



Consumer Participation Program

Welcome Participants Petitions to Participate Applications for an Award

5

[Back to Award List](#)

Award Application Details: The Western Center On Law And Poverty, Inc

1

Participant Details Participant's Eligibility Apps Participant's Petition Apps Participant's Award Apps

Application Version:

[Back to Participant's Award List](#)

Please review and approve this Application for an Award and Witness Fees if applicable.

Approvals & Comments DMHC Attachments Send Email

Entity Name: **The Western Center On Law And Poverty, Inc**

Submitted By: Richard Rothschild

Date Submitted: 5/17/2016 3:38:30 PM

Status:

Date of Decision:

DMHC Comment: (8000 characters remaining)

Updated By:

Updated Date:

Decisions & Comment History [\(Hide Details...\)](#)

There are currently no decisions or comment history.

Award Application [\(Hide Details...\)](#)

[Printer Format](#)

1. For which proceeding are you seeking compensation?

2. What is the amount requested?

3. Proceeding Contribution:

Provide a description of the ways in which your involvement made a substantial contribution to the

proceeding as defined in California Code of Regulations, Title 28, Section 1010(b)(14), supported by specific citations to the record, your testimony, cross-examination, arguments, briefs, letters, motions, discovery, or any other appropriate evidence.

(8000 characters remaining)

Western Center on Law and Poverty (WCLP) submits this request for reasonable advocacy fees for our substantial contribution to the decision of the Department of Managed Health Care (DMHC) regarding Centene Corporation's acquisition of Health Net, Inc. WCLP substantially contributed to DMHC's review of the proposed merger in a variety of ways. On December 7, 2015, Elizabeth Landsberg, Director of Policy Advocacy, provided an oral statement to the Department during which she voiced major concerns regarding this particular health plan merger, including performance quality concerns based on analysis conducted by Linda Nguy, Policy Advocate. Collaborating with legal aid partners, we drafted and submitted a comment letter on December 14, 2015. Following the Department's public meeting, Ms. Landsberg worked with Health Access and Consumers Union to jointly submit to the Department a list of questions we recommended DMHC ask of the plans. Those 13 questions were delivered to DMHC via email on December 14, 2015. We believe these questions provided a substantial service to the Department by emphasizing which aspects of the proposed merger required extra consideration. Additionally, in our written comments, WCLP detailed for the Department several concerns and recommendations, designed to protect consumer interests in the event that the Department approved the merger, which were reflected in the final agreement between DMHC and the plans. Specifically, our recommendation that the plans be required to improve their quality and consumer satisfaction ratings is reflected in Undertakings 18 through 26. Our recommendation that the plans should be required to improve their provider directories and to make them accurate, accessible, and regularly updated is addressed by Undertaking 27. Our recommendation that a certain quantity of staff remain in California to expedite consumer complaint resolution process is addressed by Undertaking 14, which requires the plans to commit to maintaining certain leadership as well as other key operations in California. In addition, Undertaking 29 requires the plans to create a grant program to support locally-based consumer assistance programs at a minimum of \$5 million over 5 years. Our recommendation that Centene pledge to be an active participant in Healthy San Diego is addressed by Undertaking 25, which requires the plans for a period of three years following the merger to actively and constructively participate in the Healthy San Diego Collaborative. We also participated in several phone and in-person meetings at DMHC regarding this proceeding.

- Please attach your time and billing record in the "Add Attachment" box below. In the time and billing record, include the hourly rate of compensation for each witness or advocate and a justification for each hourly rate, which may include copies of or citations to previously approved hourly rate; and each witness or advocate's resume or curriculum vitae. The time and billing record should show the date and exact amount of time spent on each specific task in thirty (30) minute increments, as defined in California Code of Regulations, Title 22, Section 1010(d)(3).

Document Name	Date Uploaded	Uploaded By	
Western Center combined time	5/17/2016 3:27:32 PM	Richard Rothschild	View
Landsberg resume	5/17/2016 3:28:37 PM	Richard Rothschild	View
Nguy resume	5/17/2016 3:28:56 PM	Richard Rothschild	View
Order awarding fees to WC - see page 10	5/17/2016 3:29:41 PM	Richard Rothschild	View
PUC hourly rates 2015	5/17/2016 3:36:58 PM	Richard Rothschild	View

- Clear and concise statement of participants interest in the proceeding which explains why participation is needed to represent the interests of consumers

Western Center has worked for more than four decades to maximize access to health care for low-income Californians using impact litigation, administrative advocacy, legislative and budget advocacy, and working in partnership with local legal aid program directly serving health care consumers. As a member of the Health Consumer Alliance (HCA), a partnership of consumer assistance programs operated by community-based legal services organizations and two support centers, we are confronted with the issues our clients face when they cannot get the care they need.

- The information contained in the Petition to Participate remains true and correct to the best of the knowledge of the person verifying the information.

Yes

I am authorized to certify this document on behalf of the applicant. By entering my name below, I certify under penalty of perjury under the laws of the State of California that the foregoing statements within all documents filed electronically are true and correct and that this declaration was executed at Los Angeles (City), Ca (State), on May 17, 2016.

Enter Name: Richard A. Rothschild

Account Info at Time of Submission

(Hide Details...)

Account Information

Organization Legal Name: **The Western Center On Law And Poverty, Inc**
Organization Fictitious Name:
Account Type: Organization
Email Address: elandsberg@wclp.org
Organization Phone Number: (916) 442 - 0753 ext. 18

Physical Address

Physical Address: 3701 Wilshire Blvd.
Suite: Suite 208
City: Los Angeles
State: CA
Zip/Postal Code: 90010

Organization Information

Organization Name: Western Center on Law and Poverty
Is this a nonprofit organization?: YES
Under what Statute is your Organization Incorporated?: 501c3 Internal Revenue Code
Organization's Size: 18 full time staff, 6 part-time Budget \$2.3 million
Organization's Structure: Board of Directors, Executive Director Staff Will FAX org chart
Description of the Organization's General Purposes: Mission is to advance and enforce the rights of low income Californians in health, housing, and public assistance by working statewide for systemic change. We improve the lives of low-income people through litigation, education, legal support to social and legal service providers, legislation and policy advocacy.

