No. _____

IN THE SUPREME COURT OF CALIFORNIA

NICHOLAS HONCHARIW et al.,
Plaintiffs and Respondents,

v.

PMF CA REIT, LLC, et al.,
Defendants and Appellants.

After a Decision of the Court of Appeal, Second Appellate District, Division Three, No. B337927

After an Appeal from the Superior Court for the State of California, County of Los Angeles, Case No. 21STCV25191, Hon. Bruce G. Iwasaki

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PETITION FOR REVIEW

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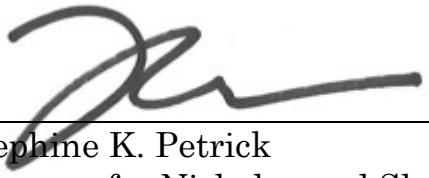
CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rules of Court, rule 8.208, Nicholas and Sharon Honchariw certify that they are individuals and have nothing to report.

Dated: February 6, 2026

Respectfully submitted,

THE NORTON LAW FIRM PC



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ISSUES PRESENTED

In *Trope v. Katz* (1995) 11 Cal.4th 274, this Court held that self-represented attorneys cannot recover attorney fees under Civil Code section 1717 because they have not "incurred" fees within the statute's meaning. *Musaelian v. Adams* (2009) 45 Cal.4th 512 extended this reasoning to attorney fees awarded as sanctions under Code of Civil Procedure section 128.7, subdivision (d). The courts of appeal are now deeply divided on how these authorities apply when a self-represented attorney also represents their spouse in litigation, and whether *Trope*'s reasoning extends to fee-shifting by agreement of the parties under Code of Civil Procedure section 1021 where neither section 1717 nor any other statute applies to bar such fee-shifting.

The issues presented are:

1. Under what circumstances, if any, can a litigant recover prevailing party attorney fees for work performed by their attorney-spouse on a claim or defense they share?

   a. One line of authority holds that where spouses' interests are joint and indivisible, an attorney-spouse cannot recover fees for representing the spouse in litigation. (*Gorman v. Tassajara Development Corp.* (6th Dist. 2009) 178 Cal.App.4th 44; *Gillotti v. Stewart* (3d Dist. 2017) 11 Cal.App.5th 875; *Honchariw v. PMF CA REIT, LLC* (2d Dist. Div. 3, 2025) 117 Cal.App.5th 827 [the Opinion Below ("Op.")].)

   b. A second line of authority holds that spouses' joint and indivisible interest in the action does not preclude recovery; and that instead, the issue is whether the attorney-

spouse had a bona fide attorney-client relationship with the other spouse. (*Rickley v. Goodfriend* (2d Dist. Div. 7, 2012) 207 Cal.App.4th 1528; *Gogal v. Deng* (4th Dist. Div. 1, 2025) 112 Cal.App.5th 1161; see also *Rickley v. County of Los Angeles* (9th Cir. 2011) 654 F.3d 950.)

c. A third, overlapping line of authority recognizes the propriety of fees for attorney-spouses who pursue litigation that assists the court and serves the public interest in addition to serving their private interests. (*Rickley*, *supra*, 207 Cal.App.4th 1528; see *Gillotti*, *supra*, 11 Cal.App.5th 875.)

2. Do *Trope* and *Musaelian* permit self-represented attorneys (and/or their spouses) to recover fees by agreement among the parties under Code of Civil Procedure sections 1021 and 1033.5?

a. The Opinion Below held that a self-represented attorney may not recover fees as costs under Code of Civil Procedure, sections 1021 and 1033.5.

b. *Lockton v. O'Rourke* (2d Dist. Div. 4, 2010) 184 Cal.App.4th 1051, held that even if self-represented attorneys are not entitled to fees under Section 1717 of the Civil Code, parties may contractually agree to permit an award of fees to the self-represented attorney under section 1021 of the Code of Civil Procedure.

c. Unpublished authorities have deepened this split on both sides of the ledger.

STATEMENT OF THE CASE

A. This dispute arises from unlawful default interest rates charged by hard money lender PMF.

This case arises from a mortgage loan dispute between Petitioners Nicholas and Sharon Honchariw and hard money lender PMF CA REIT, LLC. (Op. at p. 1.) The Honchariws obtained a $6.1 million bridge loan from PMF secured by their community property home in Tiburon. (*Id.* at p. 3.) Nicholas and Sharon were jointly and severally liable on the note, which was secured by the community property home, though each spouse also held separate property. (*Id.* at p. 22; see AA 7, 39–40, 70.)

The Honchariws were attempting to sell the house when the COVID-19 pandemic struck. (See AA 71; see also AA 42 ¶ 22.) The Honchariws then missed a payment. (Op. at pp. 3–4.) The lenders imposed a "default" interest rate that increased their rate from 8.99 percent to 19.5 percent on the principal balance of the loan. (Op. at pp. 3–4; see AA 71.) The default rate of 19.5% per annum meant that the Honchariws' monthly payments increased by $54,477 to $101,075—the equivalent of 116.9% per month and 1403% per annum on the overdue monthly instalment of $46,598. (AA 71; see AA 46 ¶ 43.)

