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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

EXOTIC FELINE BREEDING COMPOUND,
INC.,

Plaintiff and Appellant.

v.

DEPARTMENT OF FISH & WILDLIFE et al.,

Defendants and Appellants,

F070449

(Super. Ct. No. S-1500-CV-280453)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. J. Eric Bradshaw, Judge.

Kamala D. Harris, Attorney General, Robert W. Byrne, Assistant Attorney General, Randy L. Barrow and Andrea Kendrick, Deputy Attorneys General, for Defendants and Appellants.

Seyfarth Shaw, James M. Harris and Carrie P. Price for Plaintiff and Appellant.

Dan Westfall and Kele Younger for The California Sanctuary Association as Amici Curiae on behalf of Plaintiff and Appellant.

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The California Department of Fish and Wildlife (the Department) appeals a \$134,417 award of attorney fees made under Code of Civil Procedure section 1021.5 (section 1021.5). In the underlying lawsuit, a breeding zoo sought and obtained a writ of mandate directing the Department (1) to vacate its denial of the breeding zoo's request for a waiver of the permit requirement for the possession and transportation of restricted species and (2) to reconsider the waiver request in good faith and determine whether the breeding zoo met the criteria set forth in Fish and Game Code section 2150, subdivision (c).¹

After the writ of mandate was issued, the trial court granted the breeding zoo's motion for attorney fees. The court found the criteria in section 1021.5 had been satisfied, made a lodestar calculation based on reasonable hours multiplied by reasonable hourly billing rates, and adjusted the lodestar amount upward by 15 percent because of the results achieved and the moderate complexity of the case.

The Department contends section 1021.5's criteria for awarding attorney fees was not met because (1) the litigation did not enforce an important right affecting the public interest, (2) a significant benefit was not conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement did not make such an award appropriate. In addition, both sides contend the trial court erred in determining the amount of reasonable attorney fees.

We conclude that the superior court did not abuse its discretion in (1) determining that the statutory criteria in section 1021.5 were satisfied or (2) applying the lodestar method and awarding \$134,417 in attorney fees.

Therefore, we affirm the order awarding attorney fees.

¹ Except for the references to section 1021.5, all unlabeled statutory references are to the Fish and Game Code.

FACTS

The Parties

Plaintiff Exotic Feline Breeding Compound, Inc. is a California nonprofit corporation located in Rosamond, California. It was founded by Joseph W. Maynard in 1977. Plaintiff operates the Feline Conservation Center, which it characterizes as a breeding zoo and research facility that houses over 70 wild cats, including 38 specimens of 11 endangered species and 14 specimens of four threatened species. The species housed by plaintiff include jaguar, clouded leopard, Amur leopard, fishing cat, Pallas' cat, Malayan tiger and sand cat. Maynard contends plaintiff has never possessed a “detrimental” species, as that term is defined in the restricted species law.²

Plaintiff asserts it is an international leader in cat husbandry and species preservation efforts, and has been a contributing member of the International Species Inventory System since 1981. Plaintiff also asserts that it participates in plans and projects with other zoos and facilities throughout the world. These projects are designed to increase populations of endangered animals while preserving genetic diversity by pairing unrelated animals for breeding purposes. Participants in these plans, such as the San Diego Zoo or zoos in Moscow, London and Singapore, frequently transfer animals to each other for breeding or exhibition purposes.

Since 2005, plaintiff has been accredited by the Zoological Association of America (ZAA), a nonprofit organization that sets accreditation standards in husbandry, animal care, safety and ethics.

² Under section 671, subdivision (b) of title 14 of the California Code of Regulations, species posing a threat to native wildlife, the agriculture interests of the state, or to public health and safety are termed “detrimental animals.” The regulation designates detrimental animals with the letter “D.” (*Ibid.*) In the family *Felidae* of the order *Carnivora*, only cheetahs (*Acinonyx jubatus*) are designated with a “D.” (Id. at subd. (c)(2)(K).)

Permit Requirements

California statute authorizes the Department to issue written permits to import, possess or transport within the state any wild animal designated as a restricted species, upon a determination that no detriment will be caused to agriculture, native wildlife, the public health and safety, or the welfare of the animal. (§ 2150, subd. (a)(1).) The statute exempts zoos accredited by the American Zoo and Aquarium Association (AZA) from the permit requirements and authorizes unaccredited organizations to apply for permit waivers. (§ 2150, subd. (c).) The Department may “grant or deny the request for a waiver for *justified reasons.*” (*Ibid.*, italics added.)

Waiver Application

In October 2011, plaintiff applied for a waiver of certain permit requirements. Specifically, plaintiff requested a waiver of the requirement to renew its resident restricted species exhibiting permit and its restricted species breeding permit. After submitting the application, Maynard engaged in discussions with representatives of the Department and submitted additional materials, including a comparison of AZA and ZAA accreditation standards and other materials supporting plaintiff’s contention that it was a bona fide zoo.

The Department rejected the waiver application and notified plaintiff of its decision by letter dated April 24, 2012. The Department offered the following explanation of its decision:

“Section 2150(c) gives the Department the discretion to grant or deny a request for a waiver for ‘justified reasons.’ However, currently there are no standards in law to guide the Department in determining when there are justified reasons to grant a waiver request. Until the Legislature or Commission adopts such standards, the Department is not approving any waiver requests. Therefore, the Department is denying your request for a waiver exempting you from permitting requirements pursuant to ... Section 2116 et seq.”

The letter also advised plaintiff of its right to appeal the denial of its request by filing a written appeal with the Fish and Game Commission³ (the Commission) within 30 days.

Plaintiff filed an appeal with the Commission. The Commission suggested that plaintiff withdraw its appeal pending the outcome of another matter, which the Commission considered related because it involved a comparison of accreditation under ZAA and AZA. As a result, plaintiff withdrew its appeal without prejudice in July 2012.

