Paul D. Scott, Esq. (SBN 145975)
pdscott@lopds.com
Lani Anne Remick, Esq. (SBN 189889)
laremick@lopds.com
Laurence H. Tribe. (SBN #39441) (Of counsel)
LAW OFFICES OF PAUL D. SCOTT, P.C.
435 Pacific Avenue, Suite 200
San Francisco, California 94133Tel: (415) 981-1212
Fax: (415) 981-1215
Attorneys for Petitioners

FILED
San Francisco County Superior Court
SEP 29 2021
CLERK OF THE COURT
BY: [signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ABRAHAM LINCOLN HIGH SCHOOL OF SAN FRANCISCO ALUMNI ASSOCIATION; SAN FRANCISCO TAXPAYERS ASSOCIATION; GEORGE WASHINGTON HIGH SCHOOL ALUMNI ASSOCIATION; JOHN BURTON; KAREN SHIGEZUMI SAKATA,

Petitioners.

v.

SAN FRANCISCO BOARD OF EDUCATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT; VINCENT MATTHEWS in his official capacity as San Francisco Superintendent of Schools,

Respondents.

Case No. CPF-21-517410

~~[PROPOSED]~~ ORDER GRANTING MOTION FOR ATTORNEYS' FEES AND DENYING MOTION TO STRIKE OR TAX COSTS

Date: September 29, 2021
Time: 9:30 a.m.
Dept.: 302
Judge: Ethan P. Schulman
Date of first filing: March 18, 2021
Trial Date: N.A.

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

Respondents' Motion to Strike or Tax Costs Sought by Petitioners and Petitioners' Motion for Award of Attorneys' Fees came on regularly for hearing on September 29, 2021, in Department 302 of the San Francisco County Superior Court, the honorable Ethan P. Schulman presiding. Paul D. Scott appeared on behalf of Petitioners Abraham Lincoln High School of San Francisco Alumni Association, San Francisco Taxpayers Association, George Washington High School Alumni Association, Lowell Alumni Association, Balboa High School Alumni Association, Mission High School Alumni Association, John Burton and Karen Shigezumi Sakata (collectively "Petitioners"). Suzanne Solomon appeared on behalf of Respondents San Francisco Board of Education, San Francisco Unified School District, and Vincent Matthews (collectively "Respondents").

After considering the parties' briefs and arguments, the Court rules as follows:

Petitioners' motion for award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 is granted in the amount of $59,027.00. Respondents' motion to strike or tax costs is denied, and Petitioners are awarded $1,209 in costs. Petitioners are also entitled to an award of "fees on fees" for time spent in connection with the instant motions. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.) Petitioners shall, within 10 days, file a declaration of counsel detailing the time spent in connection with the fees and costs motions, counsel's reasonable hourly rates, and the total amount sought.

On January 26, 2021, the San Francisco Board of Education passed Resolution 211-12A1, declaring that 44 public schools in San Francisco would be renamed. A public uproar ensued, which included prelitigation correspondence from Petitioners challenging the process by which the Resolution was announced and the composition of the advisory School Names Committee created to carry out the Resolution. After Petitioners' counsel formally demanded that the Board repeal the Resolution, the Board President wrote an op-ed on February 21, 2021 in the San Francisco Chronicle, admitting that "mistakes were made in the renaming process," acknowledging that "we need to provide more opportunities for community input," promising that the Board would be "revising our plans to run a more deliberative process moving forward,

which includes engaging historians at nearby universities to help," and announcing that the activities of the Committee would be paused until San Francisco public schools were reopened for in-person learning. (Yap Decl. (filed Mar. 18, 2021) ¶ 30 & Ex. 26.) When the Board failed to accede to Petitioners' request that it take formal action to repeal the Resolution, Petitioners filed their petition and an ex parte application seeking writ relief from this Court. Petitioners charged in the petition that in enacting the Resolution, Respondent Board had violated the Ralph M. Brown Act, Gov't Code § 54950 *et seq.*, as well as their rights under the due process clauses of the U.S. and California Constitutions. They sought alternative and peremptory writs of mandate ordering the Board to repeal the Resolution and dissolve the Committee, as well as declaratory relief declaring that the Resolution was null and void and injunctive relief restraining Respondent Board from undertaking any activity to implement the Resolution. On March 18, 2021, the Court issued an alternative writ of mandate compelling Respondent Board either to vacate the Board's Resolution and dissolve the School Renaming Committee or, in the alternative, show cause on May 6, 2021 why it had not done so. On April 6, 2021, the Board rescinded the original Resolution, thereby effectively rendering the Petition moot. On May 26, 2021, the Court issued an order dismissing the case. In that order, the Court found that on April 6, 2021, "after suspending the work of the panel [e.g., the Committee] it had previously appointed to advise it regarding the renaming process, the Board rescinded Resolution 211-12A1. [¶] No school was renamed pursuant to the Board's resolutions. [¶] As a result, the parties agree that the proceeding is moot, and must be dismissed."