The Honchariws objected to the default rate as unlawful, but PMF rejected their demand to cancel its imposition. (AA 71:23–24.) The Honchariws refinanced with another lender and paid off the balance including accrued default interest. (Op. at pp. 3–4.) The Honchariws ultimately sold the home for approximately $12 million. (Op. at p. 22.)

B. The Honchariws successfully sue another lender, FJM, for charging them an unlawful default interest rate.

In a separate action arising from the same property, the Honchariws sued a different bridge loan lender, FJM Private Mortgage Fund, LLC, who charged them an unlawful late fee. (*Honchariw v. FJM Private Mortgage Fund, LLC* (2022) 83 Cal.App.5th 893 ("*Honchariw I*").) The late fee provided for a one-time 10% fee of the overdue monthly payment and a default interest charge of 9.99% per year against the unpaid balance of the loan. (*Id.* at p. 901.)

The Court of Appeal held that the late fee violated Civil Code section 1671, and further held (in the context of invalidating an arbitration award in FJM's favor) that section 1671 "expresses [a] 'well defined and dominant' public policy" of the State, protecting borrowers against "'unfair and unreasonable coercion arising from an imbalance of bargaining power.'" (*Id.* at pp. 899, 900, citations omitted; see *Garrett v. Coast & Southern Fed. Sav. & Loan Assn.* (1973) 9 Cal.3d 731, 739 [late payment charge measured against unpaid balance of loan was an unlawful penalty under Civil Code, section 1671].) The Court of Appeal reversed (*Honchariw I*, *supra*, 83 Cal.App.5th at p. 897), and the Honchariws prevailed on remand (see *infra*, § I.B.4.)

C. The Honchariws also successfully sue PMF for charging them an unlawful default interest rate, and are awarded their attorney fees.

In the action giving rise to the Opinion Below and this petition, the Honchariws sued PMF to recover the default interest payments. (Op. at pp. 3–4.)

Nicholas Honchariw, a semi-retired real estate attorney, represented himself and Sharon in the proceedings. (*Id.* at pp. 4–5.) He was engaged to protect Sharon's separate interests as well as their community interests. (AA 104 ¶ 1.) In other situations (e.g., estate planning), Sharon hired outside counsel. (AA 102 ¶ 4.) Sharon selected Nicholas as her attorney because of his extensive real estate financing expertise. (AA 102 ¶ 2; see AA 104–105 ¶¶ 2–8.) Nicholas accepted the representation on a contingent fee basis, contingent upon success and to the extent of an award of attorney fees. (AA 106 ¶ 11; see AA 300.) He maintained contemporaneous time records and exercised billing judgment to exclude any redundant, excessive, or unnecessary time. (AA 106 ¶ 13.) Since real property financing has been a primary area of Nicholas' expertise throughout his career, he was able to handle the work himself without needing to get up to speed on real estate law and the industry. (AA 105 ¶ 7.)

After a three-day evidentiary hearing before a referee, Justice Zebrowski (Ret.), the Honchariws prevailed on their claim that the default interest rate was an unlawful penalty under Civil Code section 1671, recovering $261,489. (Op. at p. 5; see AA 72–76.) The referee also awarded the Honchariws $251,200 in attorney fees and $91,114 in costs based on fee provisions in their

loan agreement with PMF. (Op. at pp. 3–6.) The provisions, drafted by PMF, provided discretion to the referee in the mandated reference proceedings to award attorney fees or not. (AA 33 ¶ 12(b).) The referee did not specify the statutory basis for the fee award (i.e., Civil Code section 1717 or Code of Civil Procedure sections 1021 and 1033.5). (*Id.* at p. 13.)

D. The court of appeal reverses the attorney fee award, deepening a split of authority.

PMF appealed only the attorney fee award, not the trial court's judgment holding PMF liable for imposing unlawful penalty interest rates under Civil Code, section 1671. (Op. at p. 6; cf. *Honchariw I, supra*, 83 Cal.App.5th at pp. 899–901.)

The Court of Appeal (Second District, Division Three) reversed the attorney fee award in the published portion of its opinion. (*Honchariw v. PMF CA REIT, LLC* (2025) 117 Cal.App.5th 827, appended hereto.) The court of appeal held that Nicholas Honchariw is not entitled to attorney fees for his own legal work, regardless of the statutory basis for the award (i.e., Civil Code, section 1717, or Code of Civil Procedure, sections 1021 and 1033.5), relying on *Trope v. Katz* (1995) 11 Cal.4th 274 (holding self-represented attorneys do not "incur" legal fees within the meaning of Civil Code, section 1717, so are not entitled to fees for actions "on a contract"). (Op. at pp. 8–15.)

The court of appeal further held that Sharon could not recover attorney fees for Nicholas' time spent on the case, deepening a split of authority among the Courts of Appeal. (Op. at pp. 15–22; see *infra*, § I.B.6.)

No petition for rehearing was filed.

STANDARD OF REVIEW

Although a trial court's award of fees and costs is generally reviewed for abuse of discretion, where, as here, the appeal turns on questions of statutory interpretation, review is de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332, as modified (Mar. 30, 2010); *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

REASONS FOR GRANTING REVIEW

I. Review is necessary to resolve a conflict among the courts of appeal on whether and when attorneys may recover fees for work performed on behalf of a spouse.