After the appeal in the other matter had been denied, plaintiff reinstated its appeal to the commission. The Department acknowledged the reinstatement, but asserted the appeal would not stay enforcement proceedings. The Department demanded compliance with the permit requirements and threatened a criminal enforcement action.

Further discussions were held and plaintiff submitted additional evidence to support its position that (1) the Legislature did not intend the wild animal permitting regulations to apply to professionally managed zoos; (2) plaintiff's accreditation by ZAA demonstrated its operations were as professional as those accredited by AZA; and (3) plaintiff's participation in AZA's species survival plans confirmed that its operations complied with the public safety and animal welfare requirements AZA used for accreditation.

The Department sent plaintiff a letter dated September 17, 2013, reaffirming its policy of not granting waivers and stating it would take enforcement action against

³ The California Constitution provides for a Fish and Game Commission with five members appointed by the Governor and approved by the Senate. (Cal. Const., art. IV, § 20, subd. (b).) "The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit." (Cal. Const., art. IV, § 20, subd. (b).) The relationship between the Commission and the Department includes the Department (1) implementing and enforcing the regulations promulgated by the Commission and (2) providing biological data and expertise to inform the Commission's decision making process.

plaintiff if it did not submit an application for a permit, with all required materials including \$2,773.15 in fees, by October 4, 2013.

PROCEEDINGS

On October 7, 2013, plaintiff filed a verified petition for writ of mandate, alleging that its appeal before the Commission would not be heard in time to avoid the enforcement action threatened by the Department, which might include confiscation and euthanization of its cats. Plaintiff also alleged the Department had failed to perform its mandatory duty to consider plaintiff's waiver request and, instead, followed an illegal policy of denying all waiver requests without regard to whether "justified reasons" had been shown.

In February 2014, after the parties had filed briefs and supporting papers, the trial court held a hearing on the writ. The court issued a minute order granting the petition and issuing a writ directing the Department to (1) vacate its previous denial of plaintiff's waiver request, (2) reconsider the request in good faith and determine whether plaintiff met the statutory criteria for a waiver, and (3) refrain from taking any action against petitioner based on the absence of a current permit. The order direct plaintiff to prepare a proposed order and proposed peremptory writ of mandate.

Later in February, counsel for plaintiff lodged its proposed order and proposed writ accompanied by a copy of the Department's objections to the proposals and its suggested alternatives.

In March 2014, the trial court signed and filed plaintiff's proposed order and directed the peremptory writ to be issued in the form proposed by plaintiff. The order also stated that court costs and fees may be claimed and awarded in accordance with applicable law and court rules. Pursuant to the order, the clerk of court issued the peremptory writ of mandate proposed by plaintiff.

In May 2014, plaintiff filed a motion for award of attorney fees, alleging the requirements of section 1021.5 had been satisfied. Plaintiff argued that the fees awarded

should be at least \$350,000, asserting that attorneys from the Century City office of the law firm of Seyfarth Shaw LLP had spent over 700 hours working on the case. Scott Pearson, a partner of the firm, submitted a declaration stating Seyfarth Shaw LLP had represented plaintiff on a pro bono basis. His declaration listed the names of eight attorneys who had worked on the case, the number of hours each attorney spent on the case, their hourly billing rates, and a lodestar figure obtained by multiplying the attorney's billing rate by the number of hours the attorney had spent on the case.

The Department's opposition to the attorney fees motion argued plaintiff had failed to meet at least three criteria in section 1021.5 and, alternatively, the amount of fees requested was excessive and unreasonable. As to billing rates, the Department asserted that plaintiff failed to present sufficient evidence to establish that the rates requested were reasonable, pointing out that plaintiff had not shown it made a good faith effort to find local counsel. The Department also argued the case was not complex or difficult and, therefore, no multiplier should be applied to any lodestar amount that the court might award.

In July 2014, the trial court entered a minute order granting the motion for attorney fees under section 1021.5. The order addressed the statutory criteria for an award, made the findings necessary to compute a lodestar figure, and adjusted the lodestar figure upward by 15 percent. The court found (1) the reasonable and necessary amount of time for the litigation was 237.1 hours by Scott Pearson and 167.9 hours by Joseph Escarez; (2) their reasonable hourly billing rates in the Bakersfield geographical area were \$313 and \$225,⁴ respectively; and (3) the resulting lodestar amount was

⁴ Pearson's first declaration stated his hourly billing rates were \$650 in 2013 and \$670 in 2014 and Escarez's hourly billing rates were \$435 in 2013 and \$445 in 2014. Pearson's hourly rate at his prior firm, which he left in August 2012, was \$750. The hourly rates adopted by the court were suggested by Pearson's supplemental declaration, which derived the partner and associate rates from information about Bakersfield billing rates presented in the declarations of Steven M. Torigiani, a member of a Bakersfield law

\$116,884. The order referred to the success achieved and the moderate level of complexity of the case as a basis for adjusting the lodestar figure upward to an award of \$134,417.

In September 2014, the Department filed a notice of appeal. In November 2014, plaintiff filed a notice of cross-appeal.

DISCUSSION

I. MOTION FOR ATTORNEY FEES

A. Overview of Section 1021.5

California's private attorney general doctrine is designed to compensate "all litigants and attorneys who step forward to engage in public interest litigation when there are insufficient financial incentives to justify the litigation in economic terms."

(*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1211 (*Whitley*)). Awards of attorney fees under the doctrine encourage private lawsuits that enforce important public policies. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

Section 1021.5 provides in relevant 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."

This language can be divided into six elements by stating the trial court is authorized to award "attorney fees to (1) a successful party in any action (2) that has resulted in the enforcement of an important right affecting the public interest if (3) a

firm since 1993, and Bernard C. Barmann, an attorney who had been practicing in Bakersfield for more than three years.

significant benefit has been conferred on the general public or a large class of persons, (4) private enforcement is necessary because no public entity or official pursued enforcement or litigation, (5) the financial burden of private enforcement is such as to make a fee award appropriate, and (6) in the interests of justice the fees should not be paid out of the recovery.” (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 390, fn. omitted (*Robinson*); cf. *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, 1026-1027 [statutory text organized into three factors]; 1 Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2016) § 3.37, p. 3-29 [“successful party” must satisfy four statutory criteria].)

