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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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| VEENA PURIFOY et al.,<br>Plaintiffs and Respondents,<br>v.<br>GLENN HOWELL et al.,<br>Defendants and Respondents;<br>EVANS & PAGE,<br>Intervener and Appellant. | A135284<br><br>(Contra Costa County<br>Super. Ct. No. MSC0602174) |

Intervener law firm Evans & Page appeals from the denial of a motion made on behalf of its clients, plaintiffs Veena Purifoy, Lorree Lewis, and Voices for Pets, seeking an award of attorney fees under the private attorney general statute (Code Civ. Proc., § 1021.5 (§ 1021.5)). The request for attorney fees is based on this court's published decision in *Purifoy v. Howell* (2010) 183 Cal.App.4th 166 (*Purifoy*), in which we found that defendants Contra Costa County Animal Shelter (CCCAS), and its director Glenn Howell, had been violating Food and Agriculture Code section 31108, subdivision (a) (§ 31108(a)), which provides that the required "holding period" for a stray dog impounded in a public or private shelter is "six business days" (or, if certain exceptions apply, "four business days"), not including the day of impoundment. (*Ibid*.) In so concluding, we explained defendants had been improperly counting Saturdays as "business days," which phrase as used in section 31108(a) means "Monday through Friday, the meaning most commonly used in ordinary discourse." (*Purifoy, supra*, at

p. 182). As a consequence of our decision, CCCAS changed its policy regarding the calculation of holding periods to exclude Saturdays, which was the remedy sought by plaintiffs. Based on our de novo review, we now conclude appellant has met all the pertinent statutory criteria necessary for the entitlement of an award of section 1021.5 attorney fees. Accordingly, we shall reverse and remand the matter to the trial court for further proceedings.

## FACTUAL AND PROCEDURAL BACKGROUND[1]

Purifoy's dog Duke was impounded by CCCAS on Thursday, October 5, 2006, and was held at the CCCAS animal shelter in Pinole. A new owner adopted Duke on Wednesday, October 11, 2006. Purifoy sought to retrieve Duke on Thursday, October 12, 2006, but the animal had already been taken by its new owner. Duke was ultimately returned to Purifoy. The shelters operated by CCCAS, including the Pinole shelter, were open Tuesday through Saturday for owner redemption and adoption of animals and CCCAS counted those days as "business days" in calculating minimum holding periods. The shelters were closed on Sunday, Monday, and major holidays. Because Duke was made available for owner redemption on a weekend day (Saturday, October 7), CCCAS applied a four-business-day holding period. In calculating that period for Duke, CCCAS excluded Thursday, October 5 (the day of impoundment), and Sunday and Monday, October 8 and 9 (days the shelter was closed). CCCAS counted the following days as "business days": (1) Friday, October 6, (2) Saturday, October 7,

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[1] We described in full the factual and procedural background of this litigation in our earlier published decision. (*Purifoy, supra*, 183 Cal.App.4th at pp. 171-174.) In this opinion we set forth only those facts necessary to resolve the issue of appellant's entitlement to an award of section 1021.5 attorney fees. The parties also ask us to take judicial notice of certain documents considered by this court in the earlier appeal and certain legislative history documents relating to the 1998 and 2012 amendments to section 31108. (Stats. 1998, ch. 752, § 12, operative Jan. 1, 1999; Stats. 2011, ch. 97, § 4, eff. Jan. 1, 2012.) We grant appellant's request for judicial notice filed December 12, 2012. We grant defendants' request for judicial notice filed February 1, 2013. We have considered the proffered documents to the extent they are relevant to our resolution of this appeal.

(3) Tuesday, October 10, and (4) Wednesday, October 11. CCCAS held Duke exclusively for owner redemption for the first three of those days, and permitted his adoption on the fourth day, i.e., Wednesday, October 11.

Purifoy filed this lawsuit, alleging in the operative second amended complaint, that defendants violated section 31108 by counting Saturday as a "business day," and consequently allowed Duke to be illegally adopted on Wednesday, October 11, the third business day after impoundment. It was Purifoy's position that if CCCAS had not counted Saturday as a business day, then she would have been able to reclaim Duke when she went to the shelter on Thursday, October 12, the fourth business day after impoundment. The parties filed competing motions for summary relief. After a hearing the trial court denied Purifoy's motion for summary adjudication and granted defendants' motion for summary judgment, finding that the phrase "business days" included all days on which a shelter was open including Saturdays. Judgment was entered in favor of defendants, and Purifoy appealed.

