

FILED

FEB 22 2013

SAN LUIS OBISPO SUPERIOR COURT

BY ~~R. Weenman, Deputy Clerk~~
R. Weenman, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
SAN LUIS OBISPO COUNTY

SLO HOMELESS ALLIANCE; PHILLIP
DYKEMAN; AND DAVID DOUGLAS
MOORE,

Plaintiffs,

vs.

CITY OF SAN LUIS OBISPO; STEPHEN
GESELL, IN HIS OFFICIAL CAPACITY AS
CHIEF OF POLICE FOR THE CITY OF SAN
LUIS OBISPO,

Defendants.

Case No.: CV 120204

Revised ~~PROPOSED~~
**JUDGMENT AWARDING PRIVATE
ATTORNEY GENERAL FEES
[CCP §1021.5]**

Judge: Charles S. Crandall
Dept.: 9

Following a mediated settlement in this proceeding, the court entered a
STIPULATION AND ORDER on August 31, 2012, and an ORDER AND
PRELIMINARY INJUNCTION on September 13, 2012. Plaintiffs moved for an award
of Private Attorney General Fees pursuant to Civil Code of Procedure §1021.5.

A Hearing on the Plaintiffs' § 1021.5 motion was heard October 25, 2012. On
January 17, 2013, after thoroughly having reviewed the briefs, declarations, time entries,
pleadings and other related materials, the Court issued its RULING AND ORDER
AWARDING ATTORNEYS' FEES AND EXPENSES, awarding the sum of
\$133,880.34 in Private Attorney General Fees to Plaintiffs' attorneys pursuant to Civil
Code of Procedure §1021.5; consisting of \$132,990 for the attorneys' services and
\$890.34 for their expenses.

1 The findings and procedural history set forth in the said RULING AND ORDER
2 AWARDING ATTORNEYS' FEES AND EXPENSES (attached hereto as Exhibit A)
3 are incorporated herein as part of this Judgment. Good cause existing, JUDGMENT IS
4 HEREBY ENTERED against the Defendant in favor of Plaintiffs and the City of San
5 Luis Obispo is ordered forthwith to pay to Stewart D. Jenkins and Saro G. Rizzo the sum
6 of ONE HUNDRED THIRTY THREE THOUSAND EIGHT HUNDRED EIGHTY
7 DOLLARS AND THIRTY FOUR CENTS (\$133,880.34) as Private Attorney General
8 Fees awarded pursuant to Civil Code of Procedure § 1021.5.

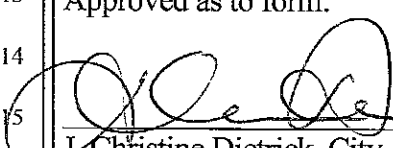
9 **FEB 22 2013**

CHARLES CRANDALL

10 Dated: _____

Charles S. Crandall, Judge of the Superior Court

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13 Approved as to form:

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15 _____
16 J. Christine Dietrick, City Attorney for the
City of San Luis Obispo, California

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JAN 17 2013

SAN LUIS OBISPO SUPERIOR COURT
Sybil W. Toling
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

SLO HOMELESS ALLIANCE; PHILLIP
DYKEMAN; DAVID DOUGLAS
MOORE,

Plaintiffs,

v.

CITY OF SAN LUIS OBISPO; STEPHEN
GESELL, in his capacity as Chief of Police
for the City of San Luis Obispo,

Defendants.

Case No.: CV 12-0204

**RULING AND ORDER AWARDING
ATTORNEYS' FEES AND EXPENSES**

I. INTRODUCTION

Following settlement of this writ of mandate case against the City of San Luis Obispo ("City"), Petitioners SLO Homeless Alliance, Phillip Dykeman and Douglas Moore (collectively "Homeless Alliance" or "Petitioners") move for an award of attorneys' fees against the City in the approximate amount of \$155,000.

