

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

COALITION FOR ADEQUATE REVIEW  
et al.,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant and Respondent.

A135660

(San Francisco City & County  
Super. Ct. No. CPF-05-505509)

ROB ANDERSON,

Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant and Respondent.

A138856

(San Francisco City & County  
Super. Ct. No. CPF-05-505509)

At the instigation of private parties, the trial court enjoins the City and County of San Francisco (City) to take no further action on a proposed project pending preparation and certification of an environmental impact report (EIR) as required by the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) For this the City agrees to pay the private parties over \$400,000 in attorney fees and costs. Thereafter, while the EIR is being prepared, the trial court, over the opposition of the private parties, partially grants three requests by the City to modify the injunction.

Eventually the EIR is certified by the City and upheld by the trial court, which also dissolves the injunction. The private parties then move for a “supplemental” attorney fees award of almost \$500,000 for opposing the City’s three attempts to dissolve the injunction. The trial court awards \$162,000.

The private parties appeal, arguing that the traditional degree of deference afforded to fee awards should be diluted because the supplemental fee decision was not made by the judge who decided any of the modification/dissolution motions. We conclude that this circumstance is not sufficient to depart from the well-established principle of reviewing courts deferring to trial courts’ presumed superior knowledge of local legal conditions and practices. We further conclude that neither the total compensation, nor the hourly rate awarded to a newly-licensed attorney, manifests an abuse of the trial court’s discretion. We thus affirm.

We also affirm another fee order awarding the same attorney only \$16,000 of the claimed \$78,860 for persuading the court to strike a cost bill of approximately \$52,000 filed by the City. Again, we conclude, there was no abuse of discretion because the trial court continued to use the hourly rate used in the other attorney fee award.

## **BACKGROUND**

In 1997, the City adopted a Bicycle Plan, described as “a comprehensive guide for efforts that will make San Francisco a more ‘bicycle-friendly’ city.” As the trial court described it: “The Bicycle Plan originated in the City’s Department of Parking and Traffic . . . as a complex, far-reaching plan to alter streets in San Francisco to accommodate San Francisco residents who ride bicycles. To achieve the Bicycle Plan’s goal of increasing the number of City residents who ride bicycles, the Bicycle Plan mandates a number of actions including: eliminating traffic lanes and street parking throughout the City to create bicycle lanes, requiring that cars, buses and trucks ‘share’ lanes with bicyclists regardless of speed, allowing bicycles inside Muni and other public transit vehicles, eliminating parking in existing and newly constructed buildings, allowing bicycles in exclusive bus lanes, installing physical impediments to motorized traffic or ‘traffic calming,’ allowing bicycles on sidewalks, and closing streets to vehicles

to create exclusive ‘bicycle boulevards.’ The Bicycle Plan also contemplated . . . requiring that CEQA review of any proposed project in the City must resolve any ‘traffic impacts or conflicts of parking access’ by giving ‘full or partial priority for bicycles,’ that any proposed Area Plan in the City must be ‘consistent’ with the Bicycle Plan, and that automatic amendments of the City’s General Plan will roll in ‘[a]s changes to the network occur.’ ”

The Bicycle Plan was a conspicuous success, so much so that it was substantially amended in 2001, and in 2002, a mere five years after being adopted, the City started planning to upgrade and extend it. However, the City took the position that, because the Bicycle Plan had already gone through CEQA review, the proposed upgrade was exempt from further environmental review because there was no possibility that it would have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061(b)(3).)

This position was opposed by two unincorporated associations and an individual (Coalition for Adequate Review, Ninety-Nine Percent, and Rob Anderson,<sup>1</sup> hereafter collectively designated as plaintiffs) who, represented by attorney Mary Miles, in 2005 filed a petition for issuance of a writ of mandate to compel the city to comply with CEQA by preparing an EIR. In 2006, the trial court granted this relief, and also issued an injunction prohibiting the City from implementing the proposed upgrade by “making any . . . change to any street, traffic signal, building, sidewalk, or other land use or physical feature.”

Plaintiffs thereupon applied for costs and an award of attorney fees. In March 2008, the City and plaintiffs (represented by Ms. Miles and the recently associated Richard M. Pearl) negotiated a “Settlement Agreement and General Release [of] Attorneys’ Fees and Costs,” whereby the City agreed to pay \$406,278.55 as “all attorneys’ fees and costs arising out of Ms. Miles’ and Mr. Pearl’s representation . . . up to and including January 31, 2008.”

---

<sup>1</sup> Anderson identified himself as “the Director of the Coalition for Adequate Review.”

In May 2008, and again in February 2009, the court largely denied requests from the City to modify the injunction, but the City was given permission to modify one specified intersection and to “add and enhance marking associated with existing bicycle lanes” on specified streets.

In August 2009, and over plaintiffs’ opposition, the City’s Board of Supervisors certified a 2,052-page EIR. For the third time, the City asked the trial court to dissolve the injunction. The court rejected the City’s argument that the injunction should, by reason of the certification alone, be dissolved; but the court did modify the injunction for a third time to permit work on certain specified features of the Bicycle Plan to proceed pending a final determination of the validity of the EIR.<sup>2</sup> And, because “the parties are unable or unwilling to reach an agreement on a schedule to test the City’s return [to the writ of mandate] expeditiously,” the court established briefing deadlines and scheduled a hearing for June 2010.

---

<sup>2</sup> Certain language in the court’s written order deserves quotation, to demonstrate the extraordinary care taken by the court in allowing modifications of its injunction. “The Court agrees that the City’s preparation and certification of an EIR is a significant change of circumstances. The Court disagrees, however, that the proper response is to unconditionally dissolve the injunction . . . . Until proceedings on the City’s return to the writ of mandate are concluded, there will be no final determination that the City’s EIR complies with CEQA. It . . . would be unreasonable to leave the City completely unable to advance what it has determined is an important policy initiative in light of the changed circumstances. [¶] Therefore, the Court will not dissolve, but will modify the existing injunction on the following conditions. Pending hearing on the return, the City may proceed with those projects within the Bicycle Plan that are least intrusive and most easily reversible should it turn out that the City has not satisfied its CEQA obligations. Specifically, the City may undertake the projects enumerated in paragraphs 7 and 9 of the Damon R. Curtis Declaration, dated November 6, 2009, with the exceptions of projects 2-7, 7-5, and 8-5. Any changes the City chooses to make on the basis of this Order, however, will be made with the understanding and on the further condition that such changes are subject to being reversed if [plaintiffs] prevail on its objections to the City’s return”

Meanwhile, in November 2009, a person named Greg Hayes filed a petition with this court for writs of mandate or prohibition.<sup>3</sup> Copies of the petition were served on Ms. Miles and the City Attorney. Ms. Miles sent a letter to this court advising that Mr. Hayes was “not a party to the underlying superior court case and has no standing to bring this case or any action in it before the Court of Appeals [*sic*].” The petition was summarily denied on November 24, without the need for a response by the City. (*Hayes v. Superior Court* (Nov. 24, 2009, A126738), petn. den.)