In a published decision we disagreed with the trial court and found the phrase "business days" in section 31108(a) did not include Saturdays, in light of the statutory language and the express legislative findings accompanying the 1998 amendments to section 31108(a). (*Purifoy, supra*, 183 Cal.App.4th at pp. 180-184.) We explained that "a construction of 'business days' that excludes Saturdays is consistent with the legislative goal of access, including the specific goal of encouraging shelters to 'be open during hours that permit working pet owners to redeem pets during nonworking hours.' (Stats. 1998, ch. 752, § 1, subd. (b)(2), p. 4904.) [¶] By contrast, a construction of 'business days' that *includes* Saturdays would often result in shorter holding periods, and thus fewer opportunities for redemption or adoption. Arguably, such a construction would promote the goal of access to some degree by providing an *additional* incentive for shelters to remain open on Saturdays, i.e., a shelter that is open on Saturdays could take advantage of the shorter, four-business-day holding period *and* could count Saturday as a 'business day' in computing that period. However, because the Legislature already provided an explicit incentive for shelters to remain open on 'weekend days,' and

because construing 'business days' to include Saturdays would result in shorter holding periods, we conclude that this result is not reasonable in light of the legislative purposes. [¶] In short, if the Legislature, having provided an incentive for shelters to remain open on weekend days, had also intended to permit shelters to count Saturdays as 'business days' (thus further shortening the total number of calendar days in the holding period), we would expect a clearer expression of such an intention in the statute. More broadly, a construction of 'business days' that includes Saturdays would both (1) shorten the holding period, and (2) reduce the opportunities for redemption and adoption. It thus would fail to achieve the dual purposes reflected in the legislative findings. [¶] Accordingly, in the absence of a clear expression of legislative intent to treat Saturdays as 'business days,' and in light of our obligation to choose a construction that most closely comports with the Legislature's intent and promotes, rather than defeats, the statute's general purposes [citations], we conclude that 'business days' in section 31108(a) means Monday through Friday, the meaning most commonly used in ordinary discourse." (*Purifoy, supra*, at pp. 181-182, fn. omitted.) Based on our decision, CCCAS changed its policy in calculating holding periods to exclude Saturdays.

After remittitur and resolution of the remaining substantive issues in favor of defendants,[2] Purifoy sought attorney fees pursuant to the private attorney general doctrine codified in section 1021.5, which request was denied by the trial court. Purifoy's counsel, appellant Evans & Page, filed a motion and complaint in intervention to protect

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[2] By an order filed on October 19, 2011, the trial court ruled on the parties' outstanding motions for summary relief on the first (violation of § 31108), third (trespass and damage to chattel), and fourth (taxpayer claim that CCCAS "wasted public money" by prematurely releasing impounded animals in violation of § 31108) causes of actions; the second cause of action had been the subject of a demurrer, which was sustained without leave to amend. The court dismissed the first and third causes of action for various reasons including that both defendants were immune from liability because they had exercised due care and good faith in interpreting the definition of "business days" in enforcing section 31108. The court dismissed the fourth cause of action that sought only injunctive relief on the ground of mootness in light of our prior *Purifoy* decision and the fact that defendants were then complying with our ruling by not counting Saturdays as business days and therefore there was nothing to enjoin.

its interest in attorney fees. On February 15, 2012, the court entered judgment in favor of defendants. On the same day, the court granted appellant's request for intervener status "for the limited purpose of seeking attorney's fees under CCP section 1021.5 via appellate review of the order denying attorney's fees, which was filed on January 12, 2012." Appellant now timely appeals, challenging the denial of its entitlement to an award of section 1021.5 attorney fees.[3]

## DISCUSSION

"A trial court's decision whether to award attorney fees under section 1021.5 is generally reviewed for abuse of discretion. [Citations.] But, where, as here, our published opinion provides the basis upon which attorney fees are sought, de novo or independent review is appropriate because we are in at least as good a position as the trial court to determine whether section 1021.5 fees should be awarded." (*Wilson v. San Luis Obispo County Democratic Central Com*. (2011) 192 Cal.App.4th 918, 924.)

### *A. Introduction*

"Section 1021.5 codifies California's version of the private attorney general doctrine, which is an exception to the usual rule that each party bears its own attorney fees." (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 390 (*Robinson*).) "[T]he fundamental objective of the private attorney general doctrine of attorney fees is ' "to encourage suits effectuating a strong [public] policy by awarding substantial attorney's fees . . . to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens." ' [Citation.] The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible."

