

DOE v. UNIVERSITY OF SOUTHERN CALIFORNIA

Case Number: BS152306

Hearing Date: October 11, 2019

OCT 11 2019

Sherril R. Carter, Executive Officer/Clerk
By *Fernando Becerra, Jr.* Deputy

ORDER GRANTING PETITIONER'S MOTION FOR ATTORNEY FEES

Petitioner John Doe requests attorney's fees in the approximate amount of \$181,680.50, a 2.0 multiplier and attorney's fees of \$3,500 to \$7,000 incurred in bringing this motion pursuant to Code of Civil Procedure section 1021.5.¹

Respondent University of Southern California opposes the motion.

The Motion is GRANTED in the amount of \$142,100.

[The court sustains Respondent's objection to the allowance of attorney's fees for services related to this motion. The manner Petitioner raised the fees related to the attorney's fees motion near the conclusion of the hearing deprived Respondent of any real ability to challenge the hours expended. It is clear from the court's review of the pleadings Attorney Smith reviewed each and every line item entry in the billing statements and annotated specific objections to the billing statements. Attorney Smith believed the hours charged were inflated and that the work had been done previously with other fee motions. Without some advance notice of the hours expended and the applicable hourly rate for the motion, it deprives Respondent of notice and a meaningful opportunity to be heard on the issue. Moreover, the amount claimed during the hearing exceeded that predicted in the moving papers.]

APPLICABLE LAW

Parties in litigation generally pay their own attorney's fees. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488.) Code of Civil Procedure² section 1021.5 is an exception to that rule. (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2010) 187 Cal.App.4th 376, 381.)

Section 1021.5, authorizing the award of attorney's fees in "public interest" litigation, provides as follows 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

¹ The moving papers indicated the exact amount sought for the motion would be "set forth in greater detail in the reply brief." (Motion 1:27.) The reply brief, however, does not pinpoint the amount sought as attorney's fees for this motion.

² All further statutory references are to this Code.

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.”

The basic 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.” (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1289; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.) The statute awards successful public interest litigants with attorney’s fees where the statutory requirements are established. (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 250-251.) The burden is on the fee claimant to establish each statutory requirement, including that its litigation costs transcend its personal interest in the litigation. (*Save Open Space Santa Monica Mountains v. Superior Court of Los Angeles County* (2000) 84 Cal.App.4th 235, 247.)

“Under [S]ection 1021.5, the court may 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 (3) if a significant benefit has been conferred on the general public or a large class of persons, and (4) the necessity and financial burden of private enforcement as such as to make the award appropriate.” (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection, supra*, 187 Cal.App.4th at 381.)

The issue of whether to award fees is committed to the trial court’s discretion. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634.)

ANALYSIS³

Petitioner argues he is the prevailing party and entitled to attorney’s fees pursuant to Section 1021.5. In opposition, Respondent argues Petitioner cannot satisfy any of the elements required for a fee award under the statute.

The court finds Petitioner has met all of the statutory requirements of Section 1021.5.

Petitioner is the Successful Party in the Action

While Respondent asserts Petitioner cannot “satisfy any one of the elements” required for attorney’s fees under Section 1021.5, Respondent does not actually challenge the notion

³ Petitioner’s request in his reply brief that this court exercise its discretion under Section 436 and “strike the references by [Respondent] in its Opposition to the findings [Respondent] was ordered to set aside by the Court of Appeal, the Judgment entered by this court, and the Writ issued by the Clerk of the Court” is denied. (Reply 5:9-10.) The court finds doing so for purposes of this motion is unnecessary.

