SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

SAN DIEGO COUNTY WATER AUTHORITY

Petitioner and Plaintiff,

v.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 13, 2010 TO BE EFFECTIVE JANUARY 1, 2011,

Respondents and Defendant.

Lead Case No. CPF-10-510830
Consolidated with Case No. CPF-12-512466

ORDER RE CROSS-MOTIONS FOR DETERMINATION OF PREVAILING PARTY.

INTRODUCTION

The parties, Petitioner San Diego County Water Authority ("San Diego") and Respondent Metropolitan Water District of Southern California ("Metropolitan" or "Met") filed cross-motions for determination of the prevailing party. The matter came on regularly for hearing on December 16, 2020. A tentative ruling was issued by the Court before oral argument. The appearances are as stated in the record. Having reviewed and considered the argument and written submissions of all parties and being fully advised, the Court finds San Diego is the prevailing party on the contract.

BACKGROUND

The parties' October 10, 2003 Exchange Agreement provides that the prevailing party shall be entitled to recover its attorneys' fees and costs. (Exchange Agreement. § 5.2.)[1] Specifically, it provides that in any litigation between the parties over whether Metropolitan's charges for the conveyance of water were "set in accordance with applicable law and regulation," the "prevailing party shall be entitled to recovery of reasonable costs and attorneys' fees incurred in prosecuting or defending against such contest." (*Id.*)

Each party contends they are the prevailing party on the contract claim, and are thus entitled to costs and attorneys' fees under the Exchange Agreement. The matter was originally scheduled to be heard on November 12, 2020. However, given Met's September 11, 2020 appeal of the judgment and writ of mandate, the Court continued the matter to December 16, 2020. The parties were instructed to provide the Court with supplemental briefing on whether the Court had jurisdiction to hear the matter pending the appeal. After reviewing the relevant law, the Court agreed with the parties that the Court had jurisdiction to hear the matter on December 16, 2020.

LEGAL STANDARDS AND GOVERNING PRINCIPLES

California Civil Code section 1717 provides that under a contract with an attorney's fees provision, the "prevailing party" shall be awarded its fees and costs incurred to enforce the contract. (Civ. Code, § 1717, subd. (a).) The "party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Id., subd. (b)(1).)

In *Hsu v. Abbara* (1995) 9 Cal.4th 863 (*Hsu*), the California Supreme Court explained that "in deciding whether there is a 'party prevailing on the contract,' the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources." (*Id.* at 876.) The prevailing party determination is to be made by "a comparison of the extent to which

[1] The October 3, 2003 Exchange Agreement is attached as Exhibit A to the operative petitions and complaints in these consolidated cases.

each party ha[s] succeeded and failed to succeed in its contentions." (*Ibid.*, citing *Bank of Idaho v. Pine Avenue Associates* (1982) 137 Cal.App.3d 5, 15.)

In determining litigation success, *Hsu* explained that "courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations.'" (*Id.* at 877.) For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective. (*Id.*, citing *Lewis v. Alpha Beta Co.* (1983) 141 Cal.App.3d 29; see also *National Computer Rental, Ltd. v. Bergen Brunswig Corp.* (1976) 59 Cal.App.3d 58, 63 [defendant awarded fees under section 1717 because it prevailed on the only disputed claim, even though plaintiff obtained judgment on undisputed claims].)

On the other hand, when one party obtains a "simple, unqualified win" on the single contract claim presented by the action, the trial court may not invoke equitable considerations unrelated to litigation success, such as the parties' behavior during settlement negotiations or discovery proceedings, except as expressly authorized by statute. (*Hsu*, 9 Cal.4th at 877.)

DISCUSSION

I. San Diego's Motion

San Diego argues it is the prevailing party because it obtained the greater relief on the contract. Furthermore, San Diego contends: "The fact that the losing party is successful on appeal in reducing the judgment does not affect the prevailing party's right to a fee award. I.e., despite the reduction, it is still 'the party recovering the greater relief in an action on the contract,'" and it is "immaterial that [the] amount of reduction obtained on appeal exceeded [the] remaining amount of [the] judgment." (Cal. Prac. Guide Civ. Trials & Ev. Ch. 17-E, ¶ 17:885, quoting Civ. Code, § 1717, subd. (b)(1), and citing *Snyder v. Marcus & Millichap* (1996) 46 Cal.App.4th 1099, 1103 ("*Snyder*").)