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[3] On September 25, 2012, we denied defendants' motion to dismiss this appeal as untimely. Consequently, we dismiss on mootness grounds appellant's appeal from the order granting its motion to intervene in this matter.

(*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933 (*Woodland Hills*).)[4]

"The portion of section 1021.5 relevant to this appeal states: 'Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, [and] (b) the necessity and financial burden of private enforcement, . . . are such as to make the award appropriate. . . .'[5] [¶] This statutory language can be divided into the following separate elements. A [trial] court may award attorney fees to (1) a successful party in any action (2) that has resulted in the enforcement of an important right affecting the public interest if (3) a significant benefit has been conferred on the general public or a large class of persons, (4) private enforcement is necessary because no public entity or official pursued enforcement or litigation, [and] (5) the financial burden of private enforcement is such as to make a fee award appropriate. . . ." (*Robinson, supra,* 202 Cal.App.4th at p. 390, fn.

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[4] In addition to the private attorney general concept, our Supreme Court also allows a party to recover attorney fees under the substantial benefit doctrine, which " 'permits the award of fees when the litigant, proceeding in a representative capacity, obtains a decision resulting in the conferral of a "substantial benefit" of a pecuniary or nonpecuniary nature. In such circumstances, the [trial] court, in the exercise of its equitable discretion, thereupon may decree that under the dictates of justice those receiving the benefit should contribute to the costs of its production.' [Citation.] Unlike the private attorney general concept, which . . . is intended to promote the vindication of important rights affecting the public interest, the 'substantial benefit' doctrine . . . rests on the principle that those who have been 'unjustly enriched' at another's expense should under some circumstances bear their fair share of the costs entailed in producing the benefits they have obtained." (*Woodland Hills, supra*, 23 Cal.3d at p. 943.)

[5] Section 1021.5 also provides that another criteria to be considered is whether "such fees should . . . in the interest of justice be paid out of the recovery, if any," awarded to the successful party. (*Id*., subd. (c).) "Inasmuch as [Purifoy's] action has produced no monetary recovery, factor '(c)' of section 1021.5 is not applicable." (*Woodland Hills, supra,* 23 Cal.3d at p. 935; see *Lyons v. Chinese Hospital Assn*. (2006) 136 Cal.App.4th 1331, 1355 (*Lyons*) ["as Lyons obtained no monetary recovery, the 'interest of justice' provision of subdivision (c) is not relevant"].)

omitted.) As we now discuss, we agree with appellant that each of the pertinent factors necessary for an award of section 1021.5 attorney fees has been satisfied in this case. [6]

***B. Successful Party***

"The threshold requirement for a fee award under section 1021.5 is proof that the fee applicant is a 'successful party.' " (*Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th 488, 493 (*Protect Our Water*).) " 'Whether a party has prevailed for purposes of an award of fees depends on the impact of the action, not the manner in which the action is resolved. [(*Folsom v. Butte County Assn. of Governments* [(1982)] 32 Cal.3d [668,] 685.)] If the party has obtained some relief from the conditions originally challenged and if that relief is attributable in some way to the lawsuit, then that party is the prevailing party. [Citation.]' [Citation.] 'In *Folsom,* the court directed the trial courts to look at the appropriate benchmark situations sought to be affected by the lawsuit, then to look at how the situations had changed, and then to examine the role the litigation played in making the changes between the two situations. [(*Folsom*, at p. 685, fn. 31.] If the plaintiffs can show that the litigation "was demonstrably influential" in obtaining a change in the conditions challenged in the lawsuit, then they are the successful parties. [(*Id*. at p. 687; [citations].)]' " (*Lyons, supra,* 136 Cal.App.4th at p. 1346, fn. 9.)

Here, we conclude Purifoy was the successful party on a significant issue in the litigation, namely, whether state shelters were properly counting certain days as business days in calculating holding periods for impounded animals. (*Purifoy, supra*, 183 Cal.App.4th at p. 180.) Defendants conceded that since 1999 and before our *Purifoy* decision, shelters in "most, if not all, California counties," had been counting as business days any days that the shelter was open to conduct the business of owner redemption or adoption, including Saturdays and/or Sundays. Purifoy's lawsuit secured a published

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[6] Because the trial court determined the *Purifoy* litigation did not vindicate an important public right or confer a significant benefit on the general public or a large class of persons, it did not make any findings relating to the necessity for private litigation and the financial burden criteria. However, the record is sufficient for us to determine whether the latter criteria have been satisfied in this case.

decision in which we explicitly found defendants were incorrect in their interpretation of the phrase "business days," and erred by counting Saturdays as business days in calculating holding periods. (*Purifoy, supra*, at p. 182.) As a consequence of our decision, CCCAS stopped counting Saturdays as business days when calculating holding periods.

