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YUBA COUNTY SUPERIOR COURT
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YUBA

JACQUELINE DAVIS IVORY, JACKIE)
VARVEL, LA YANG VANG, JUDITH)
GONZALES, SERAFIN GONZALES,)
LINDA MOORE, PHOA VANG and)
NENG LAW VANG,)

Petitioners-Plaintiffs,)

vs.)

COUNTY OF YUBA, a political)
subdivision of the State of)
California and the Yuba)
COUNTY BOARD OF SUPERVISORS)
and each of its members, JOHN)
MISTLER, MIMI MATHEWS, JAY)
PALMQUIST, BRENT HASTEY and)
JOAN SAUNDERS, in their)
official capacities and DOES)
1-20, inclusive,)

Respondents-Defendants.)

Case No. 054694
RULING ON PETITIONERS'
MOTION FOR AWARD OF
REASONABLE ATTORNEYS'
FEES

On December 9, 1993, the Petition for Writ of Mandate and the
Complaint for Declaratory and Injunctive Relief were filed against
Respondent Yuba County. The complaint alleged that Respondent's
Housing Element did not comply with State Housing Element law in
that it failed to address the risk of loss of subsidized housing
units and it failed to address the constraints to affordable

1 housing caused by the County's mobile home regulations. The
2 complaint further alleged that the Plumas Lake Specific Plan was
3 inconsistent with the County's General Plan and Housing Element
4 because:

5 (1) the Specific Plan had been adopted at a time when the
6 General Plan was illegal; and

7 (2) the Specific Plan failed to provide areas zoned for
8 affordable low income multi-family housing and failed to insure
9 adequate sites, with adequate infra-structure, for such housing.

10 On August 24, 1994, this Court issued a Peremptory Writ of
11 Mandate finding that these alleged violations were true and
12 requiring the County to correct them within 120 days.

13 Having prevailed on the merits Petitioners now request an
14 award of attorneys' fees under Code of Civil Procedure § 1021.5,
15 the California "private attorney general" statute. C.C.P. § 1021.5
16 provides for an award of reasonable attorneys' fees to successful
17 litigants when three criteria are met:

18 (1) an important right affecting the public interest has
19 been enforced;

20 (2) a significant benefit, whether pecuniary or
21 nonpecuniary, has been conferred on the general public or a large
22 class of persons; and

23 (3) the necessity and financial burden of private
24 enforcement make an award appropriate. The Supreme Court of
25 California has held that when these three statutory criteria are
26 met, the trial court must award reasonable attorneys' fees.

27 **THIS ACTION HAS RESULTED IN THE ENFORCEMENT OF IMPORTANT**
28 **RIGHTS AFFECTING THE PUBLIC INTEREST.**

1 In order to determine the importance of a right under §
2 1021.5 courts are directed to realistically assess the right in
3 terms of its relationship to the achievement of fundamental
4 legislative goals. Clearly, the enforcement of California's
5 General Plan/Housing Element requirements constitutes the
6 achievement of fundamental legislative goals. In *Building Industry*
7 *Assn. v. City of Ocean Side* (1994) 27 Cal.App.4th 744, 770, the
8 court held that housing element laws reflect important state policy
9 to promote the construction of low income housing and to remove
10 impediments to the same. The state legislature has pronounced that
11 the availability of housing is a matter of "vital statewide
12 importance" and "the early attainment of decent housing and a
13 suitable living environment for every California family is a
14 priority of the highest order". [See, e.g. Government Code §
15 65580(a).] Indeed the County's own Housing Element recognizes (at
16 page 64) that the shortage of affordable housing is Yuba County's
17 "most critical need".