San Diego cites several cases for its proposition that although it was only awarded a fraction of the damages it sought, this alone is not enough to affect its prevailing party status. (See e.g., *Snyder*, 46 Cal.App.4th at pp. 1101–1104 [finding reduction of damages on appeal was not relief for the defendant in the action on the contract; plaintiff prevailing party where she received a net judgment even though defendant had succeeded on appeal in reducing the amount of the judgment by more than a million dollars, which exceeded the $834,900 the plaintiff was awarded on remand]; *Mustachio v. Great Western*

Bank (1996) 48 Cal.App.4th 1145, 1149–1150 [although damages were reduced on appeal, the plaintiff remained "the party prevailing on the contract" because "she was ultimately awarded damages in excess of $200,000"]; *Ajaxo Inc. v. E*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 59 [plaintiff won simple unqualified verdict even though jury awarded the plaintiff "only a fraction of the damages it sought on its contract claim"].)

San Diego also contends it obtained the greater relief in the matter because Metropolitan asserted an extreme position that it owed nothing to San Diego. (See *de la Cuesta v. Benham* (2011) 193 Cal.App.4th 1287, 1296-1300 ("*de la Cuesta*") [plaintiff entitled to fees as a matter of law because the defendant "asserted the extreme position that she owed nothing," but "ended up with a judgment of about $70,000 against her."].)

Finally, San Diego asserts that this case concerned more than just money; it was about Defendant following the law. In *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761 ("*Almanor*"), for example, a homeowners' association sought to impose fines and other charges on the defendants for violating the association's rules. The defendants disputed both the fines and the plaintiff's authority to enforce the rules. After a bench trial, the trial court rejected most of the fines and charges, awarding only a small fraction of what the plaintiff sought ($6,620 out of $54,000, or about 12 percent). (*Id.* at pp. 767–769.) Yet the trial court found the plaintiff to be the prevailing party, awarding the plaintiff far more in fees and costs than it had recovered in damages, and rejecting the defendants' argument that they prevailed because they avoided the vast majority of the fines and charges. (*Ibid.*) The Court of Appeal affirmed. "The fractional damages award does not negate the broader, practical effect of the court's ruling, which on the one hand narrowed the universe of restrictions that [the plaintiff] could impose on the properties, but on the other hand cemented [its] authority to promulgate and enforce rules." (*Id.* at p. 775.) San Diego contends that like the defendant in *Almanor*, Metropolitan's position was that it was not contractually bound to follow the law that San Diego sought to enforce by asserting that it could not be liable under the Exchange Agreement for violating the wheeling statutes and the common law.

II. Metropolitan's Motion

Metropolitan argues that (1) San Diego did not prevail; (2) that in fact, it prevailed as a matter of law; (3) that if the Court finds it did not prevail as a matter of law, the Court should exercise its discretion

to find that it prevailed; and (4) if the Court finds that Met did not prevail, it should find that neither party prevailed.

First, Met argues that San Diego did not prevail because it failed to meet its main objective: Recover a damage award equal to the amount San Diego paid in 2001-2014 for SWP costs and the Water Stewardship rate as part of Metropolitan's transportation rates. (Citing San Diego's Phase II Post-Trial Brief, 30:8-11 ["San Diego contended, and still contends, that damages should be measured by removing the charges [Metropolitan] never had any legal or contractual basis for including the Price—SWP costs and the Water Stewardship Rate."].) Met contends San Diego did not achieve the most material part of that objective. Metropolitan also points out that following remand, San Diego's award fell to 20% of what San Diego sought and what the trial court originally awarded—$188,295,602—when the Court of Appeal held that Met's inclusion of its SWP transportation costs did not breach the Exchange Agreement. Met contends that San Diego's failure to prevail on the largest component of its rate challenge and thus its contractual claim demonstrates that it is not the prevailing party.

According to Metropolitan, because it successfully defended against the most valuable rate challenge and contract claim in the case, this fact makes it the prevailing party. (See Motion, 12 ["That Metropolitan did not obtain an actual money judgment is irrelevant"]; citing *David S. Karton, A Law Corp.*, (2014) 231 Cal.App.4th 600, 608 ["Dougherty did not file a cross-complaint, so his failure to obtain a money judgment or other affirmative relief from the court does not weigh against his claim to be the party prevailing on the contract."].) Met's main argument is that in contrast with San Diego, Metropolitan achieved the lion's share of its objective by earning the right to retain nearly $160 million in SWP costs that it included in the transportation rates, and also secured the right to include its SWP costs in the contract price going forward. (Citing *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th at 1146 ("*SDCWA*") ["The California Aqueduct unquestionably is an integral part of the system by which Metropolitan transports water to its member agencies"].) Based on the reduction of 80% of its damages, Met contends that it received the "greater relief" because San Diego lost more than 80% of its claim.