An award of attorneys' fees against the City under the private attorney general statute, CCP §1021.5, is appropriate if Petitioners' lawsuit resulted in the enforcement of an important right affecting the public interest. To receive attorneys' fees, the Homeless

1 Alliance must prove that its lawsuit was successfully resolved with respect to an issue of
2 public importance, that a significant benefit was conferred upon the general public, and that
3 its lawsuit was not superfluous.

4 In opposing the motion, the City raises an assortment of issues related to fee
5 entitlement, as well as the amount of the fees claimed. Distilled to its essence, the City urges
6 that no legal fees should be paid because Petitioners' efforts in the litigation were
7 fundamentally unsuccessful and did not (and do not) prevent the City from regulating
8 sleeping and camping in vehicles on public streets. The City minimizes the significance of
9 the July 3rd preliminary injunction ruling, and it claims that new ordinances, regulations, and
10 enforcement methodology regulating the use of vehicles for sleeping and camping would
11 have been adopted by the City Council irrespective of the lawsuit.

12 While it is true that this lawsuit did not profoundly alter the City's ability to regulate
13 its public streets, that is not the appropriate standard to apply under CCP §1021.5.
14 Realistically, the preliminary injunction and resulting settlement do change the manner in
15 which the City will regulate sleeping and camping in vehicles on public streets. The
16 preliminary injunction does require the City to discontinue enforcement under the old law,
17 and it plainly was the impetus for passage of several new ordinances, the posting of proper
18 signage, a different enforcement approach, and dismissal of numerous criminal cases under
19 the old ordinance. These achievements more than satisfy the requirements of the private
20 attorney general doctrine.

21 The City cautions that it should not be penalized for coming to the settlement table at
22 the Court's urging and finding some common ground with Petitioners. To be sure, the Court
23 applauds the City Council for its settlement efforts and for making appropriate changes in its
24 manner of regulating homeless people who must live out of their vehicles. Providing clear
25 notice and objectively reasonable enforcement methods is important.

26 On the other hand, the private attorney general doctrine makes it clear that attorneys
27 in the community who take on important public interest litigation, with no guarantee of
28 receiving a penny unless they win, are to be paid adequate compensation for their services if

1 they achieve significant results. And both sides risked astronomical legal bills had trial taken
2 place. Achieving an early settlement was, therefore, beneficial to both sides. The reasonable
3 approach to settlement taken by both sides was professional and laudatory.

4 With respect to the amount of the fees, the Court was initially surprised by the size of
5 Petitioners' \$150,000 fee submission in connection with writ of mandate litigation that lasted
6 no more than six months. The unfortunate truth, though, is that all types of civil litigation
7 today are very expensive. Indeed, the City paid more than \$130,000 in legal fees to the
8 Oakland law firm that defended this case.

9 Having thoroughly reviewed the briefs, declarations, time entries, pleadings and other
10 related materials, the Court will award Petitioners their attorneys' fees and costs in the
11 aggregate amount of \$133,880.34.

12 13 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

14 The Homeless Alliance filed this action in response to the San Luis Obispo Police
15 Department's issuance of criminal citations for alleged violations of San Luis Obispo City
16 Ordinance §17.16.015 (Ordinance) which prohibited the use of a recreational vehicle, camper
17 shell, automobile or similar device for living or sleeping quarters except in a lawfully
18 operated mobile home park, travel trailer park, or campground.

19 The Homeless Alliance's complaint contained four causes of action challenging the
20 constitutionality of the Ordinance. The City demurred to the complaint and the Homeless
21 Alliance filed an application for preliminary injunction to enjoin further issuance of any
22 citations.

23 On May 30, 2012, the Court issued a tentative ruling that sustained, without leave to
24 amend, the second and third causes of action, but sustained, with leave to amend, the first and
25 fourth causes of action. However, the Court never issued a final ruling. Instead, the case was
26 then set for further argument and supplemental briefing, after which the matter was taken
27 under submission. The Court also arranged for mediation before a retired judicial officer
28 which mediation was unsuccessful.

