

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JODI MANSER, CASE NO. CV-F-08-1250 LJO SMS

10 || Plaintiffs,

CASE NO. CV-F-08-1250 LJO SMS

ORDER ON PLAINTIFF'S POST-TRIAL MOTION FOR ATTORNEYS' FEES

11 || VS.

12 || SIERRA FOOTHILLS PUBLIC
UTILITY DISTRICT; et al.,

Defendants.

15 Plaintiff Jodi Manser moves post-trial for an award of attorneys fees under Cal. Code Civ. Proc.
16 §1021.5. Pursuant to a notice filed on July 30, 2010, plaintiff Jodi Manser seek an award of attorney's
17 fees against Defendant Sierra Foothills Public Utility District. Defendant filed an opposition on August
18 24, 2010. Plaintiff filed a reply brief on August 31, 2010. This matter was submitted on the pleadings
19 without oral argument pursuant to Local Rule 230(g). Having considered the moving, opposition, and
20 reply papers, as well as the Court's file, the Court issues the following order.

FACTUAL BACKGROUND

22 This case involves employment and disability discrimination claims. Plaintiff filed her complaint
23 on August 21, 2008, and alleged seventeen claims for relief arising from her employment at the
24 Riverbend Café, owned and operated by defendant Sierra Foothills Public Utility Dist. (“SFPUD”).¹

26 ¹ Plaintiff alleges the following causes of action: (1) Violation of Labor Code §1102.5; (2) Violation of CFRA; (3)
27 Violation of FMLA; (4) Sexual harassment; (5) Failure to prevent sexual harassment; (6) Retaliation for opposing sexual
28 harassment; (7) Failure to prevent retaliation; (8) Violation of Labor Code §§201 & 203; (9) Violation of public policies;
 (10) Intentional infliction of emotional distress; (11) Sexual battery; (12) Violation of due process; (13) Disability
 discrimination; (14) Failure to prevent disability discrimination; (15) Failure to provide reasonable accommodation; (16)

1 Defendant presents evidence that plaintiff submitted her initial disclosures pursuant to Rule 26 in which
2 she sought certain forms of monetary recovery. As set forth in the Initial Disclosures, Plaintiff sought
3 recovery on her claims for back pay (two and one half years at \$30,000.00), front pay (through retirement
4 at age 65 [twenty (20) years] at \$30,000.00 per year), medical expenses of \$150,000.00, emotional
5 distress damages of \$750,000.00, plus punitive damages, attorney's fees and prejudgment interest.

6 On March 25, 2010, six weeks before trial, plaintiff filed her Second Amended Complaint for
7 Damages. She dismissed the individual Defendants and narrowed her asserted causes of action to the
8 following:

- 9 A. Violation of CFRA;
- 10 B. Violation of FMLA;
- 11 C. Disability discrimination;
- 12 D. Failure to prevent disability discrimination;
- 13 E. Failure to provide a reasonable accommodation;
- 14 F. Failure to engage in the interactive process;
- 15 G. Violation of California Labor Code §6310; and
- 16 H. Violation of California Labor Code §1102.5.

17 Plaintiff proceeded to trial on May 3, 2010 before a jury on these causes of action. The jury
18 returned a verdict on May 7, 2010 in favor of plaintiff on the claims for violation of Labor Code
19 §§1102.5 and 6310. The jury found in favor of defendant on all other claims. The jury awarded plaintiff
20 \$56,000 in lost earnings, but found that the award should be reduced for failure to mitigate damages.
21 The jury's award was reduced to \$16,800.00 in favor of plaintiff.

22 **ANALYSIS AND DISCUSSION**

23 Plaintiff now brings a motion for attorneys fees pursuant to California Code of Civil Procedure
24 §1021.5 ("Section 1021.5").

