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11 Attorney for Petitioner John Doe

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA, HAYWARD HALL OF JUSTICE

14 JOHN DOE, an individual

15 Petitioner,

16 v.

17 THE REGENTS OF THE UNIVERSITY OF  
18 CALIFORNIA; and DOES 1-20, inclusive.,

19 Respondents.

Case No.: RG16843940

**NOTICE OF ORDER AWARDING  
PETITIONER ATTORNEYS' FEES IN  
THE AMOUNT OF \$31,097.85.**

20 TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA AND THEIR ATTORNEYS:

21 PLEASE TAKE NOTICE that Hon. Tara M. Desautels, Judge of the Superior Court, awarded  
22 attorneys' fees in the amount of \$31,097.85 to be paid by Respondent Regents of the University of  
23 California to Petitioner, pursuant to the Judgement entered herein against Regents on November 15,  
24 2017. A true and correct copy of the order, which the Clerk of the Court served on all parties on March  
25 21, 2018, is attached hereto.

26 WERKSMAN JACKSON  
27 HATHAWAY & QUINN LLP

28 DATED: April 18, 2018

By:

  
Mark M. Hathaway

Attorneys for Petitioner, JOHN DOE

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

On April 18, 2018, I served the foregoing document NOTICE OF ORDER AWARDING PETITIONER ATTORNEY'S FEES IN THE AMOUNT OF \$31,097.85 on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Jonathan D. Miller  
Alison Bernal  
Nye Peabody Stirling Hale & Miller LLP  
33 West Mission Street, Suite 201  
Santa Barbara, CA 93101  
Telephone: (805) 963-2345  
Facsimile: (805) 563-5385  
E-mail: jonathan@nps-law.com  
E-mail: alison@nps-law.com  
ATTORNEYS FOR RESPONDENTS

- BY FACSIMILE TRANSMISSION** from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.
- BY MAIL** by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE** by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.
- BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.
- BY ELECTRONIC TRANSMISSION** by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on April 18, 2018 in Los Angeles, California



Andrew Wuence

✓ Hathaway & Quinn LLP  
Attn: Hathaway, Mark M  
888 West Sixth Street,  
Fourth Floor  
Los Angeles, CA 90017 \_\_\_\_\_

Nye, Peabody, Stirling, Hale & Miller,  
LLP  
Attn: Bernal, Alison M.  
33 West Mission Street  
Suite 201  
Santa Barbara, CA 93101 \_\_\_\_\_

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**Superior Court of California, County of Alameda  
Hayward Hall of Justice**

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<p>Doe <span style="float: right;">Plaintiff/Petitioner(s)</span></p> <p style="text-align: center;">VS.</p> <p>Regents of the University of California <span style="float: right;">Defendant/Respondent(s)</span> (Abbreviated Title)</p>	<p style="text-align: center;">No. <u>RG16843940</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Attorney Fees Granted</p>
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The Motion for Attorney Fees filed for John Doe was set for hearing on 03/15/2018 at 09:00 AM in Department 514 before the Honorable Tara M. Desautels. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The Motion of Petitioner Doe for Award of Attorney Fees under CCP §1021.5 is **GRANTED IN PART** in the total amount of \$31,097.85.

**THE CASE**

The case concerned UCSB's investigation, hearing and decision regarding a sexual encounter between Doe and Roe.

The court's order of 11/15/17 "found that the administrative process in this case failed to comply with the Adjudicative Framework and the law because (1) there is an unacceptable risk that the investigator was not unbiased, (2) the [Interpersonal Violence Appeal Review Committee ("IPVARC")] improperly permitted Quillen to base his evaluation of credibility on what Quillen understood to be the "trauma informed approach," and (3) IPVARC conducted a substantial evidence review of the Quillen/OJA report instead of exercising its independent judgment in the review of the evidence." (Order of 11/15/17 at 26.)

The order continued "The Petition of petitioner Doe for a writ of mandate directing the Regents to set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case # 2016-0036) is **GRANTED.**" (Order of 11/15/17 at 27.)

**CCP 1021.5 GENERALLY**

The fundamental objective of the private attorney general doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases.

Under CCP §1021.5, 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 ... 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.

#### PREVAILING PARTY.

Petitioner Doe is the prevailing party in this case.

