**Tentative Rulings for March 1, 2023**
**Department 502**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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**There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)**
***The above rule also applies to cases listed in this "must appear" section.***

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**The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 502

Begin at the next page

(29)

**Tentative Ruling**

Re: ***In re: Mallory Dow***
Superior Court Case No. 23CECG00455

Hearing Date: March 1, 2023 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

**Explanation:**

Item 8 of the petition indicates that Claimant has fully recovered from her injury, however no documentation showing this has been submitted. Counsel states in his declaration that the costs will be deducted from Petitioner's settlement funds (Salhab decl., ¶9), however the costs are deducted from Claimant's settlement funds (Pet., 16.d). Petitioner asks that Claimant's funds be deposited into a blocked account, however attachment 18b(2) has not been submitted. Last, the proposed orders are incomplete.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KCK on 02/23/23.**
(Judge's initials) (Date)

(40)

**Tentative Ruling**

Re: ***Patrick Foster v. Cahan Shields, Inc.***
Superior Court Case No. 20CECG01976

Hearing Date: March 1, 2023 (Dept. 502)

Motion: Plaintiff Foster's Motion for an Order Compelling the Depositions of Defendant Ralph's Grocery Company dba Foods Co.'s Person Most Knowledgeable (Matthew Bolen and Juan Cardenas) to Appear at Depositions and for Sanctions

**Tentative Ruling:**

To issue an Order compelling the depositions of the Person Most Knowledgeable (Matthew Bolen and Juan Cardenas) to occur within 21 days of the date of this Order.

To impose $2,453.10 in monetary sanctions against Defendant Ralph's Grocery Company dba Food's Co., to be paid to counsel for Plaintiff within 30 days of service of the Order by the clerk.

**Explanation:**

Code of Civil Procedure section 2025.450 provides, in pertinent part, as follows:

> (a) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, **fails to appear for examination, or to proceed with it,** or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. (Emphasis added.)

As required by subdivision (b) of Code of Civil Procedure section 2025.450, Plaintiff's motion shows good cause justifying the deposition, which was previously ordered by the Court. There is a declaration by Plaintiff's counsel demonstrating the meet and confer efforts to which Ralph's did not respond. (Stirrup declaration, Exhibit F.)

Code of Civil Procedure section 2025.450, subdivision (g) (1) provides that, upon showing good cause, the court shall impose a monetary sanctions in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2025.450, subd. (g)(1).)

Plaintiff has previously obtained a court order on December 12, 2022 for deposition dates. The depositions were duly scheduled and noticed. Defendant Ralph's has failed to produce the witnesses despite confirmed dates and noticed depositions.

Plaintiff requests monetary sanctions. Defendant Ralph's has filed no opposition to this motion. California Rules of Court, Rule 3.1348 provides that: "(a) The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Here, Defendant Ralph's, according to Mr. Stirrup's declaration, to which Ralph's did not reply, has refused to produce properly noticed deposition witnesses four times, and again after the Court ordered them to provide dates. (Request for Pre-Trial Discovery Conference, Exhibit B to Stirrup Declaration.)

"[M]onetary sanctions are designed to recompense those who are the victims of misuse of the Discovery Act." (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438.) Monetary sanctions are comprised of the reasonable expenses, including attorney fees, "'incurred by anyone as a result of that conduct …' [Citation.]" (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1285; see also *Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc.* (2020) 56 Cal.App.5th 771, 790 ["Reasonable expenses may include attorney fees, filing fees, referee fees, and other costs incurred."].) Finally, reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.) Discovery statutes authorizing sanctions have been interpreted to authorize awards for "reasonable expenses" only, which includes the time moving party's counsel spent in research and preparation of the motion and court time in connection therewith; an award in excess of this is improper. (*Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 262.)

Due to Ralph's failure to proceed with the depositions, it is ordered to do so. Sanctions then "shall" be imposed. (Code Civ. Proc. §2025.450 subd. (g) (1).) Plaintiff requests sanctions consist of its filing fee and three (3.0) hours of time at $450.00 per hour for preparing the moving papers. Counsel's rate of $450 per hour is reasonable, however no opposition was filed; an additional two hours is unnecessary. Plaintiff is awarded $1,350 (3 hours at $450) plus $60 for filing fees for a total of $1,410.00.

