ON AWARD OF ATTORNEYS' FEES AND COSTS TO PREVAILING PETITIONER

THE COURT FINDS AS FOLLOWS:

The Petition for Writ of Mandate was filed January 14, 2005. A Writ of Mandate was granted based upon the Petition, and Judgment entered accordingly in favor of Petitioner. The matter was then appealed by Respondent and Real Party in Interest, resulting in the issuance of a published opinion of the Court of Appeal, upholding the trial court's decision, which opinion is now final. Uphold Our Heritage v. Town of Woodside

(2007) 147 Cal.App.4th 587. Accordingly, Petitioner Uphold Our Heritage is the prevailing party.

This CEQA action seeking to stop the demolition of the Jackling House, a historic house which is a "historically significant resource" resulted in enforcement of an important right affecting the public interest.

The matter also raised issues of law, specifically regarding (i) the issue of "economic infeasibility" under CEQA, as to which there is limited case law in California, and its application where (as here) there is a lack of comparative data; and (ii) the issue of legal infeasibility, as to which issue the Court of Appeal distinguished existing cases and found that the refusal of an applicant to proceed with alternatives is not a "legal infeasibility" under CEQA. Thus this case has added to the jurisprudence of California on legal issues of public interest, i.e., CEQA. (See Public Resources Code Sections 21000, 21001 and 21002.)

The Court finds that a significant benefit has been conferred on the general public, and finds that this lawsuit was not for the purpose or and did not seek a monetary recovery (and thus no recovery from which fees could be paid out), and finds that the necessity and financial burden of private enforcement are such as to make an award appropriate.

Petition and its Counsel, Chatten-Brown & Carstens, filed a motion for award of attorneys' fees and costs pursuant to C.C.P. Section 1021.5. Time records were provided to the Court. Counsel for Petitioner indicated that Petitioner contractually agreed to payment of $40,000 in attorneys' fees, with the remainder of attorney services rendered on a contingent basis. Counsel for Petitioner did not have a standard hourly rate that they

charge for services to clients who retain them, although they have recently established hourly rates of $550 for Chatten-Brown and $370 for Carstens.

Those performing services for Petition at the Chatten-Brown & Carstens firm were:

- Jan Chatten-Brown, a California attorney since January 1972, is recognized as an experienced attorney specializing in environmental law;
- Douglas Carstens, licensed since December 1997, specializes in environmental law and is a partner in the firm since July 2005;
- Amy Minteer, admitted to practice in California in December 2002, and predominantly performed services on this case during 2006 and 2007;
- Scott Dewey, was admitted to practice in California in December 2003, and worked on the appeal in this matter during 2006.
- Unidentified paralegals and law clerks, who performed minimal time on the case.

Hours billed are as follows:

Billing Person	*Hours at Trial Level*	*Appeal and Post-Appeal Hours*
Jan Chatten-Brown	9.2	50.0
Doug Carstens	115.3	266.0
Amy Minteer	0.4	64.5
Scott Dewey	-0-	62.0
Paralegals/Law Clerks	9.0	5.4

IT IS HEREBY ORDERED AS FOLLOWS:

The motion for award of attorneys' fees to Petitioner Uphold Our Heritage is GRANTED. Plaintiff Uphold Our Heritage is award reasonable attorneys' fees of $403,548.00 against Respondent Town of Woodside and Real Party in Interest Steven Jobs, jointly and severally. The Court calculated the lodestar at a rate of $500.00 for Chatten-Brown, $400.00 for Carstens, $300.00 for Minteer, $300.00 for Dewey, and $110.00 for paralegal and law clerk services. The Court then subtracted $40,000 as the non-contingent fees paid, and calculated a multiplier of two on the contingent fee services. Then added the $40,000 non-contingent fee plus the multiplier lodestar.

The motion for award of costs is GRANTED IN PART AND DENIED IN PART. Code of Civil Procedure Section 1021.5 provides for an award of attorneys' fees and is silent regarding any award of costs and expenses. The Court has found no authority providing for other than statutory costs, and no case law has been provided by counsel for Petitioner to support the granting of other than statutory costs. Overhead costs are part of the cost of doing business and are generally reflected in the hourly rates set by the market. Accordingly statutory costs, identified in the declaration of counsel for Petitioner, in the amount of $388.13 are awarded in favor of Petitioner Uphold Our Heritage against Respondent Town of Woodside and Real Party in Interest Steven Jobs, jointly and severally.

Pursuant to stipulation of the parties, interest on fees awarded for trial court services (as distinguished from appellate services) by Petitioner's counsel is GRANTED, calculated from entry of judgment on February 17, 2006 to date. As the award is joint and several, interest will be assessed at the rate of 7% per annum, in the amount of $6,954.00

in interest in favor of Petitioner Uphold Our Heritage against Respondent Town of Woodside and Real Party in Interest Steven Jobs, jointly and severally.

If desired, Petitioner shall prepare, circulate, and submit a form of Amended Judgment consistent with the prior Judgment and this Order granting fees and costs. Otherwise this Order shall stand as the final adjudication of the Court on the award of fees and costs.

DATED: January 8, 2008

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 444270

UPHOLD OUR HERITAGE vs TOWN OF WOODSIDE, STEVEN JOBS and Does 1 to 10

ORDER ON AWARD OF ATTORNEYS' FEES AND COSTS TO PREVAILING PETITIONER

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at Redwood City, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

JAN CHATTEN-BROWN
DOUGLAS CARSTENS
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 94050

JEAN B.SAVAREE
Town Attorney for Woodside
PO Box 1065
939 Laurel Street, Suite d
San Carlos, CA 94070

HOWARD ELLMAN
CHRISTINE GRIFFITH
601 California Street, 19th Floor
San Francisco, CA 94108

Executed on: January 8, 2008
at Redwood City, California

JOHN FITTON
CLERK OF THE SUPERIOR COURT

By: Terri Maragoulas
Deputy Clerk

Exhibit K

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

ENVIRONMENTAL PROTECTION INFORMATION CENTER, a non-profit California Corporation; SIERRA CLUB, A non-profit California Corporation,

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION; CALIFORNIA DEPARTMENT OF FISH AND GAME, et al.,

Respondents.

PACIFIC LUMBER COMPANY; SCOTIA PACIFIC COMPANY, LLC; and SALMON CREEK CORP.

