ORIGINAL

No. S175855

Supreme Court

OF THE

State Of California

IN RE CONSERVATORSHIP OF ROY W.

North Bay Regional Center,

Respondent,

vs.

Virginia Maldonado, as Conservator for Roy W.,

Petitioner.

Reply Brief On The Merits

From A Non-Published Decision of the Court of Appeal (1st Dist., Div. 3; A122896)
Affirming an Order of the Sonoma County Superior Court
Denying Private Attorney General Fees (No. SPR-061684)
Honorable Elaine Rushing, Judge

JAN T. CHILTON 47582
DONALD J. QUERIO 54367
SEVERSON & WERSON,
A Professional Corporation
One Embarcadero Center, 26th Floor
San Francisco, CA 94111-3600
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

Attorneys for Petitioner
VIRGINIA MALDONADO

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North Bay Regional Center's ("NBRC's") Answer Brief on the Merits ("ABM") is notable more for what it omits than for what it says. The NBRC's arguments are unpersuasive. Its silences speak volumes.

I

LITIGANTS' NONPECUNIARY INTERESTS DO NOT BLOCK PRIVATE ATTORNEY GENERAL FEE AWARDS

A. Section 1021.5 Promotes Public Interest Litigation By Enabling Litigants To Hire Lawyers To Prosecute Those Suits

The legislative history materials cited and quoted in Maldonado's Opening Brief on the Merits (OBM, 11-14) show that Code of Civil Procedure section 1021.5 was enacted for the purpose of removing what was seen as the main obstacle to private enforcement of public rights: the difficulty of obtaining legal counsel to represent litigants in public interest litigation.

Public interest litigation is often difficult. Fees exceed most litigants' ability to pay. Contingency fees are rarely an option, especially in cases involving purely non-pecuniary rights. Too few lawyers are willing offer their services without some hope of recompense. Section 1021.5 solves this problem by awarding fees to attorneys who successfully prosecute public interest litigation.

Though it agrees that section 1021.5 created "a mechanism by which fees could be awarded to litigants who successfully pursue litigation that produces a significant public benefit," the NBRC maintains a studied silence about why such a mechanism was thought necessary or what problem it was intended to overcome. (ABM, 16-17.) Indeed, it claims that the legislative history sheds no useful light on the subject. (*Ibid.*)

Even if it considers only the two bits of legislative history to which the NBRC has not objected, the Court will see that the NBRC is wrong. (See NBRC Partial Opp. to RJN, 1.)

> The proponents [of private attorney general fee awards] state that ***eliminating the main obstacle to private litigation in the public interest – the prohibitive expense of hiring legal counsel*** – would make it possible for public minded individuals to supplement the efforts of public enforcement agencies.

(Sen. Judiciary Com. Paper on Private Attorney Generals; RJN, Ex. 1, pp. 4-5; emphasis added.)

> [T]he cases covered by AB 1310 often result in non-pecuniary or intangible recoveries, thus precluding the possibility of a contingency fee arrangement. In addition, such cases require extensive amounts of attorney time and skill since the issues being decided are often of first impression in the courts and are without established legal precedents. Thus, these cases are prohibitively expensive for almost all citizens.
>
> * * *
>
> Therefore, if many important rights are to be adequately enforced, it is necessary that the courts be granted the authority to make awards of attorneys fees to the successful party in certain specified circumstances. AB 1310 provides that authority.

(Dept. of Consumer Affairs' Enrolled Bill Report; RJN, Ex. 11, p. 2.)[1]

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[1] Judge Peckham had earlier made the same point in *La Raza Unida v. Volpe* (N.D. Cal. 1975) 57 F.R.D. 94, 101, a decision that the Senate Judiciary Committee paper cites as a "leading case" on private attorney general fee awards. (See RJN, Ex. 1, p. 3.)

Moreover, contrary to the NBRC's argument, the Court may properly consider the rest of the legislative history materials of which Maldonado requested judicial notice.[2]

While these legislative history materials do not directly address whether a litigant's nonpecuniary interests are to be weighed (see ABM, 16 n. 5), they leave no doubt that section 1021.5 provides fee awards for the purpose of giving litigants a means of paying counsel and thereby securing legal representation in public interest litigation.

