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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHARLES PATRICK WOOSLEY, Plaintiff and Appellant, v. STATE OF CALIFORNIA et al., Defendants and Appellants.	B275402 (Los Angeles County Super. Ct. No. CA000499)

APPEAL from an order of the Superior Court of Los Angeles County, Stephanie M. Bowick, Judge. Affirmed.

Patrick G. Woosley, in pro. per., for Appellant.

Xavier Becerra, Attorney General, Diane S. Shaw, Senior Assistant Attorney General, Stephen Lew, Supervising Deputy Attorney General, Hutchison B. Meltzer, Deputy Attorney General, for Appellants State of California, Department of Motor Vehicles and California Department of Fee and Tax Administration.

John B. Murdock for Respondent Law Offices of John F. Busetti.

James M. Gansinger and Eric L. Troff for Respondent The Gansinger Firm.

Jones, Bell, Abbott, Fleming & Fitzgerald, Craig R. Bockman and Kevin K. Fitzgerald, for Respondent Jones, Bell, Abbott, Fleming & Fitzgerald.

After litigating a class action for approximately 30 years, respondents—the Gansinger Firm; the Law Offices of John F. Busetti (the Busetti Firm); Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P. (Jones Bell); and class plaintiff Patrick G. Woosley (Woosley), who is also an attorney (collectively, Plaintiffs' Counsel)—made their case for attorney fees. In 2014, the trial court awarded fees to Plaintiffs' Counsel, but reduced their lodestar hours and applied only a small multiplier (no multiplier for Woosely) after taking into consideration the results ultimately obtained in the underlying litigation. In 2016, the trial court awarded Plaintiffs' Counsel additional fees for their work in pursuing the 2014 fee awards. We consider whether the trial court abused its discretion by not reducing the "fees on fees" award for lack of success.

I. BACKGROUND

A. History of the Case and Prior Fee Applications[1]

The history of this litigation, which is beginning to rival *Jarndyce and Jarndyce*,[2] can be found in numerous prior

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[1] We grant the State's request that we take judicial notice of our decision in *Woosley v. State of California* (Apr. 24, 2017, B261454) [nonpub. opn.], and we further take notice of the files and records in that appeal. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) We deny the State's request to take judicial notice of a motion for attorney fees Woosley filed in 2017, after the trial court issued the fee order presently under appeal. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379, fn. 2; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.)

[2] Dickens, Bleak House (1853) p. 3.

opinions. Our recitation of the pertinent facts will therefore be brief.

Woosley filed a class action in 1978 alleging defendants and appellants the State of California, through the Department of Motor Vehicles and the State Board of Equalization,[3] (collectively, the State) unconstitutionally collected vehicle license fees and use taxes. The trial court certified two classes and entered judgment for the plaintiffs in the 1980s. In 1992, our Supreme Court reversed the portion of the judgment relating to use taxes and also held the class-wide structure of the action had been improperly defined. (*Woosley v. State of California* (1992) 3 Cal.4th 758 (*Woosley*).) In remanding the case for further proceedings consistent with its opinion, the Supreme Court recognized its decision would "result in a substantial reduction in the amount of the judgment," and "the trial court [should accordingly] reconsider the amount of its award of attorney fees to [Plaintiffs' Counsel] . . . ." (*Id*. at p. 795.) In the 1990s, the trial court certified newly defined classes. In the early-to-mid 2000s, the trial court held a new trial on liability and conducted various proceedings pertaining to class membership and the claims process.

After the action was resolved on the merits, the trial court awarded Plaintiffs' Counsel more than $23 million in attorney fees and costs pursuant to the private attorney general theory

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[3] As the caption page of this opinion reflects, we grant the Attorney General's motion to substitute California Department of Fee and Tax Administration for the State Board of Equalization.

codified in Code of Civil Procedure section 1021.5.[4] In 2010, this court reversed that fee award because the trial court had not given "any consideration to the lack of success" in the case. The 2010 decision remanded the matter to the trial court to redetermine attorney fees after undertaking such consideration. Specifically, we directed the court to, among other things, "consider and make any appropriate deductions from the lodestar figure of all counsel for the lack of success of the litigation for the period between 1978 and 1992 when the common fund was reduced from $800 million to $2 million, as well as any subsequent unsuccessful efforts by the class following and consistent with the Supreme Court's decision and instructions on remand in *Woosley*[, *supra*,] 3 Cal.4th 758" and to "reconsider the multiplier for [Plaintiffs' Counsel] after due consideration is given to the lack of success of the litigation in light of the Supreme Court's 1992 decision . . . ."