Real Parties in Interest

NO: CV990445

ORDER AWARDING ATTORNEY FEES (Code of Civ. Proc. § 1021.5)

Order

Pursuant to the provisions of Code of Civil Procedure section 1021.5,

IT IS ORDERED THAT:

1. Respondents and real parties in interest shall pay to petitioners the sum of $4,279,915.74; and,

2. Said sum shall be disbursed by petitioners for the funding of those entitlements to compensation which are reflected in Appendix A hereto, in the proportions reflected therein; and,

3. The obligation imposed upon respondents and real parties in interest hereby is one imposed upon each respondent and each real party in interest, jointly and severally.

Discussion

Introduction

Code of Civil Procedure section 1021.5 authorizes a court to 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 non-pecuniary, 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 Are Successful Parties

The petition prosecuted by petitioners sought a judgment directing the vacation of five administrative determinations made by respondents affecting interests of the real parties in interest. The judgment entered directs the vacation of those determinations. The petitioners were, therefore, the successful parties and the respondents and real parties were parties opposing them.

Important Right Affecting the Public Interest

In exercising the discretion conferred by Code of Civil Procedure section 1021.5, the court must realistically assess the litigation and determine, from a practical perspective, whether the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 938.)

Among the administrative determinations ordered annulled is Sustained Yield Plan No. 96-002 (hereinafter "SYP") which would implement the cutting of timber for which a timber harvesting plan, approved by the California Department of Forestry and Fire Protection ("CDF"), would be required.

The Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. C. §§ 4511 - 4517) contains declarations that a) the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is a great concern throughout the state relating to their

utilization, restoration and protection; b) the forest resources and timberlands of the state furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife; and, c) it is the policy of the state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations. (Pub. Res. C. § 4512, sub. (a), (b) and (c).)

The Act further declares a public policy of assuring maximum sustained production of high-quality timber products (Pub. Res. C. §§ 4512, sub. (c), 4513, sub. (b)) and Forest Practice Rules have been adopted in implementation of that policy. Rule 913.11 provides - in part (sub. b.) - that an approved sustained yield plan "achieves" Maximum Sustained Production of High Quality Timber Products.

By virtue of the legislative declaration of policy, the public interest is invested with a right to require that timber not be cut except upon a demonstration that maximum sustained production of high quality timber will be achieved. A fundamental right is involved with respect to the interests of the people of California in the forest resources and timberlands of the state under the Act. (*Gallegos v. State Board of Forestry* (1978) 76 Cal.App.3d 945-950.)

The annulment of an unlawfully approved sustained yield plan has resulted in the enforcement of this important right.

Another administrative determination ordered annulled is Incidental Take Permit No 2081-1998-63-1 approved by California Department of Fish and Game (DFG), pursuant to Fish and Game Code section 2081, purporting to authorize the "take" (for definition, see Fish and Game C. § 86) of endangered, threatened or candidate species (for definitions of those species, see Fish and Game Code §§ 2062, 2067, 2068.) That statute is a part of the California Endangered Species Act (Fish and Game Code § 2050, et seq.) which contains extensive findings and declarations of public policy focused on the importance of the conservation, protection, restoration and enhancement of endangered and threatened species and their habitat. (Fish and Game C. §§ 2051- 2056.) Fish and Game Code section 2080 makes it unlawful to take endangered or threatened species but section

2081 authorizes DFG to issue incidental take permits by complying with the conditions of that statute.

The judgment orders the annulment of Incidental Take Permit No. 2081-1998-63-1 upon a finding that it was issued without compliance with those conditions.

Upon a consideration of the extensive declarations of public policy embodied in the California Endangered Species Act, the conclusion is reached that the public interest is invested with a right to require that endangered, threatened and candidate species not be taken except upon a validly approved incidental take permit.

The annulment of an unlawfully approved incidental take permit has resulted in the enforcement of this important right.

Moreover, the incidental take permit purports to prohibit DFG from recommending or requiring that real parties provide any new, additional or different conservation or mitigation measures for take and this provision has been found to violate the public trust doctrine, a finding which is one of the bases for the annulment of the incidental take permit.

Statutory provisions relating to the preservation, conservation and maintenance of wildlife resources are replete with legislative declarations of policy evincing a strong public interest in achieving those goals (e.g., see Fish and Game C. §§ 1600, 1700, 1726, 1801, 2051, 2052) and the public trust doctrine has been recognized as being broad enough - in some form - to justify the conclusion that the state has a duty to attempt to achieve those goals. (see *Golden Feather Community Assn. v. Thermalito Irrigation Dist.* (1989) 209 Cal.App.3d 1276, 1285; *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 630 - 631; *People v. Truckee Lumber Co.* (1897) 116 Cal. 397, 399 - 401.)

The annulment of an incidental take permit which contains a provision purporting to abdicate that duty is seen as representing the enforcement of the right of the public to require that the state execute - rather than abdicate - its duty to attempt the preservation, conservation and maintenance of wildlife resources.

Another administrative determination ordered annulled is the approval by DFG of Streambed Alteration Agreement Notification No. 99-0075 pursuant to Fish and Game Code section 1603. That

statute is part of a statutory construct (Fish & Game C. §§ 1600 - 1616) which is supported by a legislative finding and declaration that the protection and conservation of fish and wildlife resources of this state are of utmost public interest. (Fish & Game C. § 1600.) In furtherance of that interest, Fish and Game Code section 1602 prohibits any entity from substantially altering the bed, channel or bank of any river, stream or lake unless there is compliance with certain requirements expressed in that statute and section 1603 authorizes DFG to enter an agreement with the entity specifying the conditions upon which the entity may lawfully make the proposed streambed alteration.

The judgment orders the annulment of Streambed Alteration Agreement Notification No. 99-0075 upon a finding that it was approved without compliance with the law.

Upon a consideration of the legislative finding and declaration supporting the prohibition of streambed alterations except those conducted pursuant to an agreement with DFG approved by it in accordance with a process mandated by the law, it is concluded that the public interest is invested with a right to require that streambeds not be substantially altered except pursuant to a validly approved streambed alteration agreement.

The annulment of an unlawfully approved streambed alteration agreement has resulted in the enforcement of this important right.

Other administrative determinations ordered annulled are those of CDF and DFG approving findings and certifications for a final environment impact report for the SYP, incidental take permit and streambed alteration agreement. This action was taken because of a finding that those determinations were made without compliance with the California Environmental Quality Act. ("CEQA", Pub. Res. C. § 21000, et seq.)