Defendant Ralph's, by its non-response to this motion, admits it has failed to pay prior late-cancellation deposition fees in the amounts of: $250.00, $508.10, and $285.00, totaling $1,043.10. (Stirrup Declaration, Exhibits H, I, J.) Accordingly, Defendant Ralph's is ordered to pay Plaintiff's counsel a total of $2,453.10. ($1,410.00 plus $1,043.10.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Issued By: KCK on 02/23/23.**
(Judge's initials) (Date)

(27)

**Tentative Ruling**

Re: ***Patricia Ford v. Shawn Deitz***
Superior Court Case No. 21CECG03486

Hearing Date: March 1, 2023 (Dept. 502)

Motion: By Plaintiff for Summary Judgment

**Tentative Ruling:**

To grant the motion for summary judgment. (Code of Civ. Proc., § 437c, subd. (c).) The prevailing party is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment ruling.

**Explanation:**

Plaintiff has plead one cause of action for recovery of a monetary judgment for $386,092.76 granted on July 28, 2011 from the United States Bankruptcy Court. (See Complaint, ¶ 5; Ex. A.) Defendant - who was the debtor in the bankruptcy proceeding - appealed the judgment, and the Ninth Circuit Court of Appeals published its final decision on July 28, 2014 ("2014 Decision"). (See *In re Shawn Deitz* (9th Cir. 2014) 760 F.3d 1038, 1039 [holding that the Bankruptcy Appellate Panel ("BAP") had correctly affirmed the creditors' claim as exempt from discharge and adopting the BAP opinion as its own].)

This court has granted plaintiff's unopposed request for judicial notice, which included to a request to judicially notice the files and records of defendant's bankruptcy case. (See Plaintiff's Request for Judicial Notice (RJN), ¶ 7.) In addition, the Ninth Circuit ordered published its decision affirming the BAP opinion adjudicating the exemption of the same debt. (See *In re Deitz, supra,* 760 F.3d at p. 1039.)

Under well-settled authorities, the date the BAP became final was the date the Ninth Circuit entered a final determination of appeal. (Code Civ. Proc. § 1049 ["An action is deemed to be pending from the time of its commencement until its final determination upon appeal ….]; *St. Paul Fire & Marine Ins. Co. v. Cunningham* (9th Cir. 1958) 257 F.2d 731, 732; *Rilcoff v. Superior Court of Los Angeles County* (1942) 50 Cal.App.2d 503, 507.)

In an application dated September 7, 2021, plaintiff applied for renewal of the July 28, 2011 judgment (see RJN, Ex. 2), which was granted two days later on September 9th, pursuant to the clerk's "automatic" and "ministerial" duties. (*Rubin v. Ross* (2021) 65 Cal.App.5th 153, 165; RJN, Ex. 3.) On October 6, 2021, defendant filed a motion to vacate the renewal on the basis that the clerk's renewal occurred more than ten years from July 28, 2011. (See RJN, Ex. 4, at pp. 2:5 and 4:16-19.) Defendant's motion to vacate neither addressed nor mentioned the Ninth Circuit's 2014 decision, and it does not appear that the Ninth Circuit's 2014 decision was considered by the Bankruptcy Court.

The Bankruptcy Court granted defendant's unopposed motion to vacate, and its order specified that "[p]ursuant to [California Code of Civil Procedure] § 683.020, a) the Judgment in favor of Wayne and Patricia Ford and against Defendant, in the original amount of $386.092.76, dated July 28, 2011 … *is no longer enforceable* against Defendant or his property on or after July 28, 2021; b) *All enforcement procedures pursuant to the Judgment or to a writ or order issued pursuant to the Judgment shall cease* …." (RJN, Ex. 5, at p. 2:15-20, emphasis added.) The order does not mention, expressly or impliedly, the Ninth Circuit's 2014 decision.

Under subdivision (a) of Code of Civil Procedure section 683.020 a judgment may not be enforced after 10 years have expired from its issuance. And the California Supreme Court notes that " '[t]he normal rules of Res judicata and collateral estoppel apply to the decisions of bankruptcy courts.'" (*Martin v. Martin* (1970) 2 Cal.3d 752, 758, 764.)