Organization's Governing Body

1. **President of Board of Directors** Doug Adler

Organization's Officers

1. **Executive Director** Paul Tepper

Contact Info at Time of Submission

(Hide Details...)

First Name: Richard
Last Name: Rothschild
Email Address: rrothschild@wclp.org
Telephone Number: (213) 235 - 2624 ext.

Status:	Active
---------	--------

- Elizabeth Landsberg
- Jennifer Flory
- Linda Nguy
- Richard Rothschild

**ELIZABETH LANDSBERG
WESTERN CENTER ON LAW AND POVERTY
CENTENE/HEALTH NET ATTORNEY TIME - THRU MAY 17, 2016**

Date	Description	Hours	Hourly Rate	Total
12/7/2015	Preparation for DMHC hearing on proposed acquisition - research on HN quality data, Medi-Cal counties, etc.	0.5		
12/7/2015	Attendance and testimony at DMHC hearing on proposed acquisition	1.5		
12/7/2015	Started letter to DMHC on proposed acquisition	0.4		
12/11/2015	Drafted letter to DMHC on proposed merger; sent to advocates for review.	1		
12/13/2015	Review of and edits to proposed joint questions with Consumers Union and Health Access	0.2		
12/15/2015	Wrote and submitted petition to participate in the Consumer Participation Program	0.4		
TOTAL		4	\$550	\$2,200

**LINDA NGUY
WESTERN CENTER ON LAW AND POVERTY
CENTENE/HEALTH NET ATTORNEY TIME - THRU MAY 17, 2016**

Date	Description	Hours	Hourly Rate	Total
12/13/2016	Review of and edits to proposed joint questions with Consumers Union and Health Access.	0.2		
3/21/2016	Call with other advocates (Health Access, CU, Greenlining) on merger.	1		
1/28/2016	Call with Health Access and CU on merger.	0.2		
12/14/2015	Compiled comments for DMHC comment letter.	0.6		
12/11/2015	Reviewed/researched Health Net/Centene quality performance for DMHC comment letter	2		
9/24/2015	Meeting with DMHC and other advocates on merger.	0.1		
TOTAL		4.1	\$285	\$1,168.50
Grand Total				\$3,368.50

Also attached are resumes for Ms. Landsberg and Ms. Nguy; the Public Utilities Commission 2015 resolution re hourly rates to be awarded to intervenors; and a 2014 fee award to the Western Center (see page 10 for hourly rate information).

LINDA T. NGUY

1107 Ninth Street, Suite 700 · Sacramento, CA 95814 · (916) 833-5956 · lnguy@wclp.org

EDUCATION:

UNIVERSITY OF MINNESOTA, Minneapolis, MN
Carlson School of Management and Humphrey Institute of Public Policy
Master of Business Administration and Master of Public Policy June 2011

BROWN UNIVERSITY, Providence, RI
Bachelor of Arts with Honor in Development Studies May 2005

EXPERIENCE:

WESTERN CENTER ON LAW AND POVERTY, Sacramento, CA 2014- Present

Policy Advocate

- Advocate on behalf of low-income Californians for access to affordable, quality health care through legislative, budget, and administrative advocacy
- Support legal services and health policy advocates with technical assistance and trainings on health policy issues
- Analyze and disseminate information on pending legislation, budget proposals and administrative policies and regulations

CAMBRIA SOLUTIONS, Sacramento, CA 2011-2014

Senior Consultant

- Reviewed Affordable Care Act (ACA) policy and regulation to help establish the health insurance marketplace in the state of Washington and Mississippi, specifically drafted the online application for subsidized and unsubsidized qualified health plans
- Researched the CMS Notice of Proposed Rulemaking, Final Rules, and Business Services Definition to understand federal guidance and to assess the impact at the state level, including Medicaid eligibility impacts
- Translated ACA requirements and other legislation for developers to modify California's Department of Health Care Services automated behavioral health claims adjudication system (Short Doyle Medi-Cal)

OFFICE OF MANAGEMENT AND BUDGET, Washington, DC Summer 2009

Intern

- Reviewed and cleared rules and regulations that provide over \$200 million annually for rural development programs and conservation programs
- Collected and analyzed spending trends from the US Forest Service and Department of Interior providing senior management with weekly wildfire report to better measure cost management system effectiveness
- Coordinated policy statements from cross-functional team that emphasized President's spending priorities

UNIVERSITY OF MINNESOTA, Minneapolis, MN 2008-2009

Research Assistant, Center for Science, Technology, and Public Policy

- Produced and presented report to Minnesota State Legislature on potential carbon cap and trade governance allocation system models
- Convened and facilitated four meetings with legislators, state agencies, technical experts, and citizens
- Reviewed literature and conducted interviews with stakeholders to gain insight

LATINO COALITION FOR A HEALTHY CALIFORNIA, Sacramento, CA 2006-2008

Policy Associate

- Wrote legislation, educated and lobbied state legislators to pass two healthcare workforce bills
- Staffed and later appointed chair of the Governor convened Healthcare Workforce Diversity Advisory Council which required organizing four regional focus groups, facilitating three Council meetings and presenting findings to Governor senior staff
- Formed coalition of leaders from strategically chosen health profession and industry group, state agencies and education organizations to advance policy developing the health profession

UNIVERSITY OF CALIFORNIA STUDENT ASSOCIATION, Sacramento, CA 2005-2006

Legislative Director

- Led UC students to implement yearly action plan by training students to lobby members and testify at hearings
- Educated UCSA Board of Directors on relevant legislation, budget, and political climate through presentations and workshops, monthly newsletters and reports, and fact sheets
- Interpreted data to educate governor and state legislators securing fee freeze for the 2006-07 academic year

Elizabeth A. Landsberg
1107 9th Street, Suite 700
Sacramento, California 95814
(916) 282-5118 ~ elandsberg@wclp.org

Legal Experience

Western Center on Law and Poverty, Sacramento, CA, *January 2006 – Present*

Director of Policy Advocacy, November 2010 – Present

Legislative Advocate, January 2006 – October 2010

Advocate on behalf of low-income Californians for access to affordable, quality health care through legislative and administrative advocacy. Support legal services and health policy advocates with technical assistance and trainings on health policy issues. Advocacy areas include implementation of federal health care reform, Medi-Cal, Covered California, access to care and consumer assistance. Supervise organization's overall policy advocacy in areas of public benefits, housing, access to justice as well as health.