CEQA specifically identifies the policies which motivated the Legislature to enact it. (Pub. Res. C. §§ 21000, 21001, 21002, 21003.) This extensive and broad statement of public policy includes the following explicit policy objectives:

1. to maintain a quality environment for the people of California;
2. to provide an environment that is healthful and pleasing to the senses;
3. to understand the relationship between a high quality environment and the general welfare of the people of California;

4. to identify critical thresholds for the health and safety of the people of California;

5. to demonstrate that every citizen has a responsibility to contribute to the preservation of the environment;

6. to encourage systematic and concerted efforts between the private and public sectors for the interrelationship of policies and practices for management of natural resources and waste disposal;

7. to require all agencies that regulate activities to give major consideration to preventing environmental damage while providing a decent home and satisfying living environment for every Californian;

8. to take all action necessary to protect, rehabilitate, and enhance the environmental quality of California;

9. to provide the people of the state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise;

10. to prevent the elimination of fish and wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history;

11. to ensure that the long-term protection of the environment, consistent with the provisions of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions;

12. to create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations;

13. to require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality;

14. to require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to

short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

(Pub. Res. C. §§ 21000. 21001.)

By virtue of this legislative declaration of policy, the public interest is invested with a right to require that the environmental values sought to be protected thereby not be derogated except in compliance with CEQA. The annulment of administrative determinations which facilitate activity offending the policy objectives of CEQA, without compliance with the requirements of that act, represents the enforcement of this important right.

The fundamental objective of the private attorney general doctrine of attorney fees, of which Code of Civil Procedure section 1021.5 is the codification, is to encourage suits effectuating a strong public policy by awarding substantial attorney's fees to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens (*Woodland Hills Residents Assn., Inc. v. City Council, supra,* 23 Cal.3d 917, 933) and thereby to encourage vindication of strong public policies by private lawsuit. (*Rich v. City of Benicia* (1979) 98 Cal.App.3d 428, 433.) In determining the importance of a particular vindicated right, courts should generally realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. (*Woodland Hills Residents Assn., Inc. v. City Council, supra*, 936; *Folsom v. Butte County Assn. of Govenments* (1982) 32 Cal.3d 668,684.) Unquestionably, environmental concerns in general and the statutory policy in favor of use of environmental impact reports in particular involve preeminently important public rights. (*Rich v. City of Benicia, supra*, at p. 435; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 993; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino)* (1984) 155 Cal.App.3d 738, 754; *Starbird v. County of San Benito* (1981) 122 Cal.App.3d 657, 665.)

Although it has been observed that the legislature did not intend to authorize an award of fees under section 1021.5 in every lawsuit enforcing a constitutional or statutory right (*Flannery v. Calif. Highway Patrol* (1998) 61 Cal.App.4th 629, 635), the observation was made in connection with a case in which the primary effect of plaintiff's litigation was the vindication of her own personal rights. (*Id.* at p. 637.)

In view of the extensive legislative declarations of policy vindicated by the judgment annulling the administrative determinations which implicate these policies, the conclusion is reached that the successful prosecution of this action has resulted in the enforcement of important rights affecting the public interest.

Significant Benefit

A significant benefit to the citizenry as a whole is implicit when a lawsuit leads to effectuation of a fundamental legislative policy (cf. *Folsom v. Butte County Assn. of Governments, supra*, 32 Cal.3d. 668, 684) and cases involving enforcement of legislative policies are generally considered to confer a significant benefit (Remy, Thomas, Moore and Manley, Guide to the California Environmental Quality Act, 10th ed., p. 663.) Moreover, there is inherent in the cutting of timber, taking of endangered, threatened and candidate species of wildlife, artificial alteration of streambeds and prosecution of projects which alter environmental quality, a potential for the degradation of environment, wildlife and their habitat and other natural resources. Assuring that such potential be assessed and regulated in accordance with legislation enacted with strong public policy bases is regarded as the achievement of a significant benefit for the general public.

Especially in the case of environmental litigation may the view be taken that significant protection of the environment in any one part of the world inures to the benefit of the whole. (*Coalition for Los Angeles County Planning in the Public Interest, et al. v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 249-250.) At the least, the relief granted in these proceedings implements those policies which, in the opinion of the Legislature, will best further the interests of all Californians in the environment. (*Id.*)

The "significant benefit" which will justify an attorney fee award under Code of Civil Procedure section 1021.5 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. (*Woodland Hills Residents Assn., Inc. v. City Council, supra*, 23 Cal.3d. 917, 939.) The significance of the benefit, as well as the size of the class of persons receiving benefit, must be determined from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case (*id.* at pp. 939-940.)

This proceeding has effectuated strong state policies to require a careful scrutiny of potential results before permitting the execution of projects that may significantly affect the environment, and may prove to be instructive to public officials charged with the responsibility for implementing those policies. (cf. *Rich v. City of Benicia, supra*, 98 Cal.App.3d 428, 436.)

Upon these considerations, the conclusion is drawn that the prosecution of this proceeding has resulted in the achievement of a significant benefit for the general public within the State of California.

Necessity and Financial Burden of Private Enforcement

Private enforcement of the rights vindicated in this action was necessary because they were not enforced by the public officials charged with enforcing them. (*Starbird v. County of San Benito, supra*, 122 Cal.App.3d 657, 665.) Inasmuch as the present action proceeded against the only governmental agencies that bear responsibilities for approval of the administrative determinations under review herein, the necessity of private, as compared to public, enforcement becomes clear. (*Woodland Hills Residents Assn., Inc.v. City Council, supra*, 23 Cal.3d 917, 941.)

With respect to the CEQA claims, the act itself plainly contemplates the kind of private enforcement action petitioners undertook and it appears to contain no provisions for public enforcement of it or its guidelines. (*Rich v. City of Benicia, supra*, 98 Cal.App.3d 428, 437.)

The basic legal standard for applying the financial burden criterion involves a realistic and practical comparison of the litigant's personal interest with the cost of suit (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 515) and the financial burden test is met when the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his individual stake in the matter. (*Woodland Hills Residents Assn. v. City Council, supra,* 23 Cal.3d 917, 944.)

