COPY

Case No. A132839

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

BUILDING INDUSTRY ASSOCIATION OF THE BAY AREA, f/k/a HOME BUILDERS ASSOCIATION OF NORTHERN CALIFORNIA, a California nonprofit corporation

Plaintiff and Respondent,

vs.

CITY OF SANTA ROSA,

Defendant and Appellant.

FILED
JUL 25 2012

On Appeal from the Superior Court of Sonoma County
(Case No. SCV 244441, Honorable Mark Tansil, Judge)

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANT CITY OF SANTA ROSA; PROPOSED BRIEF

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TO THE HONORABLE BARBARA J.R. JONES, PRESIDING JUSTICE OF THE FIRST DISTRICT COURT OF APPEAL, DIVISION FIVE:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities and the California State Association of Counties respectfully apply for permission to file the accompanying brief *amicus curiae* in support of the City of Santa Rosa, Appellant. The brief has been prepared and is submitted concurrently with this application.

INTEREST OF *AMICI*

The League of California Cities ("League) is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance. The League appears frequently before the courts of appeal as *amicus curiae* and Supreme Court on matters affecting local government.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the

Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

AMICI ARE FAMILIAR WITH THE ISSUES IN THIS CASE

Amici and its counsel are familiar with the issues in this case, and have reviewed the orders of the Superior Court and the briefs on the merits filed with this Court. As statewide organizations with considerable experience in this field, the League and CSAC believe they can provide important perspective on the issue before the Court. Counsel in this case for *amici* has represented both public interest plaintiffs and public agencies in environmental and land use litigation, including motions for attorneys' fees under Code of Civil Procedure section 1021.5.

POINTS TO BE ARGUED BY *AMICI*

If permission to file the accompanying brief is granted, the League and CSAC will address the following issue:

> May the in-house counsel for a trade association funded by the profits of its members, as well as a charitably funded law firm that provides additional representation to it, recover attorneys' fees under Code of Civil Procedure section 1021.5 after prevailing in a lawsuit that conferred a financial benefit on the trade association's members?

For these reasons, the League and CSAC will urge the Court to reverse the decision of the Sonoma County Superior Court.

Wherefore, the League of California Cities and the California State Association of Counties respectfully request this Court to grant this application to file the accompanying brief *amicus curiae*.

Dated: July 24, 2012

Respectfully submitted:

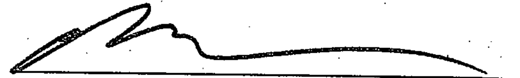
By: 

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TABLE OF CONTENTS

I. INTEREST OF *AMICI* 1

II. POINT TO BE ARGUED BY *AMICI* 2

May the in-house counsel for a trade association funded by the profits of its members, as well as a charitably funded law firm that provides additional representation to it, recover attorneys' fees under Code of Civil Procedure section 1021.5 after prevailing in a lawsuit that conferred a financial benefit on the trade association's members? 2

III. STATEMENT OF FACTS 4

IV. ARGUMENT 5

A. A TRADE ASSOCIATION FUNDED BY ITS MEMBERS MAY NOT RECOVER ATTORNEYS' FEES UNDER CODE OF CIVIL PROCEDURE SECTION 1021.5 AFTER PREVAILING IN A LAWSUIT MOTIVATED BY ITS MEMBERS' PECUNIARY INTEREST 5

B. THE TRIAL COURT'S RULING HERE WAS ERROR; AT A MINIMUM THE CASE MUST BE REMANDED SO THAT THE BIA'S MOTION CAN BE DECIDED ON A FULL RECORD 12

C. THE TRIAL COURT'S REASONING LEADS TO RESULTS THAT WERE NEVER INTENDED BY THE LEGISLATURE AND CONTRARY TO THE FUNDAMENTAL PURPOSE OF SECTION 1021.5 17

V. CONCLUSION 18

TABLE OF AUTHORITIES

Page(s)

CASES

Aguilar v. Johnson
(1988) 202 Cal.App.3d 241 16

Beach Colony II v. California Coastal Com.
(1985) 166 Cal.App.3d 106 .... 7, 15

Beasley v. Wells Fargo Bank
(1991) 235 Cal.App.3d 1407 7

California Licensed Foresters Association v. State Board of Forestry
(1994) 30 Cal.App.4th 562 ....7, 9, 10, 14-15