The Legislature linked the criteria in section 1021.5 with the word “and,” which has caused courts to conclude each criterion must be satisfied before a fee award is appropriate. (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637, 648.) Consequently, the Department can win this appeal and overturn the fee award simply by demonstrating that one of the enumerated criteria was not satisfied.

B. Standard of Review

The standard of review normally applied to a superior court’s ruling on a motion for attorney fees under section 1021.5 is abuse of discretion. (*Whitley, supra*, 50 Cal.4th at p. 1213.) De novo review, however, is warranted when the determination of whether the statutory criteria have been satisfied in a particular set of circumstances amounts to statutory construction and a question of law. (*Ibid.*) In other words, in some circumstances, whether a statutory criterion was satisfied presents a mixed question of law and fact and, if factual questions predominate, appellate courts apply the deferential abuse of discretion standard. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) In other circumstances, the material facts might be largely undisputed and,

therefore, the question is treated as one of law subject to independent review on appeal. (*Id.* at pp. 1175-1176.)

In *Robinson, supra*, 202 Cal.App.4th 382, this court explained that applying the criteria of section 1021.5 often involves questions of law and, consequently, a two-step approach to appellate review may be useful in some cases. (*Robinson, supra*, at p. 391.) The first step involves a determination “whether the superior court applied the proper legal standards in reaching its determination.” (*Ibid.*) If the proper legal standards were applied, the appellate court takes the second step and determines “whether the result was within the range of the superior court’s discretion—that is, whether there was a reasonable basis for the decision. [Citation.]” (*Ibid.*)

II. APPLICATION OF STATUTORY CRITERIA

A. Successful Party

Determining whether a party is “successful” for purposes of section 1021.5 requires an analysis of the circumstances surrounding the litigation and a pragmatic assessment of the gains achieved by a particular action. (*Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th 488, 493 (*POW*).)

In this case, plaintiff obtained (1) an order granting its petition for peremptory writ of mandate and (2) a peremptory writ of mandate directing the Department to (a) vacate its denial of plaintiff’s waiver request; (b) reconsider the waiver request in good faith and determine whether plaintiff met the criteria for waiver set forth in section 2150; and (c) refrain from taking action against plaintiff until its decision to grant or deny the waiver request became final. In addition, a “WHEREAS” clause of the writ included a finding that the Department’s “policy of summarily denying all waiver requests is an illegal underground regulation.”⁵

⁵ An “underground regulation” has been described as a rule put into use by a government agency without complying with the Administrative Procedures Act (APA), Government Code section 11340 et seq. (See *Sharon S. v. Superior Court* (2003) 31

Here, plaintiff obtained the relief it sought in its petition. Accordingly, plaintiff has shown the existence of the threshold requirement for a fee award under section 1021.5—namely, that it was “a successful party” for purposes of section 1021.5. (*POW, supra*, 130 Cal.App.4th at pp. 493-494 [plaintiff obtained a writ of mandate directing county to set aside its approval of a project].)

B. Important Right Affecting the Public Interest

In *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917 (*Woodland Hills*), the California Supreme Court stated that both constitutional and statutory rights are capable of qualifying as “important” for purposes of section 1021.5, but not all statutory rights are important. The court indicated that section 1021.5 “directs the judiciary to exercise judgment in attempting to ascertain the ‘strength’ or ‘societal importance’ of the right involved.” (*Woodland Hills, supra*, at p. 935.) The strength or societal importance of a particular right generally is determined by realistically assessing the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. (*Id.* at p. 936.)

1. *Fundamental Legislative Goals*

Courts seeking to identify the relevant legislative goal typically begin by inquiring whether the Legislature made any explicit findings and declarations that are relevant to the particular statutory right in question. (E.g., *Robinson, supra*, 202 Cal.App.4th 382.) In this case, the relevant statutory rights involved are found in (1) the provisions of the Fish and Game Code relating to wild animals and (2) the provisions of the APA that govern agency rulemaking.

Cal.4th 417, 449.) Often, only the agency knows the rule exists until it is applied to a member of the public. (*Ibid.*) Unless that application is made public, the rule will remain “underground” as to the rest of the public.

The chapter in the Fish and Game Code that addresses the importation, transportation and sheltering of restricted live wild animals includes explicit findings and a declaration of legislative intent. Section 2116.5 provides in part:

“It is the intention of the Legislature that the importation, transportation, and possession of wild animals shall be regulated to protect the health and welfare of wild animals captured, imported, transported, or possessed, to reduce the depletion of wildlife populations, to protect the native wildlife and agricultural interests of this state against damage from the existence at large of certain wild animals, and to protect the public health and safety in this state.”

Thus, the Legislature has recognized that the interests of the Californians include (1) the protection of the health and welfare of wild animals, (2) the protection of native wildlife, (3) the protection of agriculture, and (4) the protection of public health and safety. Article 2 of division 3, chapter 2 of the Fish and Game Code addresses permits and contains section 2150, which includes the waiver provision enforced by plaintiff. Neither the article nor the section contain explicit legislative findings or declarations of legislative intent. Therefore, our inquiry into the fundamental legislative goals of the relevant chapter of the Fish and Game Code is based on section 2116.5.

The APA includes a provision stating its purpose is to “establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations.” (Gov. Code, § 11346, subd. (a).) One reason for the formal rulemaking procedures is to give those persons and entities affected by the regulation a voice in its creation, which may inform the agency about possible unintended consequences of the proposed regulation and may protect against bureaucratic tyranny. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568-569.) Thus, we conclude a fundamental legislative goal of the APA is to allow public participation in the rulemaking process, a goal that cannot be achieved when an agency adopts an underground regulation.