The "financial burden" criterion does not implicate the financial status of the prevailing party. (*American Federation of Labor v. Employment Development Dept.* (1979) 88 Cal.App.3d 811, 822.)

The financial burden of prosecuting these proceedings is manifest from the evidentiary

showing made in support of the motion.

Petitioners have no discernible pecuniary interest in achieving the goals sought in the proceedings. They do have a non-pecuniary interest in attaining the policy goals of the legislation implicated in the case. Environmental interests are not easily quantified so as to compare them to the cost of litigation and a mere abstract interest in environmental preservation will not suffice to block an award of attorney fees. (*Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors, supra,* 79 Cal.App.4th, 505, 515-516.) Petitioners' environmental interest in achieving the objectives sought by their petition is not sufficient to outweigh the financial burden of prosecuting it because that interest does not function essentially in the same way in the burden/benefit analysis as does a financial interest. (*Id.*)

A realistic and practical comparison of petitioners' personal interest in achieving their petition's objectives with the cost of suit leads to the conclusion that the cost of the litigation is out of proportion to petitioners' stake in the litigation. (cf. *California Licensed Foresters Assn. v. State Board of Forestry* (1994) 30 Cal.App.4th 562, 574.)

Since petitioners had no pecuniary interest in the outcome of the case, the financial burden was such that an attorney fee award was appropriate in order to assure the effectuation of important public policies. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311,321.)

Payment From Recovery

Patently, there has been no recovery of any monetary recovery out of which attorney fees might be paid.

Calculation of Attorney's Fees

Calculation of attorney's fees under Code of Civil Procedure section 1021.5 is to be done in accordance with the guidelines set forth in *Serrano v. Priest* (1977) 20 Cal.3d 25. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra,* 155 Cal.App.3d 738, 755.) There is first determined a "touchstone" or "lodestar" figure based on careful computation of the time spent and a reasonable hourly compensation. (*Id.*) The figure may be increased or decreased by use of a multiplier after the court has considered other factors. (*Id.*, fn. 2.)

Computation of time spent on a case and the reasonable value of that time is fundamental to a

determination of an appropriate attorney's fee award. (*Margolin v. Regional Planning Com., supra*, 134 Cal.App.3d 999, 1004.) Consideration of the cost of providing services has no place in that formula. (Id, at p. 1005.)

The summary attached hereto as Appendix A represents a careful computation of time necessarily and reasonably spent on the case. It is derived from the time records kept by petitioners' counsel and states net hour quantities derived from a studied application of "billing judgment" exercised by counsel for the purpose of excluding any time that might be considered excessive, redundant or otherwise unnecessary. The statement of hours shown on Appendix A is supported by contemporaneous time records and is justified by those records and the declarations filed in support of the motion.

The hours recognized on Appendix A include some time spent by petitioners' counsel prior to the commencement of litigation on matters related to the administrative review process. They are hours properly included because they represent activities that were useful and of a type ordinarily necessary to the vindication of the public interest litigated herein. (*Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1459.)

Altogether, the amount of time expended on the case by petitioners' counsel, although large in terms of the aggregate number of hours, was reasonable and necessary, in view of the number of administrative determinations challenged, the number of issues raised, the vigorous opposition tendered by their opponents and the considerable attenuation of the litigation process.

In determining the lodestar amount, there is applied the reasonable hourly rate prevailing in the community for similar work (*Margolin v. Regional Planning Com., supra,* 134 Cal.App.3d 999, 1004) and, in doing so, it is permissible to use the prevailing market rate for comparable services in the community where counsel is located, rather than the community wherein lies the venue of the action. (cf. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096 - involving Civ. C. § 1717, rather than Code of Civ. Proc. § 1021.5.) This appears to be particularly appropriate where there were not attorneys with their offices in the locale of the venue of the action who were reasonably available to take the case, whether from unwillingness or inability due to lack of experience, expertise or specialization. (cf. *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1405; *Barjon v.*

Dalton (9th Cir. 1997) 132 F.3d 496, 501-502.) Such was the case in this action. This case required experience and expertise in a wide variety of specialized areas: CEQA, CESA, the Forest Practices Act, the Fish & Game Code, and administrative law. It also required counsel to commit thousands of hours of their time, at below-cost rates, against one of the most powerful companies in the region. No local law firm was or would have been willing to take this case and it is unlikely that any local law firm had the required experience and expertise, and the familiarity with the administrative and legislative history of all of the matters underlying the challenged administrative determinations, which were essential to the successful prosecution of the proceeding.

In calculating the lodestar, there must be applied to the time spent on the case by counsel a reasonable hourly compensation (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra,* 155 Cal.App.3d 738,755) which represents the reasonable hourly rate prevailing in the community for similar work. (*Margolin v. Regional Planning Comm.,supra,*134 Cal.App.3d 999, 1004.) Having taken into account the considerable evidence submitted by declaration on behalf of each of the parties, the finding is adopted that the hourly rates assigned to each counsel in Appendix A is a reasonable hourly rate in the San Francisco Bay Area for the services performed by each in this proceeding because the hourly rate assigned to each counsel falls within the range of rates that would be charged for comparable services by counsel of comparable qualifications in the Bay Area. An exception to the foregoing statement is made with respect to the services performed by Mr. Needham; the hourly rate assigned to his services is found to be reasonable on the basis of his customary charge to clients in Humboldt County, his experience and qualifications, and the potentially adverse implications of his acceptance of an advocacy assignment in Humboldt County in opposition to real parties.

The reasonable hourly rates assigned to the services of petitioners' counsel in Appendix A are rates prevailing at the time the fee application was made. (cf. *Lanni v. New Jersey* (3d Cir. 2001) 259 F.3d 146, 149-150.)

The lodestar calculation properly includes out-of-pocket expenses, since those claimed represent expenses ordinarily billed to a client and are not included in the overhead component of counsels' hourly rate. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1420-1421.)

The lodestar figure adopted may be increased or decreased by use of a multiplier after the court has considered a number of other factors: (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing lawsuits of the character here involved; (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra,* 155 Cal.App.3d 378, 755, fn.2.)

The expectation of petitioners' counsel that they would be fully compensated for their services in this case was essentially uncertain and contingent upon an award under section 1021.5. Notwithstanding they received some modest payment on account from their clients, their expectation of full compensation was predominately contingent. In dealing with such a contingency , the legal marketplace requires that some compensation in excess of a plain market rate be provided.