Contrary to defendants' contention, *National Parks & Conservation Assn. v. County of Riverside* (2000) 81 Cal.App.4th 234 (*National Parks*), actually supports our conclusion that Purifoy was a successful party. In *National Parks*, petitioner was successful in setting aside an EIR certification on the ground the county had failed to comply with certain CEQA requirements. (*National Parks, supra*, at p. 237.) The trial court granted petitioner's writ petitions, and retained jurisdiction to determine whether a new EIR complied with CEQA. (*Ibid*.) Petitioner, as the prevailing party, moved for attorney fees and costs, and the parties later reached a settlement on those issues. (*Ibid.*) Thereafter, the project proponents submitted as part of its return to the writ petitions, a new EIR certified by the county (hereafter Return EIR). (*Ibid*.) The trial court agreed with petitioner that the county had failed to comply with two of the writ requirements, and the Return EIR was set aside. (*Ibid*.) The trial court also awarded petitioner attorney fees incurred after the filing of the Return EIR and pertaining solely to the Return EIR. (*Id.* at pp. 237-238.) The appellate court reversed the trial court's substantive ruling and directed discharge of the writ, after determining the Return EIR complied with CEQA. (*Id.* at p. 239.) The court also ruled petitioner was not entitled to attorney fees pertaining exclusively to services performed in challenging the Return EIR. (*Ibid*.) As to the latter ruling, the appellate court held: "[Petitioner] next contends it is entitled to recover the fees because it prevailed in the initial action, and the work on the challenge to the Return EIR flowed directly from that action. [Petitioner] argues that in determining whether a party is 'successful' within the meaning of section 1021.5, a court must look at the case 'as a whole,' rather than success or failure at any particular stage. This principle is inapplicable here because it is undisputed that [petitioner] had already obtained its recoverable fees for prevailing on the first writ. [Petitioner] was seeking only those fees

incurred in challenging the Return EIR, a substantively discrete action for which [petitioner] was wholly unsuccessful. While a party 'need not prevail on every claim presented . . . to be considered a successful party . . . [citation], [petitioner] did not receive even a partial victory in this second litigation," which challenged a different EIR, did not raise identical issues, and did not achieve a successful result. (*National Parks, supra,* at pp. 239-240.) The reversal of the award of attorney fees in *National Parks* was premised on a finding that the award could not stand as petitioner was wholly unsuccessful in the litigation regarding the Return EIR. However, the appellate court in that case did not disturb the award of fees obtained by petitioner for prevailing on the initial writ petitions. So, too, in this case, appellant is seeking an award of attorney fees for efforts in initially securing a favorable judicial ruling that resulted in defendants changing their policy to exclude the counting of Saturdays as business days for the purpose of calculating holding periods for impounded animals. Thus, *National Parks* does not preclude a finding that Purifoy was a successful party for the purpose of entitlement to an award of section 1021.5 attorney fees.

***C. Enforcement of An Important Right Affecting the Public Interest***

We also conclude the *Purifoy* litigation "resulted in the enforcement of an important right affecting the public interest" within the meaning of section 1021.5. "[S]ection 1021.5 provides no concrete standard or test against which a court may determine whether the right vindicated in a particular case is sufficiently 'important' to justify a private attorney general fee award. . . ." (*Woodland Hills, supra*, 23 Cal.3d at p. 935.) Nevertheless, "the Legislature obviously intended that there be some selectivity, on a qualitative basis, in the award of attorney fees under the statute, for section 1021.5 specifically alludes to litigation which vindicates 'important' rights and does not encompass the enforcement of 'any' or 'all' statutory rights. Thus, . . . the statute directs the judiciary to exercise judgment in attempting to ascertain the 'strength' or 'social importance' of the right involved." (*Woodland Hills, supra*, at p. 935.) We "must realistically assess the litigation and determine, from a practical perspective, whether or

not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory." (*Id.* at p. 938.)