A. This Court's precedents leave open whether attorneys may recover fees for work performed on behalf of a spouse on matters of joint interest.

In *Trope*, *supra*, 11 Cal.4th 274, this Court held that self-represented attorneys cannot recover attorney fees under Civil Code section 1717 because they have not "incurred" fees within the statute's meaning. *Trope* reasoned that the "usual and ordinary meaning of the words 'attorney's fees,' both in legal and in general usage, is the consideration that a litigant actually pays or becomes liable to pay in exchange for legal representation." (*Id.* at p. 280.) The Court also emphasized that permitting self-represented attorneys to recover fees while denying such recovery to nonattorney pro per litigants would create "disparate

treatment" that would "be viewed by the public as unfair." (*Id.* at p. 286, internal citation omitted.)

In *Trope*, this Court distinguished attorney fees sought under Civil Code section 1717, from attorney fees awarded as a matter of public policy or other equitable considerations. (*Id.* at pp. 283–284, citing *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 915, fn. 13 [dicta], disapproved of on other grounds by *Kowis v. Howard* (1992) 3 Cal.4th 888, 896–897.) In *Consumers Lobby*, a nonattorney served as the sole representative of Consumers Lobby Against Monopolies (CLAM), a consumer group he had founded. (*Id.* at p. 897.)[1] CLAM successfully sued Pacific Telephone, alleging it unlawfully shifted costs from commercial customers to general rate payers. (*Id.* at pp. 897–898.)

This Court held that the Public Utilities Commission had equitable power to award attorney fees under the circumstances. (*Id.* at p. 897.) In dicta, the Court questioned the logic of denying fees to self-represented attorneys, noting that an attorney's "time spent in preparing and presenting his case is not somehow rendered less valuable because he is representing himself rather than a third party." (*Id.* at p. 915, fn. 13.)

In *Trope*, this Court harmonized its holding with footnote 13 of *Consumers Lobby*. (*Trope, supra*, 11 Cal.4th at pp. 283–284.) *Consumers Lobby* did not address attorney fees under section 1717 of the Civil Code—it considered, in the words of the

[1] Nonattorneys may be awarded fees for services in a representative capacity before the PUC. (*Id.* at pp. 913–915.)

Trope Court, whether the PUC could award attorney fees to a pro se litigant "under any of the traditional equitable exceptions to the American rule, such as the private attorney general, substantial benefit, and common fund theories[.]" (*Trope*, *supra*, 11 Cal.4th at p. 284.) "Because *Consumers Lobby* involved an equitable exception to the American rule, our authority to shape the various theories of recovery discussed therein derived from our traditionally broader and more flexible 'inherent equitable powers.' [Citation.]" (*Ibid.*)

This Court has declined to extend *Trope*'s reasoning to new scenarios beyond attorneys representing themselves. Although the *Trope* Court reasoned that Civil Code section 1717 generally limits "attorney fees" to those the litigant "actually pays or becomes liable to pay" (*Trope*, *supra*, 11 Cal.4th at p. 280), this Court later held that fees could be awarded under the same statute for work performed by in-house counsel (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1097, as modified (June 2, 2000)), and for work performed pro bono (*Lolley v. Campbell* (2002) 28 Cal.4th 367, as modified (Sept. 25, 2002) [pro bono work performed by Labor Commissioner]; see also, e.g., *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668 [pro bono legal services organizations could recover attorney fees under section 1021.5 of the Code of Civil Procedure]; *Flannery v. Prentice* (2001) 26 Cal.4th 572, 585 [pro bono attorneys entitled to "reasonable" fees under fee-shifting statutes]; *Ketchum v. Moses* (2001) 24 Cal.4th 1122 [anti-SLAPP fees available to attorney working on contingency].)

For example, in *PLCM*, this Court reasoned that in-house counsel have a true agency relationship with the corporation and are bound by fiduciary and ethical duties. (22 Cal.4th at pp. 1091–1094.) This Court held that denying fees to in-house counsel would violate the principle of mutuality of remedy intended by Civil Code section 1717. Denying such fees would unfairly discriminate between corporations that use in-house counsel and those that use outside firms, potentially providing a windfall to the losing party. (*PLCM*, at p. 1093.)

In *Musaelian v. Adams* (2009) 45 Cal.4th 512, this Court reaffirmed *Trope*'s core holding and held that self-represented attorneys cannot recover attorney fees as sanctions because Code of Civil Procedure section 128.7, subdivision (d), contains the same operative language as Civil Code section 1717—permitting recovery of attorney fees "incurred." (*Musaelian*, at p. 517.)