The case was complex, demanding and difficult, not only because of the large volume of the administrative record under review and the number of attorney hours that the case required for its management, but also because of a paucity of case authority dealing with the principal issues, they being largely novel issues. It presented a multitude of issues, all of which were handled by petitioners' counsel with unique skill, on a level of expertise substantially exceeding that reflected by the hourly rates assigned to their services in Appendix A. It was prosecuted in the face of vigorous, relentless and daunting opposition on every turn.

Their involvement in this litigation substantially precluded Ms. Duggan and Mr. Gaffney from accepting other employment.

The results obtained by petitioners' counsel were excellent and this is a factor which may be taken into account in considering a lodestar enhancement. (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 45.)

Account has been taken of the fact that an award against the respondents will ultimately fall upon the taxpayers, but this is a circumstance which does not appear to justify a mitigation or avoidance of a multiplier. The burden on the public fisc of such an award is outweighed by the significant public benefit achieved by the litigation.

All of the factors enunciated in *San Bernardino Valley Audubon Society* have been taken into account - to the extent that information has been provided regarding their applicability - but the decision to allow an enhancement has been controlled by those explicitly discussed above, as has been the selection of the appropriate multiplicand.

Upon these considerations, a lodestar multiplier of 2.0 is adopted.

Objections to Evidence

Objections stated by the parties with respect to evidentiary offerings given in support of, or opposition to, the motion are disposed of as follows.

Objections of real parties and respondents to the Rechtshaffen and Wilson declarations are overruled. Each statement to which an objection is addressed is regarded as the statement of a reason supporting a permissible opinion offered by a competent expert on relevant issues: whether the prosecution of this proceeding resulted in the enforcement of an important right affecting the public interest and whether it conferred a significant benefit on the general public.

Objections of petitioners to the Gwire declaration are sustained. The entire document is so pervasively argumentative that an attempt to regard it as an evidentiary showing and to winnow from it permissible factual content becomes a challenging exercise which will not be undertaken because of its volume (32 pages of text; 41 pages of exhibits). It is disregarded.

Objections of petitioners to the Bacik declaration are sustained for the reason that each statement to which they are addressed is either speculative or irrelevant, focusing, as it does, on "market rates" in the Mendocino-Humboldt legal community, rather than the Bay Area legal community.

Objection of petitioners to the McAffee declaration is sustained. The declaration appears to represent the expression of the declarant's opinion that the services summarized therein could not reasonably be construed as being relevant, necessary, or useful to this litigation or the judgment, but

it fails to demonstrate the competence of the declarant to form such an opinion. It is disregarded.

Objections of petitioners to "Evidence in Support of PALCO's Opposition to EPIC and USWA Motions for Attorneys' Fees and Costs" are overruled because the "exhibit" to which each objection is addressed is regarded as offered in support of a contention that the prosecution of this proceeding did not result in the enforcement of an important right affecting the public interest or confer a significant benefit on the general public.

DATED: SEPTEMBER 24, 2004

/S/
John J. Golden
Judge

I:\Order\CV990445hls

Appendix A

Merits Phase

Attorneys	Adjusted Hours	Graduation Year	Rate	Lodestar	
Sharon E. Duggan	2300.40	1982	$400	$ 920,160.00	
Brian Gaffney	2031.40	1993	325	660,205.00	
Timothy Needham	58.20	1980	350*	20,370.00	
Tara Mueller	472.60	1992	310	146,506.00	
Thomas Lippe	543.95	1982	385*	209,420.75	
Leo O'Brien	18.43	1993	300*	5,529.00	
Paralegals					
Sam Johnston	1280.09		75	$ 96,006.75	
(Needham's office)	6.50		75	487.50	
Total Merits Lodestar					$2,058,685.00
Lodestar enhancement (2.0)					$2,058,685.00

Fees Phase

Richard M. Pearl	114.60	1969	475	$ 54,435.00	
Total Fees Lodestar					$ 54,435.00

Litigation Expense (other than costs of suit claimed)

Law Offices of Sharon E. Duggan	$ 40,803.44	
Law Offices of Brian Gaffney	14,348.06	
Timothy Needham	1,762.51	
Tara Mueller	7,403.02	
Law Offices of Thomas Lippe	43,782.31	
Law Offices of Richard M. Pearl	11.40	
Total Litigation Expenses		$ 108,110.74

Total $4,279,915.74

* Rates are based on experience levels when left case.

STATE OF CALIFORNIA,)
COUNTY OF HUMBOLDT) SS. AFFIDAVIT OF SERVICE BY MAIL

I, Karla Santos, say:

That I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, Eureka, California; that I served a true copy of the attached ORDER AWARDING ATTORNEY FEES (Code of Civ. Proc. § 1021.5) by placing said copies in envelopes addressed to the following parties at their following office (residence) addresses:

Sharon Duggan, 2070 Allston #300 Berkeley CA 94704 - Fax #**(510) 647-1905**
Richard M. Pearl, 1816 Fifth Street, Berkeley, CA 94710 - **Fax (510) 548-5074**
Frank Bacik/Carter Behnke Oglesby & Bacik/P.O. Box 720 Ukiah, CA 95482/Fax # **462-7839**
Edgar Washburn, Stoel Rives LLP, 111 Sutter Street, Suite 700 San Francisco, CA 94104/**(415) 676-3000**
William Jenkins, Deputy AG 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-3664/Fax # **(415) 703-5480**
Jonathan Weissglass, Altshuler, Beron, Nubaum, Berzon & Rubin, 177 Post Street, Suite 300 San Francisco, CA 94108 Fax # **(415) 362-8064**
John Davidson, Office of the Attorney General, 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-3664 Fax # **(415) 703-5480**
Brian Gaffney, 370 Grand Avenue #5, Oakland, CA 94610 **Fax # (510) 891-9380**
Michael H. Zischke, Morrison & Foerster, 425 Market Street, San Francisco, CA 94105-2482 **Fax# (415) 268-7522**
Paul Whitehead, Five Gateway Center, Suite 807, Pittsburg, PA 15222/Fax # **(412) 562-2429**

** Parties were also faxed copies

Which said envelope were then sealed and postage fully prepaid thereon, and thereafter were on the 24th day of SEPTEMBER, 2004 deposited in the United States mail at the City of Eureka, California; that there is delivery service by United States mail at the places addressed, or regular communication by United States mail between the place of mailing and the said places so addressed.