Met asserts that on this basis it is the prevailing party, as a matter of law, because the result in Met's favor was sufficiently lopsided to limit the Court's discretion in finding no prevailing party.

(Citing *de La Cuesta*, 193 Cal.App.4th at 1295 ["If the results in a case are lopsided in terms of one party obtaining 'greater relief' than the other in comparative terms, it may be an abuse of discretion for the trial court not to recognize that the party obtaining the 'greater' relief was indeed the prevailing party."]; *Silver Creek, LLC. v. BlackRock Realty Advisors, Inc.* (2009) 173 Cal.App.4th 1533, 1540 ("*Silver Creek*") [abuse of discretion to find no prevailing party when each party won a contract issue and lost a contract issue, but one of those issues was the main litigation objective].)

Met argues that even if the Court does not agree that Metropolitan prevailed as a matter of law, it should exercise its discretion to find that it nonetheless prevailed. Met primarily relies on *Silver Creek, LLC, supra*, 173 Cal.App.4th 1533 for the proposition that the Court may abuse its discretion by finding that neither party had obtained greater relief that then other simply because each party won a contract issue and lost a contract issue. (*Id.* at 1540.) In *Silver Creek*, there were two contract claims—one related to the return of a deposit and the other related to who had a right to the property. (*Id.* at 1540.) The court noted that the return of the deposit was a secondary issue, while the rights to the property was both parties' main objective and greater in monetary value. (*Ibid.*) The Court of Appeal found that the party who won the property issue prevailed. (*Id.* at 1540-41.) Met contends that like the greater value of the property at issue in *Silver Creek*, the SWP costs included in Metropolitan's transportation rates were far greater in terms of monetary value. And because Metropolitan secured the right to include SWP costs in transportation rates and thus the Exchange Agreement price going forward, Metropolitan prevailed.

Finally, Met argues that should the Court find that the results are sufficiently mixed, that it should find neither party prevailed. Met relies on *Nasser v. Super. Court* (1984) 156 Cal.App.3d 52, 55, 60 [no prevailing party where plaintiff sought to validate lease and establish monthly rent of $565 based on option to renew; and court validated lease, but ruled that tenant had to pay $674 each month—a 68.51% increase from the pre-option rent], and *Kytasty v. Godwin* (1980) 102 Cal.App.3d 762, 772, 774 [no prevailing party where plaintiff successfully sought to have easement validated, but court reduced its scope]. Met contends that these "no prevailing party" cases are cases with equal parts good news and bad news for both parties, similar to the case here.

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III. Application and Analysis

Under the rule of stare decisis, the governing case for "prevailing party" determinations under section 1717 of the Civil Code is *Hsu v. Abbara*, *supra*, 9 Cal.4th 863, with some additional light thrown on the subject by *Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109 ("*Scott*"). (*de la Cuesta*, 193 Cal.App.4th at p. 1292.) *Hsu* tells us: "When a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a provision for attorney fees, section 1717 entitles the successful party to recover reasonable attorney fees incurred in prosecution or defense of those claims." (*Hsu*, 9 Cal.4th at p. 877.)

i. Neither Party Prevailed as a Matter of Law

Here, neither party is entitled to fees as a matter of law because neither party achieved an unqualified victory. Unlike the plaintiffs in *Snyder* and *Mustachio*, Met succeeded in more than just reducing the damage award; it also reversed the judgment. (*Cf. Snyder*, 46 Cal.App.4th at p. 1101 and *Mustachio*, 48 Cal.App.4th at 1148-49; see also *de la Cuesta*, 193 Cal.App.4th at p. 1294 [result fell short of a complete victory when a portion of the unpaid rent was deducted from what the landlord was otherwise entitled to and claims for unpaid common area maintenance charges were reduced].) Two issues were presented in this litigation: whether Met could lawfully charge for its SWP costs and whether Met could include costs for water preservation in its Water Stewardship rate. San Diego prevailed on the second issue and lost on the first. Accordingly, it did not obtain a "simple, unqualified win" and it is not entitled to an award of attorney's fees as a matter of right. (*Hsu*, 9 Cal.4th at p. 876.)