This Court harmonized *Trope* with the *Lolley–PLCM–Ketchum* line of decisions. (*Musaelian*, *supra*, 45 Cal.4th at p. 520.) As this Court explained, in the pro bono and contingency-representation cases, "attorney fees were 'incurred' in the sense that there was an attorney-client relationship, the attorney performed services on behalf of the client, and the attorney's right to fees grew out of the attorney-client relationship." (*Ibid.*) By contrast, the attorney-litigants in *Musaelian* and *Trope* were representing their own personal interests and seeking remuneration for "lost opportunity costs that could not be recouped by a nonlawyer" in "litigating his or her own case." (*Ibid.*)

This Court has not yet addressed whether and when attorney fees are available to married litigants when one spouse is an attorney representing both spouses in the litigation.[2] Indeed, this Court has implicitly left this question open. (See *Trope*, *supra*, 11 Cal.4th at p. 292, citing *Leaf v. City of San Mateo* (1984) 150 Cal.App.3d 1184.) In *Leaf*, an attorney represented himself and his wife in a reverse condemnation proceeding, and the Court of Appeal allowed an award of attorney fees when they prevailed. (*Leaf*, at p. 1189.) In *Trope*, this Court disapproved *Leaf* and several other Court of Appeal decisions only "[t]o the extent they state or imply" that this Court's earlier precedents "are no longer valid or should not be followed." (*Trope*, at p. 292.) This Court emphasized that it expressed "no opinion regarding any other aspect of the reasoning or the holdings" of those decisions, and "no opinion" regarding attorney fees to pro se litigants "in the context of the equitable exceptions to the American rule." (*Ibid.*) Thus, *Trope* did not disturb the portion of *Leaf* allowing attorney-spouses to recover fees.

[2] "Attorney-client relationships have been recognized between an attorney-spouse and a nonattorney spouse when the former represented the latter in litigation that did not involve a joint claim. [Citations.]" (*Gogal v. Deng* (2025) 112 Cal.App.5th 1161, 1170, fn. 6.) For purposes of this petition, the Honchariws proceed on the understanding that they have a joint claim.

B. The courts of appeal are split on fee awards to attorney-spouses.

The courts of appeal have reached conflicting and irreconcilable conclusions on the questions this Court's attorney-fee precedents have left open:

1. Whether attorneys representing both themselves and their spouse are merely "litigating [their] own case," and thus not entitled to fees (*Musaelian*, *supra*, 45 Cal.4th at p. 520); or

2. Whether attorney-spouses are entitled to fees because—as with pro bono, contingency, and in-house representation—fees are "incurred" where "there was an attorney-client relationship, the attorney performed services on behalf of the client, and the attorney's right to fees grew out of the attorney-client relationship" (*ibid.*); and

3. Whether fees are available to attorney-spouses who pursue litigation that assists the court and serves the public interest in addition to serving their private interests (see *Trope, supra*, 11 Cal.4th at pp. 283–284, citing *Consumers Lobby, supra*, 25 Cal.3d at pp. 879, 915, fn. 13.)

1. *Gorman* (Sixth District): No fees where attorney-spouse's interests are joint and indivisible.

In *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, a married couple sued their contractor on a contract containing a prevailing-party fee-shifting provision. (*Id.* at p. 52.) Gorman, an attorney, litigated the case alongside outside counsel. (*Id.* at pp. 52, 54.) The case settled, and plaintiffs sought attorney fees as prevailing parties. (*Id.* at pp. 52, 54–55,

90.) The plaintiffs sought fees for work performed by Gorman personally, Gorman's colleagues, and other outside counsel. (*Id.* at pp. 90–91, 93.) The trial court reduced the award but did not explain its reasoning. (*Id.* at pp. 53, 56–57.)

The Court of Appeal (Sixth District) held that *Trope* barred recovery for Gorman's personal time. (*Id.* at p. 95.) Although his wife was a co-plaintiff who had signed a retainer agreement with his firm, the court reasoned that the spouses' interests were "joint and indivisible" and their community estate was liable for their contracts. (*Ibid.*) The court also noted that there was no claim Gorman spent extra time representing his wife beyond the time he spent representing himself. (*Ibid.*) The court of appeal held "there was no error" in disallowing fees that Gorman personally generated. (*Id.* at p. 97; see also, e.g., *Richards v. Sequoia Ins. Co.* (1st Dist. Div. 3, 2011) 195 Cal.App.4th 431, 436–437 [married attorneys could not recover fees in suit over their jointly owned bar]; *Witte v. Kaufman* (3d Dist. 2006) 141 Cal.App.4th 1201, 1211 [no recovery where law firm represented by its own members]; *Soni v. Wellmike Enterprise Co. Ltd.* (2d Dist. Div. 3, 2014) 224 Cal.App.4th 1477, 1488–1489 [same]; *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (3d Dist. 2014) 230 Cal.App.4th 244, 260, as modified (Oct. 22, 2014) [same for "of counsel"]; *Sands & Associates v. Juknavorian* (2d Dist. Div. 1, 2012) 209 Cal.App.4th 1269, as modified on denial of reh'g (Oct. 30, 2012) [same].)

2. *Rickley* (Second District Division 7): Fees available if a bona fide attorney-client relationship exists and/or the litigation serves the public interest.

The Second District, Division 7 came to a different conclusion in *Rickley v. Goodfriend* (2012) 207 Cal.App.4th 1528, review den. (Oct. 17, 2012). There, a married couple filed nuisance actions against their neighbors and won. (*Id.* at pp. 1530–1531.) One spouse, an attorney, represented both. (*Ibid.*) When the neighbors refused to comply with one of the judgments, the couple initiated a contempt proceeding. (*Id.* at p. 1531.) Following a three-day trial, the court found the neighbors guilty, fined them $3,000 each, and sentenced one of the neighbors to jail time. (*Ibid.*)

The couple filed a motion for attorney fees under Code of Civil Procedure section 1218, which allows the court to order a contemnor to pay "the reasonable attorney's fees and costs incurred" by the party initiating the contempt proceeding. (*Id.* at p. 1531 & fn. 1.) Most of the fee request was for work the attorney-spouse performed. (*Id.* at p. 1531.) Though the trial court believed the fees were well deserved, it denied fees for the attorney-spouse's time. (*Id.* at p. 1532.)