18 **PETITIONER'S ACTION HAS CONFERRED A SIGNIFICANT BENEFIT**
19 **ON THE GENERAL PUBLIC AND ON A LARGE CLASS OF PERSONS.**

20 Case law interpreting § 1021.5 likewise holds that the
21 effectuation of a fundamental statutory policy is a "significant
22 benefit". The vindication of legislative intent has traditionally
23 been held to be of significant benefit to a large class of persons
24 because plaintiffs' action has benefitted not only county residence
25 who were directly affected but the "citizenry as a whole". The
26 Department of Housing and Community Development reported in 1991
27 that non-compliance with housing element law affects the state as
28 a "whole". HCD reported further that most local governments are

1 not carrying out the state's housing goals and policies because
2 they see insufficient benefit in complying with Housing Element law
3 and little cost of non-compliance. As a result, the report
4 concludes, "the state as a whole... its economy, its quality of
5 life suffers." It is also a fact that inadequate housing elements
6 affect eligibility for financial assistance necessary to develop
7 affordable housing.

8 Accordingly, numerous courts have recognized that the
9 effectuation of strong state policies such as California's Housing
10 Element law necessarily confers a significant benefit on a large
11 class of people, and this Court so finds.

12 **THE NECESSITY AND THE FINANCIAL BURDEN OF PRIVATE**
13 **ENFORCEMENT OF HOUSING LAW MAKES AN AWARD OF FEES APPROPRIATE.**

14 Cases addressing the basis for the "necessity and burden"
15 element of § 1021.5 have held that private enforcement is
16 "necessary" where there is no public agency able and willing to
17 bring the action and the "financial burden" of the litigation
18 justifies a fee award when the cost of the individual's legal
19 victory transcends his personal interest. That is, when the
20 necessity for pursuing the lawsuit places a burden on the plaintiff
21 out of proportion to his individual stake in the matter.

22 Clearly the financial burden of this litigation far
23 outweighed any personal gain petitioners might ultimately receive.
24 The Court therefore finds that the statutory criteria for an award
25 of attorneys' fees under C.C.P. § 1021.5 are satisfied.

26 Counsel for Yuba County filed written opposition to the
27 fee motion, arguing that no benefit was achieved and that the
28 relief ordered by the Court involved "the picking of nits". In

1 light of the abundant case law on the subject and the Government
2 Code sections which mandate compliance this description of what the
3 case involved is absurd. Counsel masterfully understates the
4 "achievements" as follows:

5 "1. *Remove the requirement that pre-1974 mobile*
6 *homes have siding and roofing.*" This description is misleading to
7 the uninformed reader. As one of the conditions for approval of
8 the draft Housing Element the State Department demanded that the
9 County repeal an ordinance which required costly, non-factory
10 siding and roofing for pre-1974 mobile homes. As detailed in
11 Respondent's Housing Element, mobile homes constitute a substantial
12 source of affordable housing in Yuba County and implementation of
13 the County's roofing and siding ordinance would impede the
14 development and siting of otherwise affordable mobile homes. The
15 ordinance also would have required current residents who chose to
16 move their mobile homes within the County to add the siding and
17 roofing. Respondent had assured the State that the ordinance would
18 be repealed and had reiterated that promise in a letter dated March
19 1994, several months after litigation had begun. At trial however,
20 Respondent took the peculiar position that the promise to repeal
21 the ordinance was not a promise and the explicit condition imposed
22 by HCD was in fact not a condition. The ordinance was finally
23 repealed as a result of this Court's order.

24 "2. *Make a statement that high density zoned areas*
25 *in the Plumas Lake Specific Plan may have as many as 21 units per*
26 *gross acre.*" As pointed out by the Petitioners "prior to the
27 Court's order, the Plumas Lake Plan limited overall gross
28 residential density, effectively precluding any developer of

1 affordable housing from obtaining the 21 unit/acre density which
2 the County's own Housing Element had found necessary to render
3 affordable housing development feasible. The gross density
4 limitation would have required developers who were seeking to
5 obtain higher densities on a given parcel to purchase additional
6 parcels and to leave them undeveloped, thus making development of
7 affordable housing more costly and therefore unfeasible. Pursuant
8 to the Court's order the Specific Plan has been amended to permit
9 21 unit/acre density in its multi-family zones. When the Yuba
10 County Board amended the Specific Plan it expressly stated that the
11 proposed amendment would "assist in increasing the supply of
12 affordable housing stock" and would "assist Yuba County in meeting
13 the affordable housing element production goals contained in the
14 Housing Element". Resolution No. 1994-156 (Oct. 11, 1994)