Citizens Against Rent Control v. *City of Berkeley*
(1986) 181Cal.App.3d 213, 231 [226 Cal. Rptr. 265]..................... 10, 16

City of Santa Monica v. Stewart
(2005) 126 Cal.App.4th 43 7-8

Conservatorship of Whitley
(2010) 50 Cal. 4th 1206 ....passim

County of Inyo v. City of Los Angeles
(1978) 78 Cal.App.3d 82 8

DiPirro v. Bondo
(2007) 153 Cal.App.4th 150 3

Edna Valley Watch v. County of San Luis Obispo
(2011) 197 Cal.App.4th 1312 .... 9, 14, 15

Los Angeles Police Protective League v. City of Los Angeles
(1988) 188 Cal.App.3d 1 10-11

Lyons v. Chinese Hospital Assn.
(2006) 136 Cal.App.4th 1331 .... 3, 11

Mounger v. Gates,
(1987) 193 Cal.App.3d 1248 16

Press v. Lucky Stores, Inc.
(1983) 34 Cal.3d 311 3

TABLE OF AUTHORITIES (Con't.)

Page(s)

CASES

Robinson v. City of Chowchilla
(2011) 202 Cal.App.4th 382 16

Satrap v. Pacific Gas & Electric Company
(1996) 42 Cal.App.4th 72 11

Terminal Plaza v. City and County of San Francisco
(1986) 186 Cal.App.3d 814 17

Woodland Hills Residents Assn., Inc. v. City Council
(1979) 23 Cal.3d 917 .... passim

STATUTES

Code of Civil Procedure Section 1021.5 .... passim

OTHER AUTHORITIES

California Rules of Court, Rule 8.200(c) 1

Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2d ed. 2004) § 4.31 3

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities and the California State Association of Counties respectfully submit this brief *amicus curiae* in support of the City of Santa Rosa, Appellant.

I.

<u>INTEREST OF *AMICI*</u>

The League of California Cities ("League) is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance. The League appears frequently before the courts of appeal as *amicus curiae* and Supreme Court on matters affecting local government.

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II.

POINT TO BE ARGUED BY *AMICI*

May the in-house counsel for a trade association funded by the profits of its members, as well as a charitably funded law firm that provides additional representation to it, recover attorneys' fees under Code of Civil Procedure section 1021.5 after prevailing in a lawsuit that conferred a financial benefit on the trade association's members?

A successful plaintiff may be awarded attorneys' fees under Code of Civil Procedure section 1021.5[1] only if:

1. the action resulted in "enforcement of an important right affecting the public interest";
2. the action conferred a significant benefit on the general public or large class of persons; and

[1] Code of Civil Procedure Section 1021.5 states:

> 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.

3. the necessity and financial burden of private enforcement are such as to make the award appropriate.

(*Press v. Lucky Stores, Inc*. (1983) 34 Cal.3d 311, 317–318; *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933-934; *DiPirro v. Bondo* (2007) 153 Cal.App.4th 150, 197.)

A plaintiff must prove all of these elements; if even one remains unproven, the request for attorneys' fees must fail. We focus in this brief solely on the last element: whether the burden of private enforcement transcended the plaintiff's stake. This requirement "really examines two issues: whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys." *Conservatorship of Whitley* (2010) 50 Cal. 4th 1206, 1214-1215 (citing *Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1348, quoting Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2d ed. 2004) § 4.31, p. 117, internal quotation marks omitted).

As we explain below, the plaintiff trade association here does not meet this requirement because it is a creature of, and was acting solely on behalf of, entities that *do* have a significant financial stake in the outcome of the underlying litigation. For this reason, "the financial burden of private enforcement *does not* warrant[] subsidizing" plaintiff's attorneys. Under these circumstances, the necessity and financial burden of private enforcement are *not* such as to make the award appropriate.

III.

STATEMENT OF FACTS

Amici adopt the statement of facts in the opening brief of Santa Rosa. The following statement of facts is limited to those facts material to the argument presented in this brief.

Respondent Building Industry Association of the Bay Area ("BIA") is an association "comprised of hundreds of homebuilders, developers, property owners, contractors, subcontractors, building trades, suppliers, engineers and design professionals and others involved in the business of providing housing in the area of Sonoma County." (CT 5, ¶ 5.) Its mission includes "legal representation of the interests of its members . . . in enforcement of California law governing housing and residential development." (CT 5, ¶ 5.)