In June 2010, the trial court heard extensive argument on the City’s return to the writ of mandate, and on the City’s renewed motion to dissolve the injunction, both of which were vigorously contested by plaintiffs.

Less than two months later, after reviewing a massive administrative record of more than 36,000 pages, and preparing an exhaustive 30-page order, the trial court overruled plaintiff’s objections, discharged the writ, and dissolved the injunction. Anderson appealed. Up to now, all decisions had been made by the Honorable Peter Busch.

In August 2010, the City submitted a memorandum of costs for \$51,959, almost all of which represented the expense of preparing the administrative record. Plaintiffs opposed the request, moving to have the cost bill stricken or the City’s costs taxed.

In early October 2010, plaintiffs noticed a “Motion for Award of Supplemental Attorneys’ Fees” of \$497,160 “plus attorneys’ fees incurred subsequently on this motion,” a motion apparently prepared by Mr. Pearl.<sup>4</sup> Based on “Ms. Miles’ current

---

<sup>3</sup> At best it may be determined from the incomplete copy of the petition in our record, it appears that Hayes, who described himself as “a daily bicyclist,” alleged the trial court should not have involved itself with the Bicycle Plan because the City was exercising emergency and public nuisance powers that were exempt from CEQA.

<sup>4</sup> The motion was filed the day after Anderson appealed from the judgment. Ms. Miles represented Anderson—and only Anderson—on the ensuing appeal, which produced an 83-page opinion by this court rejecting a broad array of challenges to the judgment. We did, however, order reversal on a procedural point unrelated to the merits of the environmental analysis performed in the EIR. (*Anderson v. City and County of San Francisco* (Jan. 14, 2013, A129910) [nonpub. opn].) Although plaintiffs reserved

hourly rate of \$400” as the reasonable lodestar, Mr. Pearl broke down the request as follows:

“First Motion to Modify:	203.3 hours	\$81,320
“Second Motion to Modify:	276.8 hours	\$110,720
“Motion to Dissolve:	301.1 hours	\$120,440
“Hayes petition:	27.0 hours	\$10,800
“Supplemental Fee Motion:	20.4 hours	\$8,160
“Total:	828.6 hours	\$331,440”

with “a 50% enhancement (a 1.5 multiplier) of [the] lodestar.” Mr. Pearl’s work was fixed at \$650 per hour.

The City responded that “the court should reduce the requested number of hours by [Ms.] Miles by 50% to account for gross inefficiencies and overbilling.” The City urged that Ms. Miles and Mr. Pearl should be compensated at hourly rates of \$175 and \$450, respectively, with no multiplier, for a total of \$50,183.75. With their response to the City’s opposition, plaintiffs’ fee request rose to \$539,487.50.

On February 29, 2012, the motion for fees came on before the Honorable Harold Kahn who, as is apparent from the lengthy argument that ensued and his pointed questions of counsel, had “spent an enormous amount of time preparing” for the hearing. Judge Kahn heard extensive argument on his tentative ruling, the heart of which and that occupied most of the hearing, was the following: “[Plaintiffs] are awarded . . . all hours spent by Ms. Miles for the first and second motions and this motion at \$200 per hour. . . . [Plaintiffs] are not the prevailing parties on the third motion. . . . \$200 per hour is a reasonable rate for someone with Ms. Miles’ experience, the large amount of time she spent on these motions [i.e., the City’s three motions to modify/dissolve the injunction] and the fact that she performed functions that in another law office would likely have

---

the right to claim additional fees for work incurred on that pending appeal, no part of the supplemental fees requested by plaintiffs involved such work.

been performed by a secretary, clerk and/or paralegal. Given the nature of the motions and the large amount of time spent by Ms. Miles, a multiplier is inappropriate.”

During the course of the hearing, which was requested by both sides, Judge Kahn made two reiterations of parts of the tentative ruling: (1) no fees would be awarded for opposing the Hayes writ petition because it was 99 percent certain that the petition would be denied “whether Ms. Miles did anything or not,” thus “she did work that was unnecessary and shouldn’t be charged to the City”; and (2) Mr. Pearl would be compensated at the requested rate for the claimed hours (which the Deputy City Attorney termed “eminently reasonable”).

As to its decision that plaintiffs were “not the prevailing parties” for purposes of the City’s third attempt to dissolve the injunction, Judge Kahn explained that the decision was made on the basis of the order quoted in footnote 2, *ante*. Plaintiffs viewed the matter as the City having simply failed in its attempt to dissolve the injunction, which was merely an “unnecessary” try at short-cutting the process of deciding the validity of the EIR when the City’s return to the writ of mandate was evaluated, although the City did get “some minor changes.” According to Mr. Pearl (who argued the matter), plaintiffs were “playing a defensive role. . . . opposing a motion that didn’t have to be brought and they had no choice but to do it . . . because it was necessary to preserve their right to object to the return to the writ.”

Judge Kahn viewed this as merely “an interim matter”: “I read that ruling as saying: It’s not time right now to dissolve the injunction but there’s been a significant change of circumstances and we need to tee it up properly; and it wasn’t teed up the way it should have been; and the parties can’t get their act together to agree on a scheduling order, so I’m going to provide the scheduling order right now. [¶] . . . Eventually, the way it was—in the form of whether the return was appropriate. And, as we all know, . . . that issue was decided favorably to the City and adversely to the [plaintiffs]. And it seemed to me that there was no prevailing party on that point and, arguably, the City was a prevailing party because it got Judge Busch to say: Well, it now looks like we really needed . . . to look at this again and see if the injunction should be dissolved.” This

ruling was “logically, . . . part and parcel” of the City’s eventual victory “and you can’t detach them for purposes of award[ing] attorney’s fees.” On this point the court “confirm[ed] my tentative ruling.”

Turning to what he termed “the big issue that we need to address”—Ms. Miles’s hourly rate—Judge Kahn began as follows: “I think that Ms. Miles has done a heroic thing here. . . . taking on the City by herself, as a very new lawyer,<sup>5</sup> with all the resources the City had and . . . she had to know that there was going to be a lot of people who like bicycles, [and] were not going to be happy with her. So that’s what I mean by heroic; she’s courageous. But she did it with relatively little knowledge and experience, and that’s okay, but the result is she spent a lot of time that a more experienced , more knowledgeable—and I don’t mean this to be critical—a more savvy lawyer wouldn’t have spent, and it’s . . . apparent from the papers.