1 On July 3, 2012, after supplemental briefing, the Court issued its ruling on the
2 demurrer and preliminary injunction. The Court overruled the demurrer as to all four causes
3 of action primarily based upon the viability of the fourth cause of action, which stated a
4 claim for a violation of substantive due process rights. The Court concluded the Ordinance
5 was never intended to apply to vehicles parked on public streets. Instead, it appeared that the
6 City was using a zoning regulation that addressed an entirely different problem related to
7 individuals living out of their vehicles on private property. With respect to the preliminary
8 injunction, the Court noted its serious concerns with respect to the reasonableness of the
9 City's enforcement mechanisms.

10 Seven days later, the San Luis Obispo City Council enacted an urgency ordinance
11 (Ordinance No. 1583) specifically addressing the Court's ruling. The City Council declared
12 that the Ordinance, in fact, applied both to private property and public streets, and it adopted
13 identical language into Title 9 of the Municipal Code. The City Council adopted Ordinance
14 No. 1583 for the stated purpose of preventing "the establishment and proliferation of unsafe
15 and unsanitary residential uses within the City limits and to preserve the City's immediate
16 authority to regulate public conduct in the best interests of its citizenry."

17 Based upon its adoption of the urgency legislation, the City moved for
18 reconsideration of the Court's ruling. Contemporaneously, Petitioners asked the Court to
19 enter an order, in accordance with the Court's ruling, granting their motion for preliminary
20 injunction. Pending a hearing on these issues and at the Court's urging, the parties
21 participated in an additional mediation session, this time with a private mediator, which
22 resulted in a settlement of the entire case.

23 As part of the settlement, the City agreed to dismiss 99 pending criminal citations,
24 expunge all convictions for violations of the Ordinance in 2012, and it consented to the
25 consideration of a new ordinance that would regulate overnight camping under the parking
26 provisions contained in Title 10 of the San Luis Obispo Municipal Code.

27 The new ordinance, the signage of which has since been reviewed and approved by
28 the Court under the Vehicle Code, will be enforced by parking citations. The City also

1 agreed to amend the Ordinance, as well as the recently adopted urgency ordinance under
2 Title 9 of the Municipal Code, to prohibit their application to public streets. It was also
3 agreed that the Court would enter a formal order enjoining the City from further enforcement
4 of the Ordinance in accordance with the July 3rd injunction ruling.

5 Consistent with the terms of the settlement agreement, the Court entered a Stipulation
6 and Order providing, among other things, that Petitioners would be entitled to bring a motion
7 for attorneys' fees but that they would give up their right to seek enhancement of the lodestar
8 amount of the fee.

9 III. DISCUSSION

10 A. Homeless Alliance Meets the Requirements for a Fee Award

11 The provisions of CCP §1021.5 authorize an award of attorneys' fees in any action
12 that results in the enforcement of an important right affecting the public interest. The
13 Homeless Alliance asserts it meets the criteria of CCP §1021.5 because: (1) the action was
14 successfully resolved in its favor, resulting in the enforcement of an important public right;
15 (2) a significant benefit was conferred upon the general public; and (3) the necessity and
16 financial burden of private enforcement make an award of fees appropriate. (*See Woodland
17 Hills Residents Ass'n., Inc. v. City Council of Los Angeles (Woodland Hills II)* (1979) 23
18 Cal.3d 917, 938.) The City responds that the Homeless Alliance achieved only limited
19 success on insignificant issues that either do not support any fee award or support only a
20 drastically reduced amount.

21 As discussed in *Folsom v. Butte County Association of Governments* (1982) 32 Cal.3d
22 668, 685, "the inquiry as to whether plaintiffs prevailed is an intensely factual, pragmatic one
23 that frequently requires courts to go outside the merits of the precise underlying dispute and
24 focus on the condition that the fee claimant sought to change." The City urges that the
25 Homeless Alliance merely accomplished "the substitution of one regulatory approach for
26 another, which effectively changes nothing," and that the settlement did not ultimately
27 resolve anything in Petitioners' favor.

28 ///

1 Practically speaking, one major litigation goal of the Homeless Alliance was to end
2 the City's issuance of criminal citations under the Ordinance for living and sleeping in
3 vehicles parked on public streets. Another goal was to provide better notice of the legal
4 limitations on using vehicles on public streets for living and sleeping purposes. These goals
5 were significantly advanced not only through the preliminary injunction, but also in
6 conjunction with the resulting settlement.