Health Rights Hotline / Legal Services of Northern California, Sacramento, CA,

September 2000 – November 2005

Supervising Attorney

Supervised staff of hotline counselors providing assistance and representation to health care consumers. Trained and supervised staff in health coverage law and oversaw protocols for case handling. Analyzed data from calls and did policy advocacy to address systemic issues facing health care consumers.

United States District Court, Santa Fe, NM, *September 1999 – August 2000*

Law Clerk, The Honorable Martha Vazquez

Researched and drafted orders and bench memoranda. Presented cases orally to the judge. Assisted with employment discrimination bench trial including liability and damages issues, evidentiary rulings.

Equal Rights Advocates, San Francisco, CA, *September 1998 – August 1999*

Ruth Chance Law Fellow

Year-long fellowship at a women's rights civil rights public interest law firm. Supervised the Advice and Counsel Line addressing sex discrimination, family leave, pregnancy discrimination and related issues. Did legal research and writing projects on sexual harassment and affirmative action cases.

The Lawyers' Committee for Civil Rights, San Francisco, CA, *Fall 1997*

Law Clerk

Legal research and writing projects on immigration, racial discrimination, and affirmative action issues.

The Employment Law Center / Legal Aid Society of San Francisco, San Francisco, CA, *Summer 1997*

Law Clerk

Individual client assistance through worker's rights clinic. Legal research and writing projects on sex discrimination, family leave and Equal Pay issues.

United States District Court, San Francisco, CA, *Summer 1996*

Judicial Extern, Hon. Susan Illston.

Researched and drafted orders and bench memoranda on issues including wrongful termination, constitutional claims, civil rights claims, petitions for writ of habeas corpus and attorney sanctions. Presented cases orally to the judge.

Education

UC Berkeley Boalt School of Law, Berkeley, California, J.D., May 1998

Honors: Moot Court Award in Combined Written and Oral Advocacy, Spring 1996

Activities: Editor in Chief, *Berkeley Women's Law Journal* (1997-1998); East Bay Workers' Rights Clinic; organized student-formed class: New Directions in Diversity to develop ways to continue racial diversity in light of restrictions on some affirmative action strategies.

Pomona College, Claremont, California, B.A., History, June 1991

Community Service

Congregation B'nai Israel Board of Trustees, 2013 - Present

Vice President for Administration, 2015 – Present

Member of the Board, 2013-2015

Sacramento Taskforce on Income Inequality, 2015

Co-Chair, Taskforce formed by Sacramento Mayor to recommend local minimum wage ordinance.

Sustainable Living Committee, Congregation B'nai Israel, 2007 – 2010

Chair, Committee to promote energy efficiency and ethical and environmentally sustainable food practices.

Family Shalom, Sacramento, CA, 2001-2007

Member, Jewish Women's Group Against Domestic Violence

Shalom Bayit, San Francisco, CA, 1994 – 1999

Member, Jewish Women's Task Force Against Domestic Violence

The Riley Center, San Francisco, CA, 1991 – 1993

Volunteer Advocate. Counseled women at shelter for battered women and their children, co-facilitated weekly health group and provided shelter coverage.

Petitioner Evelyn Carpio
v.
California Department of Social Services; and
Will Lightbourne, in his official capacity as
director of California Department of Social
Services.

Judge Luis A. Lavin
Hearing: July 24, 2014

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 24 2014

Sherri R. Carter, Executive Officer/Clerk
By N. DiGiambattista, Deputy

Case No. BS135127

Tentative Decision Granting Petitioner's
Motion for Attorneys' Fees in the amount of
\$186,180

Petitioner Evelyn Carpio seeks attorneys' fees in the amount of \$282,278, plus "reasonable fees for the reply brief," under Code of Civil Procedure section 1021.5. After reading and considering the moving and opposition papers, the Court renders the following decision:

Request for Judicial Notice

The Court grants Respondents' unopposed request for judicial notice of the Manual of Policies and Procedures, Electronic Benefit Transfer System.

Statement of the Case

Petitioner is a CalWORKS beneficiary who receives cash aid through California's Electronic Benefits Transfer ("EBT") system. Respondent California Department of Social Services ("DSS") is the agency charged with administering California's public benefits programs and EBT system.

In 2009, \$720 was stolen from Petitioner's EBT account. (First Amended Petition ("FAP") ¶¶ 20, 21). It took nearly two years (and two administrative hearings) for Petitioner to recover the stolen benefits from Respondent DSS and the Los Angeles County Department of Public Social Services ("DPSS"). (*Id.*, ¶¶ 21-31). According to Petitioner, under DSS's benefit-reimbursement scheme in existence at the time her benefits were stolen, her stolen benefits would have been reimbursed within five working days had she been the victim of paper-warrant theft as opposed to EBT theft. See Gov. Code, § 29853.5(b).

On September 16, 2011, Petitioner's counsel sent Will Lightbourne, DSS's Director, a letter demanding that DSS change its stolen benefit policy to provide victims of electronic-benefit theft with the same protections afforded victims of paper-warrant theft. (Pallack Decl., ¶ 6, Exhibit 2). The letter sets forth the legal theory upon which Petitioner claimed that DSS was required to apply Government Code section 29853.5(b) to cases of reported EBT theft. (See *Id.*, ¶ 6, Exhibit 2). The letter also states that if DSS did not change its policy within 31 days (October 17, 2011), Petitioner would seek a writ of mandate requiring such action. (*Id.*, ¶ 6, Exhibit 2). According to Petitioner, neither Director Lightbourne nor any other DSS representative responded to Petitioner's September 16, 2011 letter. (*Id.*, ¶ 6).

On December 8, 2011, Petitioner filed her original petition seeking a writ of mandate ordering Respondent DSS to follow the procedures set forth in Government Code section 29853.5(b) in cases of reported EBT theft.