In 2014, the trial court held a six-day evidentiary hearing and reviewed Plaintiffs' Counsel's billing records. The court deducted Plaintiffs' Counsel's lodestar figures for lack of success by 87.2 hours (Jones Bell), 1,298 hours (the Gansinger Firm), 475 hours (the Busetti Firm), and 2,601.6 hours (Woosley).[5] The court reduced the multiplier that had been applied in the prior fee

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[4] Undesignated statutory references that follow are to the Code of Civil Procedure.

[5] Consistent with the remand directions, the trial court further reduced Woosley's lodestar figure by 8,924.95 hours for work found to be inefficient, duplicative, or otherwise unnecessary, and for work done by third parties Woosley hired to assist him.

proceeding from 3 to 1.25 for all of Plaintiffs' Counsel except Woosley, whose multiplier was eliminated. The resulting fee awards for Plaintiffs' Counsel's work on the merits of the class action totaled $62,006.37 for Jones Bell, $1,690,417.19 for the Gansinger Firm, $165,750 for the Busetti Firm, and $418,821.68 for Woosley.

The trial court separately awarded Plaintiffs' Counsel the following attorney fees for work on their fee applications: $14,332.50 to Jones Bell, $80,010 to the Gansinger Firm, $15,600 to the Busetti Firm, and $70,000 to Woosley. The court rejected some of the hours claimed by counsel as excessive but did not explicitly reduce the fees on fees award for lack of success.

Plaintiffs' Counsel appealed the trial court's 2014 fee awards. We reversed the court's fee order in two limited respects—as to the Busetti Firm's award for work done from 1978 to 1985 and as to the Gansinger Firm's award for work on its 1985 fee application. We otherwise affirmed the trial court's decision.

B. 2015 Fee Applications

In 2015, Plaintiffs' Counsel moved for attorney fees and costs associated with work performed after the period covered by the prior fee awards: the Gansinger Firm sought $406,972 for 1,017.43 hours and $35,893.92 in costs; the Busetti Firm sought $32,260 for 95.15 hours; Jones Bell sought $122,083.50 for 280.90 hours of work as well as $1,340 in costs; and Woosley sought fees

forf 1,009.27 hours plus $5,975.55 in costs.[6] The vast majority of the claimed time expenditures related to litigation over the prior attorney fee awards, with other time pertaining to oversight of the claims administration and refund process.[7]

The State opposed these motions for further fees, contending Plaintiffs' Counsel were not entitled to any fees and costs, or were entitled at most to limited fees and costs, because they were not successful in obtaining a favorable judgment on the merits of the underlying litigation or in defending the prior fee awards, which the trial court reduced from approximately $23 million to $2.8 million. The State proposed that if the trial court decided to award attorney fees at all, it should reduce the amount sought by Plaintiffs' Counsel by 90 percent to conform to the prior reduction in fees.

In their written submissions and at a hearing on the attorney fee motions held in September 2015, the parties argued over whether Plaintiffs' Counsel should be considered successful for the purpose of obtaining fees on fees under section 1021.5. Attorney Gansinger contended the class plaintiffs were successful because they had prevailed in the underlying lawsuit—which brought about legislative changes and benefited "hundreds of

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[6] Woosley did not request a particular dollar amount in his fee application, but he provided his current and historical billing rates in order for the court to calculate a lodestar value.