The Court of Appeal (Second District, Division 7) reversed. (*Id.* at pp. 1538–1539.) The court examined the purpose of the contempt fee-shifting statute (Code Civ. Proc., § 1218), which was to "encourage parties to enforce contempt violations and to encourage parties to comply with court orders" (*Rickley*, at p. 1537.) As the court observed, the attorney-spouse "can be said to

be vindicating an important public interest by ensuring … compliance with the contempt order, and was taking a risk that she would not be compensated for her time." (*Ibid.*)

Disagreeing with *Gorman*, *Rickley* held that neither identical damages nor joint and indivisible interests defeat the attorney-client relationship. (*Id.* at p. 1538.) Rather, "the dispositive factor in awarding fees is not whether [the spouses] were liable for or obligated to pay fees, but whether there was an attorney-client relationship" between them. (*Id.* at pp. 1537–1538, citing Evid. Code, § 951.) The court remanded to allow the trial court to determine whether such a relationship existed and, if so, to grant the fee request. (*Id.* at pp. 1538–1539.)

Rickley has gained a following among the Courts of Appeal. (See *Gogal v. Deng* (2025) 112 Cal.App.5th 1161, 1165 [discussed *infra*, § I.B.5]; *Reed v. Wilson* (Cal. Ct. App., 4th Dist. Div. 1, June 5, 2017, No. D070699) 2017 WL 2417759, at *10 [nonpub. opn.][3] [following *Rickley* and affirming fees to litigant's common-law husband; appellant's "analogy to self-represented attorneys

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[3] Unpublished opinions are cited solely to demonstrate the extent of the split in authority. (See Cal. Rules of Court, rule 8.500(b)(1); *Camacho v. Superior Court (Merced County)* (2023) 15 Cal.5th 354, 376, fn. 2 [citing unpublished opinions demonstrating that the issue presented recurs frequently]; *People v. Mumin* (2023) 15 Cal.5th 176, 212, fns. 12–13, 230–234, App'x A [same, recurrence of issue and diverging approaches of the Courts of Appeal]; Smith & McGinty, *Obtaining California Supreme Court Review* (Dec. 2012) *Plaintiff Magazine*, p. 1 <https://bit.ly/SCOCA12> ["The petition [for review] can show the need to 'secure uniformity' by citing conflicting published decisions and unpublished decisions"].)

or law firms is inapposite to an attorney representing a significant other"; attorney-partner had a separate financial life and expected compensation]; *Sahansra v. Myers* (Cal. Ct. App., 3d Dist., June 29, 2016, No. C070001) 2016 WL 3640518, at *6 [nonpub. opn.] [citing *Rickley* with approval as an example of "case law holding attorney fee awards may be appropriate where an attorney-litigant was represented by an attorney who was also the litigant's spouse or another lawyer from the same firm"].)

Leading secondary sources favorably cite *Rickley*'s framework. (California Judges Benchbook: Civil Proceedings—Trial (July 2025) § 16.103; Robert H. Fairbank et al., California Practice Guide—Civil Trials and Evidence (Rutter Oct. 2025) ¶ 12:443.1 [same]; Hon. William P. Hogoboom (Ret.) & Hon. Donald B. King (Ret.), California Practice Guide—Family Law (Rutter June 2025) ¶¶ 14:128.1, 18:226.6; California Family Law Report—California Family Law Practice (Nov. 2025) § A.I, ¶ A.16.3.2.14.20.)

Published decisions applying analogous reasoning in non-spousal contexts further support *Rickley*'s approach. (See *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (1st Dist. Div. 4, 2012) 206 Cal.App.4th 988, 997–998 [affirming fee award to member of public interest group who represented group as attorney under the private attorney general statute (Code Civ. Proc., § 1021.5); group had implicitly "hired" attorney, there was no concern of self-dealing, and litigation sought to vindicate an important public interest]; *Ramona Unified School Dist. v. Tsiknas* (4th Dist. Div. 1, 2005) 135

Cal.App.4th 510, 525 [affirming award of fees under the anti-SLAPP statute (Code Civ. Proc., § 425.16) to attorney-defendant who assisted in the legal defense of herself and her co-defendant advocacy organization; the attorney-defendant assisted in the legal defense of herself and the organization, rendering legal services]; *Gilbert v. Master Washer & Stamping Co.* (2001) 87 Cal.App.4th 212, 214 [attorney who is sued in a matter involving personal interests and is represented by another partner in his or her law firm may recover attorney fees under Civil Code section 1717 for services rendered by that partner].)

3. *Gillotti* (Third District): Following *Gorman* and limiting *Rickley* to public-interest litigation.