Code of Civil Procedure section 1021.5 provides that "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 . . . 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. "[T]he fundamental objective of the doctrine is to encourage suits enforcing

important public policies by providing substantial attorney fees to successful litigants in such cases." (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

In *Graham*, our Supreme Court affirmed and clarified the related "catalyst theory," which permits the award of attorneys' fees to a party who does not obtain formal judicial relief but can demonstrate pragmatic success, i.e., that the defendant "change[d] its behavior substantially because of, and in the manner sought by, the litigation." (*Id.* at 560; accord, *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 521.) The catalyst theory preserves important policies underlying section 1021.5 by ensuring that a defendant may not litigate vigorously against a meritorious public interest case and then avoid paying attorneys' fees by voluntarily providing relief before a court order is entered. (*Id.* at 574.) It also preserves judicial resources, by encouraging a plaintiff to discontinue litigation once the defendant acquiesces to the remedy initially sought. (*Id.* at 573.) To guard against potential abuses, however, the Graham court imposed two additional burdens on parties seeking "catalyst" fees: (1) the lawsuit must have "some merit," and (2) the plaintiff must have engaged in reasonable pre-litigation settlement efforts. (*Id.* at 561.) The Court finds that all of the factors set forth in section 1021.5 and *Graham* are satisfied here.

First, Petitioners are "successful parties" within the meaning of section 1021.5. To show "success" under the catalyst theory, Petitioners must establish that "(1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense . . . ; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608.) Importantly, the lawsuit need not be the exclusive motivator, but only a substantial factor in the defendant's decision. (*Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2017) 157 Cal.App.4th 1358, 1365; *City of Yucaipa*, 238 Cal.App.4th at 522.) A moving party need not provide direct evidence of the defendants' motivations for providing the primary relief sought. Rather, the movant may establish an inference of catalyst causation by showing that the defendant's decision to voluntarily provide the relief sought occurred after the filing of plaintiff's

suit. (*Hogar*, 157 Cal.App.4th at 1366; *City of Yucaipa*, 238 Cal.App.4th at 522.) "When action is taken by the defendant after plaintiff's lawsuit is filed the chronology of events may permit the inference that the two events are causally related." (*Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 968.) The burden then shifts to the responding party to rebut the inference. (*Id.*) In *Graham*, the Supreme Court declared, "the defendant in such cases knows better than anyone why it made the decision that granted the plaintiff the relief sought, and the defendant is in the best position to either concede that the plaintiff was a catalyst or to document why the plaintiff was not." (*Graham*, 34 Cal.4th at 573.)

Here, there is no need for the Court to resort to a presumption that Petitioners' lawsuit was a catalyst motivating Respondents to provide the primary relief sought, because Respondents have expressly admitted as much. In its April 6, 2021 resolution rescinding the Renaming Resolution, the Board specifically referred to the instant litigation:

> WHEREAS: on March 17, Petitioners Abraham Lincoln High School of SFUSD Alumni Association, et al. filed suit against SFUSD seeking to avoid the Board's action on January 26, 2021 ("the lawsuit") asserting, among other things, that President Lopez' public statement was not enough assurance that the Board would not be taking additional imminent action to consider alternative names for the above-identified schools . . . .

(Casco Decl. (filed Apr. 19, 2021), Ex. B.) While the resolution went on to characterize the litigation as "nothing more than a transparent attempt to thwart a lawful and duly-noticed action with which it disagrees," the Board stated it was rescinding the Renaming Resolution because it "wishes to avoid the distraction and wasteful expenditure of public funds in frivolous litigation." (*Id.*) In short, as Respondents concede, "[t]he resolution states on its face that it was being enacted to end this legal action." (Opp. at 4:19.)

Contrary to Respondents' argument, this Court readily concludes that Petitioners' action had at least "some merit." (*Graham*, 34 Cal.4th at 561.) A fee applicant must show only that its claims were not "frivolous, unreasonable or groundless." (*Id.* at 575.) "The determination the trial court must make is not unlike the determination it makes when asked to issue a preliminary injunction, i.e., not a final decision on the merits but a determination at a minimum that the questions of law or fact are grave and difficult." (*Id.* (citations and quotations omitted.)