“So I could do one of two things: I could reduce the hours or I can put an hourly rate that is more consistent with a younger lawyer. . . . [T]he younger lawyers take

---

<sup>5</sup> Ms. Miles stated in her declaration supporting the fee request: “I received my J.D. from University of California Hastings College of the Law and have been a member of the California Bar since March, 2004. I have taken several courses in environmental law . . . . [¶] Before 2004 I was active in environmental issues and did volunteer work for environmental groups in administrative proceedings in issues involving [CEQA] . . . . [¶] Since 2004 I have represented parties in court on CEQA cases, in administrative proceedings on a number of other CEQA and land use cases, and given advice to individuals and groups on CEQA matters.”

She further stated: “I have represented [plaintiffs] . . . since administrative proceedings began in January, 2005, and throughout Court proceedings on the case. My arrangement with [plaintiffs] was to represent them without charge, with the expectation that if we were successful I would be compensated by recovering a statutory attorney fee award . . . . Given [plaintiffs’] lack of resources, I also had to advance expenses.” The fact that Ms. Miles was in effect working on a contingency fee basis would be relevant when and if calculating an enhancement of the basic lodestar fee. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132, 1134 (*Ketchum*).) As will be seen, the trial court was eventually persuaded that Ms. Miles deserved such an enhancement, a decision not disputed on this appeal. Because the contingent risk of Ms. Miles’s representing plaintiffs was considered in the enhancement analysis, it cannot be double-counted by also being factored in calculating the lodestar. (*Id.* at pp. 1138-1139.)

longer, particularly younger lawyers outside of the Morrison & Forsters and the other firms . . . who have the benefit of being able to ask . . . questions of the more experienced lawyers and saving tons of time; being told, ‘You go to this case or go to that book or go follow that rule’ or ‘You won’t find it in Mr. Pearl’s attorney fees guide<sup>6</sup>, but let me tell you the way of the world.’ ”

As for Judge Kahn’s tentative decision to fix the rate at \$200 per hour, he inquired of Mr. Pearl: “Where did I get it wrong?” Mr. Pearl responded: “There is no record evidence of even first-year attorneys getting [only] \$200 an hour. And we’re talking about a fifth-, sixth-, seventh-year attorney with substantial CEQA experience by that point and substantial knowledge of this case and the sole responsibility for this case and what is a reasonable rate for a person in those circumstances. And \$200 an hour . . . is nowhere in the record that that rate can be found.”

Judge Kahn then inquired: “But your book tells me that I have wide latitude because I get to see lots of lawyers practicing and that I am able to call upon my own knowledge as to what the market rate is. [¶] Doesn’t your book say that?” Mr. Pearl replied that “[i]t says that, but it also says when the record does not support the court’s assessment, . . . it’s an abuse of discretion to rely solely on your own experience . . . . We’re not just talking about big firm rates, we’re talking about other environmental attorneys. The City Attorney’s Office, when they bill for a fifth and seventh attorney in their litigation, all of those people bill at rates much closer to \$400 an hour than \$200.”

To which Judge Kahn answered: “Here’s the problem: You are right. The record is not very good on this, but you’re part of the problem here. Nobody gave me anybody who looks like Ms. Miles, a solo without office support, who, basically, within a couple of years after she got out of law school, is taking on this case and is learning on the job through this case and, presumably, other CEQA cases. Nobody gave me anybody who looks like that, and so I have to go based on the solos that I see every day, and \$200 is a

---

<sup>6</sup> Pearl, Cal. Attorney Fee Awards (3d ed. 2014) (Pearl). At the start of the hearing, the court told Mr. Pearl “I like your book. I’ve referred to it many, many times.”

very common number that I see every day. In fact, I see often less than that. I'm asked, in my capacity as discovery judge, to award sanctions, not just every day, many times a day."

At this point in the hearing Ms. Miles herself addressed Judge Kahn, arguing for several pages. Judge Kahn then turned to the City Attorney, who began as follows: "We did submit a fairly detailed analysis of all the extraordinary amount of time that was spent on these motions. Those are in our papers and our declaration and we would be happy to submit it on that." Judge Kahn responded: "I factored that in already in the hourly rate. [¶] So I'm going to confirm my tentative ruling, allowing every hour of the time spent by Ms. Miles on the first and second motion to be compensable."

Judge Kahn then moved to matter of the multiplier, which he characterized as "the hardest issue." Mr. Pearl attacked the proposed denial as follows:

"I think the Court's rationale for denying a multiplier doesn't square with the case law. . . . And I'm speaking particularly of a risk enhancement. The Court has determined a lodestar. It said: There's so many hours at this rate and the rate has been reduced to \$200 an hour because there were a lot of hours spent. And then the multiplier is denied for the same reason.

"And I think that raises two issues: One is, it's essentially double counting the same fact. And secondly, the issue for a contingent risk multiplier is, in a legal marketplace, would a reasonable fee for this case be the same.

"The lodestar reflects the fee that a fee-paying client would have paid Ms. Miles to do this case; should the ultimate fee award be the same, where her compensation was entirely dependent on winning the case, on winning these two motions [i.e., the first and second of the City's motions to modify the injunction]. And in the legal marketplace, very few attorneys are going to take a case where, if they have one situation where they can get \$200 an hour guaranteed and another where they're only going to get \$200 an hour if they win the case and then win their fee motion, the legal marketplace doesn't make those equivalent.

“And some consideration should be given to the fact that Ms. Miles would not have recovered anything for her time if she had lost the first motion or the second motion. We would also say the third motion but, given the other findings of the Court, it’s the first and second motions. And the fact that a lot of hours were spent doesn’t have anything to do with that risk . . . . If anything, it enhances the risk, because she had to spend so [much] time, which the Court has, ultimately, found was reasonable and, also, because she’s being compensated at such a low rate.

“So . . . we think that the 1.5 multiplier requested is perfectly reasonable to reflect the fact that she was not paid by a fee-paying client. She would only be paid if she won these [motions].”

Judge Kahn told Mr. Pearl that “the way you have structured your multiplier argument is at odds with my understanding of multipliers, and this is where I’m going to seek your help.