The Court of Appeal (Third District) rejected *Rickley*'s analysis and adopted *Gorman*'s in *Gillotti v. Stewart* (2017) 11 Cal.App.5th 875, rev. granted on other grounds, Aug. 23, 2017, S242568, rev. dism., Mar. 21, 2018.[4] *Gillotti* was a construction defect action brought by an attorney and his wife, who held the property as trustee of the family trust. (*Id.* at p. 905.) After the homeowners prevailed, they sought attorney fees under Civil Code section 1717 for the husband's legal work. (*Id.* at p. 904.) The trial court allowed fees for work performed by the husband's

[4] The *Gillotti* petition for review did not address attorney fees. The issue presented was whether the Right to Repair Act precludes a homeowner from bringing common law causes of action for actual damages caused by construction defects. (*Gillotti v. Stewart*, No. S242568, Jun. 26, 2017, Pet. for Rev., at p. 1.)

colleagues but disallowed fees for work the husband performed himself. (*Id.* at p. 905.)

The Court of Appeal (Third District) affirmed, following *Gorman*. (*Id.* at pp. 905–906.) The court declined to apply *Rickley*, limiting it to cases where attorney fees were available by statute (there, Code Civ. Proc., § 1218) and the litigation helped vindicate the public interest (*Gillotti*, *supra*, 11 Cal.App.5th at p. 906; see also *Pyramid Design (Series D) LLC v. Lowe* (Cal. Ct. App. 1st Dist. Div. 2, Sept. 27, 2018, No. A150265) 2018 WL 4627169, at *7 [nonpub. opn.] [affirming denial of fees to attorney who was both trustee and beneficiary of trust at issue in the action, citing *Gillotti*; trial court concluded substance of attorney's participation "was for, and to, his personal benefit"].)

4. *Honchariw II* (First District, Division Three): Applying yet another framework, more aligned with *Rickley* than *Gorman*.

The issue of fees to an attorney-spouse also arose in the Honchariws' separate action against FJM. (See *supra*, Statement of the Case, § B; *Honchariw I*, *supra*, 83 Cal.App.5th 893.)

On remand from *Honchariw I*, the Honchariws prevailed and sought attorney fees under Civil Code section 1717, Code of Civil Procedure section 1293.2 (governing arbitration costs), and Code of Civil Procedure section 1021.5 (allowing cost-shifting in public interest suits). (*Honchariw v. FJM Private Mortgage Fund, LLC* (Cal. Ct. App., Dec. 20, 2024, No. A169447) 2024 WL 5182340, as modified on denial of reh'g (Jan. 16, 2025), review

den. (Mar. 19, 2025) ("*Honchariw II*").)[5] The trial court denied the request for attorney fees, reasoning that the Honchariws had not incurred any because Nicholas was representing them. (*Id.* at p. *1.)

The Court of Appeal (First District, Division Three) affirmed. (*Ibid.*) The court reasoned that the Honchariws failed to establish that they had an attorney-client relationship, distinguishing that case from *Rickley* and *Gorman*. (*Honchariw II*, *supra*, WL 182340, at p. *3.) Thus, the Court reasoned, the Honchariws were not entitled to fees under Civil Code section 1717. (*Ibid.*)

The court of appeal then considered whether the Honchariws were entitled to attorney fees under Code of Civil Procedure section 1021.5. (*Ibid.*) Without questioning whether *Trope* precluded spousal attorney fees under section 1021.5, the court analyzed whether the Honchariws satisfied that statute's requirements. (See *ibid.*) The court acknowledged: "There is no dispute the Honchariws were the successful parties, and their action enforced an important right affecting the public interest." (*Ibid.*) But the court ruled that the Honchariws were not entitled to fees under that statute because, in addition to vindicating the

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[5] Although *Honchariw II* is unpublished, PMF cited it in the Court of Appeal and lodged a copy of the opinion, invoking California Rule of Court 8.1115(b) and (c). (AOB at pp. 20–21, fn. 3; Appellant PMF CA REIT, LLC's Appendix of Non-California Authorities, Jan. 31, 2025, Ex. 1.) The Honchariws respectfully direct the Court's attention to *Honchariw II* because it contributes to the split of authority at issue in this Petition. (See *supra*, fn. 3.)

public interest, they also had a personal financial interest in the dispute. (*Ibid.*; see Code of Civ. Proc., § 1021.5.)[6]

5. *Gogal* (Fourth District Division One): Rejecting *Gorman* and following *Rickley*.

In *Gogal*, *supra*, 112 Cal.App.5th 1161,[7] a married couple brought a retaliatory eviction action against their landlord. The husband, an attorney, represented both spouses. (*Id.* at p. 1165.) The tenants prevailed on most claims and sought to recover half of the husband's fees, which they attributed to representing his wife. (*Id.* at pp. 1165–1166.)[8] Citing *Gorman*, the trial court denied the motion on the ground that the husband represented his wife in litigation involving a joint claim, categorically precluding fees. (*Id.* at pp. 1165, 1167.)

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[6] This Court denied the petition for review in *Honchariw II*. (No. S289072.) The issue presented was: "Can a pro per plaintiff achieving complete success in private attorney general litigation which served to vindicate an important public right and conferred a significant benefit on the public under CCP § 1021.5 be denied an award of attorney fees because he suffered no financial burden by actual payment of fees to third party counsel?"