Weighing litigants' nonpecuniary interests thwarts that purpose. Litigants cannot pay attorneys with nonpecuniary interests. By considering nonpecuniary interests as disqualifying litigants from receiving private attorney general fee awards, the Courts of Appeal have recreated the very obstacle to public interest litigation that section 1021.5 was intended to remove. Maldonado made this point clearly in her OBM (pp. 2, 17, 29-30). The NBRC has no answer to it. So, it is silent on this crucial point.

Instead of answering Maldonado, the NBRC argues that failure to consider nonpecuniary interests will "result in fee awards when the litigation would have occurred under any circumstances" because the plaintiff was strongly motivated to sue for non-financial reasons. (ADM, 17-18.) The flaw in this argument lies in its implicit, unproven, and erroneous premise that section 1021.5's purpose is to motivate potential litigants to

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[2] To construe legislation, this Court has recently considered each of the types of legislative history materials that Maldonado has provided: (a) Letters in the author's bill file (RJN, Exs. 2-5) expressing support for, or opposition to, proposed legislature (*People v. Cole* (2006) 38 Cal.4th 964, 983); (b) Testimony at legislative committee hearings on a bill (RJN, Ex. 6) (*Harris v. Pricewaterhousecoopers, LLP* (2006) 39 Cal.4th 1220, 1230-1231); (c) Letters urging the Governor to sign or veto an enrolled bill (RJN, Ex. 7-9) (*People v. Cole, supra,* 38 Cal.4th at p. 983); and (d) Enrolled Bill Reports (RJN, Ex. 10) (*Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595, 604-605.)

file suit, even if they lack the resources to do so. That is *not* section 1021.5's purpose, as the legislative history materials show and the statute's structure and words confirm.

B. Reflecting Its Purpose, Section 1021.5's Language Directs That Only Financial Burdens And Benefits Are To Be Weighed, Not Nonpecuniary Interests

In her OBM (p. 15), Maldonado showed that section 1021.5's structure reflects its purpose. The section provides for fee awards to enable litigants to hire and pay lawyers, not enhanced damages or other remedies designed to motivate potential litigants to sue. The NBRC has no answer to this point. It is silent.

Maldonado also argued that by expressly directing consideration of only the "financial" burden of private enforcement, section 1021.5 implicitly allows consideration of offsetting "financial" benefits only. (OBM, 16-17.) Financial burdens and benefits are closely tied to the statute's purpose—enhancing public interest litigants' ability to hire counsel. Nonpecuniary interests are not.

Moreover, in directing consideration of "financial" burdens only, section 1021.5 clause (b) contrasts starkly with the preceding clause (a) that refers to "a significant benefit, whether pecuniary or nonpecuniary ...." (OBM, 16 n. 14.) The close juxtaposition of these disparate terms confirms Maldonado's interpretation.[3] The NBRC does not respond to these arguments. Once again, it is silent.

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[3] Had the Legislature, instead, intended courts to engage in the wide-ranging inquiry that the NBRC favors, it would have drafted clause (b) in parallel with clause (a) to refer to the "burden, whether pecuniary or non-pecuniary, of private enforcement." (Compare ADM, 10 ("*Hammond* holds ... that the statutory language directs courts to consider whether a private plaintiff's personal interest – pecuniary or non-pecuniary – makes it unlikely that he or she would have incurred the cost of bringing the action.").)

Rather than addressing the statutory words that most clearly address the issue, the NBRC focuses on two others—"necessity" and "such"—neither of which supports the NBRC's argument. (ABM, 10.)

The NBRC first repeats *Hammond's* argument that "[t]he addition of the word 'necessity' suggests, lest it be redundant, that factors beyond just 'financial burden' also may be looked at." (ABM, 10, quoting *Hammond v. Agran* (2002) 99 Cal.App.4th 115, 125.) The argument is incorrect.

There is no danger of redundancy. "Necessity" plays an important role in section 1021.5, but one that has nothing to do with assessing burden. "[U]nder the 'necessity' prong of section 1021.5, the court looks only to see whether there is a need for a private attorney general for enforcement purposes, because no public attorney general is available." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 85; see also OBM, 15-16 n. 13 and authorities there cited.)

The NBRC also claims that the word "such" somehow reinforces the notion that a litigant's personal, nonpecuniary stake is to be weighed. (ADM, 10.) The argument is unconvincing. In section 1021.5's clause (b), "such" simply means being of a quality or degree sufficient to "make the award appropriate." (See Merriam-Webster On-Line Dict., "such (adjective)," def. 1(b) ("having a quality to a degree to be indicated <his excitement was such that he shouted>).) "Such" says nothing about how a court should measure that quality or degree.