“I thought California law was the lodestar, was the presumptive correct number, and it was the exception to enhance or detract from that, a positive or negative multiplier. But the way you described it is: Any time someone is taking a contingent risk, there should be a multiplier. I don’t think the law says that. I think the law says that that is something to consider, but not mandated or even be the controlling fact. The most important fact is the lodestar and that’s, presumptively, the right number, and there has to be a good reason to depart from that.

“Where have I got it wrong?”

Mr. Pearl replied: “[I]n terms of the standard, I don’t believe there is any California case, and I think I know them, that says that. . . . [¶] . . . The state cases do say—and I agree with Your Honor—that a contingent-risk enhancement or any enhancement is discretionary and that a contingent risk enhancement not required in any contingent case. But . . . my position is and I think the fair reading of the law is . . . there should be some very good reason not to enhance the lodestar in a contingent-risk situation, because the market does value the two very differently. [¶] . . . [¶]

“[T]here are cases, for example [*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359] . . . which in that case . . . compelled a risk multiplier. The trial court had denied one. And the Court of Appeal said it was required because of the underlying purpose of the statute and, without a risk multiplier, you wouldn’t get competent attorneys to take on that kind of case.<sup>7</sup> And I think the same thing applies here. There are not attorneys out there who are going to take these kind of cases if they expect that they have to win the case and then they’re only going to get \$200 an hour for only part of their hours.”

“[O]ne of the purposes of the lodestar enhancements . . . is to entice competent counsel to take on similar cases by ensuring them that if they take the case they will receive fees at a market value. Denying a multiplier in this case has the opposite effect, not just for Ms. Miles, who now will be reluctant to do this again in other cases, but also other environmental attorneys, who are going to see that and say, ‘We’re just not—you know, we can’t afford to do this.’ ”

Mr. Pearl’s labors were not in vain, because Judge Kahn announced “I’m going to change my tentative ruling. . . . [¶] . . . [¶] I’m going to grant the multiplier on all of Ms. Miles’ hours of 1.2.”

A written order awarding plaintiffs \$161,991.50 (\$123,024 for the work of Ms. Miles, \$38,967.50 for that of Mr. Pearl) was filed in April 2012, from which plaintiffs perfected this timely appeal.

For reasons not shown by the record, it was not until late January 2013 that Judge Kahn granted plaintiffs’ motion to strike the City’s cost bill for the administrative record. Two months later plaintiffs filed another “Supplemental Motion for Reasonable Attorney Fees,” this time for slightly more than \$68,000. Ms. Miles again asked for an

---

<sup>7</sup> The statute in question was California’s Fair Employment and Housing Act, which has a provision vesting trial courts with the discretionary power to “award to the prevailing party . . . reasonable attorney’s fees and costs, including expert witness fees.” (Gov. Code, § 12965, subd. (b).)

hourly rate of \$400 for the 89.9 hours she devoted to the motion to strike, plus 35.2 hours spent on the fee motion. Again she sought a 1.5 multiplier.

The declaration Ms. Miles submitted in support of the motion had some reworking that reflected a response to Judge Kahn’s remarks on the prior fee request, now describing herself as follows: “a ninth year attorney (as measured from years out of law school). I have represented parties in court on two large CEQA cases, including this case and the Market-Octavia Project case about high-rise, high-density development in the City’s Civic Center Area. I have also appeared on behalf of various groups . . . and participated in administrative proceedings on a number of other CEQA and land use cases . . . . My work and experience level is now that of a senior associate or partner in a law firm who does unsupervised litigation work and has strategic decisionmaking authority.”

The City opposed the new fee request, arguing that because the EIR for the Bicycle Plan had been upheld, plaintiffs were not prevailing parties. The City further argued that the hourly rate requested by Ms. Miles was “inconsistent with a fee award to counsel in April of this year,” the hours claimed “is excessive, and a multiplier is unsupportable.” At best, the City concluded, “[a]ny fee award should be less than \$4000.” With Ms. Miles reply, the fee request increased to \$78,860.

Judge Kahn’s tentative ruling on this second fee request was as follows:

“[Plaintiffs] are awarded \$16,000 as reasonable fees for their counsel’s work in successfully moving to strike the City’s costs memorandum and in bringing this fees motion. [Plaintiffs] are entitled to fees per CCP 1021.5 because they had been successful in their initial writ petition which met the statutory criteria and the City’s costs memorandum was related to that petition. There is no reason to depart from the \$200 hourly rate for Ms. Miles that was determined on the . . . previous motion for fees heard and decided last year. The hours spent by Ms. Miles to defeat a \$52,000 costs memorandum were excessive given that the motion to strike essentially raised two issues—whether the City was the prevailing party, such that it was entitled to a costs award and, if so, whether the costs it claimed were reasonably incurred—were fairly

simple and did not require extensive legal research or analysis. [Sixty] hours of time spent by a \$200 per hour attorney is the most amount of time that is reasonable to have spent preparing the moving and reply papers (no hearing was held on the motion) and thus \$12,000 is awarded for that work. The hours spent by Ms. Miles to seek fees for work on the motion to strike are also disproportionate and excessive. The issues on this motion are routine and not difficult. 20 hours of time spent by a \$200 per hour attorney is the most amount of time that is reasonable to have spent in preparing the moving and reply papers and thus \$4000 is awarded for that work.”

Again, both sides asked for oral argument. But the City was unable to convince Judge Kahn that plaintiffs did not qualify as prevailing parties, and plaintiffs did not persuade him to change his mind on either the hourly rate or hours expended factors. Judge Kahn explained the reasons why to Ms. Miles that, after reading the transcript of the hearing on the previous fee request,

“The views that I expressed at that hearing I still believe are correct. You are a sole practitioner with limited support. The nature of the work done by your office is, while I’m not criticizing it, in line with a \$200 hour rate, which, frankly, is—that’s not cheap. For the average American, \$200 an hour seems sky high. [¶] I now work mostly in criminal court. I hear people every single day telling me that they can’t afford \$200 in costs imposed against them. [¶] In my many years in civil court, I have seen rates around \$200, and it seems to me that that is a fair rate for somebody in your position, which we have to gauge a rate. . . .

“And as to the compensable hours, . . . we’re talking about very simple matters here . . . . [T]he principles are pretty well understood. . . . [¶] Every day in my position I hear from litigants how expensive litigation has become. It’s become expensive because, in part, lawyers over litigate. And I’m not saying you didn’t work every one of those hours. I’m sure you did. . . . [¶] It’s just that people over-litigate, and you’re not the only one. This building is filled with over-litigation. Probably it’s true up and down the state and . . . around the country, but that doesn’t make it compensable under the reasonable standards.