In January 2012, California Assembly Member Steven Bradford learned of Petitioner's lawsuit after it received media attention. (Bradford Decl., ¶ 5). Bradford then began drafting AB 2035 with the intent to remedy the losses caused by DSS's and local social service agencies' delays in reimbursing electronic benefits to EBT-theft victims. (*Id.*, ¶¶ 5-8). In doing so, Bradford believed that legislative action would provide swifter and more effective relief for EBT-theft victims. (*Id.*, ¶ 7). Bradford introduced AB 2035 in the California Legislature on February 12, 2012. (*Id.*, ¶ 4). In April 2012, Petitioner requested an informal stay of the instant action pending approval or defeat of AB 2035. (Crane Decl., ¶ 6, Exhibit C; Dozier Decl., ¶ 7).

On September 14, 2012, AB 2035 was signed into law. (Bradford Decl., ¶ 4; see AB 2035 attached to Petitioner's MPA). The bill amended Welfare and Institutions Code section 10072 as follows: "A recipient shall not incur any loss of cash benefits that are taken by an unauthorized withdrawal, removal, or use of benefits that does not occur by the use of a physical EBT card issued to the recipient or authorized third party to directly access the benefits." See *Welf. & Inst. Code*, § 10072(g)(2); see also AB 2035 attached to Petitioner's MPA (hereinafter cited as "AB 2035"). AB 2035 also amended Welfare and Institutions Code section 10072 to require DSS to establish a protocol designed to promptly replace stolen EBT benefits. See *Welf. & Inst. Code*, § 10072(g)(2); see also AB 2035.

On October 19, 2012, following AB 2035's passage, Petitioner's counsel contacted DSS's counsel to arrange a settlement meeting. (Dozier Decl., ¶ 10). At the same time, Petitioner's counsel sent DSS's counsel a settlement offer. (*Id.*, ¶ 10). On October 31, 2012, Petitioner's counsel followed up on its October 19, 2012 offer to engage in settlement negotiations. (*Id.*, ¶ 10). According to Petitioner's counsel, DSS never agreed to engage in discussions concerning settlement of this lawsuit. (*Id.*, ¶ 10).

On December 18, 2012, Assembly Member Bradford held a meeting with Petitioner's and DSS's counsel. (Dozier Decl., ¶ 11). At the meeting, Petitioner's counsel expressed concern about the extent of benefits DSS intended to cover under, and the timeframe in which DSS intended to reimburse stolen benefits in accordance with, AB 2035's amendments to Welfare and Institutions Code section 10072. (Dozier Decl., ¶¶ 11-12).

On December 31, 2012, DSS issued interim instructions governing the implementation of AB 2035. (Dozier Decl., ¶ 13). The interim instructions provided that stolen General Assistance/General Relief ("GA/GR") benefits would not be covered by AB 2035 and that stolen benefits covered by AB 2035 should be replaced within 15 business days of a beneficiary's reporting the benefits stolen. (*Id.*, ¶ 13).

On January 14, 2013, Petitioner's counsel asked DSS's counsel to stipulate to Petitioner's filing of an amended petition ("FAP"), which would add a challenge to DSS's proposed implementing instructions. (Dozier Decl., ¶ 15). After DSS's counsel refused to stipulate, Petitioner's counsel filed a motion for leave to file the FAP, which DSS opposed. (*Id.*, ¶¶ 16, 19). On February 26,

2013, the Court granted Petitioner's motion for leave to file the FAP. (*Id.*, ¶ 20). That same day, Petitioner filed the FAP.

On March 20, 2013, Petitioner's counsel attempted to reengage DSS's counsel in settlement negotiations with an eye towards changing DSS's implementing instructions to provide relief for stolen GA/GR benefits and establish a shorter timeframe within which reported stolen benefits would be reimbursed. (Dozier Decl., ¶ 21). Throughout the parties' negotiations, Petitioner's counsel conducted discovery concerning the reimbursement timeframe issue. (*Id.*, ¶ 22).

On May 31, 2013, DSS issued a draft of its final implementing instructions that incorporated GA/GR benefits and shortened the reimbursement timeframe from 15-business days to 10-business days. (Dozier Decl., ¶ 23). Again, Petitioner's counsel asked DSS's counsel to enter into settlement negotiations. (*Id.*, ¶ 23). According to Petitioner's counsel, the parties never engaged in further settlement discussions. (*Id.*, ¶ 23).

On August 30, 2013, DSS issued its final implementing instructions for AB 2035. (Rapone Decl., ¶ 16, Exhibit E). On January 6, 2014, Petitioner dismissed the instant action.

On February 29, 2014, the parties submitted, and the Court signed, a stipulation to extend the deadline to file Petitioner's motion for attorney's fees. The motion was timely filed. It was argued and submitted on July 24, 2014.

Summary of Applicable Law

Code of Civil Procedure section 1021.5 authorizes courts to award attorneys' fees to prevailing parties under a private attorney general theory. To award section 1021.5 fees, the Court must find not only that the party was successful, but also that the party's efforts satisfy specific criteria:

“Upon motion, a court may award attorneys' fees to a successful party . . . in any action which has resulted in an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or enforcement by one public entity against another public entity, are such as to make the award appropriate.”

It is well settled that under the catalyst theory, attorneys' fees may be awarded to a successful party pursuant to section 1021.5 even if the underlying litigation did not result in a favorable final judgment. *Graham v. DaimlerChrysler Corp.*, (2004) 34 Cal.4th 553, 565-66. Under the catalyst theory, an award of attorney's fees to a petitioner is appropriate if the respondent “changes its behavior substantially because of, and in the manner sought by, the litigation.” *Id.*, at p. 560. “[T]o be eligible for attorney fees under section 1021.5, a [petitioner] must not only be a catalyst to [the respondent's] changed behavior, but the lawsuit must have some merit . . . and the [petitioner] must have engaged in a reasonable attempt to settle its dispute with the [respondent] prior to litigation.” *Id.*, at pp. 560-561.