Finally, the NBRC claims Maldonado's interpretation must be rejected because ruling out consideration of nonpecuniary interests will render the financial burden criterion "virtually meaningless in most family law and related litigation." (ABM, 11, 28.) The premise is questionable. Many family law disputes involve money or property, sometimes in quite substantial amounts. (See, e.g., *In re Marriage of Bonds* (2000) 24 Cal.4th 1.)

Moreover, the conclusion does not follow from the premise. The financial burden criterion need not apply to all types of public interest litigation to have meaning. It need only preclude awards in some cases: those in which a fee award is not needed to enable the litigant to hire legal representation.

In *Press*, this Court implicitly adopted this view. Its reasoning there—plaintiff had no pecuniary interest in the outcome; therefore the financial burden made a fee award appropriate—renders the financial burden criterion inapplicable to a broad range of public interest litigation in which only injunctive or declaratory relief, not damages, is sought. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321.)[4] The Court did not find that fact disquieting.[5]

The NBRC offers no valid or convincing argument in support of its proposed construction of section 1021.5. By contrast, Maldonado's interpretation of the statue is so compelling that the NBRC is unable to answer her assertions.

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[4] The NBRC wrongly tries to ignore *Press'* words as dictum. (See ADM, 13, 22-23, citing *Williams v. San Francisco Bd. Of Permit Appeals* (1999) 74 Cal.App.4th 961, 969-970.) *Press* decided "whether the trial court abused its discretion in awarding... attorney fees under section 1021.5 ...." (*Press,* 34 Cal.3d at p. 315.) To resolve that issue, the Court had to decide if the case satisfied all of section 1021.5's criteria, including the financial burden test. According to the opinion, Lucky conceded the important right test, but not the financial burden criterion. (Compare *id.*, at p. 318 with *id.*, at p. 320.) Hence, the Court's determination that Press satisfied that criterion was necessary to affirming the fee award, not dictum. (See *Seminole Tribe v. Florida* (1996) 517 U.S. 44, 67 ("When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound."); see also *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1038 n. 9.)

[5] Also, for the reason this Court explained in *Adoption of Joshua S.* (2009) 42 Cal.4th 945, few litigants in family law cases will qualify for private attorney general fee awards whether or not the "financial burden" criterion bars an award.

C. Nonpecuniary Interests Should Not Be Considered For Practical Reasons As Well

1. The Harm In Considering Nonpecuniary Interests Is Not Confined To Just A Few Rare Cases

Throughout its brief, the NBRC tries to reassure this Court that "[t]here have been, and will be, few cases in which the plaintiff's non-pecuniary interest is so powerful" as to preclude a private attorney general fee award. (ADM, 2, 12, 14, 18, 24, 28, 30, 33.)[6]

The only evidence the NBRC cites for its proposition is the low number of *published appellate* decisions invoking nonpecuniary interests as a reason for denying a private attorney general fee award. That is not a proper measure of the impact of the *Williams-Punsly* line of authority nor does it provide any reason to think nonpecuniary interests will result in fee denials in only rare cases.

Few appellate decisions are published, particularly when they adhere to established, albeit erroneous, authority. The unpublished opinions in this case and *Joshua S.* illustrate the point. The NBRC has offered no tally of the number of unpublished opinions that have relied on nonpecuniary interests to deny fees, let alone a count of the trial court orders denying fees for that reason.

Moreover, the true impact of the *Williams-Punsly* error occurs much earlier in litigation than the appeal of an order granting or denying fees and cannot be measured by counting appellate opinions, whether or not published. Uncertainty about the availability of fees if the plaintiff prevails affects lawyers' choices of clients and cases, discouraging them from accepting personally motivated champions and public interest litigation.

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[6] The NBRC raised a similar argument in unsuccessfully opposing the petition for review. (See Ans. to Rev. Pet., 4-5, 8.)

Also, even if nonpecuniary interests actually blocked fee awards only in rare cases, fee opponents would (and do) routinely raise the issue, thereby increasing the cost and uncertainty of fee motions, in order to wring a more favorable result by settlement if not judicial decree.