15 "3. *Call a telephone number different from that*
16 *provided by Housing and Community Development at the time the local*
17 *housing element was adopted to ascertain "at risk" units within the*
18 *County."* The Court cannot find anything in the file to explain the
19 "call a different telephone number" assertion, however, the truth
20 of the matter is that the County was ordered by the Court to
21 complete an analysis of at risk housing, as required by the
22 government code. The analysis completed by respondents revealed
23 that almost 10 million dollars of affordable housing is at risk of
24 conversion during the planning period covered by the Housing
25 Element. The analysis also found that it would cost 3.5 million
26 dollars to provide rental assistance to those families threatened
27 by conversion just during the planning period. The analysis
28 included an adequate and complete plan for preserving the

1 threatened units and that plan was created solely as a result of
2 the lawsuit. As argued by Petitioners, the Court's order thus
3 helped ensure that Yuba County's stock of subsidized housing would
4 be preserved. The County itself recognized this fact when it
5 declared that:

6 "1. The proposed amendment will assist in the
7 preservation, rehabilitation and conservation of Yuba
8 County's existing affordable housing stock." and,

9 "2. Such preservation, rehabilitation and
10 conservation will contribute to the economic well being
11 of Yuba County." Resolution No. 1994-157 (Oct. 11,
12 1994)

13 The Board's own conclusions would appear to contradict the
14 understated and so-called "nit" suggested by their attorney.

15 "4. *Adopt some language commenting upon Olivehurst*
16 *Public Utility District's alleged failure to implement a statutory*
17 *policy in writing.*" Both the Housing Element and the Specific Plan
18 failed to address the Olivehurst Public Utility District's failure
19 to give hook-up priority to affordable housing as required by State
20 law. Given the Utility District's limited capacity, affordable
21 housing developers, lacking resources to pay for additional
22 capacity would likely be precluded from developing in the Specific
23 Plan area. The County's analysis and adoption of "some language"
24 pursuant to the Court's order has resulted in OPUD acknowledging
25 the priority mandate and thereby ensuring the availability of
26 adequate sites for affordable housing development in their service
27 area.

28 Counsel's description of what this lawsuit entailed
should perhaps be considered mere advocacy, however it appears to
be consistent with an attitude of disdain which was displayed prior
to and during the proceedings. The record reflects, for example,

1 that the County unilaterally cancelled scheduled settlement
2 meetings with Petitioners' attorneys. This attitude may also have
3 been shared by two of the party/defendant supervisors Mathews and
4 Mistler if their sarcastic and somewhat contemptuous comments were
5 accurately reported.

6 Respondent has requested that the Court take judicial
7 notice of Case No. 51053, *County of Yuba v. D.K.M. et al.* That
8 file reflects the unsuccessful attempt by Hal Stockers' attorney to
9 negotiate the fee award and thereby save the County the additional
10 costs of a hearing. He was told that any request for fees would be
11 opposed with counsel's "dying breath". (Declaration of James
12 Moose, Exhibit B to Reply Memorandum filed April 15, 1993.) Yuba
13 County ended up paying several thousand dollars more as a result of
14 this attitude.

15 It would indeed be unfortunate if an "attitude" prevented
16 the early settlement of this case because Respondent should
17 certainly have anticipated that under California law the entire
18 cost of litigating the "nits" would be borne by the taxpayer.

19 **FEE CALCULATION**

20 The first step in setting a fee award is to calculate the
21 number of hours worked multiplied by a reasonable hourly rate for
22 those services. The number of hours includes all time reasonably
23 expended in pursuit of the ultimate result achieved, excluding
24 excessive, redundant or otherwise unnecessary hours.

25 Any objection to the number of hours claimed must be
26 specific and the generalized objection by opposing counsel that the
27 hours are "excessive" or "unnecessary" may not suffice to rebut the
28 fee claim.

1 Pre-litigation hours are compensable under law. A review
2 of attorney Jacobs' declarations and time records reflects the
3 claim for a mere 6 hours for administrative advocacy services, all
4 between July 1993 and September 1993, immediately before the
5 complaint was filed. This claim is clearly reasonable and
6 demonstrates the "billing judgment" required of counsel.