7 Petitioners' motion for a preliminary injunction claimed that homeless individuals
8 were being unfairly targeted by the police, that several Petitioners had already been subjected
9 to criminal prosecution (including fines and subsequent imprisonment), whereas others then
10 faced criminal prosecution. Petitioners alleged that the City's enforcement of the Ordinance
11 violated due process and equal protection of law in that the Ordinance was never intended to
12 apply to vehicles parked on public streets, and that the City was enforcing the Ordinance
13 through arbitrary and irrational mechanisms and police methods that went beyond what was
14 appropriate and necessary under the circumstances.

15 Petitioners' evidence raised serious doubts in the Court's mind about the applicability
16 of the Ordinance to public streets, as well as the reasonableness of the City's enforcement
17 efforts under the Ordinance. Accordingly, the Court enjoined enforcement of the Ordinance,
18 concluding that Petitioners had carried their burden of showing a likelihood of success on the
19 due process claims and that the harm to Petitioners from continued criminal prosecution
20 outweighed any harm to the City resulting from an injunction.

21 The July 3, 2012 preliminary injunction ruling was squarely in favor of the Homeless
22 Alliance, and it resulted in significant legislative changes to the manner in which the City
23 posts and enforces its regulations on public streets. A litigant who obtains relief such as this,
24 whether through stipulation or motion, has brought about a judicially recognized change in
25 the parties' relationship making it a successful party for purposes of a fee award under
26 section 1021.5. (*Maria P v. Riles* (1987) 43 Cal.3d 1281, 1291; *Vasquez v. State of*
27 *California* (2008) 45 Cal.4th 243, 259-60.)

28 ///

1 In assessing the significance of the Homeless Alliance lawsuit, the concept of
2 “important rights” is broadly interpreted. (Pearl, *California Attorney Fee Awards*, 3rd Ed.,
3 §3.40) Courts are required to assess the significance of the “right” in terms of its relationship
4 to the achievement of fundamental legislative goals. (*Woodland Hills Residents Association*
5 23 Cal.3d at 917, 935.)

6 In *City of Los Angeles v. 2000 Jeep Cherokee* (2008) 159 Cal.App.4th 1272, the city
7 objected to an award to plaintiff of \$49,735.90 in attorneys’ fees on the grounds that the only
8 right vindicated was the plaintiff’s right to use a vehicle for prostitution without threat of
9 forfeiture. The Court of Appeal rejected the city’s narrow interpretation of CCP §1021.5,
10 holding as follows:

11 The City took vehicles under an ordinance preempted by state law, thereby
12 depriving the drivers and owners of those vehicles of their use. Because
13 Reinsdorf’s lawsuit forced the City to abandon its ordinance and comply with
14 state law, the public interest was served—and no more was required.
(Citations) (*Id.* at 1280.)

15 As in *City of Los Angeles*, the Homeless Alliance litigation put an end to the City’s
16 use of an Ordinance that arguably did not apply to public streets, and it prodded the City to
17 adopt a new ordinance in line with the applicable Vehicle Code. The City’s process of
18 enforcement—involving the issuance of criminal citations for living and sleeping in vehicles
19 parked on public streets—has ended; and, many homeless people who were prosecuted
20 under the Ordinance have received substantive relief from their convictions.

21 The general public will benefit from the Court-approved signage, and the legality of
22 using vehicles for sleeping or living purposes has been clarified through signage at various
23 City locations. In terms of successfully resolving a lawsuit through the enforcement of an
24 important right, nothing more is required. (159 Cal.App.4th at 1280.)¹

25 The City’s reliance on cases such as *Boccatto v. City of Hermosa Beach* (1984) 158
26 Cal.App.3d 804 is inapposite. In *Boccatto*, the Court of Appeal held that the trial court did

27
28 ¹ The City provides no support for its position that reliance on the public settlement agreement contravenes Evidence Code §1552 (a). To the contrary, courts examine settlement agreements as one means of assessing litigation success. (*See, e.g., Planned Parenthood v. Aakus* (1993) 14 Cal.App.4th 162, 174.)