By the time of the filing of the operative second amended complaint, Purifoy's dog had already been returned to her, and the "thrust" of the amended pleading against defendants was "a challenge to how the Contra Costa County Animal Shelter . . . count[ed] 'business days' for determining when a stray animal [was] 'available' for adoption.' " Our ruling was the first published decision analyzing the legislative history and construction of section 31108, a statute that had been in effect since January 1, 1999. (Cal. Rules of Court, rule 8.1105(c)(4) [standards for certifying an opinion for publication include an opinion that "[a]dvances a new interpretation, . . . or construction of a provision of a . . . statute"].) By our decision, we announced that limiting business days to Monday through Friday in calculating holding periods was necessary to achieve the "fundamental legislative goals" of the 1998 amendment to section 31108. (*Woodland Hills, supra*, 23 Cal.3d at p. 936.) Thus, we explained: "Prior to the Legislature's 1998 amendment of the statute, section 31108 provided that an impounded dog could not be killed before 72 hours had elapsed from the time the dog was impounded. (Former § 31108 (Stats. 1967, ch. 15, § 2, p. 358) amended by Stats. 1998, ch. 752, § 12, p. 4907; see Legis. Counsel's Dig., Sen. Bill No. 1785, 6 Stats. 1998 (1997–1998 Reg. Sess.) Summary Dig., p. 322.) In 1998, the Legislature replaced the 72–hour holding period with the current holding periods of six or four 'business days.' (Stats. 1998, ch. 752, § 12, p. 4907.)" (*Purifoy, supra*, 183 Cal.App.4th at p. 177.) "The amended text of section 31108(a) demonstrates that the Legislature intended both to lengthen the holding period for stray dogs and to ensure that owners and potential adoptive owners have sufficient access to shelters to redeem and adopt dogs. The core mandate of the revised statute is a holding period (six or four 'business days') that is longer (and, in some cases, significantly longer) than the previous 72–hour holding period. (§ 31108(a).) The longer holding period increases opportunities for redemption and adoption. In addition, the Legislature sought to encourage shelters to provide owner access at times other than typical weekday business hours. In this regard, the statute rewards shelters that do so

with a shorter holding period of four, rather than six, business days."[7] (*Purifoy, supra*, at pp. 177-178, fn. omitted.)

"Section 1021.5 by its terms only requires that the action 'has *resulted* in the enforcement of an important right affecting the public interest.' (Italics added.)" (*Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 13, fn. 1 (*Los Angeles Police Protective League)*.) Although our prior decision was phrased in terms of the factual situation presented by Purifoy's situation, "it rested on determinations of statutory . . . construction that were not specific only to" Purifoy. [8] (*Samantha C. v. State Dept. of Developmental Services* (2012) 207 Cal.App.4th 71, 80; cf. *Roybal v. Governing Bd. of Salinas City Elementary School Dist*. (2008) 159 Cal.App.4th 1143, 1149 [remediation of defects in school district's layoff procedure on single occasion did not amount to enforcement of an important public right].) By our *Purifoy* decision, we clarified the manner in which shelters were to calculate business days for the purpose of determining holding periods pursuant to section 31108. (*Protect Our Water, supra,* 130 Cal.App.4th at p. 488; *id.* at p. 496 [significant public benefit found even "if [published appellate opinion] had no more effect than to prompt the County to alter for the better its methods of creating and managing its CEQA records"].) If Purifoy had not pursued this litigation, this court would not have been required to address the calculation of holding periods and would not have had the opportunity to

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[7] "[T]he four-business-day holding period applies if (1) the shelter 'has made the dog available for owner redemption on one weekday evening until at least 7:00 p.m. or one weekend day,*'* or (2) the shelter 'has fewer than three full-time employees or is not open during all regular weekday business hours,' and 'has established a procedure to enable owners to reclaim their dogs by appointment at a mutually agreeable time when the [shelter] would otherwise be closed.' (§ 31108(a)(1)-(2), italics added.)" (*Purifoy, supra*, 183 Cal.App.4th at p. 178, fn. 11, italics omitted.)

[8] Concededly, Purifoy's claim against defendants was based on the counting of Saturdays as business days because shelters in Contra Costa County were closed on Sundays and therefore not counted as business days for purposes of calculating holding periods. Nevertheless, in support of its legal position, defendants relied on the fact that shelters throughout the state were counting either Saturdays, Sundays, or both weekend days as business days in calculating holding periods.

vindicate an important right that "the Legislature has itself declared to be an important one." (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637, 654 (*California Wildlife Conservation Bd.)*.) Moreover, while not dispositive, the publication of our appellate decision provides an additional basis supporting our conclusion that the *Purifoy* litigation " 'vindicated an important right.'. . . [W]here as here the reason for publication of the opinion is to announce a rule not found in previously published opinions the decision clearly vindicates a right and one deemed important enough to warrant publication." (*Los Angeles Police Protective League, supra,* 188 Cal.App.3d at p. 12.)[9]