“You know, one way to really look at this is to look at all of the cites that you have in your reply brief on this motion. . . . [W]e’ve got two full pages, mostly cases, where almost none of those cases have any bearing on the decision here. Sure, they have propositions of law that are germane, but that’s not going to affect a decision maker.” [¶] . . . [¶]

“Let me . . . be as blunt as I can. I think you are seeking \$70,000 or thereabouts in fees to avoid having your clients be stuck with having to pay \$52,000. That’s disproportionate. That’s not the way litigation should be . . . . [¶] . . . [¶] A much, much smaller amount is warranted, particularly when we’re talking about fairly simple procedural matters.” [¶] . . . [¶]

“There is no complexity and novelty . . . . And while the issue was clearly important to you and your clients, it is not important in any public benefit or public interest sense, save and except for that one public policy argument you made which, in my view, could be made in one of two sentences, that seeking approximately \$50,000 in costs against a prevailing CEQA plaintiff could deter future meritorious CEQA claims. [¶] No other aspect of this had any public benefit. It was simply . . . to avoid . . . having your clients be burdened with a cost judgment against them.”

Plaintiffs thereupon appealed from the ensuing written order filed in April 2013. We ordered the appeals consolidated.

## **REVIEW**

### **The Governing Legal Principles**

The fee award was made pursuant to Code of Civil Procedure 1021.5 (section 1021.5), which provides in pertinent part: “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of

justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities . . . .”

We have noted that “a trial court which grants an application for attorneys’ fees under section 1021.5 has made a practical and realistic assessment of the litigation and determined that (1) the applicant was a successful party, (2) in an action that resulted in (a) enforcement of an important right affecting the public interest and (b) a significant benefit to the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement of the important right make an award of fees appropriate. ‘“On review of an award of attorney fees . . . the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees . . . have been satisfied amounts to statutory construction and a question of law.”’ [Citations.]” (*Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 330, 363, fn. omitted (*Karuk*)).

The City is not contesting any of these points, and is conceding plaintiffs’ entitlement to an award of fees. Indeed, the City is not challenging any aspect of the award made in plaintiffs’ favor, and is willing to pay it without protest, even though it is more than three times greater than what the City believed the award should be. It is plaintiffs who have appealed, contesting only the size of the award. Plaintiffs attack only two aspects of Judge Kahn’s decision: (1) the refusal to award any fees for opposing the City’s third motion to modify the injunction based on his conclusion they were “not the prevailing parties” on that motion and (2) the fixing of Ms. Miles’s hourly rate at \$200.

“We first review some general principles regarding the calculation of attorney fees in public interest litigation. As we recently explained, . . . ‘a court assessing attorney fees begins with a touchstone or lodestar figure, based on the “careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.”’ [Citation.] We expressly approved the use of prevailing hourly rates as a basis for the lodestar, noting that anchoring the calculation of attorney fees to

the lodestar adjustment method “ ‘is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.’ ” [Citation.] In referring to “reasonable” compensation, we indicated that trial courts must carefully review attorney documentation of hours expended; “padding” in the form of inefficient or duplicative efforts is not subject to compensation. [Citation.]

“ ‘. . . [T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including . . . (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services. The “ ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ” ’ ” (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580 (*Graham*), quoting *Ketchum, supra*, 24 Cal.4th 1122, 1131-1132.)

The key word is “reasonable,” a concept that does not have a fixed meaning, but which, like any word, “ ‘may vary greatly in . . . content according to the circumstances and the time in which it is used.’ ” (*Kern County Water Agency v. Watershed Enforcers* (2010) 185 Cal.App.4th 969, 979, fn. 7, quoting *Towne v. Eisner* (1918) 245 U.S. 418, 425 (Holmes, J.); cf. *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 452 [“determining the amount of a reasonable attorney’s fee . . . is necessarily ad hoc and must be resolved on the particular circumstances of each case”].) The word is doubly important because “the lodestar amount is the product of the number of hours ‘reasonably spent’ and the reasonable rate” of the attorney’s hourly compensation. (*Meister v. Regents of University of California, supra*, at p. 449;

see Pearl, *supra*, § 9.1, p. 9-7.) Here, as will be shown, the two aspects of reasonableness overlap.

### **The Standard Of Review And Other Preliminary Matters**

Plaintiffs take issue with the principle of reviewing court deference that is part of the abuse of discretion standard. In their brief plaintiffs emphasize that because all of the underlying rulings were made by Judge Busch, but the supplemental fee motion was decided by Judge Kahn, the principle “does not apply here” and thus “a less deferential review applies because a different judge than the judge who decided the issues on the merits.” It is true that plaintiffs can claim the support of Division One of the Fourth District, which stated that “when . . . the fee order under review was rendered by a judge other than the trial judge, we may exercise ‘somewhat more latitude in determining whether there has been an abuse of discretion than would be true in the usual case.’ ” (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th, 603, 616 (*Center for Biological Diversity*), quoting *Perkins v. Standard Oil Co. of California* (9th Cir. 1973) 474 F.2d 549, 552.) For a variety of reasons, we do not feel ourselves at liberty to exercise such greater latitude.

A sizable amount of fees sought in *Center for Biological Diversity*, and the great majority of fees awarded in the cited federal case, involved compensation for appellate work, a subject on which reviewing courts have traditionally felt themselves at least as competent to appraise in the first instance.<sup>8</sup> (E.g., *Mann v. Quality Old Time Service*,

---

<sup>8</sup> In *Center for Biological Diversity*, following a successful CEQA-based appeal, the parties objecting to the adequacy of an EIR “sought a total of \$563,926.45 in fees, including . . . \$180,324.65 for appellate work.” (*Center for Biological Diversity, supra*, 188 Cal.App.4th 603, 610.)

In the federal case: “On remand [from the United States Supreme Court, District Court] Judge Belloni, after conducting a hearing on the matter, awarded Perkins the sum of \$250,000 for attorneys’ fees in the first Supreme Court proceedings, in which the Court had ordered reinstatement of the trial court’s judgment. He also allowed \$25,000 for counsel fees arising out of the second Supreme Court proceedings, in which the Court reversed the District Court’s disallowance of attorneys’ fees on appeal. And, finally, Judge Belloni allowed \$14,180 in fees for services of Perkins’ attorneys in the attorney

*Inc.* (2006) 139 Cal.App.4th 328, 346 [“this court is familiar with the case and the attorneys’ work based on our prior appellate review and the record is sufficiently explicit that we can properly perform the necessary calculations. . . . Under these circumstances, it would be wasteful to remand and invite a new round of litigation.”]; *Cortez v. Bootsma* (1994) 27 Cal.App.4th 935, 939 [Court of Appeal fixed amount of “reasonable attorney’s fees incurred on this appeal”]; *Stephens v. Coldwell Banker Commercial Group, Inc.* (1988) 199 Cal.App.3d 1394, 1406 [same], disapproved on a different point in *White v. Ulltramar, Inc.* (1999) 21 Cal.4th 563, 574, fn. 4; *Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 524-525 [same] ; Pearl, *supra*, §§ 12.5 [p.12-4], 12.13 [p. 12-9].) No appellate work is the subject of this appeal. (See fn. 4, *ante*.)