Moreover, if, in fact, nonpecuniary interests bar fee awards only in rare cases, there is little to be gained by considering them. Special rules are not needed for those rare cases. Most can be handled well by existing rules. *Punsly* would now be resolved easily under the rule stated in *Joshua S*; *Williams,* under *Trope v. Katz* (1995) 11 Cal.4th 274.

2. Consideration Of Nonpecuniary Interests Leads To Arbitrary Decisions That Discourage Public Interest Litigation

Trying to show that considering nonpecuniary interests does not lead to arbitrary decisions thwarting section 1021.5's purpose, the NBRC says courts are "not free to speculate about motives, but must look for objective evidence." (ADM, 24.) That is cold comfort indeed. Arbitrary decisions arise not just from lack of "objective" evidence of nonpecuniary interests, but more often from the difficulty of weighing those interests against the financial burden imposed by the litigation.

Next, the NBRC claims that Maldonado has conceded *Williams* reached the correct result, thus undercutting her argument that weighing of nonpecuniary interests is inherently arbitrary. (ADM, 24-25.) The NBRC misreads Maldonado's opening brief. It says *Williams* offered the wrong rationale, but reached the right result because the plaintiff represented himself. (OBM, 19 & n. 17.) Nothing in that statement conflicts with Maldonado's argument on this point.

Finally, the NBRC says judges and juries make similar decisions all the time, monetizing intangibles and the like—decisions that the NBRC says are "respected" not just because there is no alternative but because "judges and juries make sound decisions on these matters." (ADM, 25-26.)

Not so. Like other humans, judges make arbitrary and unpredictable decisions when faced with impossible questions—like weighing Maldonado's concern for her brother's welfare against $177,000 in appellate attorney fees. The trial court's ruling in this case illustrates that fact. Other than praising judges' sagacity, the NBRC does not suggest how judges can answer such an intractable question.

There is no reason to force judges to make these difficult decisions just to handle the rare case in which, according to the NBRC, weighing nonpecuniary interests will make a difference.

3. Consideration Of Nonpecuniary Interests Broadens The Scope And Increases The Expense Of Fee Litigation

The NBRC also denies that considering nonpecuniary interests will add to the burden and expense of fee litigation. (ADM, 26-27.) The only evidence it cites for that proposition is that, in this one case—and perhaps the four others that have resulted in published opinions in the *Williams-Punsly* line—there was no extensive discovery. A sample of five cases is statistically insignificant. That sample affords no assurance that once this Pandora's box is opened its evil spirit can be so easily contained.

Nor is it any greater comfort that fee litigation occurs at the end of the case. It is far from certain that "the relevant evidence will already be known" then. (ADM, 26.) Normally, a plaintiff's motives in bringing suit are irrelevant and so are beyond the scope of discovery while the suit is pending.

Valuing financial interests—even diminution in property values—is unlikely to be as time-consuming or intrusive as assessing nonpecuniary interests impelling suit. (See ADM, 27.) Moreover, section 1021.5's text and purpose compel the weighing of financial interests, but not nonpecuniary interests.

4. Considering Nonpecuniary Interests Biases The Decision Against Fee Awards

In her opening brief (p. 27), Maldonado pointed out that weighing only financial burdens but all benefits, whether pecuniary or nonpecuniary, of public interest litigation inherently biases the weighing process against fee awards. Maldonado challenged the NBRC to provide any rational justification for this inherently unbalanced approach. (*Id.*)

The NBRC has none. It is silent on the point.

5. Considering Nonpecuniary Interests Leaves Public Interest Litigation To The Wealthy Or Those Least Interested In The Outcome

In her opening brief (pp. 27-29), Maldonado argued that considering nonpecuniary interests also will leave public interest litigation to the wealthy and those who lack strong personal interests in the outcome. The wealthy can afford to hire lawyers without fee awards. Disinterested litigants are more likely to obtain fee awards and thus will be better able to obtain legal representation.

Not even the NBRC argues that it is socially desirable to force non-wealthy, but strongly interested individuals out of public interest litigation.

Instead, the NBRC says first that "section 1021.5 does not exist simply to equalize the terms of litigation between individuals of modest means and better funded entities." (ADM, 29.) That assertion entirely misses the point of Maldonado's argument, which deals with selection among potential public interest litigants, not equalizing their resources vis-à-vis their opponents'.