The BIA challenged a Santa Rosa ordinance that required applicants for discretionary development approvals to annex to the City's Special Tax District. (CT 1-18.) The ordinance applied only to certain residential development, and not to the public generally. (CT 498-499.)[2] The BIA alleged that Santa Rosa's actions in adopting the ordinance "directly affect and impair the interests of [BIA] and its members…" (CT 4, ¶5) and explained that the ordinance made it "more difficult and more expensive"

for BIA members to engage in their business, *i.e.*, developing housing. (CT 6, ¶15.)

The trial court ultimately granted summary judgment in favor of the BIA, holding that the ordinance was unconstitutional because it essentially compelled developers to agree to be taxed in order to develop their property. (CT 238.) The trial court did not invalidate the Special Tax District itself. (CT 236.) Santa Rosa elected not to appeal that ruling but rather to revise its ordinance.

BIA then filed a motion seeking over $226,000 in attorney fees under Code of Civil Procedure section 1021.5. (CT 623-624.) It further sought an additional $48,000 in its reply brief. (CT 200.) The trial court awarded BIA $243,417.50. (CT 217.)

IV.

ARGUMENT

A. A TRADE ASSOCIATION FUNDED BY ITS MEMBERS MAY NOT RECOVER ATTORNEYS' FEES UNDER CODE OF CIVIL PROCEDURE SECTION 1021.5 AFTER PREVAILING IN A LAWSUIT MOTIVATED BY ITS MEMBERS' PECUNIARY INTEREST

In this case a building industry trade association funded by its members and a charitably funded law firm which exists to advocate for

[2] The BIA admitted that the ordinance only applied to a "small subset of applicants for non-exempt residential building permits in the City." (CT 604:4-5.)

private property rights (CT 945) were awarded fees for overturning a local ordinance whose object was to raise funds to pay for the services required by new real estate development. If ever a case invites a return to first principles with respect to the private attorney general theory this is it.

What is the purpose of the "private attorney general" theory, as codified in Section 1021.5?

> …. the fundamental objective of the private attorney general doctrine of attorney fees is "'to encourage suits effectuating a strong [public] policy by awarding substantial attorney's fees . . . to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens.'" The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, *without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible*.

(*Woodland Hills Residents Assn.*, *supra*, 23 Cal.3d at 933, citations omitted, emphasis supplied; *Whitley*, *supra*, 50 Cal.4th at 1217-1218.)

But the private attorney general theory is not just a bounty for successful public interest litigants simply because they are successful. Rather it is intended to make important public interest litigation that would otherwise be unaffordable possible. It is *not* intended to be a "reward for litigants motivated by their own interests who coincidentally serve the

public[3]." (*California Licensed Foresters Association v. State Board of Forestry* (1994) 30 Cal.App.4th 562, 570, citing *Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 114; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1414.)

> What section 1021.5 does address is the problem of affordability of such lawsuits. Because public interest litigation often yields nonpecuniary and intangible or widely diffused benefits, and because such litigation is often complex and therefore expensive, litigants will be unable either to afford to pay an attorney hourly fees or to entice an attorney to accept the case with the prospect of contingency fees, thereby often making public interest litigation 'as a practical matter … infeasible.'

(*Whitley*, *supra*, 50 Cal.4th at 1219, *quoting Woodland Hills, supra*, 23 Cal.3d at 933.)

Intrinsic to the private attorney general is the principle that fees may be awarded only when necessary because the cost of public interest litigation to the plaintiff renders it "infeasible" as a practical matter.

> [S]ection 1021.5 is primarily concerned not with the problem of a litigant's lack of motivation to pursue public interest litigation but with the infeasibility of doing so because of large attorney fees and nonpecuniary outcomes that make "these cases … prohibitively expensive for almost all citizens."

(*Id.* at 1224, citation omitted.)[4]

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[3] Although in this case it is not at all clear there was even a *coincidental* public benefit.

[4] "Taken together, the policies underlying both the intervention and private attorney general statutes are designed to encourage interested parties who might otherwise lack the resources to aggressively pursue meritorious

Section 1021.5 speaks directly to this requirement by requiring that "the necessity and financial burden of private enforcement… [be] such as to make the award appropriate." The "financial burden" part of this inquiry focuses not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. (*Whitley*, *supra*, 50 Cal.4th at 1215, *quoting Woodland Hills*, *supra*, 23 Cal.3d at 941.) Thus an award is "appropriate" only when the "cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his individual stake in the matter." (*Woodland Hills*, *supra*, 23 Cal.3d at 941, citing *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89.)