[7] Woosley is the only party who reported significant time expenditures on non-fee-related work. He claimed 227.05 hours from July 2006 to January 2009 for work, in his words, "monitoring the [claim] refund process, the stopping of discrimination, and finalizing the judgment."

thousands of California taxpayers"—and there was no requirement that they succeed on every claim in order to obtain fees. Attorney Gansinger further argued they had succeeded in the earlier fee litigation because this court affirmed their entitlement to fees and the trial court's 2014 decision on remand was simply a reconsideration of the ultimate amount awarded. Attorney Gansinger noted his firm was awarded more than $1.8 million in attorney fees in 2014, which belied the State's assertion that Plaintiffs' Counsel were unsuccessful.

The trial court took the matter of Plaintiffs' Counsel's entitlement to attorney fees under submission and continued the hearing to November for argument regarding the appropriate amount of attorney fees (in the event the court found Plaintiffs' Counsel were entitled to them).[8]

In early 2016, the trial court granted Plaintiffs' Counsel's fee motions and awarded them the following amounts: to the Gansinger Firm, $404,275.75 in attorney fees and $5,281.87 in costs; to the Busetti Firm, $32,260 in attorney fees and $60 in costs; to Jones Bell, $122,083.50 in attorney fees and $393.57 in costs; and to Woosley, $277,592 in attorney fees and $60 in costs.

The trial court was unpersuaded by the State's contention that Plaintiffs' Counsel were not entitled to fees under section 1021.5. The court relied on *Serrano v. Unruh* (1982) 32 Cal.3d 621 (*Serrano IV*) for the proposition that when a party is deemed successful on the merits for the purpose of obtaining fees under section 1021.5, there is no independent inquiry into the party's

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[8] The trial court held at least one subsequent hearing in November 2015, but there is no transcript for that hearing in the appellate record.

success for the purpose of awarding fees on fees. The trial court further concluded, in any event, that Plaintiffs' Counsel had succeeded in defending their entitlement to the earlier fee awards because they "achieved the primary relief sought" and disputes over the amounts to be awarded did "not go to the primary relief sought."

Turning to the calculation of the awards, the trial court acknowledged that lack of success should be considered in an award of attorney fees pursuant to section 1021.5, but it rejected the State's proposal to reduce the lodestar values of Plaintiffs' Counsel by 90 percent. The court reasoned the proposed reduction was "an arbitrary ratio and an illogical calculation" that ran contrary to our Supreme Court's decision in *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311 (*Press*). The court also "decline[d] to deconstruct counsel's billing records in an attempt to unwind and reduce work performed [on what] the State contends were 'unsuccessful' claims," reasoning that the State's recommendation for such reductions was "unsupported and insufficiently analyzed."

The trial court applied the lodestar method to calculate awards for Plaintiffs' Counsel. After reviewing the billing records and hourly rates for work by the Gansinger Firm, the Busetti Firm, and Jones Bell, the trial court found the rates they submitted were reasonable and the time expenditures they reported were supported by appropriate documentation, except for a small number of hours the Gansinger Firm spent on issues relating to the then-pending appeal of the 2014 fee awards to this court. The trial court awarded the Busetti Firm and Jones Bell the full amounts sought, and the Gansinger Firm close to the amount it sought.

In contrast to the other Plaintiffs' Counsel, the trial court found Woosley's stated rate, which ranged from $400 to $750 per hour over the relevant time period, to be excessive. The court determined a rate of $400 per hour was appropriate and calculated Woosley's lodestar accordingly.[9] The trial court also identified concerns with Woosley's billing records: Woosley requested fees for work performed during the period covered by the prior fee award;[10] he used "[b]lock billing" rather than identifying specific tasks completed; and his records revealed double billing and "hours not reasonably expended (excessive, redundant or unnecessary)." The court deducted 303.2 hours from Woosley's application based on its concerns: 18.7 hours for work during the period covered by the prior fee award; 25 hours for time entries it found "vague as argued by the State"; 25 hours for "numerous entries for tasks and communications in the amounts of .10 to .40 that appear inefficient (as argued by the State), excessive, unnecessary and/or unreasonable"; and 234.5 hours for vague, block-billed time that "obscure[d] the work done" and included time the court found to be "inflated, padded in many instances and unreasonable . . . ."

The trial court awarded substantially fewer costs than those requested by Plaintiffs' Counsel. The court found the costs claimed were in many cases unrecoverable or vaguely described.