The amount of fees awarded under section 1021.5 is calculated using the “lodestar-multiplier” method. Serrano v. Priest, (1977) 20 Cal.3d 25, 48. Under this method, the base is computed by multiplying the number of hours reasonably expended by a reasonable hourly rate for these services. Id. Hours reasonably expended are those that are useful and necessary and directly contributed to the resolution of the action. Serano v. Unruh, (1982) 32 Cal.3d 621, 639. A reasonable hourly rate is “the reasonable rate for comparable legal services in the local community for non-contingent litigation of the same type.” Environmental Protection Info. Ctr. V. Cal Dep’t of Forestry & Fire Protection, (2010) 190 Cal. App. 4th 217, 248.

“[I]n the absence of ‘circumstances rendering an award unjust, an attorney fee award should ordinarily include compensation for all of the hours reasonably spent, including those relating solely to the fee.’” Bernardi v. County of Monterey, (2008) 167 Cal.App.4th 1379, 1394. “California courts have long held that trial courts have broad discretion in determining the amount of a reasonable attorney’s fee award. This determination is necessarily ad hoc and must be resolved on the particular circumstances of each case.” Id.

Analysis

1. Petitioner is the Successful Party under a Catalyst Theory

Petitioner argues she is the successful party under the catalyst theory because her lawsuit caused the California Legislature to enact AB 2035, which amended Welfare and Institutions Code section 10072 to provide Petitioner and other EBT beneficiaries with the relief sought through Petitioner’s lawsuit. The Court agrees.

In determining whether a petitioner is a successful party for purposes of section 1021.5, the most important factor is the impact of the petitioner’s lawsuit, not the manner of its resolution. Graham, supra, 34 Cal.4th at p. 566. In determining whether the petitioner seeking attorney’s fees is entitled to a fee award, the trial court must realistically assess the litigation to “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 section 1021.5.” Ibid. “Thus, an award of attorney fees may be appropriate where [the petitioner’s] lawsuit was a *catalyst* motivating defendants to provide the primary relief sought . . . A plaintiff will be considered a ‘successful party’ where an important right is vindicated ‘by activating defendants to modify their behavior.’” Ibid (emphasis original). In other words, to qualify as the successful party under the catalyst theory, the petitioner seeking attorney’s fees must establish causation—i.e., that the petitioner’s lawsuit was a cause of the respondent’s favorable change in behavior. See Cates v. Chiang, (2013) 213 Cal.App.4th 791, 807. “To satisfy the causation prong of the catalyst theory, the plaintiff need not show the “litigation [was] *the only cause* of defendant’s acquiescence. Rather, [the] litigation need only be a substantial factor contributing to defendant’s action. . . . Put another way, courts check to see whether the lawsuit initiated by the plaintiff was ‘demonstrably influential’ in overturning, remedying, or prompting a change in the state of affairs challenged by the lawsuit.” Id., at pp. 807-808.

Here, Petitioner has established that her lawsuit was the catalyst that caused Respondent DSS to change its policy concerning reimbursement of stolen EBT benefits. The express language of

AB 2035's findings and the timing of Petitioner's initiation of her lawsuit with respect to the timing of the Legislature's drafting and enacting of AB 2035 establish this point. For example, Section 1 of AB 2035's findings provides in relevant part:

(d) Because of this inequity, a petition for writ of mandate, *Carpio v. Lightbourne* (Case No. BS135127) was filed in the Los Angeles County Superior Court in December 2011, to address a solution for families that have been victims of skimming.

(e) *It is therefore the intent of the Legislature in enacting this act to address the problem of electronic theft of public benefits that is at issue in Carpio v. Lightbourne.*

(Crane Decl., ¶ 5, Exhibit B) (emphasis added).

Aside from the express language of AB 2035, Petitioner's evidence establishes that the instant lawsuit spurred the Legislature's passage of AB 2035. In September 2011, Petitioner's counsel sent Respondent DSS a letter requesting that DSS change its policy concerning reimbursement of stolen EBT benefits within 31 days or else Petitioner would seek a writ of mandate requiring such action. (Pallack Decl., ¶ 6, Exhibit 2). After Respondent DSS did not respond to the letter, Petitioner filed the original underlying petition for writ of mandate on December 8, 2011, requesting an order from the Court requiring DSS to reimburse Petitioner's and other similarly situated EBT beneficiaries' stolen EBT benefits. (Pallack Decl., ¶ 6; Original Petition, ¶ 32). Soon after filing the original petition, Petitioner's counsel spoke to the media about Petitioner's lawsuit. (See e.g., Dozier Decl., ¶ 4, Exhibit B). In January 2012, California Assembly Member Steven Bradford learned of Petitioner's lawsuit after the suit was publicized. (Bradford Decl., ¶ 5). Bradford then began drafting AB 2035 with the intent to remedy the losses caused by DSS's and local social service agencies' delays in reimbursing electronic benefits to EBT-theft victims. (*Id.*, ¶¶ 5-8). In doing so, Bradford believed that legislative action would provide swifter and more effective relief for EBT-theft victims. (*Id.*, ¶ 7). Bradford introduced AB 2035 in the California Legislature on February 12, 2012, and on September 14, 2012, the bill was signed into law. (Bradford Decl., ¶ 4; see AB 2035 attached to Petitioner's MPA).

Respondent DSS argues that Petitioner's lawsuit was not the catalyst for the Legislature's action but rather a shell through which Petitioner's counsel could attempt to recover the costs of its participation in AB 2035's enactment. This argument is not supported by the evidence. DSS has presented the Court with no evidence demonstrating that Petitioner's counsel was actively involved in, and primarily concerned with, the legislative process prior to initiating Petitioner's lawsuit. In fact, DSS has presented no evidence that legislators or lobbyists had begun working on AB 2035 prior to the time Petitioner initiated the instant action. See Tipton-Whittingham v. City of Los Angeles, (2004) 34 Cal.4th 604, 609. Rather, as outlined above, the evidence shows that Petitioner initially intended to pursue a writ of mandate to obtain her desired relief (see Pallack Decl., ¶ 6, Exhibit 2), and her counsel did not become involved in AB 2035's creation until after she filed the original underlying petition. (See Bradford Decl., ¶¶ 5-8; Reply Barthelow Decl., ¶ 6).