2. *Permits and Waiver Requests*

Section 2150, subdivision (a)(1) states that the Department may issue written permits to import, possess or transport certain wild animals “upon a determination that the animal is not detrimental or that no damage or detriment can be caused to agriculture, native wildlife, the public health or safety, or the welfare of the animal, as a result of the importation, transportation, or possession.” The information needed to make this determination is identified in subdivision (a)(2) of section 2150, which provides in part:

“Application forms shall be provided by the department and shall be designed to ascertain the applicant’s ability to properly care for the wild animal or animals the applicant seeks to import, transport, or possess. Proper care includes providing adequate food, shelter, and veterinary care, and other requirements the commission may designate.”

Section 2150 does not require a permit for each designated wild animal that might be transported or possessed within California. A categorical exemption from the permit requirement is provided to any zoo that has been accredited by AZA. (§ 2150, subd. (c).) In addition, any unaccredited California organization (such as plaintiff) “may apply to the department for a waiver of specified permit requirements of this chapter. The department may grant or deny the request for a waiver for justified reasons.” (§ 2150, subd. (c).) The Legislature regarded waiver applications and the requirement for “justified reasons” of sufficient importance to provide applicants the right to appeal the denial of an application to the Commission. (§ 2150, subd. (c); see § 30 [commission defined].)

3. *The Department’s Argument Regarding Public Interest*

Initially, the Department contends that plaintiff’s action did not affect a public interest because the trial court’s order was limited to the parties before the court and written trial court rulings have no precedential value.

We reject this contention for two reasons. First, the trial court’s writ expressly addressed the Department’s policy of summarily denying all waiver applications and found it “is an illegal underground regulation.” This finding is not limited to the facts

and circumstances of plaintiff's case and, therefore, has implications beyond this case. Those implications can be categorized as specific deterrence and general deterrence. Specific deterrence relates to how the Department processes other waiver applications pertaining to permits for restricted species. General deterrence relates to how the Department and other agencies conduct themselves in similar situations and whether the ruling would deter reliance on underground regulations in those situations. The Department's contention views the range of impacts of the trial court's decision too narrowly. (See 1 Pearl, Cal. Attorney Fee Awards, *supra*, § 3.40, p. 3-32 ["courts frequently reject attempts to characterize rights in their most narrow or personal light"].)

Second, the Department's contention about the limited impact upon its actions presents a factual question about how the Department has and will react to the trial court's decision. The Department's argument implies, but does not actually assert, that it has and will continue to summarily deny all waiver applications pursuant to its illegal underground regulation. In other words, the Department's argument about a limited impact implies the Department has continued its policy of summary denials. The flaw in the Department's argument is the lack of a citation to any evidence in the record that shows how the Department has or will react to the trial court's ruling. Our own review of the record has located no evidence showing how the Department has processed waiver applications since the trial court's ruling or intends to process them in the future. Because the Department is "the party with the best access to information"⁶ about how waiver applications are or will be processed, it should have presented that evidence to the trial court as part of its opposition to plaintiff's motion for attorney fees. By failing to do

⁶ *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 434. In *Oldham*, this court observed that sometimes facts become conspicuous by their omission, particularly when the attorneys for the party with the best access to those facts (1) has not provided them to the court and (2) is asking the court to adopt a position the merits of which cannot be evaluated without the missing facts.

so, the Department has not established the factual basis for its argument about limited impact as it relates to specific deterrence. (Cf. Civ. Code, §§ 3529 [presumption of performance of that which ought to have been done], 3548 [law has been obeyed].)

Therefore, we conclude the trial court did not err when it rejected the Department's view of the limited impact of the court's decision.

4. *Societal Importance*

The Department contends that its issuance of permits serves the fundamental legislative goals identified in section 2116.5 and referred to in section 2150, subdivision (a), but the portion of the statute creating an exemption and authorizing waivers of the permitting requirements does not achieve those fundamental goals.

Plaintiff counters this contention about the relationship between waivers and the fundamental legislative goals by referring to the findings made by the trial court when it granted the writ of mandate. In particular, the court found that the Department was demanding that plaintiff immediately anesthetize and microchip or tattoo all of its animals, which was at odds with plaintiff's practice of implanting microchips in animals only after they have been anesthetized for medically necessary reasons. The court found that plaintiff's compliance with the Department's demand "would risk the lives of cats including cats from endangered or threatened species." The court also found:

"The loss of even one such specimen from complications of anesthesia would have a significant and irreparable environmental impact which far outweighs the extremely limited benefit of implanting a microchip in a securely caged animal.⁷ Notably, the Department has rejected [plaintiff's] proposal for an alternative method of identification, despite the fact that it

⁷ This finding may be overstated because the adverse impact from losing a highly inbred cat would be less significant than the loss of a less inbred specimen. This overstatement does not taint the entirety of the finding. The welfare of an endangered or threatened species could be significantly affected when its gene pool is depleted by the loss of a cat with rare genes or when the number of individual cats remaining is so low that each specimen is important.

agreed to that method for at least one other facility which ha[d] not challenged the Department's wrongful conduct."

Based on these specific findings, we reject the Department's categorical assertion that a waiver of the permit requirements will not achieve any fundamental legislative goal. These findings show that a waiver of some permitting requirements would serve the legislative goal of protecting "the health and welfare of wild animals" (§ 2116.5) with a minimal negative impact on the other goals of protecting agriculture, native wildlife, and the health and safety of humans.

Therefore, we conclude the trial court did not abuse its discretion or commit legal error when it determined the right to have an application for the waiver of permit processed in the manner intended by the Legislature was important because of the role such waivers could play in achieving fundamental legislative goals. (See *Woodland Hills*, *supra*, 23 Cal.3d at p. 936.)

C. Significant Benefit to the Public

The trial court's July 25, 2014, minute order addressed the criterion of a significant benefit to the public by stating such benefits were conferred through (1) the protection of wildlife, (2) the public's access to protected wildlife, and (3) the protection of the public against arbitrary regulatory actions.