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[9] The rates of the other Plaintiffs' Counsel ranged from $325 to $435 per hour.

[10] Even though the prior judgment awarded attorney fees for work through March 2007, Woosley sought fees for work going back to July 2006.

The State appeals, and Woosley cross-appeals, the trial court's attorney fees order. The Gansinger Firm, the Busetti Firm, and Jones Bell do not challenge the fee award, and they are respondents only in this proceeding.

II. DISCUSSION

We must uphold a trial court's order awarding attorney fees pursuant to section 1021.5 unless we are convinced the court abused its discretion. (*Vasquez v. State* (2008) 45 Cal.4th 243, 251.) Here, the trial court evaluated Plaintiffs' Counsel's individual billing records and rates, and considered the written and oral arguments of all parties. The court expressly considered whether the fee awards should be reduced for lack of success; deducted hours it found to be unrecoverable, vague, unnecessary, or otherwise inappropriate; and ultimately awarded fees without any enhancement. In our judgment, the record shows the trial court appropriately exercised its discretion.

A. The Trial Court Did Not Abuse Its Discretion by Failing to Consider Lack of Success

The State contends that even if the trial court were permitted to award Plaintiffs' Counsel fees as a prevailing party, the court was required to adjust those fees downward to reflect the extent to which Plaintiffs' Counsel failed to achieve success. We conclude the trial court committed no error.

In rendering an award of attorney fees pursuant to section 1021.5, the trial court first calculates a "lodestar" amount based on its compilation of counsels' hours, multiplied by their reasonable rates. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (*Graham*).) After calculating the lodestar, the

court may adjust the amount upwards or downwards based on various factors. (*Ibid.*; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) By adjusting the lodestar, the court retrospectively approximates the fair market rate for the attorney work. (*Graham*, *supra*, at p. 579.)

As long as the court properly considers the factors that might warrant an adjustment, the court has discretion to determine whether those factors merit enhancement or reduction. (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239-1240.) As our Supreme Court implicitly recognized when it partially reversed the judgment in this case, a party's lack of success is a factor that could justify a reduction in section 1021.5 attorney fees. (*Woosley*, *supra*, 3 Cal.4th at p. 795; see also *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 973-975 [even if party is entitled to attorney fees under section 1021.5, trial court may adjust lodestar downward to account for relative lack of success].)

"[A]bsent circumstances rendering the award unjust, fees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim." (*Serrano IV*, *supra*, 32 Cal.3d at p. 639; see also *id.* at p. 637 [where underlying litigation meets requirements of section 1021.5 fee award, litigation in defense of that award need not independently meet the requirements of section 1021.5].) Like litigation on the merits, fee-related litigation may be enhanced under certain circumstances. (*Graham*, *supra*, 34 Cal.4th at p. 581; see also *id.* at pp. 582-583 ["[F]ees for fee litigation may be enhanced when a defendant's opposition to the fee motion creates extraordinary difficulties" or where there "is a significant delay in the payment

of the fees"]; *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 997-998 (*Downey Cares*).) "[T]he enhancement justified for fees in the underlying litigation may differ from the enhancement warranted in the fee litigation, and . . . a lower enhancement, or no enhancement, may be appropriate in the latter litigation." (*Graham*, *supra*, at p. 582.)

The trial court expressly recognized lack of success was a factor to be considered in determining attorney fees. The court deducted time it found to be unrecoverable, unnecessary, vague, or excessive, and it calculated fees without the enhancement of any multiplier—despite the fact that a positive multiplier was applied to most of the fee awards for the underlying litigation and there might have been some justification for enhancement of the fees on fees award here. The State has not shown that the court failed to give adequate consideration to lack of success.[11] (See, e.g., *Serrano IV*, *supra*, 32 Cal.3d at p. 639, fn. 28 [rejecting proposal to limit fees on fees awards to parties who are "awarded 'all or substantially all' (i.e., 75 percent) of the amount originally

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[11] We do not presume the trial court erred, and it is the appellant's burden to demonstrate error with an adequate record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*); *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.) Because the appellate record does not contain a transcript or settled statement of the November 2015 hearing at which the trial court indicated it would consider arguments regarding the appropriate amount of attorney fees, we have no way of knowing to what extent the court addressed lack of success as a factor at that hearing. Considering the record before us, the trial court's statement of decision is accordingly more than sufficient for us to conclude the court adequately considered lack of success in calculating the attorney fee awards.

sought" as "unnecessarily confining" considering the "[s]ufficient controls . . . in the current system, which demands that hours be carefully documented"]; *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 825-826 (*Cates*) [court did not err in declining to reduce lodestar based on factors it explicitly considered, including lack of success].)

