

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
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DAVID H. YAMASAKI
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY _____ SACRALI DEPUTY

TO: Teague P. Paterson
Beeson Tayer & Bodine
483 Ninth Street Suite 200
Oakland, CA 94607

RE: San Jose Police Officers' Association vs City Of San Jose
Case Nbr: 1-12-CV-225926

PROOF OF SERVICE

ORDER ON PLAINTIFFS' MOTION FOR ATTORNEY FEES

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

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San Jose, CA on 10/01/14. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Naomi Matautia, Deputy

Order Issued
on Submitted Matter

(ENDORSED)
FILED
OCT - 12 2014

DAVID H. YAMM...
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY JAGMI NARAI DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

vs.

CITY OF SAN JOSE AND BOARD OF
ADMINISTRATORS FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE,

Defendants.

AND CONSOLIDATED ACTIONS.

Case No. 112CV225926
(and Consolidated Actions 112CV225928,
112CV226570, 112CV226574, and
112CV227864)

ORDER ON PLAINTIFFS' MOTION FOR
ATTORNEY FEES

In these consolidated cases, Plaintiffs San Jose Police Officers' Association (POA), San Jose Retired Employees Association (REA), and AFSCME Local 101 (AFSCME) moved for attorney fees pursuant to Code of Civil Procedure section 1021.5. AFSCME has also moved for payment of expenses of proof pursuant to Code of Civil Procedure section 2033.420. Pursuant to stipulation filed September 8, 2014, the issue of whether fees will be awarded has been bifurcated from the issue of the amount of fees.

1 The matter was argued at substantial length on September 25, 2014, and submitted.

2 **I. Attorney Fees Pursuant to Section 1021.5**

3 The request for judicial notice filed with POA's moving papers is granted.

4 The request for judicial notice filed with Defendants' opposition is granted as to Exhibits
5 1-3 and 5 and is denied as to Exhibit 4. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7
6 Cal.4th 1057, 1063 citing *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301, overruled on other
7 grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276 ["[J]udicial notice, since it is a
8 substitute for proof ..., is always confined to those matters which are relevant to the issue at
9 hand."].)

10 The request for judicial notice by POA submitted in reply is granted as to Exhibits 2 and
11 3 and is otherwise denied as not appropriate for judicial notice and not relevant.

12 After submitting the matter for decision and without seeking leave of court, Defendants
13 then attempted to submit additional evidence and argument by letter dated September 26, 2014,
14 and a Request for Judicial Notice filed the same day. The request is denied as procedurally
15 improper and not relevant.

16 *A. Plaintiffs Were Successful Parties within the Meaning of Section 1021.5.*

17 The court's ruling declining to award costs does not preclude an award of section 1021.5
18 fees, as the statutory factors which the court is required to analyze on a fee application are not
19 identical to the criteria for an award of costs.

20 Although Defendants argue that Plaintiffs prevailed on only three of thirteen claims
21 (Opposition, at 3:26-27), the court's task does not consist of tallying up the number of individual
22 issues on which each side prevailed. "The party seeking attorney fees need not prevail on all its
23 claimed alleged in order to qualify for an award." (*RiverWatch v. San Diego Sept. of Environ.*
24 *Health* (2009) 175 Cal.App.4th 768, 782-83.) Defendants' suggestion that the law requires
25 success on all legal claims (Opposition, at 7:15-16) is contrary to the law. Indeed, Defendants
26 elsewhere concede that the determination of whether a party is successful under section 1021.5
27 requires a critical analysis of the litigation's circumstances and a pragmatic assessment of gains
28 achieved by the litigation. (*Id.*, at 4: 13-16.)

1 A party may be considered a prevailing party for section 1021.5 purposes if it succeeds
2 on “any significant issue” achieving some of the benefit sought by filing the action. (*Maria P. v.*
3 *Riles* (1987) 43 Cal.3d. 1281, 1291-92 (affirming trial court’s award of fees despite order
4 dismissing case).) Defendants rely on *Ebbetts Pass Forest Watch v. Cal. Dept. of Forestry and*
5 *Fire Prot.* (2010) 187 Cal.App.4th 376, but that case does not support their position: in that case,
6 the plaintiff obtained no relief at all but unsuccessfully sought fees on the theory that the
7 appellate ruling “clarified” the law. Plaintiffs here did obtain relief. Similarly, Defendants’
8 reliance on *Marine Forests Society v. Cal. Coastal Comm’n* (2008) 160 Cal.App.4th 867, is not
9 persuasive because, unlike here, the plaintiff in that case did not achieve the relief it sought
10 (preservation of an artificial reef), and it was not entitled to fees under a catalyst theory on the
11 basis that the Legislature later amended the statute in question.