25 Section 1021.5 codifies the "private attorney general" doctrine of attorney fees. *Flannery v.*
26 *California Highway Patrol*, 61 Cal.App.4th 629, 71 Cal.Rptr.2d 632 (1998). Section 1021.5 states in
27

28 Failure to engage in the interactive process; and (17) Violation of Labor Code §6310.

1 pertinent part:

2 “Upon motion, a court may award attorneys' fees to a successful party
3 against one or more opposing parties in any action which has resulted in
4 the enforcement of an important right affecting the public interest if: (a)
5 a significant benefit, whether pecuniary or nonpecuniary, has been
6 conferred on the general public or a large class of persons, (b) the
7 necessity and financial burden of private enforcement, or of enforcement
8 by one public entity against another public entity, are such as to make the
9 award appropriate, and (c) such fees should not in the interest of justice
10 be paid out of the recovery, if any.”

11 The goal of section 1021.5 "rests upon the recognition that privately initiated lawsuits are often essential
12 to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions,
13 and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such
14 important public policies will as a practical matter frequently be infeasible." *Feminist Women's Health
15 Center v. Blythe*, 39 Cal.Rptr.2d 189, 202 (1995).

16 **A. Arguments regarding Important Rights that Conferred a Significant Benefit**

17 Plaintiff argues that the case vindicated the public importance of food and beverage
18 contamination at sporting venues. Plaintiff's actions were intended to encourage defendant to follow
19 public health and safety laws. (Doc. 156, Motion p.4.) Plaintiff argues that safety of the public in a
20 public establishment and safe working conditions for the employees of a public establishment are
21 important public rights.

22 Defendant argues that plaintiff did not seek to enforce or vindicate an important public right; she
23 sought the recovery of monetary damages in an amount in excess of \$1.5 million for herself and herself
24 alone. Although plaintiff belatedly sought injunctive relief, that relief was purely directed to benefit
25 plaintiff's own interests in seeking reinstatement to her former position. Plaintiff claims that her report
26 to her supervisor was “whistle blowing” but Plaintiff never reported any concerns regarding the Café
27 to anyone other than her supervisor. The only independent evidence at trial was that the Café was clean
28 and sanitary. Thus, defendant argues plaintiff did not vindicate an important right of significant benefit.

29 **B. Standards for Evaluating Whether to Award Attorneys' Fees**

30 The California Supreme Court noted that “not every case” warrants an attorney fee award: “[T]he
31 Legislature did not intend to authorize an award of attorney fees in every case involving a statutory
32 violation.” *Woodland Hills Residents Assn., Inc. v. City Council*, 23 Cal.3d 917, 939, 154 Cal.Rptr. 503

1 (1979). The court noted that this is because, in every case, the public “benefits:” “[T]he public always
2 has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the
3 public always derives a “benefit” when illegal private or public conduct is rectified.” *Flannery*, 61
4 Cal.App.4th at 635.

5 The factors that have been identified by California court to determine whether an award is
6 appropriate are the following: (1) whether a right of societal importance was involved, (2) whether a
7 sizable class has been benefitted by the litigation, (3) whether the necessity and financial burden of
8 private enforcement are such as to make the award appropriate, and (4) whether in the interest of justice,
9 such fees should not be paid out of the recovery. *Serrano v. Priest*, 20 Cal.3d 25, 44-48, 141 Cal.Rptr.
10 315, 569 P.2d 1303 (1977). Stated a different way, in analyzing whether attorney fees are appropriate
11 under the private attorney general statute, the court “would determine the significance of the benefit, as
12 well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent
13 circumstances, of the gains which have resulted in a particular case.” *Woodland Hills*, 23 Cal.3d at 939.
14 The Court addresses each factor in turn.

15 **(1) Societal Importance**

16 Section 1021.5 directs the courts to exercise “judgment in attempting to ascertain the ‘strength’
17 or ‘societal importance’ of the right involved.” *Woodland Hills*, 23 Cal.3d at 935. In determining the
18 importance of the particular right that was vindicated, courts must “realistically assess the significance
19 of that right in terms of its relationship to the achievement of fundamental legislative goals.” *Id.* at 936.
20 The trial court must determine the significance of the benefit and the size of the class receiving that
21 benefit by realistically assessing the gains that have resulted in a particular case. *Flannery*, 61
22 Cal.App.4th at 635-636.