The Department argues there was no "significant benefit" for the same reasons that there was no "enforcement of an important right" for purposes of section 1021.5. In addition, the Department argues that the litigation did not confer benefits on the general public or a large class of persons. In the Department's view, the benefits conferred by the litigation were realized by plaintiff and no one else.

The Department disagrees with the trial court's determination that significant benefits were conferred upon the public through (1) the protection of wildlife, (2) the public's access to protected wildlife, and (3) the protection of the public against arbitrary regulatory actions. Despite this disagreement, the Department has not established *how*

the trial court abused its discretion in determining significant benefits were conferred upon the public in any of the three ways mentioned in the trial court's order. The remand of a matter to an agency for further action can confer a significant benefit to the public even if the ultimate decision of the agency is not affected. (See *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 235 [remand so sustained yield plan can be resubmitted to include omitted information will result in more accurate analysis of impacts of proposed logging on watershed, which is a significant benefit]; *POW, supra*, 130 Cal.App.4th at p. 496 [significant benefit conferred even if appellate opinion "had no more effect than to prompt County to alter for the better its methods of creating and managing its CEQA records]; see *Woodland Hills, supra*, 23 Cal.3d at p. 939 [effectuation of statutory policy may constitute a significant benefit].)

Based on this precedent and the trial court's determinations about the impact of its decision, we conclude the trial court did not abuse its discretion when it determined the litigation conferred a significant benefit upon the public.

D. Necessity

We have treated "the 'necessity' of private enforcement" as a separate criterion because the California Supreme Court has stated it is a separate issue that looks at the adequacy of public enforcement to vindicate the public rights in question. (*Whitley, supra*, 50 Cal.4th at pp. 1214-1215.) In other words, if public enforcement is not available, or sufficiently available, private enforcement is necessary. (*Robinson, supra*, 202 Cal.App.4th at p. 401.)

Here, the Attorney General's office represented the Department in this litigation and filed papers opposing plaintiff's interpretation of the waiver provision in section 2150, subdivision (c). This fact is sufficient evidentiary support for the trial court's implied finding that public enforcement of the waiver provision was not available,

particularly when there is no evidence in the record of any state agency, local governmental entity, or any public official pursuing a claim similar to plaintiff's. (1 Pearl, Cal. Attorney Fee Awards, *supra*, § 3.61, p. 3-59 [in action against governmental agencies, the need for private enforcement is clear].) Consequently, we conclude the "necessity" element of California's private attorney general doctrine was established in this case.

E. Financial Burden

Section 1021.5's reference to the "financial burden of private enforcement" requires courts to examine the financial burdens and incentives involved in bringing the lawsuit. (*Whitley, supra*, 50 Cal.4th at p. 1215.) This inquiry involves examining "the costs of the litigation [and] any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield." (*Ibid.*) This cost-benefit analysis seeks to determine whether the financial burden of the lawsuit was out of proportion to the plaintiffs' individual stake in the matter. (*Ibid.*) When the financial burden of the lawsuit is high and the recovery or cost savings is low, subsidizing the successful party's attorneys is appropriate. (*Id.* at p. 1214.)

1. *Cost-Benefit Analysis*

In *Whitley*, the California Supreme Court adopted a specific methodology for performing this cost-benefit analysis. (*Whitley, supra*, 50 Cal.4th at pp. 1215-1216, citing *Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 9-10.) The benefits of the litigation are determined by estimating the value of the case to plaintiffs at the time the vital litigation decisions were being made. (*Whitley, supra*, at p. 1215.) This involves estimating the monetary value of the benefits obtained and discounting that number by an estimate of the probability of success at the time the vital litigation decisions were made. (*Ibid.*) In contrast, the costs portion of the cost-benefit analysis is based on the *actual* costs of the litigation, which include attorney

fees, deposition costs, expert witness fees, and other expenses required to bring the case to fruition. (*Id.* at pp. 1215-1216.) The final step in the cost-benefit analysis is to compare the estimated value of the case against the actual costs and make a value judgment whether it is desirable to encourage litigation of that sort by providing a bounty. When the estimated value of the litigant’s own monetary reward exceeds by a substantial margin the actual costs of the litigation, a bounty is not appropriate. (*Id.* at p. 1216.)

2. *Expected Benefit of a Permit Waiver*

The Department contends plaintiff’s showing relating to the financial burden of the litigation was inadequate because it provided no evidence to substantiate its financial interest in the litigation so it could be compared to the value of the attorney time expended. In the trial court, plaintiff supported its motion for attorney fees by filing a reply that argued it was absurd for the Department to suggest plaintiff had a financial incentive to pursue the litigation for its own benefit. Plaintiff’s supported this argument by citing a July 12, 2013, letter from the Department demanding plaintiff submit permit applications along with fees of \$2,773.15.

We conclude the fee demand in the Department’s letters of July and September of 2013 provide a sufficient evidentiary basis for the trial court to estimate “the monetary value of the benefits obtained by the successful litigants” (*Whitley, supra*, 50 Cal.4th at p. 1215, quoting *Los Angeles Police Protective League v. City of Los Angeles, supra*, 188 Cal.App.3d at p. 9.) If plaintiff succeeded in this litigation and if its permit waiver application were granted, it would have benefited financially by not having to pay the permit fees.

The Department quotes Pearson’s declaration where he asserted, “This effectively is a bet-the-company case for [plaintiff].” Pearson provided no explanation for how losing the case and complying with the permitting requirements would have forced

plaintiff to close its operations. Consequently, we infer the trial court impliedly found Pearson's assertion was an overstatement—an inference that is consistent with the trial court's finding about the reasonable number of attorney hours spent on this litigation.

The second component of the benefits side of the cost-benefit equation requires the trial court to estimate “the probability of success at the time the vital litigation decisions were made” (*Whitley, supra*, 50 Cal.4th at p. 1215.) The trial court did not make an express finding about the probability of success, but the financial benefit of avoiding annual permit fees is so low that, even if we assume plaintiff had a 100 percent chance of success, the benefit side of the cost-benefit comparison remains less than \$3,000 annually, which is relatively small.