Here, however, the Bankruptcy Court's granting of defendant's motion to vacate the renewal did not invalidate the original, July 28, 2011, judgment, because, even where an original judgment is no longer enforceable under the provisions of Code of Civil Procedure section 683.020, it nevertheless remains valid. (*Green v. Zissis* (1992) 5 Cal.App.4th 1219, 1222 (*Zissis*) [rejecting as "wholly unmeritorious" a contention that an order vacating a renewal invalidated the original judgment].) In other words, although the Bankruptcy Court issued a final decision regarding renewal, plaintiff's motion for summary judgment does not seek renewal or enforcement of the July 28, 2011 judgment, but rather seeks relief on the judgment rendered by the Ninth Circuit in 2014. (See Plaintiff's Supplemental Brief, at p. 6:4-5; Motion for Summary Judgment, at p. 4:1-17; *Martin v. Martin, supra,* 2 Cal.3d at p. 759 [res judicata only applies to those issues previously determined].)

In addition, even if the July 28, 2011 judgment date is used, it appears that the Judicial Council's Emergency Rule no. 9 (see Cal. Rules of Court, Appendix I, rule 9), operates to toll enforcement by at least *six* months. Plaintiff's commencement of this case in November, 2021 – which is *three* months outside the 10 year period – would be timely under application of the Judicial Council's emergency rule. (See *Zissis, supra,* 5 Cal.App.4th at p. 1223 [the plaintiff was entitled to judgment, despite expiration of the 10 year period under Code Civ. Proc., § 683.020, because statutory tolling principles applied].)

Defendant's liability on the judgment can be decided as a matter of law, and therefore plaintiff's motion for summary judgment is granted. (Code Civ. Proc. § 437c, subd. (c).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KCK on 02/27/23.**
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***In re: Tiana Millro***
Superior Court Case No. 22CECG01796

Hearing Date: March 1, 2023 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

To grant. Petitioners are directed to submit an Order Approving Compromise reflecting to whom the attorney's fees are payable in Item 8.a.(1), which is blank on the order as filed, for signature. The court intends to sign the proposed order to deposit. No appearances are necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KCK on 02/27/23.**
(Judge's initials) (Date)

(17)

**Tentative Ruling**

Re: ***Yuba County Water Agency v. State Water Resources Control Board***
Court Case No. 20CECG03342

Hearing Date: March 1, 2023 (Dept. 502)

Motions: Yuba's Motion for Attorney's Fees

**Tentative Ruling:**

To grant Yuba's Motion for Attorney's Fees in the amount of $219,739.30.

**Explanation:**

Petitioner Yuba County Water Agency (Yuba) seeks attorney's fees under Code of Civil Procedure section 1021.5. Section 1021.5 codifies the private attorney general doctrine, which provides an exception to the "American rule" that each party bears its own attorney fees. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147.) 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. (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565 (*Graham*).) Under section 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 are such as to make the award appropriate. (*Ibid*.) The burden is on the claimant for the award of attorney's fees to establish each prerequisite to an award of attorney's fees under Code of Civil Procedure section 1021.5. (*Ebbetts Pass Forest Watch v. Department of Forestry and Fire Protection* (2010) 187 Cal. App. 4th 376, 381.)

*1. Successful Party*

Courts take "a broad, pragmatic view of what constitutes a 'successful party' " for purposes of a section 1021.5 fee award (*Graham*, *supra*, 34 Cal.4th at p. 565) and the court must critically analyze the surrounding circumstances of the litigation and pragmatically assess the gains achieved by the action." (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection*, *supra*, 187 Cal.App.4th at p. 382.)

Here, Yuba alleged that the Water Resources Control Board (Respondent) lacked the jurisdiction to issue a Section 401 certification in the absence of a pending application from Yuba for such a certification. This court agree, and on June 28, 2022, granted Yuba's Motion for Judgment on the Writ. On August 4, 2022, the court entered judgment and issued a peremptory writ of mandate directing Respondent to set aside and vacate its July l7, 2020 Clean Water Act section 401 water quality certification to Yuba (as amended December 25, 3030) and to set aside and vacate Order WQ 2020-

0043 adopting limited amendments to the Certification. Accordingly, Yuba is a successful party.

2. *Important Public Right*

Yuba asserts that it sought to "ensure that the SWRCB's implementation of its regulations exercising its authority under the federal Clean Water Act are consistent with that Act" and that "[e]nsuring that administrative agencies enact and implement regulations that are consistent with the laws they administer" is "the enforcement of an important right protecting the public interest." Respondent disagrees, characterizing its ability to issue water quality certifications absent a pending application as a "threshold legal issue" and a "narrow legal issue" that "put the public at greater risk of harm" with respect to water quality.