The Court also finds that Petitioner's lawsuit, specifically Petitioner's filing of her first amended petition ("FAP"), was the catalyst that caused Respondent DSS to change its implementing instructions for AB 2035 to provide greater coverage for stolen EBT benefits and swifter relief to victims of stolen EBT benefits. At a December 18, 2012 meeting with Assembly Member Bradford following AB 2035's passage, Petitioner's counsel expressed concern about the extent of benefits DSS intended to cover, and the timeframe in which DSS intended to reimburse stolen benefits following theft reports, under amended Welfare and Institutions Code section 10072. (Dozier Decl., ¶¶ 11-12).

On December 31, 2012, DSS issued interim instructions governing the implementation of AB 2035. (Dozier Decl., ¶ 13). The interim instructions provided that stolen General Assistance/General Relief ("GA/GR") benefits would not be covered by AB 2035 and that stolen benefits covered by AB 2035 should be replaced within 15 business days of a beneficiary's reporting the benefits stolen. (*Id.*, ¶ 13). On January 14, 2013, Petitioner's counsel asked DSS's counsel to stipulate to Petitioner's filing of the FAP, which amended the original petition to include a challenge to DSS's implementing instructions. (*Id.*, ¶ 15). After DSS's counsel refused to stipulate, Petitioner's counsel filed a motion for leave to file the FAP, which DSS opposed. (*Id.*, ¶¶ 16, 19). On February 26, 2013, the Court granted Petitioner's motion for leave to file the FAP. (*Id.*, ¶ 20).

After Petitioner filed the FAP, Petitioner's counsel reengaged DSS's counsel in settlement negotiations with an eye towards changing the AB 2035 implementing instructions to provide relief for stolen GA/GR benefits and a shorter timeframe within which reported stolen benefits would be reimbursed. (Dozier Decl., ¶ 21). At the same time, Petitioner's counsel conducted discovery concerning the reimbursement timeframe issue. (*Id.*, ¶ 22). On May 31, 2013, DSS issued final implemental instructions that incorporated GA/GR benefits and shortened the reimbursement timeframe from 15-business days to 10-business days. (*Id.*, ¶ 23). Because DSS opposed Petitioner's attempts to challenge its implementing instructions through the instant litigation and did not incorporate changes favorable to Petitioner's position until after Petitioner succeeded in filing the FAP, the evidence demonstrates that Petitioner's effort in pursuing the litigation was a substantial factor in causing DSS to change its final implementing instructions. See *Cates*, *supra*, 213 Cal.App.4th at pp. 807-808. DSS presents no evidence directly refuting Petitioner's argument that this litigation influenced DSS to change its implementing instructions. See *Graham*, *supra*, 34 Cal.4th at p. 573 ("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").

2. Petitioner's Lawsuit was Meritorious

Respondent DSS argues that Petitioner is barred from recovering attorney's fees because her lawsuit was meritless. DSS contends that Petitioner's lawsuit was meritless because, prior to AB 2035's enactment, courts lacked authority to require DSS to reimburse stolen EBT benefits in the manner sought by Petitioner. Specifically, DSS contends that prior to AB 2035's enactment, the statutory scheme covering stolen public benefits reimbursement applied only to paper warrants

and did not provide for a reimbursement mechanism for electronic benefits. The Court disagrees with DSS' contentions.

To support an attorney's fee award under the catalyst theory, the moving party must establish that its lawsuit was not "frivolous, unreasonable or groundless." Graham, supra, 34 Cal.4th at p. 575. "At the very least, a plaintiff must establish 'the precise factual/legal condition that [it] sought to change or affect' as a prerequisite for establishing the catalytic effect of its lawsuit." Id. at p. 576. Although Welfare and Institutions Code section 29853.5 does not expressly address stolen electronic benefits, Petitioner's claim that EBT beneficiaries are entitled to protections for stolen electronic benefits similar to those protecting lost or stolen public benefit paper warrants was not without merit. (See Petition ¶ 32). Indeed, in Petitioner's administrative appeal seeking reimbursement of her stolen electronic benefits, the administrative law judge found that Government Code section 29853.5 extended to claims for stolen electronic benefits and awarded Petitioner a reimbursement of her stolen benefits. (See Prieto Decl., ¶ 7, Exhibit 3). The administrative law judge's decision was affirmed by DSS's Director. (Id., ¶ 7, Exhibit 3).

Further, established principles of statutory interpretation support Petitioner's position that Government Code section 29853.5 could be expanded to protect stolen electronic benefits. For example, courts have acknowledged that "[s]tatutory interpretation must be prepared to accommodate technological innovation, if the technology is otherwise consistent with the statutory scheme." Ni v. Slocum, (2011) 196 Cal.App.4th 1636, 1652. With this principle in mind, it was reasonable for Petitioner to believe that Government Code section 29853.5 protected stolen electronic benefits because the express purpose of that statute is to provide replacement of lost benefits "*to ensure that the needs of the family continue to be met . . .*" Beverly v. Anderson, (1999) 76 Cal.App.4th 480, 487 (emphasis original); see also Gov. Code, § 29853.5(b).

3. Petitioner Made a Reasonable Attempt to Settle

The final requirement for recovery of attorney's fees under the catalyst theory is that the party seeking a fee award must have made a reasonable attempt to settle her claim prior to initiating litigation. Graham, supra, 34 Cal.4th at pp. 560-561. "Lengthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time." Id., at p. 577.

Petitioner made a reasonable attempt to settle her dispute with Respondent DSS prior to initiating this action. On September 16, 2011, Petitioner's counsel sent Director Lightbourne a letter demanding that DSS change its stolen benefit policy to provide victims of electronic-benefit theft with the same protections afforded victims of paper-warrant theft. (Pallack Decl., ¶ 6, Exhibit 2). The letter clearly sets forth the legal theory upon which Petitioner based her claim that DSS was required to modify its stolen benefit policy, with citations to the statutory scheme addressing the state's stolen benefit reimbursement procedures and case law interpreting these procedures. (Id., ¶ 6, Exhibit 2). The letter also sets forth Petitioner's proposed remedy—i.e., modification of DSS's stolen benefit policy to provide greater protection for victims of stolen electronic benefits. (Id., ¶ 6, Exhibit 2). Additionally, the letter states that if DSS does not change its policy within 31 days, Petitioner would seek a writ of mandate requiring such action. (Id., ¶ 6, Exhibit 2).