For similar reasons, Met did not achieve an unqualified win. Contrary to Met's contentions, Met is not the prevailing party merely because the damage award was reduced by 80%. Met erroneously equates the overall 80% reduction in damages to "San Diego los[ing] more than 80% of its [contract] claim." This argument completely disregards San Diego's 100% success on its claim for the Water Stewardship Rate. Furthermore, as Petitioner's cases have demonstrated, a mere reduction in damages, alone, does not deprive a party from a prevailing party status.

Instead where, as here, neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." (*Scott*, 20 Cal.4th at p.

1109.) In determining whether either party prevailed, section 1717 expressly contemplates a comparison of the respective results. (*de la Cuesta*, 193 Cal.App.4th at p. 1295 [describing the party obtaining 'a greater relief' as a comparative term].) The Court is empowered to "identify the party obtaining 'a greater relief' by examining the results of the action in relative terms: the general term 'greater' includes '[l]arger in size than others of the same kind' as well as 'principal' and '[s]uperior in quality.' " (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1150–1151.) The Court evaluates each side's stated litigation objectives and evaluate their "relative success" on those objectives, "taking into account the unique facts and circumstances of each case. (*de la Cuesta*, 193 Cal.App.4th at p. 1296). A party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective." (*Hsu*, 9 Cal.4th at p. 877.)

ii. <u>San Diego Obtained Greater Relief</u>

In this case, San Diego is the prevailing party. San Diego won a substantial $44 million judgment on the contract, and similar to *Almanor*, this case was about much more than money.

The basis of San Diego's lawsuit was to recover any charges that Met did not set "pursuant to applicable law and regulation and generally applicable to the conveyance of water of Metropolitan on behalf of its member agencies." (See Exchange Agreement, § 5.2) At the outset, the parties agreed that Met was obligated to set its rates based on principles of cost causation, that is, that Met must charge for its services based only on what it costs to provide them. (Met's Closing Brief, p. 60; San Diego's Amended First Pretrial Brief, p. 1.) As the Court put it in its Phase I Statement of Decision, "this [was] the central focus of this case." (Phase I Statement of Decision ("Phase I SOD"), p. 47.)

In Phase I of trial, the Court found Met's inclusion in its transportation rate and wheeling rate of 100% of its State Water Project transportation costs and 100% of its costs for conservation and local water supply development programs recovered through the Water Stewardship Rate, unlawful. (*See* Phase I SOD, p. 65.) On appeal, the appellate court reversed the trial court with respect to the System Access Rate finding that the inclusion of the System Access Rate that recovers the cost of Met's State Water Project transportation payments did not violate the wheeling statutes. (*See SDCWA*, 12 Cal.App.5th at 1149 ["The inclusion of these payments in the calculation of Metropolitan's wheeling rate does not violate the wheeling

statutes.") On this basis, Met contends that the Court should find that the results are sufficiently mixed that neither party prevailed.

Met's argument, though somewhat persuasive, does not paint the whole picture "taking into account the unique facts and circumstances of this case." (*de la Cuesta*, 193 Cal.App.4th at p. 1296). In Phase II of trial, which included adjudication of the contract cause of action, Met asserted several positions against San Diego's breach of contract claim, notwithstanding the trial court's ruling invalidating Met's System Access Rate and Water Stewardship Rate. This suggests that exclusive of whether Met's rates were found invalid, Met's position was that it could prevail on the breach of contract claim nonetheless.

First, Met claimed there was no basis under the contract to challenge the rate structure because, pursuant to Met's interpretation of the contract, San Diego never had any right to challenge Met's existing, unamended rate structure. (*See* Phase II Statement of Decision ("Phase II SOD"), pp. 6-10; Met's Closing Brief, pp. 20-22.) The Court found Met's interpretation inconsistent and "irreconcilable with the plain language of the contract," and the testimony of its witness Jeffrey Kightlinger "contradicted" by other evidence. (Phase II SOD, pp. 9-10.) The Court found that under § 5.2 of the Exchange Agreement, San Diego was within its right to contest whether Met's rates and charges were consistent with applicable law after five years. (*See ibid.*)

With regard to breach, the trial court reasoned that because Met's charges were not consistent with law and regulation, as determined in Phase I, Met breached § 5.2 of the Exchange Agreement. (Phase II SOD, p. 10.) In response, Met raised several arguments asserting that there could be no breach because San Diego agreed to Met's existing rate structure by (i) agreeing to an initial price of $253, (ii) entering into the Exchange Agreement knowing Met's existing rate structure, (iii) voting in favor of the challenged rate structure before and after the Exchange Agreement was entered into, and (iv) accepting Met's performance under the contract. (*Ibid*; Met's Amended Motion for Partial Judgment, pp. 2-3; Met Pre-trial Brief, p. 12.) The Court found none of Met's arguments precluded San Diego from validly challenging whether the charges were properly set pursuant to applicable law and regulation. (*See* Phase II SOD, p. 11, citing the Exchange Agreement § 5.2.)