I ~~certify~~ (or declare) under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 24th day of SEPTEMBER, 2004, at the City of Eureka, County of Humboldt, State of California.

DWIGHT W. CLARK, Clerk of the Court

By Karla Santos
(~~Seal~~) Deputy Clerk

STATE OF CALIFORNIA,)
COUNTY OF HUMBOLDT) SS. AFFIDAVIT OF SERVICE BY MAIL

I, [signature], say:

That I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, Eureka, California; that I served a true copy of the attached ORDER AWARDING ATTORNEY FEES by placing said copies in envelopes addressed to the following parties at their following office (residence) addresses:

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Fax# (415) 268-7522

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I ~~certify~~ (or declare) under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 24th day of SEPTEMBER, 2004, at the City of Eureka, County of Humboldt, State of California.

DWIGHT W. CLARK, Clerk of the Court

By [signature]
(Seal) Deputy Clerk

FAX TRANSMISSION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT
825 5TH STREET
EUREKA CALIFORNIA, 95501
(707) 269-1203
FAX: (707) 445-7041
HARLA L. SANTOS

To: **Sharon Duggan**
Fax # (510) 647-1905

Brian Gaffney
Fax # (510) 891-9380

Frank Bacik
Fax # 462-7839

Edgar Washburn
Fax # (415) 676-3000

William Jenkins
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Jonathan Weissglass
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John Davidson
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Paul Whitehead
Fax # (412) 562-2429

Michael H. Zischke
Fax # (415) 268-7522

Richard Pearl
Fax # (510) 548-5074

From: **Harla Santos**
Judicial Secretary

Subject: **Order Awarding Attorney Fees**

Re: **EPIC & Steelworkers**

Date: **September 24, 2004**

Pages: **31/with cover**

Exhibit L

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 31, 2015

EVENT DATE: 08/07/2015 EVENT TIME: 01:30:00 PM DEPT.: C-72

JUDICIAL OFFICER: Timothy Taylor

CASE NO.: 37-2012-00101054-CU-TT-CTL

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Tentative Ruling on Motion for Attorneys' Fees

Sierra Club v. County of San Diego, Case No. 2012-0101054

August 7, 2015, 1:30 p.m., Dept. 72

1. <u>Overview and Procedural Posture</u>.

This CEQA case was one of two taken up by this court in late 2012 and early 2013 in which the court was required to address the controversial topic of global climate change. The first was *Cleveland Nat'l. Forest Foundation v. SANDAG*, Case No. 2011-00101593; that case was the subject of a learned opinion of the 4th DCA, Div. 1 [D063288, 180 Cal. Rptr. 3d 548 (2014)], and has now been accepted for review by the California Supreme Court [No. S223603, 343 P. 2d 903 (2015)]. The Supreme Court has limited the issue in that case to "Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S–3–05 to comply with the California Environmental Quality Act?"

In the second, present case, Sierra Club contended that the County's June 20, 2012 "Climate Action Plan" (CAP), was insufficient and violated CEQA in several respects: it did not comply with mitigation measures spelled out in the County's 2011 Program EIR (PEIR), adopted in connection with the 2011 General Plan Update (GPU)(AR 0441 *ff*); it failed to satisfy the requirements for adopting thresholds of significance for greenhouse gas emissions (GHG); and it should have been set forth in a stand-alone environmental document rather than in an addendum to the PEIR. The County denied these claims, and asserted that the CEQA challenge was time-barred, the CAP complied with all legal requirements, the use of an addendum was appropriate, and that all relief is barred by the Sierra Club's failure to notify the AG as required by Pub. Res. Code section 21167.7.

On April 19, 2013, the court ruled in favor of the Sierra Club on the original petition. ROA 33. The County appealed. ROA 44. The parties thereafter stipulated to stay the case while it was on appeal. ROA 60. But before they did, the Sierra Club had filed a supplemental petition. ROA 54. The stipulated stay prevented consideration of that document. Subsequently, the parties filed a stipulation regarding the disposition of the supplemental petition, depending on the disposition of the appeal. ROA 64.

In October of 2014, the 4th DCA, Div. 1 issued its learned opinion affirming this court. 231 Cal. App. 4th 1152 (2014). On March 11, 2015, the Supreme Court denied review. A remittitur thereafter issued.

The parties were before the court on April 15, 2015. Petitioner asked that the stay be lifted, and that the case be restored to the civil active list. These requests were granted without objection. The Sierra Club also wanted the court to sign an order, while the County wanted the court to sign a different order. There were two problems: first, the court had not received petitioner's version of the proposed order, nor had a chance to review the County's proposed order; and second, the parties were before the court while it was in the middle of a lengthy trial with jurors arriving shortly. The court continued the matter to the regular law and motion calendar of May 1. ROA 73.

The court thereafter reviewed the parties' competing submissions. The central problem was that a dispute had arisen regarding the intent, import and meaning of the December 11, 2014 stipulation (ROA 64). The court, following several submissions and argument, resolved the dispute in May of 2015. ROA 91.

Presently, petitioners' counsel seek an award of attorneys' fees. ROA 95-104. The amended moving papers (ROA 116, 117) make clear that the county agrees petitioner is entitled to fees; the only question is how much. Petitioner seeks a lodestar of over $661,000.00 with a multiplier of two, for a total of over $1.3 million, plus fees necessary for the fee motion.

The County filed opposition. ROA 122-125. After presenting very focused argument, the County ends by making several specific "suggestions" for reducing the fee award: a combination of cutting hours, reducing rates, and denial of any multiplier. The County does not propose a bottom-line number. Petitioners filed reply. ROA 126-130. The moving attorneys concede some relatively minor duplication/mistakes on the timesheets, and agree to some minor hourly rate reductions for paralegal tasks. The court has reviewed all the briefing.

2. Applicable Standards.

California follows the "American rule," under which each party to a lawsuit ordinarily must pay his, her or its own attorney fees. *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 237; *Trope v. Katz,* 11 Cal.4th 274, 278 (1995); *Gray v. Don Miller & Associates, Inc*., 35 Cal.3d 498, 504 (1984). Code of Civil Procedure section 1021 codifies the rule, providing that the measure and mode of attorney compensation is left to the agreement of the parties "[e]xcept as attorney's fees are specifically provided for by statute."