12 Defendants put forward several points in support of their argument that the issues on
13 which Plaintiffs prevailed were insignificant ones. First, Defendants point out that most of the
14 evidence at trial related to retiree healthcare, but it does not follow from the fact that the
15 healthcare issue involved more factual disputes than others that therefore the healthcare issue
16 was a more significant litigation objective. Defendants attempt to minimize the importance of
17 the invalidation of section 1506 calling for increased pension contributions, by arguing that
18 Plaintiffs as a practical matter obtained no relief, given that the City can lower wages. This
19 assertion ignores the practical reality, which motivated much of the litigation, recognizing that
20 lowering wages is a very different process involving different constraints than increasing pension
21 contributions. Defendants suggest that the court’s ruling on section 1507, the Voluntary Election
22 Plan, was not “separate” because it was “tied to “ section 1506—but that logic is based on the
23 issue-tallying approach that the case authorities disallow. Defendants also argue that Plaintiffs’
24 success regarding section 1507 was not “tangible” because the provision was never approved by
25 the IRS—but that fact did not prevent Defendants from vigorously defending the section.
26 Similarly, Defendants now claim that Plaintiffs’ victory on the COLA issue, section 1510, is
27 “limited and technical” and “theoretical”, but the issue was a significant one which they had
28 argued strenuously. Finally, Defendants argue that the reservation of rights was only one of

1 many issues—but it was a very significant threshold issue which, had Defendants prevailed,
2 would have cut off other issues on which Plaintiffs did prevail.

3 Accordingly, Plaintiffs have met their burden to show that they achieved success within
4 the meaning of section 1021.5.

5 *B. An Important Right Effecting the Public Interest was Enforced.*

6 At the hearing, Defendants argued that pensions rights do not constitute an important
7 right within the meaning of section 1021.5, and as support for this assertion pointed out that the
8 only case cited by Plaintiffs involving pension rights was *Cal. Teachers Ass'n v. Cory* (1984)
9 155 Cal.App.3d 494, and in that original mandamus proceeding, an award of section 1021.5 fees
10 was denied. However, the denial was **not** based on the absence of an important right, but
11 because in the “unique circumstances” of that case, the “financial burden” factor had not been
12 met. (*Id.*, at 515.)

13 To the contrary, *Cory* supports Plaintiffs’ position that pension rights are important
14 rights. The “unique circumstances” of *Cory* involved an effort by teachers, in challenging times
15 following Proposition 13, to compel the state controller to comply with the Education Code by
16 transferring money to the teachers’ retirement funds instead of to the state general fund as
17 directed by budget legislation. The *Cory* court held that the teachers had an enforceable contract
18 right to have their retirement system funded in exchange for the services they provided. (*Cory*,
19 *supra*, 155 Cal.App.3d at 506.) Plaintiffs have cited a number of other cases discussing the
20 fundamental importance of pension rights. Defendants’ suggestion that an important right must
21 have no pecuniary aspect (Opposition, at 9:17-19) is not supported by the law. Defendants also
22 argue, incorrectly, that there must be a “sweeping victory” or a decision “announc[ing] new law”
23 to support a fee award (Opposition, 10:9, 13), but the case law does not support such an
24 interpretation. Plaintiffs did obtain enforcement of the fundamental right to pension benefits.

25 *C. A Significant Benefit was Conferred on a Large Class of Persons.*

26 Defendants do not dispute that a large class of persons is affected by the decision.
27 Defendants argue that the ruling did not establish a “tangible benefit, much less a ‘significant
28 benefit’” and that the ruling was “theoretical and will make no concrete difference in practice.”

1 (Opposition, at 12:11-13.) However, this argument reflects a misunderstanding of section
2 1021.5. “[T]he ‘significant benefit’ that will justify an attorney fee award need not represent a
3 ‘tangible’ asset or a ‘concrete’ gain but, in some cases, may be recognized simply from the
4 effectuation of a fundamental constitutional or statutory policy.” (*Woodland Hills Residents*
5 *Association, Inc. v. City Council* (1979) 23 Cal.3d 917, 939.) Plaintiffs have established this
6 element.

7 *D. The Necessity and Financial Burden of Enforcement Make an Award Appropriate.*

8 The necessity and financial burden requirement raises two issues: whether private
9 enforcement is necessary and “whether the financial burden of private enforcement warrants
10 subsidizing the successful party’s attorneys.” (*Collins v. City of Los Angeles* (2012) 205
11 Cal.App.4th 140, 154, quoting *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214-15.)
12 Defendants have not contested the necessity of private enforcement, but argue that this was “just
13 financial litigation” and therefore no fee award is warranted.

14 Defendants incorrectly argue that any “financial motivation precludes” an award of
15 attorney fees pursuant to section 1021.5. (Opposition, at 13:14.) “The question is whether the
16 cost of the claimant’s victory transcends his personal interest -- that is, whether the burden on the
17 claimant was out of proportion to his individual stake.” (*Citizens Against Rent Control v. City of*
18 *Berkeley* (1986) 181 Cal.App.3d 213, 230-31.) “An attorney fee award under section 1021.5 is
19 proper unless the plaintiff’s reasonably expected financial benefits exceed by a substantial
20 margin the plaintiff’s actual litigation costs.” (*Collins, supra*, 205 Cal.App.4th at 154.)