23 For purposes of the Court’s analysis, and because it does not change the Court’s conclusion, this
24 Court will construe broadly the “societal importance” at issue here, as protecting whistle blowers of
25 health/food hazards. The evidence at trial showed plaintiff reported to her supervisor her concerns about
26 specific incidents of food handling practices in the Café. In doing so, she sought to rectify the conditions
27 and make the food preparation healthful and safe. The Court finds there was some measure of societal
28 benefit in plaintiff’s conduct.

(2) A Sizeable Class has Benefitted

2 The second factor the Court must examine is whether a sizeable class has been benefitted by the
3 litigation.

4 Here, the Court does not find that a sizeable class has benefitted for two reasons. First,
5 plaintiff's reports were of limited nature. The evidence showed that plaintiff did not report health/food
6 hazards at the Café to anyone outside of the Café. She reported some incidents to her supervisor.

7 Further, at trial, the evidence significantly conflicted as to whether the health/food hazards, in
8 fact, occurred. Under the causes of action on which plaintiff prevailed, the jury was not required to
9 believe that actual food hazards existed. The jury could correctly find for plaintiff even if the hazards
10 did not occur. Plaintiff was merely required to show that she had “reasonable cause to believe” that
11 violations of the law were occurring. Thus, no finding was made by the jury that the incidents occurred.
12 Therefore, due to the limited nature of plaintiff’s reports and the conflict in the evidence, plaintiff has
13 not shown a sizable class has benefitted.

(3) Plaintiff's Pecuniary Interest

15 Generally, fees are not be awarded under § 1021.5 where the primary effect of the employment
16 litigation is to advance or vindicate the plaintiff's personal economic interest (as opposed to enforcing
17 a right affecting the public interest). *Weeks v. Baker & McKenzie*, 63 Cal.App.4th 1128, 1170 (1998)
18 (fees award denied under 1021.5 where action was brought for plaintiff's pecuniary interests even though
19 the case brought sexual harassment to forefront). "When the record indicates that the primary effect of
20 a lawsuit was to advance or vindicate a plaintiff's personal economic interests, an award of fees under
21 section 1021.5 is improper." *Flannery*, 61 Cal.App.4th at 635 (plaintiff was entitled to fees under
22 Govt.Code.§ 12965(b) of Fair Employment and Housing Act; award under C.C.P. 1021.5 was improper).
23 "It is within the trial court's discretion to deny attorneys' fees pursuant to section 1021.5 on the ground
24 that the plaintiff's personal stake in the outcome was not disproportionate to the burden of private
25 enforcement, even where the litigation enforced an important right and conferred a significant benefit
26 upon the public." *Satrap v. Pac. Gas & Elec. Co.*, 42 Cal.App.4th 72, 78, 49 Cal.Rptr.2d 348 (1996).

27 Here, the Court finds that this case was pursued by plaintiff for plaintiff's own pecuniary interest.
28 Plaintiff initially filed this action alleging numerous violations of plaintiff's personal interests. In

1 plaintiff's scheduling report, she described this action as, "This is an action to recover damages for
2 Plaintiff due to Defendants' various unlawful acts against Plaintiff, whereby Defendants, among other
3 things, unlawfully harassed Plaintiff, violated Plaintiff's rights pursuant to Federal and State medical
4 leave laws, retaliated against Plaintiff due to Plaintiff's protected disclosures of her employer's unlawful
5 activities in violation of California law and engaged in various violations of the California Labor Code."
6 (Doc. 21, Joint Scheduling report p.2.) No mention is made of protecting the interests of the public. As
7 further evidence of plaintiff's pecuniary interest, defendants present plaintiff's initial disclosures made
8 pursuant to Rule 26. In her disclosures, plaintiff requested significant compensation for the alleged
9 violations of her individual rights of over \$1.5 million. In her pretrial statement, plaintiff stated:
10 "PLAINTIFF seeks an award of damages against SFPUD based upon SFPUD's violation of California
11 Government Code section 12940(m) ("FEHA") for failing to reasonably accommodate PLAINTIFF's
12 physical condition." (Doc. 31, Pretrial Statement p. 13.) Plaintiff pursued this case for her pecuniary
13 interest in which she had a substantial personal stake in the outcome of the litigation.