Nor does law of the case require a reduction in the fee awards. When this court remanded the matter in 2010 for a reconsideration of attorney fees, we did not require the trial court to reduce Plaintiffs' Counsel's attorney fees for lack of success. Rather, we directed the court to exercise its discretion after expressly considering that factor. In following our instructions, the trial court distinguished how it treated the attorney fees sought for work on the merits versus those sought for work on the fee applications. The court reduced the lodestar hours and the multipliers previously applied to the fees for the underlying litigation. With respect to the fee work, on the other hand, the court declined to reduce counsel's hours based on lack of success, but did not apply any positive multiplier.

As our Supreme Court indicated in *Graham*, *supra*, 34 Cal.4th 553, there are significant distinctions between litigation on the merits and litigation on the entitlement to fees that warrant treating attorney fee applications pertaining to each type of work differently. The facts of this case illustrate those distinctions. The underlying lawsuit was predicated on multiple, distinct legal theories; it sought distinct remedies based on those theories; and the time expenditures of Plaintiffs' Counsel on the lawsuit were attributable to work on those theories. Thus, the trial court had a basis for determining what the market rate of Plaintiffs' Counsel's services would have been had their work

been limited to successful issues. The fee litigation in this case is different. The time Plaintiffs' Counsel devoted to litigating attorney fees was driven not so much by their pursuit of multiple legal theories but by procedural circumstances and the nature of the State's opposition, both of which made the fee litigation more cumbersome and complex.[12] (See *Serrano IV*, *supra*, 32 Cal.3d at pp. 638-639 [length of section 1021.5 fee litigation "lies in defendants' hands" and the "government 'cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response'"]; see also *id.* at pp. 632, 634 [depriving successful parties from fees on fees awards would frustrate or nullify the private attorney general doctrine, effectively reduce the compensation of counsel for their work on the merits, and "permit fees to be determined by the litigiousness of losing parties"].) To the extent Plaintiffs' Counsel failed to defend their prior fee awards, that failure pertained only to the amounts awarded and not to a wholesale rejection of a principal basis for their claims, as was the case in the underlying litigation.

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[12] On remand from this court's 2010 reversal of the attorney fees award, the case was ultimately assigned to a new trial judge with no familiarity with the decades-long litigation. The newly assigned judge ordered the State to identify the specific time entries by Plaintiffs' Counsel that the State objected to, but the State failed to comply with the trial judge's order and instead advocated only for across-the-board percentage reductions. The State's failure complicated matters for both Plaintiffs' Counsel and the trial court, which ultimately decided a multi-day evidentiary hearing and a painstaking independent review of decades of time entries was required to resolve the fee dispute.

Because the trial court applied the proper standards in determining the attorney fee awards in this case and because those awards are supported by a reasonable basis in the record, we find no abuse of discretion. (See *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 92; *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 776.)

B. The Trial Court Did Not Err in Determining Woosley's Fee Award

Woosley contends the trial court abused its discretion in calculating his lodestar because the court (1) reduced his hours without an adequate basis or explanation, (2) did not use his actual hourly rate, and (3) did not enhance his award for risk and delay. Much like the State's contentions, Woosley's arguments on appeal are handicapped by the absence of a transcript or settled statement of the trial court's hearing(s) on the amounts Plaintiffs' Counsel should be awarded. Without a complete record, we cannot ascertain the extent to which Woosley's arguments on appeal were considered by the trial court. (See, e.g., *Maria P.*, *supra*, 43 Cal.3d at pp. 1295-1296 [affirming attorney fee award where appellant failed to provide adequate record showing the basis for the court's decision].) In any event, on the record presented, each of Woosley's arguments is meritless.