3. *Actual Costs*

The costs side of the cost-benefit analysis is based on the *actual* costs of the litigation, which include attorney fees, deposition costs, expert witness fees, and other expenses required to bring the case to fruition. (*Whitley, supra*, 50 Cal.4th at pp. 1215-1216.) Pearson's declaration about the amount of attorney time spent on the litigation provided the trial court with an adequate basis for evaluating the cost side of the equation. (See *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 777 [party seeking attorney fees has the burden of establishing that its litigation costs transcended its personal interests].)

Consequently, we conclude plaintiff presented sufficient evidence for the trial court to complete the cost-benefit analysis and impliedly find that the financial burden of private enforcement made an award of attorney fees under section 1021.5 appropriate.

F. Summary

We conclude the criteria set forth in section 1021.5 have been established in this case and, as a result, plaintiff was entitled to an award of attorney fees. The Department has not shown the trial court committed factual or legal error, or otherwise abused its

discretion, in determining that the statutory criteria had been satisfied. Accordingly, we proceed to the parties' arguments about the *amount* of the fees awarded.

III. AMOUNT OF REASONABLE ATTORNEY FEES

A. Overview of the Lodestar Method

1. *Basic Rules*

Determination of the amount of an award of attorney fees under section 1021.5 begins with the calculation of a lodestar figure. (*Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at p. 579.) The lodestar figure equals the hours reasonably expended by the attorney multiplied by that attorney's reasonable hourly rate. (*Ketchum v. Moses* (2001) 24 Cal.4th at 1122, 1134.) The trial court was aware of the foregoing rules of law and applied them. Its minute order includes its determination as to reasonable hours and reasonable rates.

Next, the lodestar figure may "be increased or reduced by the application of a 'multiplier' after the trial court has considered other factors concerning the lawsuit." (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322, fn. omitted.) Here, the trial court undertook this step. It considered plaintiff's argument that a multiplier should be used to increase the fee award and made a 15 percent upward adjustment in the lodestar amount.

2. *Standard of Review*

We review a trial court's determination of the amount of attorney fees to determine (1) whether the court followed the applicable principles of law and (2) whether the amount awarded falls within the range of possible outcomes committed to the trial court's discretion. (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831 [an "abuse of discretion standard ... measures whether, given the established evidence, the act of the lower tribunal falls within the permissible range of options set by the legal criteria"].) Appellate courts generally defer to the views of the trial court as to the *amount* of fees awarded because the trial court is in the best position

to decide the value of the service rendered before it.⁸ (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*); *Ketchum v. Moses, supra*, 24 Cal.4th at p. 1132.) Accordingly, an appellate court will interfere with the amount of reasonable attorney fees awarded only where there has been a manifest abuse of discretion. (*PLCM, supra*, at p. 1095.)

B. Reasonable Hours

1. *Correlating Hours to Tasks*

The Department contends that Pearson's declaration did not correlate the tasks performed by the various attorneys to the amount of time billed for each task. The trial court found the time recorded by Pearson (237.1 hours) and Escarez (167.9 hours) to be a reasonable amount of time for this litigation. The court made no award for the 300 hours recorded by six other attorneys.

California law does not require the submission of detailed time records to support the moving party's claim as to the number of hours reasonably spent. (2 Pearl, Cal. Attorney Fee Awards, *supra*, § 9.83, p. 9-75.) Furthermore, there is no well-established rule of law stating the level of detail that counsel must achieve to demonstrate attorney time was reasonably spent. (*Id.*, § 9.84, p. 9-76.) Consequently, the level of detail is a matter committed to the discretionary authority of the trial court and is subject to review for a manifest abuse of discretion.

We conclude that the trial court did not abuse its discretion in determining that the amount of time recorded by Pearson and Escarez was reasonable despite the absence of daily billing records or any breakdown of how that time was spent. The court's

⁸ During the hearing on attorney fees, the trial court informed counsel that its decision would be based on the evidence in the declarations and the court's own experience, which included 23 years of practicing law in Bakersfield. The court also stated: "I've worked in law firms that did public agency work and worked in a private law firm. I understand what pro bono work looks like. I understand why people do it."

reasonableness determination as to the time recorded by those attorneys must be considered in the broader context of its decision that an additional 300 hours of time claimed was not reasonable. The trial court was familiar with the case, the product of the attorneys' work in the form of the various papers filed, and appearances of those attorneys before the court. These factors provide a sufficient basis for the trial court's finding that the hours recorded by Pearson and Escarez were reasonable, while properly deciding the reasonableness of the other attorney time had not been established by the very general description of that time provided in Pearson's declaration.

2. *Time Spent on Second Lawsuit*

The Department argues that the trial court's award of all of Pearson's time resulted in the recovery of fees for the time Pearson spent working on the declaratory relief lawsuit that was dismissed. The Department has correctly interpreted Pearson's initial and supplemental declarations to mean that the 237.1 hours he claimed included time he spent on the declaratory relief case.

Plaintiff filed its complaint for declaratory and injunctive relief on October 7, 2013, the same day the petition for writ of mandate was filed, and the complaint was assigned case No. S-1500-CV-280452. The first cause of action in that complaint alleged that subdivision (c) of section 2150 was unconstitutional on its face and, as applied to plaintiff and all other non-AZA accredited zoos, was an unconstitutional delegation of legislative and executive police powers. The second cause of action alleged the statutory exemption for AZA-accredited organizations violated the equal protection clauses of the United States and California Constitutions.

Plaintiff argues it divided its claims into two lawsuits for procedural reasons and the fact that it won the case before the constitutional arguments were reached does not categorically establish that the time spent on that case was unreasonable. As a general rule, time spent on ancillary proceedings closely related to the litigation is compensable.

(2 Pearl, Cal. Attorney Fee Awards, *supra*, § 9.13, p. 9-23.) Similarly, where a single lawsuit raised multiple claims and the prevailing party spent time on unsuccessful or partially successful claims, the trial court may award compensation for time spent on unsuccessful claims that are “related” to the successful claims. (*Id.*, § 9.51, p. 9-50.) Conversely, time spent on unsuccessful unrelated claims is not compensable. (*Id.*, § 9.52, p. 9-50.1.)