In *Woodland Hills Residents Association, Inc. v. City Council of Los Angeles* (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." (*Id*. 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.)

Yuba claims it's entitlement to attorney's fees is supported *by Sweetwater Union High School Dististric v. Julian Union Elementary School District* (2019) 36 Cal.App.5th 970 (Sweetwater) and *Samantha C. v. State Department of Developmental Services* (2012) 207 Cal.App.4th 71 (*Samantha C.*). In *Sweetwater*, a school district was awarded attorneys' fees under Section 1021.5 for an action it brought to enforce the geographic limitations of the Charter School Act against another school district and two charter schools. The Court of Appeal agreed, finding that requiring compliance with the geographic boundary requirements of the Charter School Act enforced an important right affecting the public interest. (*Sweetwater*, *supra*, 36 Cal.App.5th at p. 990.) In *Samantha C.*, a student challenged the validity of a regulation under which she was denied services for a certain type of developmental disability. The appellate court concluded the student's action resulted in the enforcement of an important right affecting the public interest. By enacting a statute "defining the class of benefited persons to include those in Samantha's position, the Legislature has demonstrated its determination that such a need exists, in a quantity that is of sufficient size to require its legislative protection. (*Samantha C.*, *supra*, at 207 Cal.App.4th at p. 80.) Respondent counters that, unlike Yuba's authorities, this action "does not implicate any issue on which the Legislature expressed a specific intent to ensure protection of a public right."

"The public always has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the public always derives a 'benefit' when illegal private or public conduct is rectified." (*Id*. at 939.) This benefit, however, does not always justify attorney's fees under section 1021.5, as demonstrated in *Karuk Tribe of Northern California v. California Regional Water Quality Control Bd*. (2010) 183

Cal.App.4th 330, 354 (*Karuk*) and *Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th 488 (*Protect Our Water*).

In *Protect Our Water*, several environmental groups sought a writ of mandate to compel a county to set aside, principally on EIR adequacy grounds, the county's conditional use permit for a massive surface mining project. The trial court denied the writ petition. The appellate court reversed because the administrative record generated by the county was "so inadequate that the county could not demonstrate on appeal that it had made the CEQA findings required for approval of the project"; the key undisclosed CEQA findings involved the reasons for the project's approval notwithstanding its significant environmental effects. (*Protect Our Water*, *supra*, 130 Cal.App.4th at pp. 491-492, 494, 496.) Attorney's fees were warranted because complete recordkeeping during the CEQA review process was fundamental to CEQA and a matter of significant public concern. The court concluded that significant benefit was conferred even if its opinion "had no more effect than to prompt County to alter for the better its methods of creating and managing its CEQA records". (*Id*. at p. 496.)

In *Karuk,* private parties sought a writ of mandate to force a regional water control board to enforce California law governing waste discharge to hydroelectric dam reservoirs. The trial court sent the matter back to the board to reconsider its initial refusal in light of two decisions by the United States Supreme Court. After the board again concluded federal law preempted California's standards, the trial court agreed and discharged the writ. However, the trial court also awarded petitioners section 1021.5 attorney fees, concluding that the litigation had resulted in the " 'important public benefit' of the Board making 'a thoughtful and well-reasoned determination' concerning its lack of authority to enforce state law." (*Karuk*, *supra*, 183 Cal.App.4th at p. 335.)

The Court of Appeal reversed the award of attorney fees. In reaching this result, the court rejected as "completely unpersuasive" the petitioners' contention that they were entitled to fees because they had vindicated " 'the public's right to ensure that governmental agencies follow the letter of the law,' … " (*Id.* at p. 365.) While water quality concededly amounted to " 'an important right affecting the public interest,' " the trial court's remand was unnecessary, as no law or regulation required the board's decision to be in any particular form. (*Id*. at p. 369.) Accordingly, the plaintiffs did not "enforce" a public benefit because there was no ultimate change in the Board's position. (*Ibid*.)

Here, water quality, conservation, control and utilization is of paramount importance to the people of California. (*Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 701–702.) The Porter–Cologne Act codifies the Legislature's recognition of these interests. (Wat. Code, § 13000.) Yuba effected change, obtaining writ relief vacating unlawful actions by respondent.