1 A review of the time records of Petitioners' counsel shows that additional time was
2 spent interviewing witnesses and preparing declarations for the injunction motion, preparing
3 the complaint, conducting miscellaneous legal research, preparing for oral argument,
4 attending hearings, settlement conferences, and City Council meetings, as well as preparing
5 this fee motion. Moreover, Petitioners' counsel is not seeking compensation for
6 approximately 200 hours that were spent representing homeless individuals who were
7 charged in the related criminal cases. It appears as though reasonable billing judgment was
8 therefore exercised. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431; see *Hutchinson v.*
9 *Patrick* (1st Cir 2011) 636 F.3d 1, 14; Pearl, *Attorney Fee Awards*, 3rd Ed., §9.5.)

10 The reasonableness of the Homeless Alliance fees is confirmed by comparing the
11 legal fees paid to the City's outside counsel with those incurred by the Homeless Alliance.
12 Through the end of August 2012, the attorneys' fees paid to the law firm of Burke, Williams
13 and Sorensen, LLP exceeded \$131,000. Such fees do not include any fees incurred by the
14 City responding to this fee motion or fees incurred with respect to implementing the
15 settlement after the successful mediation. Importantly, these hours and fees also do not
16 include the time spent by the City Attorney's Office in assisting in the City's defense.

17 Evidence of the hours expended by opposing counsel can certainly be helpful in
18 determining whether time expended on a case is reasonable. (*Robinson v. City of Edmond*,
19 160 F.3d 1275, 1284 (10th Cir. 1998).) However, the fees of the opposing side are not an
20 "immutable yardstick of reasonableness" because opposing parties do not always have the
21 same responsibilities under the applicable rules, nor are they similarly situated with respect to
22 their strategies, their access to facts, the need to do original legal research to make out their
23 case, and so on.

24 Just as the City had several different pairs of eyes reviewing pleadings, making
25 strategy decisions, contacting witnesses, interviewing clients, and preparing for and attending
26 court hearings, the Homeless Alliance was reasonable and justified in staffing the case with
27 two lawyers. In addition, the Homeless Alliance bore the burden of proof as to all claims and
28 issues.

1 114 Cal.App.4th 624, 633.) That is exactly what happened here – a different ruling was
2 issued in Petitioners’ favor after several hearings.

3 Although the City contends that attorneys’ fees are unwarranted because its motion
4 for reconsideration undermined the factual basis for the preliminary injunction, no such
5 motion was ever heard or decided: the accompanying evidentiary materials cannot be used to
6 draw conclusions, one way or another, about how this Court might have eventually ruled had
7 the case not settled.

8 Given that this Court strongly encouraged the parties to pursue alternative dispute
9 resolution, the City next claims that it should not be “penalized” with an attorneys’ fees
10 award for following the Court’s lead and choosing to settle. The Court agrees that neither
11 party should be faulted or penalized for resolving this case; to the contrary, both sides
12 deserve approbation.

13 While it may be true that the City chose to settle “solely to avoid the financial costs
14 and the toll of community divisiveness of litigation,” these motivations do not support denial
15 of Petitioners’ fee claim. Indeed, the City was well advised to consider the potential cost of
16 this litigation: had the parties proceeded to trial and through appeal, the collective attorneys’
17 fees due and owing could have easily exceeded \$1 million. Achieving a settlement early
18 was, therefore, of practical benefit to both sides as well as to the community at large.

19 Based upon *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214, the City also
20 contends that attorneys’ fees should be denied because the Homeless Alliance lawsuit was
21 unnecessary. Because discussion of parking and zoning reform was underway in the public
22 domain prior to this lawsuit, the City contends that Petitioners might have been able to
23 achieve the same (or better) result if they had allowed the political process to run its course,
24 rather than filing suit.