The trial court could have determined the declaratory relief action was closely related to the writ proceeding because both lawsuits addressed how the Department was interpreting and applying the waiver provision in section 2150, subdivision (c). Consequently, under the rule of law that allows a trial court to compensate an attorney for time spent on a closely related ancillary proceeding, the trial court had the discretion to compensate Pearson for the hours spent on that case. Thus, we conclude the Department has failed to establish an abuse of discretion of this point.

3. *Administrative Proceedings*

The Department argues plaintiff may not recover for the attorney time spent on pre-litigation administrative proceedings unless that time was inextricably intertwined with the litigation and contributed to the resolution of the action. The Department argues that Pearson’s declarations fail to identify the time incurred preparing evidentiary submissions to the Department and in preparing the waiver application. In response, plaintiff contends its pre-litigation efforts were inextricably intertwined with the writ proceeding and, as a result, the time spent on those efforts was compensable.

In *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, the court held that attorney fees should be awarded for services provided during administrative proceedings where the administrative proceeding was useful and of a type ordinarily necessary for the vindication of the public interest litigated by the private party. (*Id.* at p. 1459.) We note that, as a general matter, when the subsequent litigation

involves a *writ of mandate* directing a public agency to perform a statutory duty, some sort of administrative proceedings usually will have been necessary to establish that (1) the agency did not perform the duty in question, (2) the litigant is an aggrieved party with standing to challenge an agency decision, and (3) the litigant has exhausted available administrative remedies.

The present case involved a writ of mandate that necessarily involved proceedings before the Department in applying for a waiver of the permit requirements. Therefore, we conclude the Department has not shown the trial court erred in determining the administrative proceedings were necessary and useful and, thus, intertwined with the public interest vindicated in this litigation.

4. *Plaintiff's Cross-Appeal*

Plaintiff contends the trial court erred in disregarding the hours expended by several attorneys who worked on the matter. This argument merits little discussion because it skates along the edge of frivolity.

When a law firm requesting an attorney fees award chooses to present the time recorded as a single block for each attorney and omits any description from the attorney as to how he or she spent that recorded time, it is virtually impossible for that law firm to establish trial court error on appeal. (See 2 Pearl, Cal. Attorney Fee Awards, *supra*, § 9.84, p. 9-77 [some court criticize the use of block billing—i.e., lumping all the time for *one day* into a single entry].) Such an approach has the tactical advantage in the trial court of limiting the information subject to scrutiny under the adversarial process, but it has the disadvantage of putting the fee request at the mercy of the trial court's discretion. For instance, we lack sufficient information to rule that any of the 300 hours excluded by the trial court were reasonably incurred because there is only Pearson's rather general description of what those attorneys did.

Therefore, we reject plaintiff's contention that the trial court abused its discretionary authority when it excluded 300 hours of recorded attorney time.

C. Reasonable Billing Rates

1. *Basic Rules*

In *Serrano v. Unruh* (1982) 32 Cal.3d 621, a case involving a fee award under section 1021.5, the court approved a lodestar calculation in which the reasonable hours spent were multiplied by the hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type. (*Serrano v. Unruh, supra*, at p. 625, *Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) We have applied this approach to hourly rates: "The lodestar figure is calculated using the reasonable rate for comparable legal services in *the local community* for noncontingent litigation of the same type." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1242.) As a general rule, the rates awarded are based on the rates prevalent in the community where the court is located. (2 Pearl, Cal. Attorney Fee Awards, *supra*, § 9.114, p. 9-106.1.) These rules about the reasonable value of the attorney time expended apply even if the attorney performed services pro bono or for a reduced fee. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 585.)

The general rule about the use of local rates is subject to an exception that allows attorneys from a market in which hourly rates are higher than the local forum to have their home market rates used in calculating the lodestar figure in certain circumstances. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399 (*Horsford*); 2 Pearl, Cal. Attorney Fee Awards, *supra*, § 9.115, p. 9-106.2.) In *Horsford*, this court concluded that the plaintiffs had demonstrated that hiring local counsel was impracticable and, as a result, "it was an abuse of discretion to fail even to consider an hourly rate based on counsel's 'home' market rate." (*Horsford, supra*, at p. 399.)

2. *Plaintiff's Claim for Los Angeles Rates*

To support plaintiff's request for Los Angeles hourly rates, Pearson's declaration addressed the possibility of using attorneys located in Kern County to handle this litigation:

"13. I have represented EFBC for many years, and I effectively act as an informal outside General Counsel for the organization. In that unofficial capacity, I regularly communicate with lawyers in Kern County and elsewhere about their interest in representing EFBC, which is a non-profit. EFBC cannot afford to hire its own counsel for a case of this nature, and I have not been able to identify any lawyers in Kern County who are able and willing to take on a potentially lengthy and expensive litigation against the State of California. In fact, due to a conflict of interest that arose in connection with the related declaratory relief case, I made numerous attempts to secure counsel to oppose the intervention motion in that case but was unsuccessful. Based on my personal experience and observations, I do not believe that any firm in Kern County would take this case — only large national firms have the resources to do so."

In its cross-appeal, plaintiff contends the trial court erred in applying Bakersfield rates and should have applied Los Angeles rates to calculate the lodestar amount. In plaintiff's view, "[t]he undisputed record reflects that it was necessary for [plaintiff] to rely on out-of-town counsel because there were no Kern County lawyers who would take on a case of this magnitude on a *pro bono* basis." In addition, plaintiff argues the trial court committed legal error because it "relied on an incorrect legal premise (that local rates must be used)."