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[9] Consequently, we find this case is distinguishable from *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629 (*Flannery*), and *Baxter v. Salutary Sportsclubs, Inc.* (2004) 122 Cal.App.4th 941 (*Baxter*), cited by the trial court. *Flannery* concerned the plaintiff's recovery of attorney fees in an action against her employer and others based on harassment and wrongful termination in violation of the Fair Employment and Housing Act (Gov. Code, § 12900 et. seq.) (*Flannery, supra*, p. 632.) In concluding that plaintiff was not entitled to an award of section 1021.5 attorney fees, our colleagues in Division One found, in pertinent part, that "[w]hile plaintiff's lawsuit was based on the important right to be free from unlawful discrimination, its primary effect was the vindication of her own personal right and economic interest." (*Flannery, supra*, at p. 637.) Similarly, *Baxter* concerned the plaintiff's request to recover attorney fees in an action under the unfair competition law (Bus. & Prof. Code, § 17200 (UCL)) against a corporation that operated several health clubs in California based on allegations that the corporation's contracts failed to comply with the health studio contracts law in several ways. (*Baxter, supra*, at pp. 942-943.) Although the corporation asserted its contracts complied with the spirit if not the letter of law, after the complaint was filed it modified its membership contracts to conform precisely with the health studio contracts law. (*Id.* at p. 943.) Although the trial court agreed that the corporation's contracts had been nonconforming in minor respects, it denied plaintiff's request for section 1021.5 attorney's fees, "reasoning that '[t]he relief granted plaintiff was a de minimus change in the defendant's contracts that did not result in a significant benefit to the public.' " (*Id*. at p. 944.) In upholding the trial court's ruling denying attorney fees, we concluded the case was "a textbook example of valueless litigation against a private party 'under the guise of benefiting the public interest,' " (*id*. at p. 946), and that "the broad sweep and relaxed standing requirements of UCL, [which] often serve a valuable purpose in vindicating important rights on behalf of the general public, . . . are not, in combination with section 1021.5, a license to bounty-hunt for niggling statutory violations that neither harm nor threaten to harm anyone, especially when there is no showing that the offending

### *D. Significant Benefit Conferred on the General Public*

We also conclude the *Purifoy* litigation conferred a "significant benefit" on the general public. "Again, although [section 1021.5] does not define with precision the nature of the 'benefit' that is contemplated by the provision, the statutory language and [case law] afford some guidance on the issue." (*Woodland Hills, supra,* 23 Cal.3d at p. 939.) "First, the explicit terms of the statute provide that the 'significant benefit' conferred by the litigation may be either 'pecuniary or nonpecuniary' in nature; thus, the fact that the chief benefits afforded by an action have no readily ascertainable economic or monetary value in no way forecloses an attorney fee award under the statute. . . . [¶] Second, . . . under the *private attorney general doctrine*, . . . the 'significant benefit' that will justify an attorney fee award need not represent a 'tangible' asset or a 'concrete' gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy. [Citation.] . . . [¶] Of course, . . . [b]oth the statutory language ('*significant* benefit') and . . . case law, however, indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. . . . [R]ather[,] . . . the Legislature contemplated that . . . "the significance of the benefit, as well as the size of the class receiving benefit," must be determined based on "a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case." (*Id.* at pp. 939-940.)

As noted, our March 2010 opinion was the first published decision analyzing the legislative history and judicial interpretation of section 31108, which statute had been in effect since 1999. Thereafter, the Legislature amended section 31108 to add a definition of "business days," effective January 1, 2012. (Stats. 2011, ch. 97, § 4.) Defendants' arguments that the 2012 amendment to section 31108 demonstrates that the *Purifoy* litigation failed to achieve any measure of relief or frustrated the ultimate goal of the lawsuit are not persuasive. The 2012 amendment to section 31108 was part of the 2011 omnibus bill authored by the Legislative Assembly Agriculture Committee. (*Id.,* at § 1.)

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party refuses to correct the violations after they have been brought to its attention" (*id*. at p. 948).