25 To make the “necessity” determination, the Court exercises equitable discretion in
26 light of all the relevant circumstances. (*Vasquez*, 45 Cal.4th at 258-59.) Given that this case
27 was brought *against* a government agency, the need for private enforcement seems apparent.
28 (*Woodland Hills Residents Association v. City Council* (1979) 23 Cal.3d 917, 941.) The City

1 has submitted no authority for the proposition that Petitioners were required to let the full
2 political process play out and stand idly by while homeless people were being criminally
3 prosecuted for violations of the Ordinance.

4 The ruling and settlement obtained by Homeless Alliance falls squarely within the
5 ambit of CCP §1021.5, and fully supports an award of attorneys' fees. (See *RiverWatch v.*
6 *County of San Diego* (2009) 175 Cal.App.4th 768, 781-782; *Laurel Heights Improvement*
7 *Ass'n of San Francisco v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 428; *Westside*
8 *Community for Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-353; *Bowman v. City*
9 *of Berkeley* (2005) 131 Cal.App.4th 173, 177.)

10 **B. No Deduction for Partial Success is Warranted**

11 The City claims that the Homeless Alliance's fee claim should be drastically reduced
12 because the fees are "grossly disproportionate to its litigation success." More particularly,
13 the City contends that three out of the four constitutional claims pleaded in the complaint
14 were abandoned, thereby warranting a 75% reduction in Petitioners' attorneys' fees.

15 The Court has a duty to examine the degree of success of the fee claim when ruling
16 on a motion for attorneys' fees. (*Harman v. City and County of San Francisco* (2007) 158
17 Cal.App.4th 407, 417-418; *Meister v. Regents of University of California* (1998) 67
18 Cal.App.4th 437; *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 250.) When
19 success is very limited, a reduction in the lodestar may be appropriate. (*Sokolow*, 213
20 Cal.App.3d at 250; Pearl, *California Attorney Fee Awards*, 3rd Ed., §3.44.)

21 On the other hand, parties who recover substantial relief may be compensated for all
22 their hours, even if the court does not adopt each contention raised. (*Downey Cares v.*
23 *Downey Community Development Commission* (1987) 196 Cal.App.3d 983, 997.)
24 Apportionment between distinct causes of action need not occur where plaintiff's claims
25 involve a common core of facts or are based on related legal theories. (*Drouin v. Fleetwood*
26 *Enterprises* (1985) 163 Cal.App.3d 486, 493.) "Mathematical" comparisons between
27 winning and losing issues have limited relevance when deciding whether to reduce a claim
28

1 for attorneys' fees. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 436; *Harman*, 158
2 Cal.App.4th 407, 421.)

3 As discussed above, the Homeless Alliance has achieved substantial success. As
4 mentioned in the Court's July 4th demurrer ruling, all four causes of action were based upon
5 different theories seeking to invalidate the Ordinance, and all four causes of action involved a
6 common core of operative facts. Given these factors, it would be inequitable to apportion the
7 Homeless Alliance fees between causes of action, or to reduce them based upon some sort of
8 mathematical calculation per claim. (*Downey Cares*, 196 Cal.App.3d at 997; *Harman*, 158
9 Cal.App.4th at 421.) The Homeless Alliance is deserving of a fully compensatory fee.
10 (*Bowman*, 131 Cal.App.4th 173, 177; *Lyons v. Chinese Hosp. Ass'n* (2006) 136 Cal.App.4th
11 1331, 1346; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153.)

12 **C. The Overall Time Spent in Litigation-Related Matters and the Hourly Rates of**
13 **Petitioners' Counsel**

14 At first blush, the Court was surprised by Petitioners' lodestar submission of over
15 \$150,000 for writ of mandate litigation that lasted approximately six months. However,
16 litigation in this era is very expensive. Upon a review of the pleadings on file, as well as an
17 examination of the actual time records that were submitted, the Court concludes that the
18 overall time (approximately 440 hours) spent by Petitioners' counsel was reasonable.