*3. Significant Benefit Conferred*

" '[T]he "significant benefit" that will justify an attorney fee award need not represent a "tangible" asset or a "concrete" gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy.' [Citations.] '[T]he benefit may be conceptual or doctrinal and need not be

actual or concrete; further, the effectuation of a statutory or constitutional purpose may be sufficient.' [Citation.] Thus, successful CEQA actions often lead to fee awards under section 1021.5. [Citations.] Moreover, the extent of the public benefit need not be great to justify an attorney fee award. [Citation.]" (*RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 781 (*RiverWatch*).) Forcing a public agency to comply with state and federal water law confers a significant benefit on the public. Moreover, the declaration of respondent's Executive Director indicates it has issued seven water quality certifications for relicensing hydroelectric projects without the licensees having an application pending. (Sobeck Decl., ¶¶ 8-9.)

*4. Necessity of Private Enforcement*

Because this action proceeded against the governmental agency granted the authority to exercise the State's full power and jurisdiction to issue Section 401certifications to prevent degradation of the State's waters. (Wat. Code, §§ 13000, 13160), it is evident that private, rather than public, enforcement was necessary. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1215 (*Whitley*); *Woodland Hills*, *supra*, 23 Cal.3d at p. 941.)

*A. Financial Burden of Private Enforcement*

The "financial burden of private enforcement" element concerns the costs of litigation and any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. (*Whitley*, *supra*, 50 Cal.4th at p. 1215.) As a general proposition, an award of attorney fees is appropriate when the cost of the claimant's legal victory transcends his or her personal interest and places a burden on the claimant out of proportion to his or her individual stake in the matter. (*Ibid*.)

The Legislature amended section 1021.5 in 1993 to "allow[] a public entity to recover attorney fees from another public entity." (*People ex rel. Brown v. Tehama County Bd. of Supervisors* (2007) 149 Cal.App.4th 422, 450.) In doing so, the Legislature essentially recognized that sometimes there may be a need for one public entity to engage in public interest litigation against another public entity under circumstances that make a fee award under section 1021.5 appropriate. (*State Water Resources Control Bd. Cases* (2008) 161 Cal.App.4th 304, 314.)

Respondent vigorously argues that Yuba derived a significant pecuniary benefit from this action, citing Yuba's Writ Petition, which claimed the Respondent's acts "could impose on YCWA . . . economic impacts in the range of approximately $500 million to potentially over 1 billion over the next 50 years." (Petition ¶ 55; see also Petition at ¶¶ 84, 132.) Respondent concludes that these allegations contradict Yuba's claim that it derived no financial benefit from the judgment in this litigation.

In evaluating the element of financial burden, "the inquiry before the trial court [is] whether there were 'insufficient financial incentives to justify the litigation in economic terms.' " (*Summit Media LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 193 (*Summit Media*).) "The relevant issue is ' " 'the estimated value of the case at the time the vital litigation decisions were being made.' " ' " (*Davis v. Farmers Insurance Exchange*

(2016) 245 Cal.App.4th 1302, 1330.) If the plaintiff had a "personal financial stake" in the litigation "sufficient to warrant [the] decision to incur significant attorney fees and costs in the vigorous prosecution" of the lawsuit, an award under section 1021.5 is inappropriate. (*Summit Media*, *supra*, 240 Cal.App.4th at pp. 193–194.) " 'Instead, its purpose is to provide some incentive for the plaintiff who acts as a true private attorney general, prosecuting a lawsuit that enforces an important public right and confers a significant benefit, despite the fact that his or her own financial stake in the outcome would not by itself constitute an adequate incentive to litigate.' " (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 635.)

Where the only evidence of pecuniary interest is indirect, speculative, or a potential future benefit, it is not the type of pecuniary benefit that may offset the financial burden of fees and that disqualifies a litigant from recovering fees under section 1021.5. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 739–740 [potential decline in property value not quantified]; see also *Heron Bay Homeowners Assn. v. City of San Leandro* (2018) 19 Cal.App.5th 376, 392–395 [HOA president's unsupported assertion regarding the potential value of the loss for all homeowners properly rejected by trial court], compare *Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 113-114 [benefits obtained were "immediately and directly translated into monetary terms" by allowing petitioner to save $300,000 in improvement expenses].)