The Supreme Court has since clarified that a litigant's *nonpecuniary* stake may not be considered in this analysis. (*Whitley*, *supra*, 50 Cal.4th at 1211.) This highlights the focus of the private attorney general theory and Section 1021.5 on *pecuniary* costs and benefits to litigants seeking an award of attorneys' fees.

> Motivation language is particularly useful because in assessing the financial burdens and benefits in the context of section 1021.5, we are evaluating incentives rather than

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public interest litigation." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 88 [proponents of a ballot measure were entitled to fees as successful intervenors, because the financial burden of litigation significantly outweighed their interest in having the measure upheld].)

> outcomes. "'[W]e do not look at the plaintiff's *actual* recovery after trial, but instead we consider "the estimated value of the case at the time the vital litigation decisions were being made."' [Citation.] The reason for the focus on the plaintiff's expected recovery at the time litigation decisions are being made, is that Code of Civil Procedure section 1021.5 is intended to provide an incentive for private plaintiffs to bring public interest suits when their personal stake in the outcome is insufficient to warrant incurring the costs of litigation." [Citation.] Although objective financial incentives and subjective motives may overlap, and indeed sometimes may be indistinguishable, it is clear from the language and purpose of the statute that only the former is the proper subject of the court's inquiry when assessing the financial burden of litigation under section 1021.5.

(*Id.* at 1220-21.)

At the same time, the fact that a litigant does not *seek* monetary damages is irrelevant. Court need not "feign naiveté as to the plaintiff's true purpose in bringing an action." (*Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312, 1321.)

What of the situation here, where a trade association, rather than its members, prosecutes a lawsuit?

In *California Licensed Foresters Association (CLFA) v. State Board of Forestry* (1994) 30 Cal.App.4th 562, plaintiff had prevailed in a challenge to emergency regulations that had been adopted by the Board of Forestry, claiming that the emergency regulations affected the livelihood of its members. (*Id*. at 567.) It then sought fees under Section 1021.5. The trial court awarded fees, but the court of appeal reversed.

Like the BIA here, "CLFA argue[d] it had no personal motivation for bringing this action because, as an entity separate from its members, CLFA had no financial stake in the outcome." (*Id.* at 570.) The court rejected this line of reasoning:

> These arguments are not persuasive. In its representative capacity, CLFA had a financial stake in pursuing this matter *to the same extent as its members*. CLFA's very existence depends upon the economic vitality of its members and any benefit or burden derived by CLFA from this lawsuit ultimately redounds to the membership. As to CLFA's financial status, our concern under section 1021.5 is whether CLFA "had an *individual stake* that was out of proportion to the costs of litigation …, not whether [it was] financially able to bear the costs. Financial status is not the criterion…." (*Citizens Against Rent Control* v. *City of Berkeley* (1986) 181Cal.App.3d 213, 231 [226 Cal. Rptr. 265], citations omitted and italics in original.)

(*Id.*, emphasis supplied.)

The Court concluded that the pecuniary interest of CLFA and its members was sufficient *motivation* for bringing the action and reversed the award of fees. (*Id.* at 573.)

Similarly, in *Los Angeles Police Protective League v. City of Los Angeles* (1988) 188 Cal.App.3d 1, the court denied attorneys fees for a police union at the trial level, where the case only implicated its members' interests and the union had ample resources to proceed, but upheld fees for work at the appellate level, where the case was expanded to vindicate interests of non-members and where legal costs exceeded benefits such that it would not have made sense to proceed without a bounty.

The court described the analytical process 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. …
>
> 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… 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.

(*Id*. at 9-10, cited with approval in *Conservatorship of Whitley*, *supra*, 50 Cal.4th at 1215-1216.)

Again, the key issue is whether the likely pecuniary value of the litigation was sufficient to motivate the lawsuit. "Motivation language is particularly useful because in assessing the financial burdens and benefits in the context of section 1021.5, we are evaluating incentives rather than outcomes." (*Conservatorship of Whitley*, *supra*, 50 Cal.4th at 1220-21, citing *Satrap v. Pacific Gas & Electric Company* (1996) 42 Cal.App.4th 72, 77.) If the estimated value of the case is sufficient to justify actual litigation costs and still provide an incentive to litigate, fees should not be awarded. (*Lyons v. Chinese Hospital Association* (2006) 136 Cal.App.4th 1331, 1353.)