The NBRC also says it denigrates the bar to argue that lawyers take on public interest litigation *only* if confident of a fee award. (ADM, 29.) Maldonado never made that argument. There indisputably are *some* lawyers who undertake public interest litigation without thought of compensation for their work. But, as the legislative materials quoted in Maldonado's

opening brief (pp. 11-14) and above (pp.4-5) show, the Legislature thought there were too few of those paragons to ensure the private enforcement of important public policies through public interest litigation.[7] That is precisely why the Legislature enacted section 1021.5.

D. This Case Illustrates Why Considering Nonpecuniary Interests Thwarts Section 1021.5's Purpose

The facts of this case illustrate how section 1021.5's purpose is thwarted by considering nonpecuniary interests as a factor disqualifying a litigant from receiving a private attorney general fee award.

In her opening brief, Maldonado showed that though nonpecuniary interests may have motivated her suit, she could not pay for a lawyer to handle this case for her. (ODM, 29-30 n. 24.) Thus, Maldonado faced the very problem that section 1021.5 was intended to solve. Denial of a fee award in these circumstances kept the statute from achieving its intended purpose.

In its answer, the NBRC does not suggest that Maldonado could have paid the $177,000 in fees that the NBRC admits was reasonably incurred on her appeal. (See ADM, 19-21.) Instead, the NBRC contends that fees were properly denied because Maldonado had purely personal motives for suing. She did not set out "to vindicate a significant public right." (ADM, 20.)[8]

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[7] For obvious practical reasons, solo practitioners, small firms, and even medium-sized ones, however well motivated, can take on relatively little public interest litigation without some hope of compensation.

[8] Factually, the NBRC's contention is a misleading half-truth. Maldonado initially protested Whitley's outplacement solely out of concern for her brother's welfare. With the help of a solo practitioner, she pursued the matter through a *Richard S.* hearing for that reason. But, Maldonado has not sought a fee award for any of that work.

When the matter moved to the appellate court, Maldonado obtained different counsel to pursue broader goals. "I also wanted to assure that the out-

(Fn. cont'd)

The NBRC's argument is irrelevant. Section 1021.5 says nothing about litigants' motives, whether personal or public-spirited. Instead, the statute rewards those who achieve public good, whatever their motives. Fees are awarded if the suit "resulted in the enforcement of an important right affecting the public interest" and conferred "a significant benefit ... on the general public or a large class of persons." (Code Civ. Proc., § 1021.5.) Result, not motivation, is what counts. (See *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17.)

The distinction between result and motive in bringing suit is particularly important in cases, like this one, where procedural rights are vindicated. Rarely do litigants sue to correct improper procedure. Rather they sue for the tangible result which they hope to secure through proper procedure.

Saleeby v. State Bar (1985) 39 Cal.3d 547 illustrates the point. There, Saleeby sued to recover money from the Client Security Fund as recompense for funds his attorney misappropriated. His motive in pursuing litigation was purely personal. (*Id.*, at pp. 553-555.) He did not set out to reform the world or benefit mankind. Nevertheless, Saleeby's suit resulted in enforcement of an important public right: "establishment of a method of administration allowing full and considered participation [to] assure proper determinations." (*Id.*, at p. 574.) This Court held Saleeby was entitled to a fee award under section 1021.5. (*Id.*, at pp. 574-575.)

The NBRC also argues that fees were properly denied because the Court of Appeal, itself, first raised the issue on which it ultimately ruled in

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(Fn. cont'd)
placement process gave proper attention to the input of all of the families of the developmentally disabled." (App., 252:4-14; quoted at greater length at OBM, 7-8.) The broader focus of the appeal was apparent from the outset. Even the hastily drafted petition for writ of supersedeas raised broader procedural issues, not just the impropriety of Whitley's own transfer to Miracle Lane. (See Writ Pet., 21-25.)

Maldonado's favor. (ADM, 2, 6, 20-21.) Even were the point factually correct, it is legally irrelevant. Section 1021.5 does not state that fees are awarded only if a litigant's lawyers originate the theory on which the litigant prevails. Private attorney general fees may be awarded even in a case that does not establish new law but "merely" results in "the enforcement of well-defined, existing obligations." (*Press v. Lucky Stores, Inc., supra,* 34 Cal.3d at p. 318; *Riverside Sheriffs' Assn. v. County of Riverside* (2007) 152 Cal.App.4th 414, 422.)