14 This case is like *Weeks v. Baker & McKenzie*, 63 Cal.App.4th 1128, 1170 (1998). In *Weeks*,
15 plaintiff, a legal secretary, brought a sexual harassment action against a partner in a law firm and the firm
16 itself under the Fair Employment and Housing Act (FEHA). The jury awarded the plaintiff \$50,000 in
17 compensatory damages, and punitive damages of \$225,000 against the partner and \$6.9 million against
18 the law firm, though the trial court reduced the latter figure to \$3.5 million. The Court of Appeal denied
19 attorneys fees under Section 1021.5 because plaintiff failed to articulate a "sufficient public or private
20 reason" to justify the award of attorney fees under §1021.5. The Court stated the case was "in essence
21 a personal injury action, brought by a single plaintiff to recover her own economic damages.² *Weeks*, 63
22 Cal.App. 4th at 1174; *see also Luck v. Southern Pacific Trans. Co.*, 218 Cal.App.3d 1, 30-31, 267
23 Cal.Rptr. 618 (1990) (the court upheld an order denying a request for approximately \$300,000 in
24 attorney fees. The trial court had found that the wrongful termination suit alleging, *inter alia*, that the
25 plaintiff had a constitutional right to refuse drug testing enforced an important public right and conferred
26 a significant benefit, but denied her request for attorney fees. Plaintiff had a sufficient financial

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2 The Court permitted an award of the fees under the FEHA, Gov. Code §12965.

1 incentive to bring the lawsuit.)

2 Here, as in *Weeks*, plaintiff sought no relief for others. She sought only a large money judgment
3 for herself. Throughout the majority of the litigation in this matter, plaintiff expected to recover a
4 significant award. While in the latter stages of the case, plaintiff sought an equitable remedy, that
5 equitable remedy was solely for plaintiff's personal benefit. She sought reinstatement to her former
6 position with full benefits. Indeed, throughout the litigation plaintiff vigorously pursued the expectation
7 of recovering substantial damages.

8 Plaintiff's personal stake was disproportionate to the public interest pursued. Thus, this factor far
9 outweighs all of the other factors. For more than a year and a half during the litigation, plaintiff pursued
10 personal injury type claims, involving claims of sexual harassment, battery, etc. These claims were
11 disproportionate to the claims involving the reporting of food hazards at the Café. In trial, plaintiff
12 continued to pursue her personal stake, which far outweighs any incidental benefit to the public.

13 **(4) The interest of justice**

14 The purpose of Section 1021.5 is to provide some incentive for the plaintiff who acts as a true
15 private attorney general, prosecuting a lawsuit that enforces an important public right and confers a
16 significant benefit, despite the fact that his or her own financial stake in the outcome would not by itself
17 constitute an adequate incentive to litigate. Here, the interests of justice simply do not warrant an award
18 under this section. Plaintiff had her own substantial financial stake in this litigation. Therefore, attorney
19 fees pursuant to §1021.5 are not warranted.

20 **CONCLUSION AND ORDER**

21 For all of the foregoing reasons, plaintiff's motion for an award of attorneys' fees pursuant to
22 §1021.5 is DENIED.

23 IT IS SO ORDERED.

24 **Dated: September 7, 2010**

/s/ Lawrence J. O'Neill

25 **UNITED STATES DISTRICT JUDGE**

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