[7] A case pending before this Court arises from a related case but addresses a distinct issue (propriety of a pre-dispute costs waiver). (*Gogal v. Deng* (2025) 112 Cal.App.5th 1193, rev. granted, No. S22779 (Nov. 19, 2025)).)

[8] The basis for the fees was Civ. Code, § 1942.5, subd. (i), which provides: "In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action." (*Gogal*, *supra*, 112 Cal.App.5th at p. 1166.)

The Court of Appeal (Fourth District, Division One) affirmed on different grounds, acknowledging that the issue "has been the subject of inconsistent opinions from California appellate courts." (*Id.* at p. 1164; see *id.* at pp. 1165, 1169.)

Rather than follow *Gorman*'s categorical approach, *Gogal* agreed with *Rickley*'s fact-based inquiry. (*Id.* at p. 1165.) The court explained that while it might be simple to follow *Gorman* and categorically deny fees in joint-claim litigation, a "more nuanced analysis is required." (*Ibid.*) The critical question, the court emphasized, is whether "a true attorney-client relationship exists between spouses," and courts "cannot merely assume as a matter of law, irrespective of the evidence, that it does not." (*Ibid.*)

The *Gogal* court found *Gorman*'s analysis lacking in several respects. (*Id.* at pp. 1170–1171.) *Gorman* did "not mention the principle that an attorney must be consulted in his or her professional capacity for legal advice in order for an attorney-client relationship to exist," nor did it "attempt to define the difference between a 'true' attorney-client relationship and any other kind." (*Id.* at p. 1170.) As the court observed, it was "unclear whether *Gorman* purported to establish an inflexible legal rule that there can never be an attorney-client relationship between spouses where their interests in the litigation and the damages they suffered were 'joint and indivisible[,]'" or whether the opinion merely held that "such circumstances will not support a finding of a 'true' attorney-client relationship in the absence of

other evidence indicating that the nonattorney spouse is playing more than a nominal role." (*Id.* at pp. 1170–1171.)

Gogal preferred *Rickley*'s approach because it "focused on more traditional criteria for determining whether an attorney-client relationship was created." (*Id.* at p. 1171.) The court explained: "While joint interests and coincident damages are relevant and often determinative considerations, they do not necessarily preclude an attorney-client relationship any more than separate interests and distinct damages define it." (*Id.* at p. 1172.) The court suggested that *Gorman* could be "harmonized with *Rickley* if it is construed narrowly to say that in the absence of other evidence, spouses with totally joint interests and seeking only coincident damages will generally be unable to establish a true attorney-client relationship." (*Ibid.*) Such "other evidence," the court noted, "may include any facts tending to show that the nonattorney spouse played a significant substantive role in the litigation rather than merely deferring to the other spouse." (*Ibid.*)

Applying this framework, the *Gogal* court nonetheless affirmed the denial of fees because the tenants "failed to present facts sufficient to establish the existence of a true attorney-client relationship." (*Id.* at p. 1165; see *id.* at p. 1172.)

6. The Opinion Below (Second District, Division 3): Following *Gorman* and rejecting *Rickley* and *Gogal*.

The Opinion Below deepened this split of authority, aligning with *Gorman* and *Gillotti* and expressly departing from *Rickley* and *Gogal*.

The Opinion Below held that Sharon could not recover attorney fees for Nicholas' time spent on the case. (Op. at pp. 15–22.) The court acknowledged that Nicholas and Sharon likely had a "true" attorney-client relationship in the sense that Sharon authorized Nicholas to act on her behalf and would be bound by his actions. But the court held this was irrelevant. (Op. at p. 20.) On this point, the Opinion Below explicitly disagreed with *Rickley* and *Gogal*, stating: "To the extent that *Rickley* and *Gogal* hold that a nonattorney's ability to recover attorney fees for legal work performed by his or her spouse turns on whether a 'true' attorney-client relationship exists between the spouses, we disagree." (Op. at p. 20.) Instead, the court reasoned that "whether a litigant represented by an attorney-spouse is 'self-represented' within the meaning of *Trope* depends on whether the litigation concerns a commonly held interest or asset." (*Ibid.*)

Although the Honchariws argued that, under *Rickley*, fees were appropriate not only because they had an attorney-client relationship but also because their litigation vindicated the public interest embodied in Civil Code section 1671 (RB at pp. 27–29), the Opinion Below did not address this contention (see Op. at pp. 17–18 [acknowledging *Rickley*'s public-interest rationale but not applying it].)

7. Federal courts, too, are split on this issue.

Federal courts are divided on whether and under what circumstances attorney-spouses may be entitled to fees.

The Ninth Circuit permits civil rights litigants to recover fees for work performed by an attorney-spouse. (*Rickley v. County*

of Los Angeles (9th Cir. 2011) 654 F.3d 950, as amended on denial of reh'g and reh'g en banc (Oct. 4, 2011).) In *Rickley*, the Ninth Circuit held that "a successful civil rights plaintiff may recover a reasonable attorney's fee for legal services performed by her attorney-spouse." (*Id.* at p. 951.) The Ninth Circuit reasoned: "[W]e see no reason to presume that attorney-spouses are, as a general proposition, 'unable to provide independent, dispassionate legal advice.' [Citation.] There is therefore no basis for a bright-line prohibition on awarding fees to successful civil rights plaintiffs who are represented by their attorney-spouses." (*Id.* at p. 955.)