Moreover, we note that on this point the Fourth District stands alone.<sup>9</sup> The Ninth Circuit has never reiterated its 1973 reduced of view judicial discretion. And the Fourth District’s approach has never been adopted by our Supreme Court, which has never varied from emphasizing the deferential abuse of discretion standard enunciated in *Serrano v. Priest* (1977) 20 Cal.3d 25, 49.<sup>10</sup> (See, e.g., *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989 (*Chavez*); *Graham, supra*, 34 Cal.4th 553, 579; *Ketchum,*

---

fee application proceedings in the District Court.” (*Perkins v. Standard Oil Co. of California, supra*, 474 F.2d 549, 551.) The Ninth Circuit began its analysis with the following: “This is not the usual situation, where an appellate court is faced with an attack on the trial court’s allowance of attorneys’ fees for services at trial. Here we must review the District Court’s appraisal of the worth of services rendered in another court, the Supreme Court. Accordingly, we believe the District Court’s determination, at least with respect to the necessity for and the quality and value of the work, need not be accorded the deference that would be given to decisions which involved matters within the ‘first-hand’ knowledge of the District Court and which come within its special competence.” (*Id.* at p. 552.)

<sup>9</sup> The Fourth District could have cited its decision in *Mann v. Quality Old Time Service, Inc., supra*, 139 Cal.App.4th 328, 346, where it noted, “Here, the trial judge did not preside over the underlying litigation and did not have firsthand knowledge of the work . . . .”

<sup>10</sup> Except for instances of de novo review being given to purely legal issues of entitlement under section 1021.5. (See *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, 1025-1026 and authorities cited.)

*supra*, 24 Cal.4th 1124, 1132; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*); *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 752 [“We have held, and we remained convinced, that an ‘ ‘experienced trial court is the best judge of professional services . . . ’ ’”]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294-1295 (*Riles*); see Pearl, *supra*, § 16.23, p. 16-13 [“The amount of fees awarded by the trial court is subject to a very deferential standard of review.”]; *Arrieta v. Mahon* (1982) 31 Cal.3d 381, 393-394.) This court has consistently applied that standard. (E.g., *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1004; *Karuk, supra*, 183 Cal.App.4th 330, 363; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259; *In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1052 [“Our review of the amount of attorney fees is deferential”]; *Children’s Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 777 (*Bonta*); *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 832; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 25-26; *Citizens Against Rent Control v. Berkeley* (1986) 181 Cal.App.3d 213, 233; *Rich v. City of Benicia* (1979) 98 Cal.App.3d 428, 438.) Change at this point must come from our Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

But even if we were to embrace this seemingly optional rule (“we *may* exercise ‘somewhat more latitude’ ”), it would not benefit plaintiffs—not in light of Judge Kahn’s concerns.

As will be seen, a crucial issue on this appeal is Judge Kahn’s decision to fix Ms. Miles’ hourly rate of compensation at \$200 based on his knowledge of what constitutes “the fair market rate for such services” “for private attorneys in the community,” that is “ ‘ ‘attorneys of like skill in the area.’ ’ ” (*Ketchum, supra*, 24 Cal.4th 1122, 1132-1133; see *PLCM Group, supra*, 22 Cal.4th 1084, 1095 [“The reasonable hourly rate is that prevailing in the community for similar work.”].) Making such a determination is obviously fact- and situation-specific, looking to familiarity with local practices and billing rates. (See Pearl, *supra*, §§ 9.106-9.109, pp. 9-90–9.94.) It would be a brave (or perhaps foolhardy) reviewing court which—possibly from a

considerable geographic remove—would claim greater knowledge of such parochial conditions and issues.

Moreover, it would appear that Judge Kahn had just as much knowledge of local conditions as would Judge Busch. Judge Kahn has been on the bench since 2001, after almost 17 years of private practice in San Francisco. His knowledge of the practical realities of civil litigation must be considerable.

Finally, we note that plaintiffs never even intimated to Judge Kahn that only Judge Busch was sufficiently knowledgeable about the prior proceedings to evaluate the merits of either of the pending supplemental fee motions. In other words, plaintiffs submitted both of their motions to Judge Kahn's discretion.

In light of the foregoing, we conclude there is no basis for not reviewing the fee award according to the traditional deferential abuse of discretion standard.

Next, plaintiffs assert that because their request for a statement of decision was denied, “the trial court’s order is not entitled to a presumption that it is supported on matters where the record is silent.” But Mr. Pearl, in his treatise, says only that “the trial court should articulate its findings on the elements of the fee award,” but “[a] formal statement of decision is not required.” (Pearl, *supra*, § 11.65, p. 11-68.) Authority for the latter proposition is easy to find. (See, e.g., *Ketchum, supra*, 24 Cal.4th 1122, 1140 [trial court “was not required to issue a statement of decision with regard to the fee award”]; *Riles, supra*, 43 Cal.3d 1281, 1294 [“we have discovered no case requiring a statement of decision on a motion for attorney fees”]; *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 58-61 and authorities cited.) We are also puzzled by plaintiffs’ citation to *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, because the Court of Appeal there did not question this principle. (*Id.* at p. 874 [“The trial court was not required to issue a statement of decision with regard to the fee award,” citing *Ketchum*]; accord, *Pellegrino v. Robert Half Internat., Inc.* (2010) 182 Cal.App.4th 278, 289.) In any event, Judge Kahn took the trouble in his written order which, not incidentally, he himself prepared to explain “a brief summary of [the] rulings” made at the hearing. That order, and the transcript of the hearing, are more

than adequate to allow informed review of Judge Kahn’s reasoning. (See *Riles, supra*, at p. 1295; *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1348-1349.)