7 As lead counsel in the action attorney Jacobs elected to
8 associate Michael Rawson of the Housing Element Enforcement Project
9 of Alameda County as co-counsel. The use of multiple counsel is
10 permissible when the demands of the particular case warrant the
11 hiring of more than one attorney. In this regard some duplication
12 of effort is unavoidable and permissible. The Court has carefully
13 reviewed the qualifications and experience of both counsel and
14 notes particularly that Ms. Jacobs serves as co-chairperson on the
15 CRLA Housing Law Task Force, regularly reviewing Housing Element
16 law, local draft and adopted housing elements and providing
17 testimony at local public hearings. Furthermore, having presided
18 over these proceedings and being able to observe the participation
19 and performance of counsel, and having previously observed the
20 performance of Ms. Jacobs in other, arguably complex litigation, it
21 is this Court's finding that attorney Rawson's involvement, while
22 no doubt helpful to lead counsel Jacobs, was not entirely
23 necessary. The Court does not consider this case sufficiently
24 complex to justify the full-time participation of more than one
25 attorney of Ms. Jacobs' qualifications, particularly at the actual
26 hearings and at various depositions. The deposition transcripts
27 reveal that the questioning and subject matter were relatively
28 simple and straight-forward. For these reasons Mr. Rawson's hours

1 for those appearances are disallowed. The hours claimed for
2 consultation and review with attorney Rawson are considered
3 reasonable because trial counsel often consult other attorneys who
4 are not actively involved in the case. The Court assumes that
5 County Counsel had such a benefit available to him and the Court
6 will accept attorney Jacobs' declaration that such consultation was
7 necessary.

8 The issue of compensation for additional counsel also
9 arises in connection with the preparation and presentation of the
10 Motion for Attorneys' Fees. Ms. Jacobs enlisted the aide of Bay
11 Area attorney Richard Pearl and he too has billed for services
12 rendered. As the Court noted at the hearing on the motion, Mr.
13 Pearl is the author of "California Attorney Fee Awards" a
14 recognized practice guide on the subject of fees. Given the
15 availability of his excellent text and trial counsel's abilities it
16 was an unnecessary duplication of effort to associate Mr. Pearl and
17 to have him appear at the hearing. The Court does not consider his
18 hours of participation as being reasonably spent as required by
19 *Serrano v. Unruh* 32 Cal.3rd 621.

20 In conclusion the Court finds that the 348.30 hours
21 claimed by Ms. Jacobs are all compensable and that 145.22 hours
22 claimed by Mr. Rawson are compensable.

23 Having calculated the compensable hours the Court must
24 next determine the fee rate to be applied. Case law is clear that
25 the fact that counsel is a salaried employee of a public funded
26 corporation is not relevant and that the appropriate measure is the
27 prevailing community market rate, in the area where the services
28 are rendered. Petitioners have submitted the declaration of a

1 local practitioner in support of their claimed "prevailing local
2 rate". This declaration suggests an hourly rate of between \$150.00
3 and \$200.00 for legal services, with declarant's law firm charging
4 \$200.00 per hour for complex real property matters. Having
5 presided over hundreds of cases in the past eight years, the Court
6 finds that the current prevailing hourly rate is more in the
7 neighborhood of \$150.00, with many attorneys charging less and a
8 few charging somewhat more.

9 Although it is recognized that the hourly rate is
10 substantially higher in the Bay Area the Court finds that the Yuba-
11 Sutter rate is appropriate for the services of attorney Rawson.

12 The total (lodestar) amount for services reasonably
13 rendered is \$74,028.00.

14 Petitioners have requested that the Court enhance the
15 lodestar award by a 1.5 multiplier to reflect the complexity and
16 other factors recognized by the Supreme Court and the Appellate
17 Courts. These factors include the novelty and complexity of
18 issues; the difficulty of the case; skill displayed in presenting
19 the case; the contingent fee factor; the preclusion of other
20 employment and the results obtained. A court may use a positive
21 multiplier, but the final award must bear some reasonable
22 relationship to the lodestar figure. While Federal law, not
23 binding in California, has significantly restricted the use of a
24 multiplier for fee awards, state trial courts may consider the
25 various factors listed to enhance or decrease the base amount.