1 Petitioners' central claim was that the Board violated the Brown Act by agendizing and titling its
2 Resolution, "In Support of a Formal Process in the Renaming of San Francisco Unified School
3 District Schools," when in fact the Resolution itself did nothing to advance a "formal process,"
4 but instead resolved that Respondent should adopt the Committee's recommendation that all 44
5 school names be changed. (Casco Decl., Ex. A; Yap Decl. ¶¶ 20-22 & Ex. 17 [press release
6 stating, "The resolution . . . serves as the Board's commitment to replace the names"].) At a
7 minimum, that claim raised colorable questions as to whether Respondent's description of the
8 agenda item was misleading, in violation of the fundamental requirement that "agenda drafters
9 must give the public a fair chance to participate in matters of particular or general concern by
10 providing the public with more than mere clues from which they must then guess or surmise the
11 essential nature of the business to be considered by a local agency." (*Olson v. Hornbrook*
12 *Community Services Dist.* (2019) 33 Cal.App.5th 502, 519 (citations and quotations omitted).)
13 Thus, in *Olson*, the court held that the trial court erred in dismissing complaints alleging that a
14 community services district violated the Brown Act by failing to adequately describe several
15 items it acted on over the course of three district meetings where "the local agency took an action
16 different than what it notified the public it would take." (*Id.* at 525; see also, e.g., *Hernandez v.*
17 *Town of Apple Valley* (2017) 7 Cal.App.5th 194, 197, 208 [agenda insufficient when it described
18 that council would discuss Walmart initiative measure and provide direction to staff but failed to
19 include that council would also adopt a memorandum of understanding authorizing the
20 acceptance of a gift from Walmart to pay for the special election to pass the initiative measure
21 discussed]; *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th
22 1167, 1170, 1176-1177 [agenda description stating that planning commission would potentially
23 approve subdivision application was lacking where it failed to mention the commission would
24 also consider whether to adopt a mitigated negative declaration concerning the environmental
25 impact of the project]; *Moreno v. City of King* (2005) 127 Cal.App.4th 17, 25 [agenda item
26 stating that city in closed session would consider "Public Employee (employment contract)" was
27 inadequate to give notice to public that council was considering disciplining or terminating
28 finance director].)

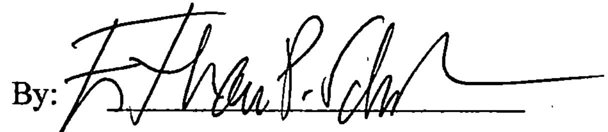
1 The Court also concludes that the other factors set forth in section 1021.5 are satisfied.
2 The petition enforced an important right affecting the public interest. The pertinent question
3 under this factor is "whether there was an important public interest at stake." (*Beasley v. Wells*
4 *Fargo Bank* (1991) 235 Cal.App.3d 1407, 1417, overruled on other grounds in *Olson v.*
5 *Automobile Club of Southern California* (2008) 42 Cal.4th 1142.) This "merely calls for an
6 examination of the subject matter of the action—i.e., whether the right involved was of sufficient
7 societal importance." (*Id.*) It does not require a showing of the merits of the applicant's claims.
8 (*In re Butler* (2015) 236 Cal.App.4th 1222, 1232.) Rights of sufficient "societal importance"
9 include those enshrined in the constitution or "important" statutes. (*Woodland Hills Resident*
10 *Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935.) By filing this action, Petitioners sought
11 to vindicate statutory rights under the Brown Act, which is undergirded by the "important
12 legislative purposes" of ensuring that public agencies take their actions in public and conduct
13 their deliberations openly. (E.g., *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th
14 1063, 1076, quoting Gov. Code § 54950; see also *International Longshoremen's and*
15 *Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 303
16 ["The private attorney general statue is analogous to the Brown Act's attorney fees provision in
17 that both authorize compensation for private actions which serve to vindicate important rights
18 affecting the public interest"]; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524 [trial
19 court abused its discretion in denying attorney fees on basis of a lack of public benefit, where
20 petitioner's action was filed "in good faith and intended to carry out the strong public policy of
21 open governmental meetings embodied in the Brown Act."].) For similar reasons, by
22 contributing to Respondents' decision to repeal the Resolution and overhaul the renaming
23 process, it conferred a significant benefit on the general public. Finally, Petitioners establish the
24 necessity and financial burden of private enforcement, since they were not seeking any pecuniary
25 relief, and no public agency undertook to enforce the strictures of the Brown Act against
26 Respondents. (See *Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1351 ["Under
27 the private burden prong of section 1021.5, fees are recoverable "when the cost of the claimant's
28 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" (quoting *Woodland Hills Residents Assn., Inc.*, 23 Cal.3d at 941)].)

Respondents do not raise any objection to the amount of fees being claimed, which the Court finds are eminently reasonable in amount. Accordingly, the motion is granted. Finally, Respondents' motion to strike or tax costs is based solely on the ground that Petitioners were not the prevailing party, and is denied for the reasons stated. (See, e.g., *Skinner v. Ken's Foods, Inc.* (2020) 53 Cal.App.5th 938, 945 [affirming trial court's ruling that plaintiffs were entitled to attorney fees and costs as successful parties entitled to a catalyst fee award].)

IT IS SO ORDERED.

Dated: September 29, 2021

By: 

Superior Court Judge

ETHAN P. SCHULMAN