3. *Legal Error*

Plaintiff's claim of legal error is not established because it has not demonstrated that the trial court believed that local rates *must* be applied and it had no discretionary authority on that issue. The trial court's minute order addressed hourly rates by stating that (1) the hourly rates sought by plaintiff were not in line with rates in the court's locale and (2) the reasonable rates for the court's geographical area were the hourly rates discussed in Pearson's supplemental declaration—\$313 for Pearson's time and \$225 for

Escarez's time. These statements in the order do not show the trial court was confused or had adopted a legally incorrect view of its authority to determine reasonable hourly rates.

Another place in the record that might show the trial court actually committed the legal error asserted by plaintiffs is the transcript of the hearing on the motion for attorney fees. We note that plaintiff's claim of legal error is not supported by citations to that transcript. Near the beginning of that hearing, the trial court asked counsel to focus on the entitlement to attorney fees and told them that it was pretty comfortable with the issue of the amount if that issue was reached. Near the end of the hearing, the court told counsel it was disinclined to accept further submissions relating to the amount of the fees and stated: "I'm going to decide this case based on the evidence in front of me." Our review of the hearing transcript has located nothing that suggests the trial court did not understand the discretion it had in determining reasonable hourly rates and "fail[ed] even to consider" Los Angeles hourly rates. (*Horsford, supra*, 132 Cal.App.4th at p. 399.)

We conclude that plaintiff's claim of legal error is based on a misinterpretation of the trial court's order. The trial court did not state it was *required* to apply local rates. Thus, plaintiff's contention about the trial court's underlying rationale is based on inference. The particular inference drawn by plaintiff undermines the correctness of the trial court's order and, as a result, is contrary to the basic rules of appellate procedure. Under those rules, the order of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) This presumption means that when the appellate record is silent on a matter, the reviewing court must indulge all intendments and presumptions that support the trial court's order regarding attorney fees. (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1140.)

In accordance with these basic principles, we presume that the trial court was aware of its discretionary authority in determining reasonable hourly rates and made the appropriate implied findings before deciding to apply local rates. Plaintiff has failed to demonstrate that these presumptions are incorrect and that the trial court erroneously

believed it was *required* to use local hourly rates when calculating the lodestar figure. Consequently, plaintiff's claim of legal error is rejected.

4. *Factual Error*

Plaintiff argues it demonstrated that it had to rely on out-of-town counsel. This exalted view of its own evidence does not convince us that the trial court committed factual error in finding that local rates were reasonable and were appropriate for use in the lodestar calculation. Part of plaintiff's evidence was Pearson's declaration, which asserted that plaintiff "cannot afford to hire its own counsel for a case of this nature." One reason the trial court was not bound to accept Pearson's factual assertion was that his declaration does not establish that he had the foundational knowledge of plaintiff's finances to accurately described what it could afford and what it could not. (See Evid. Code, § 702, subd. (a) [personal knowledge].)

In light of the deference given to the trial court in its role as the trier of fact, we will not reweigh the evidentiary worth of the statements contained in Pearson's declaration. (See *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 883 [appellate court does not reweigh the evidence in considering whether trial court abused its discretion under § 1021.5].) Accordingly, we conclude there were sufficient grounds upon which the trial court reasonably could have determined that plaintiff's evidence was not convincing. Consequently, we need not set forth other grounds upon which the trial court could have discounted that declaration. (See Evid. Code, § 780.)

In summary, the trial court reasonably could have determined that plaintiff's evidence failed to demonstrate that retaining local counsel was impracticable. Also, plaintiff has not shown that the trial court failed to even consider an hourly rate based on the Los Angeles market. Therefore, this case is distinguishable from *Horsford, supra*, 132 Cal.App.4th at page 399. As a result, unlike *Horsford*, we need not remand with

directions regarding the proper exercise of discretion in determining the reasonable hourly rates.

IV. MULTIPLIER

A. Factors Relevant to Adjusting the Award

The California Supreme Court has identified the factors that are relevant to an upward or downward adjustment of the lodestar amount as 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, and (4) the contingent nature of the fee award. (*Ketchum v. Moses, supra*, 24 Cal.4th at pp. 1131-1132.)

B. Application of Factors

Here, the trial court expressly stated that the plaintiffs' success and the moderate level of complexity made it reasonable to adjust the lodestar figure upward by 15 percent. The contingent nature of the recovery of fees was not explicitly mentioned, probably because the court regarded it as obvious and not a matter in dispute.

On appeal, the Department contends that the case was not complex or difficult and that there are no other grounds that support the multiplier. In addition, the Department argues an upward adjustment is inappropriate because it ultimately will be paid by the taxpayers.

First, we conclude that the Department has failed to establish the trial court erred when it determined the case was moderately complex. The case involved the application of the provision in section 2150, subdivision (c) governing the waiver of the permit requirement. The waiver provision had not been addressed in a published opinion and the Department's approach to that provision implicated the requirements of the APA. Thus, the novelty of the legal issues presented support the trial court's determination of moderate complexity.

Second, the Department has failed to establish that no other grounds support the use of a multiplier. Plaintiff's law firm took the case on a pro bono basis and, as a result, its recovery of fees was contingent upon being a successful party under section 1021.5 and meeting the other criteria for an award of fees under that statute. (See *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 623. [contingency risk is one of the most common fee enhancers].) Therefore, we conclude the contingent nature of the law firm's recovery of attorney fees was a factor that supports an upward adjustment in the award.

Third, the fact that a fee award eventually will be paid by the taxpayers is a factor relevant to the adjustment of the lodestar figure. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) Nonetheless, the payment of a plaintiff's fees by a public agency, standing alone, does not justify the complete denial of an upward lodestar adjustment. (*Horsford, supra*, 132 Cal.App.4th at p. 400.) Consequently, the Department's reference to the fact that California's taxpayers will be paying the attorney fee award does not demonstrate the trial court abused its discretion in making a 15 percent upward adjustment, which is a relatively mild enhancement.

DISPOSITION

The order awarding attorney fees is affirmed. The parties shall bear their own costs of the appeal and cross-appeal.

FRANSON, J.

WE CONCUR:

LEVY, Acting P.J.

DETJEN, J.