As already noted, here there is no dispute over the entitlement to fees.

A trial court has broad discretion in determining a reasonable amount of attorney fees. *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . 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.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." *Id.*

As noted above, petitioner seeks a 2.0 bonus multiplier. Fee enhancements by means of multipliers or otherwise are well recognized in California. *E.g., Serrano v. Priest,* 20 Cal. 3d 25 (1977) (*Serrano III*); *Beasley v. Wells Fargo Bank,* 235 Cal. App. 3d 1407 (1991); *City of Oakland v. Oakland Raiders,* 203 Cal. App. 3d 78 (1988); *Kern River Public Access Com. v. City of Bakersfield* 170 Cal. App. 3d 1205 (1985). Under California law, the trial court begins by fixing the "lodestar" or "touchstone" reflecting a compilation of the time spent and reasonable hourly compensation of each attorney or legal professional involved in the presentation of the case. The court then adjusts this figure in light of a number of factors that militate in favor of *augmentation or diminution*. *Serrano III*, 20 Cal. 3d at 48-49 (emphasis by this

court). The court must consider such factors as the nature and complexity of the case, the results obtained, the amount of work involved, the available resources, the nature of the issues and the burden of discovery, the skill required and the time consumed, the court's own knowledge and experience, the time spent, and rates charged in the community for similar work. *See Contractors Labor Pool, Inc. v. Westway Contractors*, 53 Cal. App. 4th 152, 168 (1997); *see also Ghirardo v. Antonioli*, 14 Cal. App. 4th 215, 219 (1993).

The purpose of a fee enhancement is not to reward attorneys for litigating certain kinds of cases, but to fix a reasonable fee in a particular action. Section 1021.5 authorizes an award of *reasonable* attorney fees, not an award of reasonable fees plus an enhancement. Nonetheless, the courts recognize that some form of fee enhancement may be appropriate and necessary to attract competent representation in cases meriting legal assistance. In *Press v. Lucky Stores, Inc*., 34 Cal. 3d 311, 322 (1983), our Supreme Court implicitly found that it would be appropriate to enhance an award by means of a multiplier " 'to reflect the broad public impact of the results obtained and to compensate for the high quality of work performed and the contingencies involved in undertaking this litigation.'" This does not mean, however, that the trial courts should enhance the lodestar figure in every case of uncertain outcome or where the work performed was of high quality. The challenge for the trial courts is to make an award that provides fair compensation to the attorneys involved in the litigation at hand and encourages litigation of claims that in the public interest and merit litigation, without encouraging the unnecessary litigation of claims of little public value.

The classic situation justifying an upward adjustment of the lodestar figure was seen in the *Serrano* cases [*Serrano v. Priest,* 5 Cal. 3d 584 (1971)(*Serrano I*), *Serrano* v. *Priest,* 18 Cal. 3d 728 (1976)(*Serrano II*), and *Serrano III*, *supra*, 20 Cal. 3d 25]. The litigation there revolved around California's system for financing public schools. The plaintiffs succeeded in overturning the existing system, obtaining an order that it be replaced by a system designed to provide an equitable distribution of state funds between all public schools. The litigation resulted in no fund of money from which attorney fees might be paid, nor did it result in any monetary recovery by the plaintiffs. The plaintiffs were under no obligation to pay their attorneys for their efforts. It appears that the attorneys did, however, receive some funding from charities or public sources for the purposes of prosecuting cases of the character involved in that action--a factor the court found to be relevant in determining the size of an award of fees. (*Serrano III*, *supra*, 20 Cal. 3d at p. 49, fn. 24.) Finally, an award of fees was uncertain not only because of the complexity and difficulty of the legal issues involved, but because there was no clear statutory authority for shifting attorney fees to the defendant.

The court in *Weeks v. Baker & McKenzie,* 63 Cal. App. 4th 1128 (1998), contrasted that case with the situation in *Serrano III*: "the present case is in essence a personal injury action, brought by a single plaintiff to recover her own economic damages. Weeks and her attorneys had a fee agreement by which her attorneys were assured of a portion of any recovery. In addition, because of the availability of attorney fees under the FEHA, the attorneys had reason to assume that the amount of Weeks's recovery would not limit the amount of fees they ultimately received. Thus, the risk that Weeks's attorneys would not be compensated for their work was no greater than the risk of loss inherent in any contingency fee case; however, because of the availability of statutory fees the possibility of receiving full compensation for litigating the case was greater than that inherent in most contingency fee actions." 63 Cal. App. 4th at 1174.

"In general, where the trial court decides to depart from the lodestar attorney fee approach to select and apply a multiplier, it must make appropriate findings on the factors recognized by case law to explain this discretionary determination in such a manner as to make meaningful appellate review possible." *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 629. Generally, however, a trial court is not required to provide a detailed explanation of how it arrived at a fee award. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294-1295; *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 65-67.) California courts have explicitly departed from federal law requiring district courts to explain their fee awards with particularity. (*See, e.g., Gorman*, *supra*, at pp. 66-67; *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 970.)

Finally, plaintiffs seek "the additional fees not yet incurred in bringing this motion." The case law makes clear that prevailing plaintiffs are entitled to fees for pursuit of fee claims. *Graham v. Daimler Chrysler*, 34 Cal. 4th 553, 580 (2004); *Ketchum v. Moses*, 24 Cal. 4th 122, 133-34 (2001).

3. Discussion and Rulings.

The County first asserts the hours spent on the case by counsel are excessive. Oppo. at 1-3. With some fairly minor exceptions discussed below, the court disagrees. The administrative record in this case was very substantial: 4300+ pages. The briefing in three courts was extensive. The theories advanced by petitioners here, although seeking the application of established law, were novel: other than this court in the *Cleveland Nat'l Forest* case, few (if any) cases prior to this one had grappled with greenhouse gas emission reduction goals in relation to CEQA analysis. That the petitioners' efforts yielded a published opinion speaks for itself. See CRC 8.1105(c). The County battled petitioners with focus and intensity, all the way to the Supreme Court (and after), and cannot now be heard to argue that petitioners' counsel were required to put in a lot of time.