#### ENFORCEMENT OF IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST.

This case resulted in the enforcement of an important right affecting the public interest. The petition sought relief from an order of suspension concerning a single student, but in the process enforced the right to due process in academic sexual harassment investigations and proceedings.

#### SIGNIFICANT BENEFIT TO GENERAL PUBLIC OR LARGE NUMBER OF PERSONS

The case conferred a significant benefit on the general public or a large class of persons. The court found this to be the closest call because it concerns whether the judgment was specific to Doe as an individual student or whether it concerned a UCSB policy or practice, and thus all students. At oral argument on the motion for attorney's fees, Respondent stressed its position that the judgment was explicitly case-specific, as the evidence that had been presented in connection with the Writ was insufficient to demonstrate any pattern or practice necessary to satisfy the "significant benefit" prerequisite to any consideration of an award for attorneys' fees.

The court agrees in part.

The court's order of 11/15/17 found "there is an unacceptable risk that the investigator was not unbiased." This was specific to Doe.

However, the court's order of 11/15/17 found "the IPVARC improperly permitted Quillen to base his evaluation of credibility on what Quillen understood to be the "trauma informed approach." This concerned UCSB's practice of conducting investigations. Order at 12:3-25 states, "[Investigator] Quillen relied on the "trauma informed approach" as he understood it based on his training as an investigator." Citing the AR, Order at 12:7-14 states that "The IPVARC explained that the Title IX office decides what information is appropriate in IPVARC hearings and Quillen stated he was '100% confident that this is private employment information that neither party is entitled to, nor will they receive access to it.'" The Investigator's use of what Quillen understood to be the "trauma informed approach" was part of his training, and thus evidence of a practice, and the IPVARC held that he was not required to disclose the training, which appears to be further evidence of a practice.

In addition, the court's order of 11/15/17 found "IPVARC conducted a substantial evidence review of the Quillen/OJA report instead of exercising its independent judgment in the review of the evidence." Here, IPVARC's failure to conduct the de novo review its own guidelines require is evidence of UCSB's practice of conducting hearings. Order at 17:23-18:10, states that the IPVARC was unclear on whether it was sitting as a trier of fact, as required by its official policies, or was reviewing the investigator's recommendation for substantial evidence. Order at 20:20-1-2 states "The court finds that the UCSB procedures, the Adjudication Framework, and the appeal form are internally inconsistent and uncertain." The IPVARC's understanding of its role was thus a practice based on internally inconsistent policies even though the order and judgment concerned Doe alone.

Accordingly, the court finds that the case presented issues of policy and practice that affect a large number of persons, specifically those that may be subject to IPVARC's authority in the future.

The court expressly does not find a benefit for a large number of persons on the basis the trial court opinion in this case "sends a message" to UCSB. The court follows the observation in *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 636, that "the reasoning ... espoused by plaintiff would make the private attorney general doctrine applicable in every case in which a plaintiff successfully sued a public agency for some wrongful conduct, because every such lawsuit would communicate a message to the losing party. Such an expansive reading of the statutory requirement is

untenable." (See also *Weeks v. Baker & McKenzie* (1998) 63 Cal. App. 4th 1128, 1170-1171.)

## NECESSITY OF PRIVATE LITIGATION

The necessity of private enforcement is such as to make the award appropriate. The Regents had no internal audit or similar process to reevaluate decisions after they were made.

## FINANCIAL BURDEN OF PRIVATE LITIGATION

The financial burden of private enforcement is such as to make the award appropriate. In determining the financial burden on litigants, the court considers both the reasonably expected costs of the litigation and the reasonably expected financial benefits from the litigation at the time the vital litigation decisions were made. (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1220-1221.) The California Supreme Court set out the methodology as follows:

The trial court must first fix-or at least estimate-the monetary value of the benefits obtained by the successful litigants themselves.... Once the court is able to put some kind of number on the gains actually attained it must discount these total benefits by some estimate of the probability of success at the time the vital litigation decisions were made which eventually produced the successful outcome.... Thus, if success would yield ... the litigant group ... an aggregate of \$10,000 but there is only a one-third chance of ultimate victory they won't proceed-as a rational matter-unless their litigation costs are substantially less than \$3,000.

After approximating the estimated value of the case at the time the vital litigation decisions were being made, the court must then turn to the costs of the litigation-the legal fees, deposition costs, expert witness fees, etc., which may have been required to bring the case to fruition.... [¶] The final step is to place the estimated value of the case beside the actual cost and make the value judgment whether it is desirable to offer the bounty of a court-awarded fee in order to encourage litigation of the sort involved in this case.... [A] bounty will be appropriate except where the expected value of the litigant's own monetary award exceeds by a substantial margin the actual litigation costs.