In proposing the amendment, the bill's author commented that our *Purifoy* decision "has created the need to establish that Saturday is a business day for purposes of this division. The State Humane Association of California has raised this as a clarifying change since most private, and many public shelters are open on Saturdays to provide the public more opportunity to rescue and/or adopt animals. Many are not open every day of a typical business week, that is Monday to Friday, for that purpose. The Association states that this change will provide the shelters the clarification needed so they don't need to add additional days to their holding period *and to meet the court's interpretation of [the] current statute*." (Assem. Com. on Agriculture, Analysis of Assem. Bill No. 222 (2011-2012 Reg. Sess.) April 6, 2011 [proposed amendment], p. 2, italics added.) As amended, section 31108 now provides that "a business day is defined" as "any day that a public or private shelter is open to the public for at least four hours, excluding state holidays." (§ 31108, subd. (d), added Stats. 2011, ch. 97, § 4.) Although a Saturday can now be counted as a business day if the shelter is open to the public for at least four hours, the Legislature left intact that shelters are not to count as business days any state holidays, which include "every Sunday" (Gov. Code, § 6700, subd. (a)). The Legislature's addition of a definition of "business days" also resolved an issue that we did not need to address in our *Purifoy* decision. (*Purifoy, supra*, 183 Cal.App.4th at p. 184, fn. 19.) Under the 2012 amendment, a shelter must be open on a nonholiday weekday for at least four hours in order to count that day as a business day.

We also reject defendants' contentions that the 2012 amendment to section 31108 was either a repeal, abrogation, direct repudiation, or nullification, of our *Purifoy* decision. The Legislature did not expressly state the addition of a definition of "business day" was either declaratory of existing law, or clarified "the law's *original meaning*." (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 476, italics added.) Rather, our *Purifoy* decision was the impetus for a necessary statutory addition of a definition of the phrase "business days" to be used by all shelters to calculate adequate holding periods, thereby fostering the public interest that "the Legislature has itself declared to be an important one." (*California Wildlife Conservation Bd.*, *supra*, 145

Cal.App.4th at p. 654; cf. *Bruno v. Bell* (1979) 91 Cal.App.3d 776, 787 [appellate court reversed an award of section 1021.5 attorney fees, in part, because the Legislature fixed the statute's infirmity that was the basis for the ruling in favor of plaintiff and negated the stated purpose of the lawsuit]; *Miller v. California Comm. on Status of Women* (1985) 176 Cal.App.3d 454, 456, fn. 2 [award of section 1021.5 attorney fees not warranted after favorable judicial decision was abrogated by legislative enactment that was expressly "declaratory of existing law"].)

Defendants' argument that the *Purifoy* lawsuit otherwise had no effect on either Purifoy or other animal owners is "based on the wrong standard." (*Choi v. Orange County Great Park Corp.* (2009) 175 Cal.App.4th 524, 532). Unlike the criteria necessary to support an award of attorney fees based on the substantial benefit theory, which we discuss in footnote four *ante*, " 'the "significant benefit" that will justify [a section 1021.5] attorney fee award *need not* represent a "tangible" asset or a "concrete" gain but, in some cases, [like this one], may be recognized simply from the effectuation of a fundamental constitutional or statutory policy.' " (*RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 781, italics added.) [10]

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[10] Thus, the trial court was incorrect in finding to the contrary - that the *Purifoy* litigation's significant benefit had to be " 'actual and concrete, not conceptual or doctrinal and not merely the effectuation of a constitutional or statutory policy.' " In so ruling, the court improperly relied on those portions of *Pipefitters Local No. 636 Defined Benefit Plan v. Oakley, Inc.* (2010) 180 Cal.App.4th 1542, 1551, and *Braude v. Automobile Club of Southern Cal.* (1986) 178 Cal.App.3d 994, 1006, which discuss the criteria for an award of attorney fees under the "substantial benefit theory," and not the criteria for an award of attorney fees under the private attorney general doctrine codified in section 1021.5.

Additionally, we are not persuaded by defendants' reliance on *Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329. In that case, petitioner presented a CEQA challenge to the city's approval of a warehouse facility. (*Id*. at p. 331.) The trial court agreed there was one CEQA defect, and issued a writ rescinding approval of the project until a revision was made. (*Id*. at pp. 331-332.) The trial court denied petitioner's request for section 1021.5 attorney fees after assessing "the circumstances of the case and determin[ing] the gains obtained by [petitioner] did not confer a significant benefit on a large class of people." (*Id*. at p. 335.) In upholding the denial of attorney fees, the appellate court commented that the trial court "felt the

Defendant's argument, while not relevant to appellant's "entitlement to attorney fees," may be considered in determining the "amount" of any fee to be awarded by the trial court on remand. (*Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 232; see also *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, 1029-1030, fn. 12 ["trial court has discretion to restrict a section 1021.5 fee award to an amount reflecting only those efforts by counsel involving issues of public importance"]; *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1226 (*Whitley*) ["[trial] court may legitimately restrict the award to only that portion of the attorneys' efforts that furthered the litigation of issues of public importance"]; but see *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358, 1369 ["[i]t is only when a plaintiff has achieved limited success or has failed with respect to distinct and unrelated claims, that a reduction [in attorney fees] is appropriate;" " '[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his [or her] attorney[ ] fee[s] reduced simply because the [trial] court did not adopt each contention raised' "].)