The Court next dealt with the issue of damages. San Diego's position was that it suffered damages because it paid more than it agreed to under the Exchange Agreement when Met improperly included all of

the State Water Project costs for the transportation of purchased water and all of the costs for conservation and local water supply development programs to its conveyance rates. (Phase II SOD, p. 13.) In response, Met's position asserted that San Diego did not prove damages because San Diego could not prove that it paid more under the Exchange Agreement than it could have under an alternative lawful rate structure. (*Ibid*; Met's Closing Brief, p. 3; Met's Amended Memorandum in Support of Partial Judgment, pp. 8-9.) To that, the trial court remarked that Met's argument "fl[ew] in the face of the positions it ha[d] repeatedly taken in the past." (Phase II SOD, p. 13.) Throughout the litigation, Met asserted both that (i) only a new rate setting procedure may be used in the case to fix lawful rates which in turn must be done before damages can be ascertained, and (ii) the superior court lacked jurisdiction to do this. (*Id.* at p. 14; Met's January 9, 215 Motion to Dismiss, pp. 1-5; Trial Transcript, 2013:6-2018:16; see also Met's March 27, 2014 Objections to Tentative Statement of Decision, 2-3.) The trial court noted that "[t]he effect of Met's fabricated conundrum would be, of course, that damages could never be fixed if Met ever breached the Exchange Agreement." (Phase II SOD, p. 14.)[2] The Court ultimately found that San Diego had proven that it was in fact damaged by paying conveyance rates that were higher than Met could have set pursuant to application law and regulation, and that San Diego was "not required to prove the fact of damages by proving the entire universe of possible alternative legal rate structures Met might have implemented." (*Id.* at p. 16.) This ruling was not disbursed on appeal.

Met's argument that it obtained the "greater relief" simply because it prevailed on one of the two contract claims is not persuasive when the Court evaluates each side's stated litigation positions and evaluates their "relative success" on those objectives, "taking into account the unique facts and circumstances of each case." (*de la Cuesta*, 193 Cal.App.4th at 1296.) While it is true there was no breach of contract with respect to Met's System Access Rate, there was a breach of the agreement with respect to the Water Stewardship Rate that was unlawfully charged for the conveyance of water. Moreover, San Diego defeated Met's position that it could not challenge the rates under the Exchange Agreement and

[2] Met also argued that San Diego failed to account for (or off set) benefits it secured by Met's illegal rates, and as a consequence failed to establish damages. (Phase II SOD, p. 15.) However, Met bore the burden of demonstrating that San Diego's damages were offset by incidental extra-contractual benefits San Diego obtained as a result of the same conduct amounting to breach. (*Ibid.*) The Court found that "[n]o evidence showed San Diego would have received a consequential benefit ....Accordingly, Met's argument for an offset does not defeat liability. It has not met that burden." (*Ibid.*)

demonstrated that it was entitled to recover damages attributable to the unlawful inclusion of the Water Stewardship Rate over Met's objections. (Phase II SOD, pp. 6-16; *see also SDWA*, 12 Cal.App.5th at 1154.) Here, San Diego obtained the greater relief for prevailing in its fundamental goal of enforcing, based on the contract, the laws governing the conveyance of water: a vital and dispositive victory in addition to San Diego's significant monetary recovery. (*See, e.g., Almanor*, 246 Cal.App.4th at pp. 775–776 & fn. 7; *see also Hsu*, 9 Cal.4th at p. 877 ["A party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective."].)