(*Whitley*, 50 Cal.4th at 1215-1215.) See also *Whitley*, 50 Cal.4th at 1220-1221 [the analysis considers the information known "at the time the vital litigation decisions were being made."].)

Petitioner Doe had an uncertain and long term financial interest in clearing his name and in graduating from UCSB. This can qualify as a non-speculative financial interest in the outcome of the litigation, but the court cannot place a dollar figure on the value. (*Heron Bay Homeowners Association v. City of San Leandro* (2018) 19 Cal.App.5th 376, 394-396.) Petitioner Doe's probability of success at the inception of the litigation was probably in the 50% range. The estimated financial cost and expense of prosecuting the case was probably in the \$50,000 range.

The court concludes that the necessity and financial burden of private enforcement make an award appropriate and does not find that the uncertain value of Doe's own "monetary award exceeds by a substantial margin the actual litigation costs." The focus in *Whitley* on pecuniary benefit suggests that this is an appropriate case for an award of fees.

The court also finds that Doe "had a sufficient financial incentive to incur some, but not all, of the costs of the litigation." (*Heron Bay*, 19 Cal.App.4th at 389.) The court will "deduct from the total reasonable attorney fee an amount reflecting the fee that plaintiffs could reasonably have been expected to bear themselves." (*Heron Bay*, 19 Cal.App.4th at 389.)

## INTERESTS OF JUSTICE

The court has considered *Whitley*, 50 Cal.4th at 1219, where the court cited legislative history for the proposition that "[S]ubstantial benefits to the general public should not depend upon the financial status of the plaintiff or upon the charity of foundations or upon the charity of public-minded lawyers alone. Where the benefit is conferred upon a large number of persons, it is inequitable that a person who steps forward to enforce the rights should bear the entire cost." It is doubtful whether students, or possibly their parents, would find it financially rational to pursue a case against a university for a student

discipline matter when the student could potentially transfer to another university. Therefore, some incentive is appropriate to induce counsel to accept cases to assist students in matters that present policy or practice concerns.

#### AMOUNT OF FEES - LODESTAR.

The court determines the amount of a reasonable fee under the lodestar/multiplier analysis. "The challenge to the trial courts is to make an award that provides fair compensation to the attorneys involved in the litigation at hand and encourages litigation of claims that in the public interest merit litigation, without encouraging the unnecessary litigation of claims of little public value." (Weeks v. Baker & McKenzie (1998) 63 Cal. App. 4th 1128, 1172 (applying Gov't Code 12965(b).) Petitioner asserts that counsel spent approximately 160 hours on the case and asserts that the reasonable hourly rates of \$650 for Mark Hathaway (30 hours) and \$225 for Jenna Eyrich (110 hours). Petitioner also seeks fees for paralegal work.

The court considers that counsel for Petitioner was appeared repeatedly in this court on similar matters regarding the Regents and student discipline. There is a relationship between the quality of counsel and the time reasonably spent by counsel. An attorney with specialized knowledge might charge a higher hourly rate, but should also be able to efficiently litigate a matter that is similar to matters that he or she has worked on in the past. (Ursic v. Bethlehem Mines (3d Cir. 1983) 719 F.2d 670, 677; Boston & Me. Corp. v. Moore (1st Cir. 1985) 776 F.2d 2, 9; Blizzard v. Astrue (SDNY 2007) 496 F.Supp.2d 320, 323.) Counsel for Petitioner is a specialist in this issue and was working in his field of expertise. The court finds that Petitioner's counsel reasonably spent a total of approximately 160 hours on the case. The documentation of the time spent is adequate. (Syers Properties III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 698-699.)

The court finds that Petitioner's counsel reasonably allocated time between Hathaway at \$650/hour and Eyrich at \$225/hour.

The court will permit Petitioner to recover for the time spent in the administrative process (Hogar v. Community Development Com. of City of Escondido (2007) 157 Cal.App.4th 1358, 1370.) The court finds that the reasonable hourly rate asserted for Petitioner's counsel on matters of this type is \$650 per hour and \$225 per hour. It is important to be realistic about the "regular rates." The "regular rate" should reflect "the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors." (Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1138.) The court sets the rate at the general local hourly rate for a fee-bearing case of similar type or complexity in Alameda County. (Syers Properties III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 700-703.)