Finally, Petitioner waited nearly three months after she sent the demand letter and received no response from DSS or Director Lightbourne to initiate the instant action. (*Id.*, ¶ 6). Petitioner's prelitigation conduct satisfies Graham's requirements because it put Respondents on adequate notice of Petitioner's claim and desired relief, and it provided Respondents with nearly three months to respond to Petitioner's demand, which it never did before Petitioner filed her original petition on December 8, 2013. See Graham, supra, 34 Cal.4th at pp. 577.

4. Petitioner's Success Resulted in the Enforcement of Important Rights Affecting the Public Interest

Having established Petitioner as the successful party, this Court must next evaluate whether Petitioner's lawsuit enforced "an important right affecting the public interest." Woodland Hills Residents Association, Inc. v. City Council, (1979) 23 Cal. 3d 917, 930-31. The right of impoverished families to receive government benefits designed to provide those families with subsistence is a matter of public interest. See Green v. Obledo, (1981) 29 Cal.3d 126, 145; see also Welf. & Inst. Code, § 10000 ("The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed"). It follows then that an action causing the agency charged with implementing the distribution and regulation of those government benefits to provide greater protections for benefit recipients constitutes the enforcement of an important right affecting the public interest. See Beverly, supra, 76 Cal.App.4th at p. 487; see also Gov. Code, § 29853.5(b).

5. Petitioner's Success Provided a Significant Public Benefit to a Large Class of Persons

To obtain an award under Code of Civil Procedure section 1021.5, a party must also show that its action conferred a significant public benefit on the general public or on a large class of persons. Although distinct from the "important right" requirement, it too is evaluated by practically assessing the gains of the litigation. See Woodland Hills, supra, 23 Cal.3d at 939-41. A significant benefit may be pecuniary or non-pecuniary and need not be concrete to support a fee award. Braude v. Automobile Club of Southern California, (1986) 178 Cal.App.3d 994, 1013.

Here, Petitioner conferred a significant benefit on all recipients of EBT benefits. Petitioner's lawsuit spurred California's Legislature to pass AB 2035 and influenced DSS to draft implementing instructions that provide EBT beneficiaries with farther-reaching and swifter-acting protections against benefit theft. As a result of the Legislature's and DSS's actions, EBT beneficiaries from a broad a of cash benefit programs (e.g., CalWORKs, Welfare to Work, Refugee Cash Assistance, Cash Assistance Program for Immigrants, and county administered GA/GR) are now guaranteed protection against theft of their electronic benefits and they are entitled to swift reimbursement of those benefits. As noted above, the ability of the needy and distressed to rely on continued receipt of these benefits is a matter of interest to not only the individuals entitled to receive the benefits, but also the entire population of California. See Welf. & Inst. Code, § 10000. Further, Petitioner has presented evidence demonstrating that theft of electronic benefits is a problem that has affected thousands of individuals enrolled in EBT programs. (See Prieto Decl., ¶ 22, Exhibit 7).

Accordingly, the Court finds that Petitioner's success provided a significant public benefit to a large class of persons.

6. Private Action Enforcement Was Necessary in this Case

A party seeking fees must also show the necessity of private, as opposed to public, enforcement. Woodland Hills, *supra*, 23 Cal.3d at p. 942. The necessity and financial burden requirement “examines two issues: whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys.” Lyons v. Chinese Hosp. Ass'n, (2006) 136 Cal.App.4th 1331, 1348(internal citations omitted). “The ‘necessity’ of the private enforcement factor . . . looks to the adequacy of public enforcement and seeks economic equalization of representation in cases where private enforcement is necessary.” *Id.* “An award on the ‘private attorney general’ theory is appropriate when the cost of the claimant’s legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the [Petitioner] ‘out of proportion to his individual stake in the matter.’” Woodland Hills Residents’ Ass’n, Inc., *supra*, 23 Cal.3d at 941 (internal citations omitted). This requirement focuses on the financial burdens and incentives involved in bringing the lawsuit. Press v. Lucky Stores, Inc., (1983) 34 Cal.3d 311, 321.

Respondent DSS argues that Petitioner’s private enforcement was not necessary because litigation was avoidable as Petitioner’s rights were ultimately vindicated through passage of AB 2035 and DSS’s issuance of the final implementing instructions. The Court disagrees. As Petitioner’s evidence demonstrates, DSS expressed no willingness to change its policy concerning reimbursement of stolen electronic benefits prior to Petitioner’s filing of her original petition. Although Petitioner ultimately obtained her sought-after relief through legislative and executive action (i.e., the Legislature’s passage of AB 2035 and DSS’s creation of the final implementing instructions), there is no indication that such relief would have been obtained without Petitioner’s initiation of the instant lawsuit. Indeed, both the express language of AB 2035 and Assembly Member Bradford’s statements confirm that AB 2035’s creation and passage were directly triggered by Petitioner’s initiation of the instant suit. DSS has directed the Court to no evidence demonstrating that legislative action establishing greater protections against EBT theft had begun prior to Petitioner’s filing of the original petition.

The Court also finds that Petitioner’s pursuit of this lawsuit placed a burden on her that was out of proportion to her personal stake in the suit’s outcome. Prior to initiating the instant suit, Petitioner was the victim of a theft of \$720 in CalWORKS benefits from her EBT account. Although Petitioner was successful in recovering those funds, the process took nearly two years, prompting her to initiate the instant suit in an effort to reform DSS’s reimbursement policy. Due to the far-reaching impact of AB 2035’s EBT reimbursement policy reform, Petitioner’s interest in pursuing this case transcends any individual financial interest she may have in enjoying swifter reimbursement of stolen EBT funds in the future.