B. THE TRIAL COURT'S RULING HERE WAS ERROR; AT A MINIMUM THE CASE MUST BE REMANDED SO THAT THE BIA'S MOTION CAN BE DECIDED ON A FULL RECORD

BIA argued below that this case was not about whether or not BIA's members would have to pay a tax, but simply about whether they had the right to vote. (RT, p. 9:3-7; 10:2-3.) The trial court attempted to address the question of whether the financial stake of BIA's members in this litigation was such as to make an award of fees inappropriate, but got wrong what this case was really about:

> This case was not about dollars but about rights. The legal action was brought in order to obtain declaratory and injunctive relief concerning a land use ordinance, seeking a determination that the ordinance was facially unconstitutional. When the [BIA] won, the group was not awarded monetary damages, rather it got a ruling that vindicated constitutional rights.[5]

(CT 215:12-16.)

BIA doubles down in its respondent's brief: "Here, the [BIA] has no financial incentive to bring this lawsuit. The [BIA] did not seek or obtain

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[5] "Of course, 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. "[However]… the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. We believe rather that the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case." (*Woodland Hills, supra*, 23 Cal.3d at 939–940.)

damages or any other monetary relief…" (Resp. Brief 19; see also Resp. Brief 23.) BIA claims that it merely "vindicated the constitutional rights of its members." (*Id*.) But those constitutional rights amounted, in this case, to *the right to avoid paying taxes* to provide services to the developments they hoped to build.[6] If BIA's members had no objection to paying the tax in question, BIA would not have challenged an ordinance that "directly threatened" its members by depriving them of the ability to "freely *vote* for or *against taxation*." (CT 62:2-8; emphasis supplied.) This lawsuit was filed only because BIA's Santa Rosa members did not want to pay a local tax, which they believed would "have an adverse effect on them." (CT 314, #1, citing CT 932, 933 & 940.) The effect referred to is clearly an *economic* effect.

And, BIA has a direct interest in its members' profitability – not just because that is its *raison d'etre*, but also because BIA is funded by a fee based on the sales prices of new homes sold by its members. So "to the extent that Ordinance No. 3902 affects the ability of [its] members to obtain permits or approval for building new homes or the closing price for the sale of such a home [sic.], Ordinance No. 3902 will directly affect Plaintiff."

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[6] One wonders whether, by depriving Santa Rosa of funds to provide needed public services, BIA's success did not confer a *benefit* on the public, but caused it *detriment*. (See CT 390, ¶¶9-20 [challenged ordinance was intended to provide funds to pay for public services necessitated by new developments].)

(CT 349:20-25.) To describe BIA's argument as merely disingenuous does not do it justice.

In *Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312, the successful plaintiff similarly claimed that he had no pecuniary interest in the litigation because he had not sought monetary damages. The court rejected this claim, observing that the private attorney general theory and Section 1021.5 do not "require[] the court to confine its analysis to the relief sought on the face of the pleadings and to feign naiveté as to the plaintiff's true purpose in bringing an action." (*Id*. at 1321.) Naïve would seem to be an apt description of the statement that "[t]his case was not about dollars but about rights."

The trial court next stated:

> From a realistic and practical assessment, the [BIA] did not have a financial incentive to wage this battle. Any future financial benefit that might be derived by [BIA] members owning local real property is relatively small in comparison to the cost of this litigation.

(CT 215, p. 3:17-19.)

On what was this "realistic and practical assessment based"?

Entitlement to an award of fees under Section 1021.5 "does not turn on a balance of the litigant's private interests against those of the public but on a comparison of the litigant's private interests with the anticipated costs of suit." (*California Licensed Foresters Association v. State Board of*

Forestry (1994) 30 Cal.App.4th 562, 570, citing *Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 113.)

Amici submit that a more obviously "realistic and practical assessment" in this case is that BIA members –property developers who will not have to pay additional tax as a result of this litigation – are *defined* by their financial stake in this action.