Nor is a fee award an unwarranted windfall to Maldonado or her attorneys. Maldonado was the first to persevere through a *Richard S.* hearing and an appeal, thus allowing the Court of Appeal to reach an issue of first impression. Her attorneys labored long and hard to obtain her appellate victory. The NBRC concedes that $177,000 in fees was reasonably incurred in that effort. Indeed, to deny Maldonado fees because lightning supposedly first struck an eminent jurist rather than her less prominent lawyer is to reward the NBRC for its silent haste in transferring Whitley to Miracle Lane contrary to its counsel's promise, thereby forcing Maldonado's new appellate counsel to seek supersedeas hurriedly before they had thoroughly analyzed the law in this abstruse area.[9]

In short, the NBRC's arguments fail to justify the denial of fees to Maldonado in this case.

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[9] If NBRC's point is that Maldonado did not appeal for the purpose of winning the jurisdictional point first raised by the Court of Appeal, it is irrelevant because, as already stated, fees are awarded based on results, not the litigant's motives for suing. (See p. 12 above.)

II

ISSUES FOR REMAND AND FEES FOR THIS APPEAL

In its brief, the NBRC asks the Court, if it rules in Maldonado's favor on the issue for review, to remand to the Court of Appeal to allow that court decide whether its decision benefited a sufficiently large class of persons to satisfy section 1021.5 clause (a). (ADM, 31-32.) Maldonado agrees. (See OBM, 32.)

The NBRC also asks that the Court remand to allow the Court of Appeal to decide if a partial award of fees is appropriate under *Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 942. (ADM, 32-33.) Maldonado disagrees. *Woodland Hills* held that a partial award might be appropriate if "plaintiffs' ***potential financial gain*** in this case is such as to warrant placing upon them a portion of the attorney fee burden ...." (*Ibid.*; emphasis added.)

There was never any "potential" for "financial gain in this case." So there is no reason to remand on this issue. The NBRC does not argue otherwise. Instead, it pursues an entirely different point that *Woodland Hills* does ***not*** support. The NBRC claims fees should be reduced because some of the briefing on appeal addressed issues other than the one on which Maldonado eventually prevailed. That argument was rejected long ago. (*Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273.)

In her opening brief, Maldonado showed that if she prevails in this Court, she will be entitled to a private attorney general fee award for work done in connection with her fee application and this appeal—whatever the Court of Appeal decides about the significance of its prior decision's benefit. (OBM, 30-32.) Maldonado asked this Court to determine her eligibility for such an award and remand for the lower courts to determine the amount of fees to be awarded. (OBM, 32-33.)

The NBRC ends its brief as it started—with silence. It has presented no argument against a fee award for the fee application and this appeal if Maldonado prevails in this Court. It tacitly concedes the issue.

III

CONCLUSION

For the reasons stated above and in Maldonado's opening brief, the Court grant the relief prayed for in the conclusion of Maldonado's opening brief.

Dated: March 11, 2010.

SEVERSON & WERSON
A Professional Corporation

By 
Jan T. Chilton

Attorneys for Petitioner
Virginia Maldonado

CERTIFICATE OF BRIEF LENGTH

[California Rules of Court, rule 8.504(d)(1)]

Pursuant to California Rules of Court, rule 8.504(d)(1), I certify that the foregoing brief contains 4,190 words, as shown by the word count function of the computer program used to prepare the brief.

Dated: March 11, 2010.

Jan T. Chilton

PROOF OF SERVICE

(Supreme Court No. S175855)
(Court of Appeal Case No A133896)
(Sonoma County Superior Court Case No.: SPR-061684)

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

Reply Brief On The Merits

on all interested parties in said case addressed as follows:

CALIFORNIA COURT OF APPEAL 350 McAllister Street San Francisco, CA 94102	Case No. A133896
SONOMA COUNTY SUPERIOR COURT 600 Administration Drive, Rm. 107-J Santa Rosa, CA 95403	Case No. SPR-061684
Joseph P. Mascovich, Esq. RANDOLPH, CREGGER & CHALFANT 1030 G Street Sacramento, CA 95814 Telephone: (916) 443-4443 Fax: (916) 443-2124	*Attorneys for Petitioner and Respondent North Bay Regional Center*

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on March ~~11~~ 12, 2010.

Marilyn C. Li