7. Lodestar Calculation

In its reply papers, Petitioner seeks attorneys’ fees in the total amount of \$299,394, including a 1.5 multiplier.

a. *The Reasonable Hourly Rate*

The Court must first determine the reasonable hourly rate prevailing in the community for similar work. Petitioner seeks attorneys' fees for the work of five attorneys at the following billing rates: (1) Richard Rothschild, a 1975 law school graduate, at the rate of \$750/hour; (2) David Pallack, a 1979 law school graduate, at the rate of \$730/hour; (3) Vanessa Lee, a 2001 law school graduate, at the rate of \$500 an hour; (4) Antionette Dozier, a 2006 law school graduate, at the rate of \$460/hour; and (5) Alexander Prieto, a 2008 law school graduate, at the rate of \$440/hour. (See Petitioner's Exhibit 1 attached to Petitioner's Additional Supporting Exhibits). With the exception of Vanessa Lee, Petitioner attaches the resumes for the attorneys claiming hours worked on the underlying litigation. (See Prieto Decl., ¶ 4, Exhibit A; Pallack Decl., ¶ 2, Exhibit A; Dozier Decl., ¶ 3, Exhibit A; Rothschild Decl., ¶ 2, Exhibit A). Petitioner's attorneys are employed by Neighborhood Legal Services of Los Angeles County and the Western Center on Law and Poverty, both of which are non-profit legal services corporations. (See Pallack Decl., ¶ 7; Rothschild Decl., ¶ 7).

Petitioner also attaches the declarations of Carol A Sobel, a civil rights litigator, and Steven L. Mayer, a member of the Western Center on Law and Poverty's Board of Directors, both of whom are familiar with Mr. Rothschild's work and both of whom attest that the hourly rates applied by Petitioner's attorneys are reasonable in light of the market rates for comparable services. (See generally Sobel Decl.; see Mayer Decl., ¶ 3). In light of the evidence presented in support of her motion, the Court finds that the rates sought by Petitioner's attorneys are reasonable and correspond to the market rates for comparable services. Notably, DSS does not present any argument or evidence to rebut the hourly rates claimed by Petitioner's attorneys.

b. *The Number of Hours Reasonably Expended*

DSS argues that Petitioner's counsel expended an unreasonable and excessive number of hours in connection with the underlying litigation. Although DSS asserts that it was unnecessary for Petitioner's counsel to expend the amount of hours claimed, DSS does not specifically attack any of the timesheets produced by Petitioner's counsel or any of the individual tasks Petitioner's attorneys claim to have worked on. "[C]onclusory and unsubstantiated objections [are] simply inadequate to rebut the presumption [the moving party's] fees were reasonably and necessarily incurred." Hadley, *supra*, 167 Cal.App.3d at p. 684. Nevertheless, the Court conducted its own review of the hours claimed by Petitioner's counsel.

The following chart outlines the hours billed by each of Petitioner's attorneys, the rates at which those hours were billed by each attorney, and the total amount of fees billed by each attorney:

Attorney	Hours Billed	Rate	Total
Alexander Prieto	280.6 [38.90 of which are associated with preparation of the reply in support of the instant motion]	\$440	\$123,464
Antionette Dozier	61.5	\$460	\$28,290
Vanessa Lee	17.2	\$500	\$8,600
David Pallack	74.37 [29.76 of which are associated with memorandum of points and authorities in support of the instant motion]	\$730	\$54,290.10
Richard Rothschild	9.4	\$750	\$7,050
Total	443.07		\$221,694.10

(See Prieto Decl., ¶ 5, Exhibit B; Reply Prieto Decl., ¶ 3, Exhibit A; Pallack Decl., ¶¶ 3-4, Exhibits B and C; Dozier Decl., ¶ 4, Exhibit B; Rothschild Decl., ¶ 5, Exhibit B).

After reviewing the billing records, the Court reduces the hours billed by Petitioner's attorneys by 17.2 hours (at the rate of \$500/hour), or \$8,600, to account for the hours allegedly billed by Vanessa Lee. Although Petitioner has produce a billing sheet attached to Mr. Pallack's declaration allegedly accounting for Ms. Lee's hours, Petitioner presents no statements from Ms. Lee accounting for these hours. In addition, the Court finds that the hours billed by Petitioner for the fee motion are excessive. Thus, the Court reduces the loadstar by \$17,116 to reflect the hours attributed to Mr. Prieto for his work on the reply papers. The Court finds the remaining hours billed by Petitioner's attorneys are fair and reasonable.

c. Whether a Multiplier should be Applied

Petitioner asks the Court to apply a 1.5 multiplier to the amount of fees billed in connection with the underlying litigation, with the exception of fees associated with the preparation of the instant fee motion. Petitioner claims a multiplier of 1.5 is warranted because Petitioner's counsel represented Petitioner on a contingency fee basis and was precluded from accepting to represent other individuals during the pendency of Petitioner's action. "[The fee] may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." Ketchum v. Moses, (2001) 24 Cal.4th 1122, 1132. "The trial court's decision to apply a multiplier to enhance an award of attorney fees 'is a discretionary one.'" Bernardi, supra, 167 Cal.App.4th at p. 1399.

Although Petitioner asserts that her attorneys were precluded from representing other qualified clients during the pendency of her case, she directs the Court to no statements from her attorneys alleging that they were unable to represent other clients or generally identifying representation opportunities that were passed on as a result of this litigation. The Court also notes that Petitioner has not directed the Court to any statements by her counsel attesting that they represented Petitioner on a contingent basis. Finally, and importantly, this action was stayed for nearly six months and Petitioner's counsel filed and argued only one substantive motion. Under these circumstances, a multiplier is not appropriate.

Disposition

In summary, Petitioner's motion for attorneys' fees is granted in the total amount of \$186,180. This amount was calculated as follows: (1) 241.7 hours billed at \$440/hour (\$106,348) for Mr. Prieto; (2) 61.5 hours billed at \$460/hour (\$28,290) for Ms. Dozier; (3) 74.37 hours billed at \$730/hour (\$54,290.10) for Mr. Pallack; (4) 9.4 hours billed at \$750/hour (\$7,050) for Mr. Rothschild, for a gross total of \$195,978.10, (5) minus a 5% reduction (\$9,798) of the gross total to reflect duplication of efforts among the four attorneys.

IT IS SO ORDERED

July 24, 2014

LUIS A. LAVIN

Hon. Luis A. Lavin
Judge of the Superior Court