The final preliminary matter is a matter raised by a pair of statements by plaintiffs. On the cover of each of the eight volumes of their appellants’ appendix is “Record in Case No. 129910 Incorporated by Reference.” And in a footnote in one of their opening brief is this: “Appellant submits with this brief Appellant’s Appendix which incorporates by reference: 1) the Clerk’s Transcript in Case No. A129910, *Rob Anderson v. City and County of San Francisco*, transmitted to the Court on December 20, 2010; 2) the . . . Administrative Record lodged with the Court in the same case on February 17, 2011; and 3) Appellant’s Opening Brief filed July 5, 2011; Appellant’s Reply Brief filed June 1, 2012; and Unpublished Opinion filed January 14, 2013.” )~

The Rules of Court do make allowance for incorporation by reference in certain situations, one of which is a prior appeal in the same case. (Cal. Rules of Court, rule 8.147.) But the party wanting the incorporation must specify the parts of the prior record on appeal “in its designation of the record,” more particularly, “in a separate section at the end of the designation of the record.” (*Id.*, rule 8.147(b)(1)(A).) Plaintiff s failed to do so in their designation. Moreover, incorporation would not extend to an administrative record (see *id.*, rule 8.123(e) [“When the remittitur issues the reviewing court must return any administrative record to the superior court or, if the record was lodged by a party . . . , to the lodging party.”]), which in any event would seem to have scant relevance to this appeal from a fee order. Finally, the administrative record was lodged with this court until after Judge Kahn made both of his orders, so it certainly can have played no part in his decisions and therefore cannot be used to overturn those decisions. (See *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 442 [“ ‘ ‘an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration” ’ ’].)

However, we will treat plaintiffs’ imperfect attempt to incorporate as a request to take judicial notice of the clerk’s transcript and our opinion in the prior appeal. (Evid.

Code, §§ 451, subd. (a), 452, subd. (a), 459, subd. (a).) No other part of plaintiffs' incorporation designation appears relevant to a material issue on this appeal. (See *Ketchum, supra*, 24 Cal.4th 1122, 1135, fn. 1.) However, it appears that the only part of the clerk's transcript relevant here would be materials relating to the City's third motion to dissolve the injunction. The record on this appeal does not include the City's papers, but it does include plaintiff's opposing papers, a reporter's transcript of the hearing conducted by Judge Busch, and Judge Busch's eventual order. This we believe is sufficient to delineate the sole issue concerning that motion. Accordingly, we take judicial notice only of our opinion in *Anderson v. City and County of San Francisco, supra*, A129910.

We now turn to the merits.

### **The First Award (A135660)**

#### **The Hourly Rate**

Although in their brief plaintiffs initially challenge the denial of compensation for opposing the City's third motion to dissolve the injunction, it is more appropriate to consider first the issue of Ms. Miles's hourly compensation, because determining the lodestar is where "assessing attorney fees begins." (*Ketchum, supra*, 24 Cal.4th 1122, 1131; *id.* at p. 1133 ["We approve[] the calculation of attorney fees beginning with a lodestar"]; accord, *PLCM Group, supra*, 22 Cal.4th 1084, 1095 ["the fee setting inquiry in California ordinarily begins with the lodestar"].)

To begin with the obvious certainties, "absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the hours reasonably spent" in litigating an action. (*Ketchum, supra*, 24 Cal.4th 1122, 1133, italics added.) On the other hand, "[a] plaintiff is not automatically entitled to all hours claimed in the fee request." (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1243-1245.) As our Supreme Court sensibly explained: "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny it altogether. 'If . . . the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be

encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place . . . .’ ” (*Serrano v. Priest* (1982) 32 Cal.3d 621, 635, fn. omitted.) The point is sufficiently important that the court periodically reiterates it. (*Chavez, supra*, 47 Cal.4th 970, 990; *Ketchum, supra*, 24 Cal.4th 1122, 1137.)

No one has suggested that there is anything in this record pointing to misconduct by Ms. Miles. She sought \$400 per hour, but, as the City cogently notes, “Ms. Miles has no actual market rate that she has actually charged to any paying client.” Judge Kahn’s quoted remarks establish that he was clearly of the opinion that Ms. Miles had achieved a notable success against a powerful opponent, a success that was all the more impressive because it was achieved by a solo practitioner who began her representation of plaintiffs barely a year out of law school. (See fn. 5, *ante*.) But this atypical success meant that she could not expect to be compensated at the rates of more experienced attorneys who achieved a like success. (See *Ketchum, supra*, 24 Cal.4th 1122, 1139 [trial court can consider “the attorney’s reputation”].)

Moreover, the undeniable fact of Ms. Miles’s relative lack of experience clearly figured in Judge Kahn’s belief that her relative lack of “knowledge and experience” produced inefficiency because she was “learning on the job through this case.” Or, as Judge Kahn put it, he factored that “in . . . the hourly rate.” It was, in short, all within Judge Kahn’s “broad discretion to adjust the fee downward,” (*Ketchum, supra*, at p. 1138.) a downward adjustment based on Judge Kahn’s personal experience, and his thorough, and thoughtful, analysis.

That personal experience was particularly important here because neither side provided compensation examples or information about attorneys similarly situated. As Judge Kahn put it, “Nobody gave me anybody who looks like Ms. Miles.”<sup>11</sup> In sum,

---

<sup>11</sup> Although the Deputy City Attorney handling the fee motion came awfully close: she advised the court that in one CEQA action against the City, opposing counsel “sought market rate attorney fees for an associate with 9 years of relevant CEQA litigation experience at \$240 per hour.”

Judge Kahn was not, as plaintiffs insist, “contravene[ing] the uncontradicted evidence,” but was acting on his own estimate of what would be a “reasonable rate[] charged by . . . comparable attorneys for comparable work.” (*Bonta, supra*, 97 Cal.App.4th 740, 783; see *Ketchum, supra*, at p. 1132 [“the lodestar is the basic fee for comparable legal services in the community”]; *PCLM Group, supra*, 22 Cal.4th 1084, 1095 [“The reasonable hourly rate is that prevailing in the community for similar work”].)

At oral argument, counsel for plaintiffs focused much of his argument on the few comments by Judge Kahn referring to Ms. Miles as a “sole practitioner,” and from there to argue in essence that Judge Kahn discounted her hourly rate based on that factor, to her prejudice. Such focus was misplaced. Considered in its entirety, the record demonstrates that Judge Kahn set the hourly rate on the basis of general relevant factors, not simply on Miles being a sole practitioner. Indeed that such factor alone did not dictate Judge Kahn’s conclusion is best shown by the fact that plaintiff’s counsel Richard Pearl is himself a sole practitioner—a sole practitioner who was awarded \$650 per hour, the full amount requested, for every hour claimed.

The question is whether Judge Kahn’s decision was “ ‘ ‘ ‘clearly wrong’ ’ ’ ” (*Ketchum supra*, 24 Cal.4th 1122, 1132) and thus an abuse of his broad discretion? Not to this Court of Appeal.