The County next objects to petitioners' counsel conferring with each other, claiming this is indicative of "duplication and inefficiency." Oppo. at 3-4. The court does not view this as a valid objection in the circumstances of this case. The successful representation of a client or group of clients is often enhanced by communications among attorneys. The County's apparent view, that lawyers working together on a case are not permitted to record their time when they bounce ideas off each other, is just not reflective of how the private practice of law works. The quaint notion that a single lawyer (or judge) knows all and can toil singlehandedly with a green eyeshade is incorrect, and has been for well over a century. Even the man many consider America's greatest lawyer, Abraham Lincoln, had a law partner, William Herndon, with whom he discussed his cases. See C. Sandburg, *Abraham Lincoln,* pp. 111-112 (1954); see generally D.H. Donald, *We Are Lincoln Men,* Simon & Schuster (2011). The aggregation and collaboration of the attorneys who successfully represented petitioners in this case are properly viewed as, in substance, a temporary law partnership. To advance the interests of the petitioners, it is unsurprising that the attorneys conferred with one another over arguments, evidence, precedents, strategy and tactics, and used each other as sounding boards. In this way, arguments and theories are tried out and tested, and then either discarded or honed or more fully developed. Simply put, there is nothing inherently wrong with attorneys conferring with one another and charging for it. This is what lawyers do. Judges do it, too: hence the conferences among appellate justices before cases are decided.

The County next contends (Oppo. at 4-5) that the hourly rates are unjustified. On this, the court agrees in part (as discussed more fully below).

The County then urges (Oppo. at 6-9) an outright denial of any multiplier, and does not suggest a fall-back position (*i.e.* a lower multiplier than the one sought). The court does not agree with the County's position on this point. To the contrary, the court believes this case is squarely in the "sweet spot" of situations in which a multiplier is called for. The following factors from *Serrano III* and other cases run in petitioners' favor: The petitioners succeeded in overturning a significant CAP and related approvals, obtaining an order that the CAP be re-done. The litigation resulted in no fund of money from which attorney fees might be paid, nor did it result in any monetary recovery by the petitioners. Petitioners succeeded at three levels of court review after repeated attempts to resolve the case. They have waited more than two years with no recompense. An award of fees was uncertain not only because of the complexity and difficulty of the legal issues involved, but also because it involved issues of first impression and the signal environmental issue of our time. In this regard, the court considered, as it is permitted to do under the case law [*Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977)], that the burden of the fee award will ultimately fall upon the taxpayers. In this case, the same people who pay taxes are the people who may be disadvantaged in profound ways by the County's failure to conduct a proper analysis of the CAP. Thus, in the circumstances of this case, the court does not feel that this factor is entitled to great weight.

Finally, the County takes issue (Oppo. at 9-10) with some relatively minor cost issues. The court presumes the County will agree that these *de minimis* issues are more than subsumed in the reductions outlined below.

The court makes the following determinations:

A. The court deletes all time for attorney transitory billers: Carstens ($11,500), and Gladden ($4812), for a total of $16,312.00. Transitory billers, particularly those with high hourly rates such as Carstens, are suggestive of inefficiency.

B. The court deletes all "administrative time," for a total of $15,125.00. The court, having helped run a major law firm in its past life, believes that "administrative time" is or should be built into each biller's rate design.

C. The court deletes the multiplier on costs (top of Ex. B). There is no justification in logic or the case law for a multiplier on out of pocket expenses. No client would pay this markup, and there is no basis for asking the County to do so.

D. The court reduces the paralegals to the same hourly rate as the law clerk ($100 vs. $150): total reduction: $1905.00

E. The court reduces the Josh Chatten-Brown and Dickenson hourly rate to $300/hr. – this yields a total savings to the County of $130,900.00. As already noted, the court agrees in part with the County's views on the rates. Neither Josh Chatten-Brown nor Ms. Dickenson have the experience or expertise of Jan Chatten-Brown or Mr. Briggs - the court had the opportunity to see both in action. Viewed as a whole, the case was top-heavy in terms of billing rates, and this reduction brings the staffing more in line with what the court would have expected in terms of partner/associate leverage and blended hourly rate. The court finds that the designed rates of Mr. Briggs and Ms. Chatten-Brown are reasonable for the needs of the case, rates charged for similar work in the community, the type of work done, and the significant results achieved. No reductions in their rates is deemed appropriate by this court. The court makes all of the determinations on rates having practiced law in San Diego for 20 years prior to 2005, and having had the duty, in the decade last past, to make decisions on fee awards in hundreds of cases in a variety of settings.

F. For purposes of the calculation of a lodestar, the court deletes the $26,425.00 sought for preparation of the attorneys' fees application. See further discussion below.

These decisions yield a total reduction of $190,667.00 from the claimed lodestar of $661,485.00. All of this results in an adjusted lodestar of $470,818.00, which, when multiplied by the 2.0 multiplier, equals $941,636.00.

The court awards a total of $20,000.00 for preparation, briefing and argument of the fee application. This amount is not subject to the multiplier, inasmuch as the County stipulated to the entitlement to fees, the motion was routine in comparison to the work on the petition, and the award of substantial fees was never really in doubt. The County's position (Oppo. at 9) that no fees are allowable really flies in the face of established law. *Graham v. Daimler Chrysler*, 34 Cal. 4th 553, 580 (2004); *Ketchum v. Moses*, 24 Cal. 4th 122, 133-34 (2001).

Therefore, the total attorneys' fee award is $961,636.00. The costs set forth on the Memorandum of Costs on Judicial Council form MC-010 filed May 13, 2015 (ROA 97) are allowed in full, as there was no motion to tax costs filed and the costs are modest and reasonable. Counsel for petitioner must forthwith prepare and submit an amended judgment consistent with the foregoing.

4. CMC.

The case is also set for a continued CMC with regard to the amended petition and the return. ROA 114. The parties have filed competing CMC Statements. ROA 119-120. In its CMC statement, Sierra Club "requests that the Court give guidance to the County about what it considers to be a reasonable time period for complying with the Judgment and Supplemental Writ." This is not an appropriate request, on several levels. First, it is not appropriate to request affirmative, substantive relief in a CMC Statement. CMC statements are procedural tools designed to assist the court in case management. See CRC 3.725. Second, the court does not "give guidance;" it makes rulings and orders on properly presented motions, petitions and applications. Sierra Club's request for an advisory ruling is denied. If Sierra Club believes the County is willfully violating a previous judgment of this court, it is free to follow the proper procedures to seek a judgment of contempt. See CCP sections 1209 through 1222.