26 This matter was not unduly complex. Both this Court and
27 attorney Jacobs urged Respondent County to settle this lawsuit and
28 avoid protracted litigation and the issuance of the writ because

1 the issues were relatively simple and Petitioners claims were
2 clearly meritorious. Counsel cannot now take the position that the
3 matter was so complex as to justify a higher fee. Having reviewed
4 the numerous cases where the appellate courts found that an
5 enhanced fee was justified based on complexity it is this Court's
6 opinion that this factor is often overly used and too easily
7 applied.

8 The skill of attorney Jacobs is recognized and is
9 appreciated, however, it is not considered an enhancing factor
10 because that skill is no more than that which is necessary and
11 would be expected of any competent attorney.

12 The case did not preclude other work by counsel to such
13 a significant extent as to be all-consuming. Indeed, the
14 proceedings were deliberately drawn out to allow defendants to
15 amend the housing element and specific plan and avoid the issuance
16 of any writ.

17 The contingent fee factor is not considered justification
18 for enhancing the fee award given the well known fact, at least in
19 housing law, that fees are usually awarded to the prevailing party.

20 Another possibly enhancing factor is the undesirability
21 or unpopularity of the cause and, except for the opinions of a few
22 uninformed, this case has caused no undue hardship upon counsel.

23 Finally, the success achieved is reflected in the award
24 of fees and does not justify a multiplier.

25 Having considered the various factors which have been
26 applied by the other courts, not always with a clear understanding
27 of the reasons to award more than an amount based on the hours
28 actually spent times a reasonable rate, and specifically

1 disagreeing with the opinion of some courts that generous fees
2 should be awarded to encourage any particular type of litigation
3 (it not being the business of the courts to promote litigation)
4 this Court finds that none of the criteria justify either
5 enhancement or reduction of the fee.

6 Respondent's opposition to the motion for fees based on
7 the argument that they were in compliance with the law is an
8 attempt to re-litigate the issues already determined by the Court.
9 Respondent chose not to appeal the Court's ruling and should have
10 done so if they believed they were in fact in compliance.

11 Respondent also opposes the motion based on the
12 suggestion that Yuba County is impecunious. Even if true, the
13 courts have expressly held the defendant's financial condition is
14 irrelevant to the fee claim. The recognized purpose of CCP §
15 1021.5 is to encourage plaintiffs to vindicate their statutory
16 rights and not to punish defendants. It is simply designed to
17 encourage public interest litigation by providing compensation to
18 successful counsel. As pointed out by Petitioners, the question is
19 not whether Yuba County should be "punished" with a fee award but
20 whether the Petitioners should be compensated for achieving
21 compliance with important State law.

22 Respondent's final argument is that the fee award should
23 be reduced because they acted in good faith. Even assuming such
24 good faith, which was not always evident during trial, case law
25 specifically rejects this argument as irrelevant.

26 There is no doubt that dedicated county personnel
27 invested a tremendous amount of time and energy into the
28 preparation of the housing element and the specific plan. It is

1 indeed regrettable that Respondent refused to take those few,
2 relatively simple steps which would have resolved the lawsuit,
3 avoided the issuance of the writ and significantly reduced the
4 costs of litigation. This resistance to the obvious not only left
5 the Court with no alternative but to issue the writ but has placed
6 this Court in the position of having to award fees, thereby adding
7 unnecessarily to the financial strain of the County.

8 In accordance with the above, the Court finds that
9 California Rural Legal Assistance shall be awarded the sum of
10 \$52,245.00 as and for attorneys' fees and that Housing Element
11 Enforcement Project shall be awarded the sum of \$21,783.00.
12 Combined costs of \$3,765.57 are awarded.

13 SO ORDERED.

14 DATE: April 28, 1995

DENNIS J. BUCKLEY

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16 DENNIS J. BUCKLEY
17 JUDGE OF THE SUPERIOR COURT
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