Second, although Met may have prevailed on its position that the State Water Project costs could lawfully be included in the transportation rate, it failed to succeed on the majority of its stated litigation positions on the contract cause of action. Based on the record, Met sought to evade the contract entirely, "denying an enforceable contract and actionable breach." (*SDCWA*, 12 Cal.App.5th p. 1154.) Met's assertions about the Exchange Agreement and its defenses in the action on that contract—including Met's contentions that San Diego consented to Met's unlawful rates, that the Exchange Agreement itself was "illegal at its inception," and that San Diego's claims were time-barred—were rejected at the trial court level and on appeal. (*Id.* at pp. 1141-43, 1154.) Met made "several assertions … denying an enforceable contract and actionable breach but none [was] persuasive. The contract was not illegal at its inception for including a variable price term that was ultimately found to contain an unlawful rate component." (*Id.* at p. 1154.) San Diego obtained rulings, affirmed on appeal, that Metropolitan breached the Exchange Agreement by violating the Wheeling Statutes and the common law, "violated the contractual term price, not just the wheeling rate, and [that] actionable injury [was] shown by payment of a water stewardship rate unrelated to the transportation services provided." (*Ibid.*) San Diego not only obtained a $44 million damage award, but also successfully defended the Exchange Agreement and obtained a writ of mandate and declaratory relief. Like the plaintiff in *Almanor*, the appellate court narrowed the universe of costs San Diego could potentially challenge, "but on the other hand cemented [its] authority to … enforce [the contract]," which was also a disputed issue in this litigation. (*See Almanor*, 246 Cal.App.4th at p. 775.) As in *Almanor*, the "fractional damages award does not negate the broader, practical effect of the court's ruling." (*Ibid.*)

Met's reliance on *Silver Creek, supra,* 173 Cal.App.4th 1533 is misplaced and distinguishable on the facts. In *Silver Creek,* although the parties asked the court to decide the deposit issue in their respective favors, the appellate court found that the trial court correctly recognized that the main litigation objective for the parties was disposition of the properties and that the deposit issue was "secondar[y]." (*Id.* at p. 1540.) Thus, the main factor the court considered for finding in favor of Silver Creek as the prevailing party was not the fact that the property issue was greater in terms of monetary value, but rather because "Silver Creek achieved its main litigation objective, while BlackRock clearly failed to accomplish its desired goal even though it obtained the return of its deposit." (*Ibid.*)[3]

In sum, San Diego did not need a complete victory as a prerequisite for awarding Petitioner its fees. (*See de la Cuesta,* 193 Cal.App.4th at p. 1294.) Metropolitan's argument that San Diego did not obtain the greater relief because of the post-appeal reduction on damages fails to account for San Diego's important nonmonetary victories on the contract. More than a claim for just damages, San Diego's litigation objective was to require Metropolitan to comply with "legal limits on charges imposed by government agencies," including the core principle that rates must be "limited to the costs of providing the services at issue." (Oct. 18, 2013 *SDCWA* Trial Brief, p. 1.) San Diego prevailed, and the judgment not only benefits its own ratepayers but all of the nearly 19 million people in Metropolitan's service area because enforcing cost-of-service principles serves the interests of all ratepayers. (*See SDCWA,* 12 Cal.App.5th at pp. 1150-52, 1154.) San Diego also vindicated "the policy of the state to facilitate the voluntary sale, lease, or exchange of water or water rights in order to promote efficient use." (Oct. 18, 2013 *SDCWA* Trial Brief, p. 39.) Specifically, San Diego proved that Metropolitan violated the Wheeling Statutes, the common law, and the Exchange Agreement by overcharging for an exchange of water that not only benefits the San Diego ratepayers but all of Metropolitan's service area. (*See SDCWA,* 12 Cal.App.5th at pp. 1150-52, 1154.)

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[3] Met also cites *Kytasty v. Godwin, supra,* 102 Cal.App.3d 762 and *Nasser v. Super. Court, supra,* 156 Cal.App.3d 52, 55, 60 for its proposition that the Court should find no prevailing party. *Kytasty* and *Nasser* were decided before *Hsu.* In any event, *Silver Creek* informs us that a trial court "oversimplif[ies] its duties by counting the number of contract claims presented and essentially declaring a tie because each party won one of the claims presented for resolution." (*Id.* at 1540.) Rather, the Court must look to see at each parties' respective litigation position, "taking into account the unique facts and circumstances of each case." (*de la Cuesta,* 193 Cal.App.4th at p. 1296; *Hsu,* 9 Cal.4th at p. 876.)

CONCLUSION AND ORDER

For foregoing reasons, the Court finds that San Diego obtained the greater relief by "examining the results of the action in relative terms" (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1150–1151), and evaluating each side's stated litigation objectives and their "relative success" on those objectives, "taking into account the unique facts and circumstances of [the] case." (*de la Cuesta*, 193 Cal.App.4th at p. 1296). Accordingly, San Diego is the prevailing party on the contract and entitled to the fees and cost.

IT IS SO ORDERED.

Dated: January 13, 2021

Anne-Christine Massullo
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On January 13, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: January 13, 2021

T. Michael Yuen, Clerk

By: _____
Ericka Larnauti, Deputy Clerk