19 This was not a simple case. Petitioners' counsel were required to develop the factual
20 record and research multiple complex legal issues relating not only to state and local
21 vehicular and parking regulations, but also constitutional issues related to a variety of
22 interrelated legal claims. The City responded to the complaint by moving to dismiss the
23 entire suit and by attacking every one of the legal theories asserted by Petitioners.

24 To conduct a vigorous defense, the City hired specialty outside counsel to work
25 alongside the City Attorney's Office. Both sides participated in several rounds of complex
26 legal briefing that was thorough and well-researched. Far from being unnecessary, it was
27 appropriate for the Homeless Alliance to oppose efforts by the City to terminate the case.
28

1 A review of the time records of Petitioners' counsel shows that additional time was
2 spent interviewing witnesses and preparing declarations for the injunction motion, preparing
3 the complaint, conducting miscellaneous legal research, preparing for oral argument,
4 attending hearings, settlement conferences, and City Council meetings, as well as preparing
5 this fee motion. Moreover, Petitioners' counsel is not seeking compensation for
6 approximately 200 hours that were spent representing homeless individuals who were
7 charged in the related criminal cases. It appears as though reasonable billing judgment was
8 therefore exercised. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431; see *Hutchinson v.*
9 *Patrick* (1st Cir 2011) 636 F.3d 1, 14; Pearl, *Attorney Fee Awards*, 3rd Ed., §9.5.)

10 The reasonableness of the Homeless Alliance fees is confirmed by comparing the
11 legal fees paid to the City's outside counsel with those incurred by the Homeless Alliance.
12 Through the end of August 2012, the attorneys' fees paid to the law firm of Burke, Williams
13 and Sorensen, LLP exceeded \$131,000. Such fees do not include any fees incurred by the
14 City responding to this fee motion or fees incurred with respect to implementing the
15 settlement after the successful mediation. Importantly, these hours and fees also do not
16 include the time spent by the City Attorney's Office in assisting in the City's defense.

17 Evidence of the hours expended by opposing counsel can certainly be helpful in
18 determining whether time expended on a case is reasonable. (*Robinson v. City of Edmond*,
19 160 F.3d 1275, 1284 (10th Cir. 1998).) However, the fees of the opposing side are not an
20 "immutable yardstick of reasonableness" because opposing parties do not always have the
21 same responsibilities under the applicable rules, nor are they similarly situated with respect to
22 their strategies, their access to facts, the need to do original legal research to make out their
23 case, and so on.

24 Just as the City had several different pairs of eyes reviewing pleadings, making
25 strategy decisions, contacting witnesses, interviewing clients, and preparing for and attending
26 court hearings, the Homeless Alliance was reasonable and justified in staffing the case with
27 two lawyers. In addition, the Homeless Alliance bore the burden of proof as to all claims and
28 issues.

1 The City also has made no attempt to analyze Petitioners' actual time records, to
2 quantify the proposed reductions, or to parse out particular entries or subject matter areas
3 where fees should be disallowed. Given that Petitioners submitted their contemporaneous
4 time records, it was the City's burden to prove that the claimed fees were unreasonable.
5 (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Ass'n* (2008) 163
6 Cal.App.4th 550, 564; see Pearl, *Attorney Fee Awards*, 3rd Ed., §9.90.) The City has not
7 carried its burden. (*Id.*) Having mounted a vigorous defense prior to settling, the City cannot
8 now claim that the lawyer services of the Homeless Alliance were unneeded or that they
9 should not be fully compensated.

10 With respect to hourly rates, the Homeless Alliance requests \$350 for both counsel
11 based upon the declarations of four experienced attorneys. Responding with attorney
12 declarations of its own, the City responds that Homeless Alliance's counsel have not shown
13 that the claimed hourly rates are justified by the local market.

14 On the one hand, it is well settled that "because government and insurance defense
15 counsel generally charge lower rates than plaintiff's attorneys for complex litigation, such
16 attorneys rates reflect the different market and, therefore, may not be probative." (Pearl,
17 *California Attorney Fee Awards* 2nd Ed. (2012) §9.121 at 540.) On the other hand, in the
18 recent past, this Court awarded a lower hourly rate to the same counsel who are now making
19 the current fee claim.