### **The Third Motion**

The criteria for determining whether a party qualifies as a “successful party” for purposes of fees under section 1021.5 are well-settled (even if their application proves infinitely vexing in application): “[W]e have taken a broad, pragmatic view of what constitutes a ‘successful party.’ ‘Our prior cases uniformly explain that an attorney fee award may be justified even when the plaintiff’s legal action does not result in a favorable final judgment. [Citations.] It is also clear that the procedural device by which a plaintiff seeks to enforce an important right is not determinative of his or her entitlement to attorney fees under section 1021.5. [Citation.] Similarly, a section 1021.5 award is not necessarily barred merely because the plaintiff won the case on a preliminary issue. [Citations.] In determining whether a plaintiff is a successful party for

purposes of section 1021.5, “[t]he critical fact is the impact of the action, not the manner of its resolution.” [Citation.] [¶] The trial court in its discretion “must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award” under section 1021.5. [Citation.]” ’ ’ ” (*Graham, supra*, 34 Cal.4th 553, 565-566; quoting *Riles, supra*, 43 Cal.3d 1281, 1290-1291.) We have previously quoted Mr. Pearl’s treatise for the proposition that “ ‘ “Entitlement to fees under [section] 1021.5 is based on the impact of the case as a whole.” ’ ’ ” (*Karuk, supra*, 183 Cal.App.4th 330, 363, quoting what is now Pearl, *supra*, § 3.30, p. 3-25.)

However, these principles do not truly apply here. This is not an instance where an attorney is seeking attorney’s fees for a case now completed and won, but was sent away empty handed. Ms. Miles has already received more than \$400,000 for her work in making the City comply with CEQA, and would receive the \$178,000 the City is also willing to pay pursuant to the two orders being reviewed here. And for all that the record shows, there may be an additional award for her work on the previous appeal. (See fn. 4, *ante*.)

But if Ms. Miles was not working to achieve victory, she was certainly working to preserve it. Such efforts in “ancillary proceedings” are ordinarily treated as compensable. (E.g., *Bonta, supra*, 97 Cal.App.4th 740, 777-778; Pearl, *supra*, §§ 9.13-9.14, p. 9-21 [“Work that is believed necessary to protect a judgment or decree also is compensable”], 9.24, p. 9-29 [“Time reasonably spent enforcing or monitoring prior decree is compensable”].) On the other hand, “ ‘under state law . . . a reduced fee award is appropriate when a claimant achieves only limited success’ ” (*Chavez, supra*, 47 Cal.4th 970, 989). Moreover, as already shown, unless the attorney’s efforts are “reasonably spent,” compensation is not automatic. (*Ketchum, supra*, 24 Cal.4th 1122, 1133; *Rey v. Madera Unified School Dist., supra*, 203 Cal.App.4th 1223, 1243-1244.)<sup>12</sup>

---

<sup>12</sup> We assume that, by abandoning her claim for opposing the Hayes petition, plaintiffs are implicitly accepting Judge Kahn’s determination that the time presenting that opposition was not “reasonably spent.”

So, were plaintiffs the prevailing parties in connection with the City's third attempt to dissolve the injunction? Judge Kahn concluded they were not, a decision we review for abuse of discretion. (*Roden v. AmerisourceBergen* (2010) 186 Cal.App.4th 620, 662, 664.)

As noted, while Judge Busch rejected the City's argument that the injunction should, by reason of the certification alone, be dissolved, he did modify the injunction to permit work on certain specified features of the Bicycle Plan to proceed pending a final determination of the validity of the EIR. And, because "the parties are unable or unwilling to reach an agreement on a schedule to test the City's return [to the writ of mandate] expeditiously," an evidently exasperated Judge Busch established briefing deadlines and scheduled a hearing for June 2010. In sum, while the City did not succeed in getting the injunction dissolved, it did get the injunction lifted in part. The decision was "good news and bad news" for each side. (*Roden v. AmerisourceBergen, supra*, 186 Cal.App.4th at p. 664.)

In these circumstances it was entirely apt for Judge Kahn to characterize plaintiffs' opposition as securing only an "interim" success, merely causing a pause of nine months before the certified EIR was upheld and the City allowed to proceed with the entirety of what Judge Busch termed "a complex far-reaching plan to alter streets in San Francisco." (*Anderson v. City and County of San Francisco, supra*, A129910 at \* 2.) A " 'practical and realistic assessment' " of plaintiffs' opposition must lead us to conclude that it brought no " 'genuine relief' " or significant benefit to the public, meaning plaintiffs did not qualify as prevailing parties for purposes of section 1021.5. (*Center for Biological Diversity v. California Fish & Game Com.* (2011) 195 Cal.App.4th 128, 136, 138, quoting *Karuk, supra*, 183 Cal.App.4th 330, 363, 366.)

We see no basis for overturning Judge Kahn's conclusion on this point.

### **The Second Award (A138856)**

Plaintiffs' contentions against the second order mirror those against the first, thus considerably obviating the need for redundancy.

Nothing brought before Judge Kahn on the second fee request showed that Ms. Miles's personal credentials had significantly changed. By the time he ruled on this request, he now had personal knowledge of Ms. Miles's lawyering skills, so the argument made against his unfamiliarity is no longer applicable. Thus, Ms. Miles must now concede Judge Kahn's second decision is entitled to the full measure of our deference. We cannot conclude that the passage of barely a year between the two rulings required Judge Kahn to revise his figure for the reasonable hourly value of Ms. Miles' services that she had performed in 2010. We again conclude that he did not abuse his discretion in fixing that value at \$200.

We have already noted the Supreme Court's frequent reiteration of the trial court's power to reduce "unreasonably inflated" fee requests. (*Chavez, supra*, 47 Cal.4th 970, 990; *Ketchum, supra*, 24 Cal.4th 1122, 1137; *Serrano v. Priest, supra*, 32 Cal.3d 621, 635.) Put another way, Judge Kahn's comments make it absolutely clear that he still found inefficiency in that the amount of time claimed was excessive, both in an absolute sense and in light of the smaller liability her clients might incur. Under either of these possibilities, he was concluding that Ms. Miles's efforts were not "reasonably spent." (*Ketchum, supra*, 24 Cal.4th 1122, 1132-1133; *Rey v. Madera Unified School Dist., supra*, 203 Cal.App.4th 1223, 1243-1244.) Necessarily, they did not deserve a multiplier. This too was no abuse of his discretion.

#### **DISPOSITION**

The orders are affirmed.

---

Richman, J.

We concur:

---

Kline, P.J.

---

Brick, J.\*

---

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.