As we explained in our most recent opinion in this litigation, it is the fee applicant's burden to establish that the fees he seeks are reasonable, and the trial court "has considerable latitude to accept or reject a fee applicant's claim" without relying on the specific deductions or reasons for deductions proposed by an objecting party. Thus, Woosley's contention that the court

was not permitted to make deductions unless supported by a detailed explanation from the State justifying each deducted entry is meritless. (See, e.g., *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096 ["trial court has broad authority to determine the amount of a reasonable fee," and such a determination "'is committed to the discretion of the trial court'"] (*PLCM Group*); *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127 [trial court not bound by parties' positions in determining reasonable fee].) In any case, the State did specifically identify time entries by Woosley that it objected to and the basis for its objections. The trial court sustained some, but not all, of the State's objections and reduced Woosley's lodestar after independently reviewing his records. The court declined, for example, to reduce Woosley's lodestar for unsuccessful work as the State recommended, but it did make certain deductions for time entries it found to be block-billed and vague, inflated, or otherwise unreasonable. The court's method and results were both sound.[13]

The trial court also committed no error when it determined a reasonable billing rate for calculating Woosley's award. The

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[13] Woosley asserts the entries characterized as block-billed look that way not because he actually block-billed his time but because he was compelled to reconstruct his records on account of a computer or software malfunction. The distinction is unavailing. While a trial court is not prohibited from calculating a fee award on the basis of reconstructed records (see, e.g., *PLCM Group*, *supra*, 22 Cal.4th at p. 1096, fn. 4), it is not required to do so (see, e.g., *Cates*, *supra*, 213 Cal.App.4th at p. 821 [court appropriately reduced reconstructed hours based on "evidentiary problems with the documentation"]).

"'"reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors . . . [:] the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.'" [Citation.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139 (*Ketchum*).) Here, the trial court settled on an hourly rate of $400 after considering "the going market rates in the community for the type of case involved" and Woosley's experience and background, which was "primarily in the area of taxation and tax litigation." The court's determination was well within its discretion. We note that Attorney Gansinger, who served as lead counsel in this case from its inception and whose law practice since 1970 focused primarily on complex business litigation, sought an attorney fee award based on a $400 hourly rate.

Finally, we conclude the trial court's decision not to enhance Woosley's fee award for risk and delay was not error. By the time Plaintiffs' Counsel applied for the attorney fees at issue here, their entitlement to an award of some amount was all but inevitable (notwithstanding the State's arguments to the contrary) based on their success in the underlying litigation and their earlier fee award. (See *Graham*, *supra*, 34 Cal.4th at p. 583.) Thus, the trial court did not abuse its discretion in failing to enhance Woosley's award for risk. Nor do we think the court abused its discretion by declining to enhance Woosley's award for the delay in payment. While a "small" enhancement "tantamount to an interest rate" for "a significant delay in the payment of the fees" is permitted (see *id.* at pp. 583-584), it is not mandatory (see *Ketchum*, *supra*, 24 Cal.4th at p. 1138 ["trial court is not *required* to include a fee enhancement to the basic lodestar figure for

contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case"]; see also *Espejo v. Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 384-385 [court has discretion not to enhance lodestar in section 1021.5 fee award]). Particularly given the lack of a complete record in this case, "[w]e are entitled to presume the trial court considered all the appropriate factors in choosing the multiplier . . . ."[14] (*Downey Cares*, *supra*, 196 Cal.App.3d at p. 998.)

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[14] Woosley's more general contention that the record does not reveal the trial court exercised its discretion in several respects is meritless. (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383 ["Ruelas has failed to carry his burden to show the juvenile court failed to exercise its discretion and we must presume it did"].)

DISPOSITION

The order is affirmed. The Gansinger Firm, the Law Offices of John F. Busetti, and Jones, Bell, Abbott, Fleming & Fitzgerald are to recover their costs on appeal from defendants. Patrick G. Woosley shall bear his own costs on appeal. Defendants are awarded no costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.