The court focuses on and emphasizes the subject matter of this case and reasonable rates charges in cases of similar type and complexity. The court finds that Ricketts's experience generally coupled with his specific knowledge and expertise in this area of law supports a reasonable rate of \$650 in this case. This results in a lodestar of \$56,097.85.

#### AMOUNT OF FEES -MULTIPLIER.

The Court determines whether to apply a multiplier based on its consideration of five factors: (1) the novelty and difficulty of the legal issues involved, (2) the skill of counsel, (3) the time commitment and preclusion of other employment, (4) the contingent nature of the fee award, and (5) the benefit conferred. (Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1131-1132.)

This case involved novel and difficult issues. The novelty and difficulty of the issues is, however, already reflected in the reasonable hourly rate for this type of work and the time spent by counsel. (Northwest Energetic Services, LLC v. California Franchise Tax Bd. (2008) 159 Cal.App.4th 841, 880.)

The skill of counsel is already reflected in the hourly rates of counsel. The Court is aware of the danger of "double counting." (Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1138-1139.) Counsel was working in his area of expertise and did not need to reinvent the wheel. (Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal.App.4th 866, 897.)

The time commitment and preclusion of other employment were not so significant that it would have disrupted counsel's practice and the actual time spent is reflected in the hours billed.

Counsel is entitled to some multiplier if they assume risk and undertake a case on a contingent basis. (Ketchum, 24 Cal.4th at 1132 and 1138; Greene v. Dillingham Constr. N.A. (2002) 101 Cal. App. 4th 418, 428-429.) Counsel undertook this case on an hourly basis. (Hathaway Dec., para 13, Exh 6.)

The fact that a government entity will be paying the fees is not a consideration in setting the multiplier. The purpose of fee shifting is to compensate 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. (In re Conservatorship of Whitley (2010) 50 Cal.4th 1206, 1217, 1210.) Because the focus is on the incentive to pursue meritorious litigation, the identity of the party that must pay the fees is not relevant. (Rogel v. Lynwood Redevelopment Agency (2011) 194 Cal.App.4th 1319, 1331; Horsford v. Board Of Trustees Of California State University (2005) 132 Cal.App.4th 359, 400-401.) The Court finds that a multiplier of 1.0 is appropriate in this case because counsel prosecuted this case on a contingent basis. Counsel's familiarity with the issues and skill is reflected in the hourly rate and the time spent is reflected in the time spent.

The lodestar of \$56,097.85 and the multiplier of 1.0 result would result in a fee award of \$56,097.85.

#### APPORTIONMENT

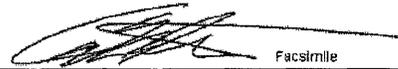
Although the court finds that Petitioner is entitled to fees under CCP 1021.5 and that the reasonable fees for this matter are \$56,097.85, the court also finds that Doe "had a sufficient financial incentive to incur some, but not all, of the costs of the litigation" and therefore the court will "deduct from the total reasonable attorney fee an amount reflecting the fee that plaintiffs could reasonably have been expected to bear themselves." (Heron Bay, 19 Cal.App.4th at 389.)

The court finds that Doe had a significant non-speculative financial interest in the outcome of the litigation regarding his personal reputation and his personal ability to graduate from UCSB in a timely manner. The court finds that Doe would have reasonably incurred \$25,000 solely for his own indirect pecuniary interest. Therefore, the court apportions \$25,000 of the reasonable fees to Doe and awards the balance against the Regents.

#### CONCLUSION

The lodestar of \$56,097.85 and the multiplier of 1.0 would result in a fee award of \$56,097.85, which less the apportionment of \$25,000 results in a total fee award of \$31,097.85.

Dated: 03/19/2018



Facsimile  
Judge Tara M. Desautels

Superior Court of California, County of Alameda  
Hayward Hall of Justice

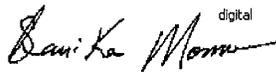
Case Number: RG16843940  
Order After Hearing Re: of 03/19/2018

**DECLARATION OF SERVICE BY MAIL**

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, California.

Executed on 03/21/2018.

Chad Finke Executive Officer / Clerk of the Superior Court

By  <sup>digital</sup>

Deputy Clerk