Yuba's cost of complying with respondent's unlawful certification is purely speculative. Yuba did not obtain a calculable pecuniary benefit. It did not evade any identified fine or fee. It did not gain or preserve access to any identified fund. It did not evade a calculated expense. It merely mitigated the potential of a future detriment.

5. Amount of Attorney's Fee Award

A court assessing attorney's 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." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Here, Yuba seeks a lodestar of $217,388.80 plus an additional $14,420.00 for the work done on the attorney's fee motion.

As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted 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.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

Respondent maintains that Yuba is not entitled to fees related to administrative proceedings taking place after the filing of this action, or for work beyond what was required for the narrow scope of Yuba's motion for judgment on the writ. Respondent also asserts that Yuba cannot recover fees at attorney rates for non-legal work.

*A. Fees Incurred in Administrative Proceedings After this Action Was Filed Are Recoverable.*

Respondent objects to $44,032.25 in fees Yuba incurred in connection with administrative proceedings on the petition for reconsideration of the Certification after the filing of this action, including arguments that respondent: failed to support Certification conditions with substantial evidence, unlawfully delegated its authority to staff, violated CEQA, impermissibly allowed a staff member with a conflict of interest to participate, and lost the ability to administratively reconsider the Certification conditions 90 days after filing the reconsideration petition.

Fees expended in prior ancillary litigation may be recovered where the prior proceedings were "inextricably intertwined," (*Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 848–849) or "closely related to the action in which fees are sought and useful to its resolution." (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 779-780.) The court in *Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312, concluded that because exhaustion of administrative remedies is a prerequisite to a lawsuit challenging a CEQA determination, the administrative proceedings were "useful and necessary to the public interest litigation." (*Id*. at p. 1319, citing *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1461.)

Respondent asserts that Yuba's "continued involvement in the administrative proceedings on the reconsideration petition was neither useful nor necessary to the resolution of this litigation" because of the narrow issue presented in the Motion for Judgment on the writ. However, absent circumstances rendering the award unjust, a fee award should ordinarily include compensation for all the hours reasonably spent on related claims. Thus, a trial court does not abuse its discretion in refusing to reduce a fee award in an environmental case even though plaintiff prevailed on only a few of many claims. (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 896-898; see also *RiverWatch*, *supra*, 175 Cal.App.4th at pp. 782-783 [no reduction appropriate although plaintiff prevailed on only 3 of 60 claims].) This court will not reduce Yuba's attorney's fees for time spent on administrative proceedings after this action was filed.

*B. Fees Sought by Yuba Are Not Excessive*

Respondents object to Yuba recovering $217,388.80 for 680 hours of work related to this litigation where motion for judgment on the writ involved the single issue of whether the State Board had authority to issue the Section 401 Certification with no pending application. Respondent specifically objects to $44,559.75 charged for time spent requesting and reviewing records from the State Board; drafting an administrative record that was never certified by respondent nor lodged with the Court; and that time related to allegations that respondent violated CEQA and made fatal "judicial admissions."

However, where an attorney's work on successful and unsuccessful causes of action overlaps, a court looks to the party's relative success in achieving his or her objective, and the court may reduce the amount of attorney's fees awarded for partial success if appropriate. (*Mann v. Quality Old Time Service, Inc*. (2006) 139 Cal.App.4th

328, 344–345.) Here, all these tasks were appropriate and inextricably related to the petition for writ relief as a whole, and cannot be said to have been unnecessary simply because Yuba prevailed quickly and efficiently on a threshold issue.

*C. Clerical Work is Not Recoverable*

"[P]urely clerical or secretarial tasks should not be billed …, regardless of who performs them." (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) Calendaring, preparing proofs of service, internal filing, preparing binders for a hearing, and scanning are examples of tasks that have been found to be purely clerical and thus noncompensable or compensable at a greatly reduced billing rate. (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1187; *Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 991.) Respondent identifies $12,069.50 of non-legal work, including but not limited to, indexing and organizing files, addressing issues with downloading and accessing files, checking the court's dockets, and calendaring deadlines. The court agrees and deducts $12,069.50 from the requested attorney's fee award of $231,808.80, for a total attorney's fee award of $219,739.30.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KCK on 02/28/23 .**
(Judge's initials) (Date)