Indeed, Mr. Campos comes right out and says it: "Plaintiff has a direct interest in protecting its members' *right to conduct their business*" (CT 908, ¶3, emphasis supplied), presumably for profit. With respect to voting, BIA argued that it was directly interested in not merely being able to vote, but to freely *vote against taxation*. (CT 62:2-8.) Accordingly, it must be presumed that the BIA members have a financial interest that justified the cost of this lawsuit. For instance, how many units must they sell in order to justify an expenditure of $250,000? Even a moderately-sized development will provide more than that amount of profit and "developer fees". Added to this, how much will the local BIA members save by not having to consent to taxation under the challenged ordinance? For BIA to disclaim any financial incentive on the part of its members, and to don the mantle of protecting the rights of "the voters" – who in this case are limited to its local members – is not credible. If the courts may consider the real motives of public interest plaintiffs whose profit margins are *not* affected by litigation, as in *Edna Valley Watch*, they may – and should – certainly

consider the motives of trade associations and their members who exist for the purpose of engaging in business for profit.

In *Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, the successful petitioner's moving papers addressed his litigation costs, but did not demonstrate the cost-benefit analysis required by *Whitley*. After reciting the benefits he had received, the Court concluded:

> We will not attempt to apply the cost-benefit analysis here. Instead, we will remand to the trial court for it to reach a determination, in light of *Conservatorship of Whitley*, regarding the "financial burden of private enforcement" criterion contained in section 1021.5. (See *Aguilar v. Johnson, supra*, 202 Cal.App.3d at p. 253 [remanded to trial court for a determination of financial burden criterion]; *Mounger v. Gates, supra*, 193 Cal. App.3d at p. 1259 [same].)

(*Robinson v. City of Chowchilla* (2011) 202 Cal. App. 4th 382, 402-403.)

Similarly here, there is insufficient evidence as to whether or not BIA's members have a sufficiently small pecuniary stake in this litigation to make an award of fees appropriate. This must be held *against* BIA, since it had the burden to demonstrate it met the requirements of Section 1021.5, not Santa Rosa's to prove the negative. Accordingly, the court should remand for discovery and further factual development, as requested by Santa Rosa, and a full determination by the trial court.

C. THE TRIAL COURT'S REASONING LEADS TO RESULTS THAT WERE NEVER INTENDED BY THE LEGISLATURE AND CONTRARY TO THE FUNDAMENTAL PURPOSE OF SECTION 1021.5

It seems unlikely, to say the least, that the drafters of Section 1021.5 intended it to authorize an award of fees to an industry trade group of, for example, the five largest oil companies in a case involving invalidation of a tax that would apply to oil companies. Rewarding this sort of ventriloquism is not the purpose of Section 1021.5. Yet this is precisely what the trial court's ruling here does, albeit on a smaller scale.

Stated bluntly, "Section 1021.5 'is clearly designed to encourage private enforcement of important public rights: true public-interest litigation conducted by protagonists who are truly private attorneys general . . . the benefit provided [] must inure primarily to the public and be substantial . . .'" (*Terminal Plaza v. City and County of San Francisco* (1986) 186 Cal.App.3d 814, 837, citations omitted, emphasis in original.) That is simply not the case here.

V.

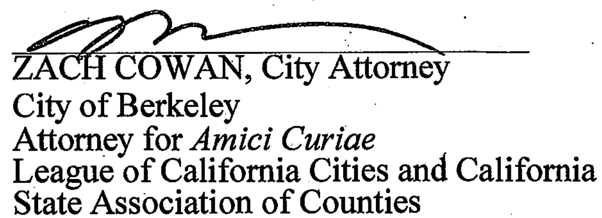
CONCLUSION

For the foregoing reasons, *amici curiae* League of California Cities and California State Association of Counties urge the Court to reverse the decision of the trial court.

Dated: July 24, 2012

Respectfully submitted:

By:



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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionally double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 4, 160 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on July 24, 2012.

Respectfully submitted,

By:

Zach Cowan
Attorneys for Amici Curiae
LEAGUE OF CALIFORNIA CITIES
and CALIFORNIA STATE
ASSOCIATION OF COUNTIES

CERTIFICATE OF SERVICE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over the age of eighteen years and not a party to the within action. My business address is 2180 Milvia Street, Fourth Floor, Berkeley, California 94704. On July 24, 2012, I served the following document(s):

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANT CITY OF SANTA ROSA; PROPOSED BRIEF

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

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X : By First Class Mail - I am readily familiar with the department's practice for collection and processing of correspondence for mailing. Under that practice, the document(s) is deposited with the U.S. Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Berkeley, California, for mailing to the office of the addressee following ordinary business practices.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 24, 2012, at Berkeley, California.

JOANNA K. RUDY