20 Although fees in the range of \$350 could be justified, this Court will take a more
21 conservative approach and confirm a reasonable market rate of \$300 per hour, which is
22 clearly within the range of reasonable rates for the San Luis Obispo legal market.
23

24 III. CONCLUSION

25 The Homeless Alliance's victory is not trivial or *de minimis*, but rather involves
26 issues of significant public importance. The Homeless Alliance's litigation put an end to the
27 City's use of an Ordinance that most likely did not apply to public streets. It terminated the
28 City's issuance of criminal citations for nearly 100 homeless people living and sleeping in

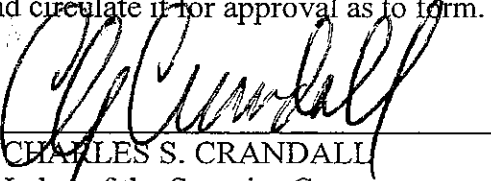
1 vehicles parked on public streets, and it is resulting in better notice of the legal requirements
2 regarding the use of vehicles that are parked on public streets. It led to the enactment of a
3 new ordinance that is more in line with the applicable Vehicle Code, and it has reformed the
4 City's method of enforcement with respect to vehicles that are parked on public streets.

5 Although the time and effort associated with writ of mandate litigation pales in
6 comparison to full blown civil litigation, in this day and age the required time and effort can
7 nevertheless be considerable. Given the results obtained, and keeping in mind the salutary
8 purpose of CCP §1021.5, which is to attract competent counsel to take on litigation on behalf
9 of the public interest, a fully compensatory attorneys' fee award is warranted.

10 Having thoroughly reviewed the briefs, declarations, time entries, pleadings and other
11 related materials, the Court awards attorneys' fees in the amount of \$132,990 (443.30 hours
12 at the rate of \$300 per hour) and total costs in the amount of \$890.34. Counsel for Homeless
13 Alliance should prepare the appropriate judgment and circulate it for approval as to form.

14
15 Dated: January 17, 2013

132,990.34


CHARLES S. CRANDALL
Judge of the Superior Court

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PROOF OF SERVICE

[C.C.P., 1013A(3) CRC Rule 2006(d) Revised 3/31/92]

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 1336 Morro Street, San Luis Obispo, California 93401.

On January 30, 2013 I served the following document described as **revised proposed JUDGMENT AWARDING PRIVATE ATTORNEY GENERAL FEES [CCP §1021.5] approved as to form, and EXHIBIT # A: RULING AND ORDER AWARDING ATTORNEYS' FEES AND EXPENSES; together with the accompanying PLANITIFFS' RESPONSE TO CITY'S OBJECTIONS TO PLAINTIFFS' PROPOSED JUDGMENT**

on the **Defendants'** Attorney in this action:

SLO Homeless Alliance, et al. v City of San Luis Obispo, et al. CV12 0204 by:

MAIL: I placed a true copy of the of the foregoing document in a sealed envelope, addressed to each interested party as set forth below, with postage fully prepaid, deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service.

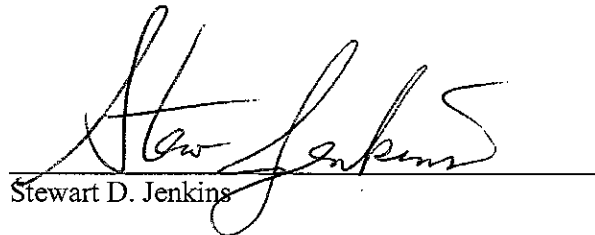
**Manuela Albuquerque, Burke, Williams & Sorensen, LLP.
1901 Harrison Street, Suite 900, Oakland CA 94612-3501**

PERSONAL SERVICE -- I delivered such envelope by hand to the office of the addressee(s) noted below. **TIME: 8:50 AM Individual Served: Claudia Prowos**

**J. Christine Dietrick, City Attorney of San Luis Obispo
990 Palm Street, San Luis Obispo, CA 93401**

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

February 13, 2013
DATED


Stewart D. Jenkins