21 Each of the Plaintiffs seeking fees is an association, representing members. Although
22 REA urges the court to consider only the financial stake of Plaintiffs as associations as opposed
23 to the stake of their members (Memorandum in Support, at 8:1-2), the law requires otherwise.
24 When a successful plaintiff is an association representing members who may have a financial
25 stake, the court should consider the members’ stake in the litigation when evaluating a section
26 1021.5 request. (*California Redevelopment Ass’n v. Matosantos* (2013) 212 Cal.App.4th 1457,
27 1476-82.)

1 Plaintiffs' members faced the potential of a substantial increase in their pension
2 contributions and healthcare costs, and a reduction in benefits and pay. In evaluating the
3 members' stake in the outcome, the court is mindful that each Plaintiff challenged Defendants'
4 position concerning the reservation of rights, a threshold issue involving whether Plaintiffs could
5 be heard on the substantive challenges to the various sections of Measure B. Each Plaintiff had
6 something to gain in future disputes by successfully opposing Defendants on the reservation of
7 rights issue: a fact tending to show Plaintiffs have met the financial burden requirement. (*Los*
8 *Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 15.) In that
9 regard, this case is similar to *Baggett v. Gates* (1982) 32 Cal.3d 128, 142-43 (reversing denial of
10 section 1021.5 fees), where the Supreme Court noted that, because the action sought to enforce
11 procedural rights and a favorable ruling might not result in any pecuniary benefit, the financial
12 burden requirement was satisfied. Similarly, in *Otto v. Los Angeles Unified School Dist.* (2003)
13 106 Cal. App. 4th 328, 332, the action sought enforcement of a procedural right and even a
14 favorable result may not have avoided a potential negative effect for the petitioner, and the court
15 reversed the denial of fees. (See also *People ex rel. Seal Beach Police Officers Ass'n v. City of*
16 *Seal Beach* (1984) 36 Cal.3d 591, 602 (reversing decision adverse to police union challenging
17 city charter amendment and awarding section 1021.5 fees).)

18 Defendants argue that with \$18 million at stake, Plaintiffs have failed to establish that the
19 stakes were out of proportion to their litigation burden. However, while there may have been
20 large potential cost savings at stake for Defendants, the stakes for Plaintiffs' members should be
21 analyzed differently. By challenging Measure B, Plaintiffs preserved the status quo, and did not
22 seek or obtain pecuniary benefit beyond that. (*Citizens Against Rent Control*, 181 Cal.App.3d at
23 230-31.) None of REA's members would have experienced increased contributions, but they
24 challenged the reservation of rights and did obtain protection for COLA rights. Likewise some
25 of POA's and AFSCME's current members, whose employment may be of indeterminate length,
26 may not receive benefit from the decision. To the extent that a "potential financial incentive for
27 [the representative association] and its members is indirect and largely speculative", that is a
28 factor favoring an award of attorney fees. (*Plumbers & Steamfitters, Local 290 v. Duncan*

1 (2007) 157 Cal.App.4th 1083, 1099; see also *Monterey/Santa Cruz County Building and*
2 *Construction Trades v. Cypress Marina Heights, LP* (2011) 191 Cal.App.4th 1500, 1523.)

3 Finally, in exercising its discretion, the court has also looked at the statutory factors taken
4 together. "All these factors under section 1021.5 are interrelated []. Where the benefits achieved
5 for others are very high it will be more important to encourage litigation which achieves those
6 results." (*Los Angeles Police Protective League*, 188 CA3d at 14.) Plaintiffs obtained a ruling
7 which benefits individuals who are not members but whose rights would be impaired by a
8 successful assertion of a reservation of rights.

9 Accordingly, the court finds that Plaintiffs have established all the elements necessary to
10 warrant a fee award under section 1021.5. The parties are given leave to file additional papers
11 addressing whether and to what extent the court should reduce fees to account for the issues on
12 which Defendants prevailed, as well as any lodestar or other issues pertinent to the amount of
13 fees to be awarded. On or before October 16, 2014, Plaintiffs may file and serve opening
14 argument and evidence. On or before October 27, 2014, Defendants may file and serve argument
15 and evidence in opposition. On or before November 3, 2014, Plaintiffs may file and serve reply.
16 The hearing is set for November 13, 2014.

17 **II. Cost-of-proof Sanctions Pursuant to Section 2033.420**

18 The City had reasonable grounds to believe that it would prevail and there are other good
19 reasons for the City's decision not to admit the statements as they were vague and overbroad
20 statements of the law. The motion is denied.

21 Dated: October 1, 2014

22 

23 Honorable Patricia M. Lucas
24 Judge of the Superior Court
25
26
27
28