***E. Necessity of Private Enforcement***

We also conclude appellant satisfied the statutory criteria that private enforcement was necessary. (*Lyons, supra,* 136 Cal.App.4th at p. 1348.) Where, as in this case, "a private suit is brought against a governmental agency or official, the necessity of private enforcement is often obvious." (*Committee to Defend Reproductive Rights v. A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 639.) Because defendants believed their interpretation of the phrase "business days" in section 31108 was correct, this litigation was necessary to correct their inaccurate interpretation of the statute. Defendants argue

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[CEQA] inadequacy was a 'minute blemish' that could be repaired," and that petitioner "did not establish a precedent that applied statewide; rather it successfully asserted a defect in CEQA's process, the correction of which was not likely to change the project." (*Ibid*.) In contrast, our published *Purifoy* decision addressed and established a statewide precedent addressing an apparently widespread misinterpretation of the manner in which animal shelters were to calculate holding periods for impounded dogs under section 31108.

the lawsuit was not necessary because there was no reason for a change in their policy of counting Saturdays as business days as it reflected the correct interpretation of the law as evidenced by the Legislature's 2012 amendment to section 31108. However, at the time this litigation was commenced against defendants, the interpretation of the phrase "business days" in section 31108 was unclear. When the issue was resolved by our March 2010 decision, defendants' interpretation of the statute was found to be incorrect. They chose not to pursue further judicial review but complied with our ruling. As we have noted, the Legislature did not later abrogate our ruling; it merely added a definition of the phrase "business days" to meet this court's "interpretation" of the statute. (Assem. Com. on Agriculture, Analysis of Assem. Bill No. 222 (2011-2012 Reg. Sess.) April 6, 2011 [proposed amendment], p. 2.)

***F. Financial Burden of Private Enforcement***

Last, we conclude appellant satisfied the statutory criteria that the financial burden of private enforcement warrants an award of section 1021.5 attorney fees. The financial burden factor considers whether the plaintiff's " 'personal stake in the outcome is insufficient to warrant incurring the costs of litigation.' " (*Whitley, supra,* 50 Cal.4th at p. 1221, quoting *Satrap v. Pacific Gas & Electric Co*. (1996) 42 Cal.App.4th 72, 79.) Defendants contend the financial burden of pursuing this litigation was not established because Purifoy was primarily interested in regaining possession of her dog, the litigation did not " 'transcend' " her personal interest, and enforcement of the public interest was merely " 'coincidental to the attainment of her personal goals.' " However, Purifoy had already secured the return of her dog by the time of the filing of the operative second amended complaint in which relief was first sought against defendants. "The fact [that Purifoy] ha[d] little or no personal financial interest in the outcome of the litigation and [was] not vindicating a private economic interest tends to show [the financial burden] requirement has been met." (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 751.)

### *G. Conclusion*

In sum, appellant has demonstrated satisfaction of the pertinent statutory criteria for entitlement to an award of section 1021.5 attorney fees. On remand, the trial court is directed to determine the amount of reasonable trial and appellate attorney fees incurred in pursuing this litigation and "for the time spent prosecuting the fee issue at both the trial and appellate levels." (*Bouvia v. County of Los Angeles* (1987) 195 Cal.App.3d 1075, 1086, fn. 9; see *Whitley, supra*, 50 Cal.4th at pp. 1226-1227, fn. 5 ["it is well established that the attorney fees for work necessary to recover [section 1021.5] fees . . . are to be included in the fee award"].) Our decision should not be read and we express no opinion as to the amount of attorney fees to be awarded by the trial court.

## DISPOSITION

The appeal from the order filed February 15, 2012, granting appellant intervener status is dismissed. The order filed on January 12, 2012, denying the motion for section 1021.5 attorney fees is reversed, and the judgment filed February 15, 2012, is reversed insofar as it does not provide for an award of section 1021.5 attorney fees and the matter is remanded to the trial court for further proceedings on that issue only. In all other respects, the judgment is affirmed. Appellant is awarded costs and attorney fees on this appeal. On remand the trial court is directed to determine reasonable attorney fees in connection with this appeal.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Pollak, J.