The Ninth Circuit reached this holding even though Roit, the attorney-spouse, co-owned the property at issue, filed most of the complaints to the County, was jointly targeted by the County's misconduct, and "stood to gain in equal measure with Rickley from any benefits obtained through the litigation." (*Id.* at p. 952.) The Ninth Circuit dismissed as irrelevant that Roit could have been named as a co-plaintiff along with Rickley. (*Id.* at p. 957.) The court doubted that "Rickley would have been precluded from obtaining attorney's fees had Roit been joined as a plaintiff." (*Ibid.*, citing *Schneider v. Colegio de Abogados de Puerto Rico* (1st Cir. 1999) 187 F.3d 30, 32 (per curiam) [holding that an attorney-plaintiff was properly awarded fees under 42 U.S.C. § 1988 when he represented another plaintiff in addition to himself].)

The Ninth Circuit in *Rickley* drew support from federal authorities allowing attorney-spouses to recover fees as prevailing parties. (*Id.* at p. 956, citing *Mahtesian v. Snow* (N.D.

Cal., Dec. 14, 2004, No. 03-5372MMC) 2004 WL 2889922, at *4 [42 U.S.C. § 2000e–5(k)], and *Bennett v. Smith* (N.D. Ill., Feb. 1, 2002, No. 96 C 2422) 2002 WL 169323, at *2 [same]; see also *Doherty v. Secretary of Health & Human Services* (Fed. Cl., May 7, 2020, No. 15-1429V) 2020 WL 2958291, at *7, fn. 8 [awarding attorney fees under the Vaccine Act to petitioner's father-in-law; attorney filed formal substitution of counsel and was well qualified to take on a case in the Vaccine Program].)

Yet other federal courts have declined to award fees to attorney-spouses. (See, e.g., *Haggart v. United States* (Fed. Cir. 2022) 38 F.4th 164, 169–171 [affirming denial of fees under the Uniform Relocation Act to attorney-spouse who was co-plaintiff and joint owner of property]; *Kooi v. Secretary of Dept. of Health & Human Services* (Fed. Cl., Nov. 21, 2007, No. 05-438V) 2007 WL 5161800, at *4 [denying fees to attorney-spouse under Vaccine Act]; see also *McKenna v. City of Philadelphia* (E.D. Pa., Oct. 25, 2012, No. 98-5835) 2012 WL 5269218, at *5 [no fees under 42 U.S.C. § 2000e–5(k) to paralegal-spouse]; *United States v. Claro* (5th Cir. 2009) 579 F.3d 452, 465 [same, Hyde Amendment].)

C. The conflict among the courts of appeal determined the outcome below.

The express disagreement between appellate districts—acknowledged by the courts themselves (see *Gogal*, *supra*, 112 Cal.App.5th at p. 1164)—creates an entrenched split that warrants this Court's intervention.

The first line of authority, represented by *Gorman*, *Gillotti*, and the Opinion Below, holds that where spouses' interests are joint and indivisible, an attorney-spouse cannot recover fees for representing the spouse in litigation. (See *Gorman*, *supra*, 178 Cal.App.4th 44; *Gillotti*, *supra*, 11 Cal.App.5th 875; Op. at p. 18.) This line of authority thus extends *Trope* and *Musaelian* to the context of attorney-spouses, as if such attorneys are merely litigating their "own case" and thus are not entitled to fees. (*Musaelian*, *supra*, 45 Cal.4th at p. 520.)

The second line of authority, led by *Rickley* and *Gogal*, instead conducts a fact-based inquiry to determine whether the attorney-spouse had a bona fide attorney-client relationship with the other spouse. (*Rickley*, *supra*, 207 Cal.App.4th 1528; *Gogal*, *supra*, 112 Cal.App.5th 1161.) This line of authority squares with this Court's precedents allowing fee recovery by pro bono, contingency, and in-house counsel—such fees are "'incurred' in the sense that there was an attorney-client relationship, the attorney performed services on behalf of the client, and the attorney's right to fees grew out of the attorney-client relationship.'" (*Musaelian*, *supra*, 45 Cal.4th at p. 520, citing *Lolley*, *supra*, 28 Cal.4th 367, *PLCM Group*, *supra*, 22 Cal.4th at p. 1093, and *Ketchum*, *supra*, 24 Cal.4th 1122.)

A third and overlapping line of authority, represented by *Rickley* and *Gillotti*, recognizes the propriety of fees for attorney-spouses who pursue litigation that assists the court and serves the public interest in addition to serving their private interests. (*Rickley*, *supra*, 207 Cal.App.4th at p. 1537; see *Gillotti*,

supra, 11 Cal.App.5th at p. 906.) This line of authority tracks this Court's recognition that equitable considerations—including whether litigation served the public interest—may justify fees even to self-represented attorneys. (See *Trope, supra*, 11 Cal.4th at pp. 283–284, citing *Consumers Lobby, supra*, 25 Cal.3d at pp. 879, 915, fn. 13.)

The outcome of this case would have been different had the Opinion Below followed the second or third lines of authority. Under *Rickley*, *Gogal*, and analogous federal authority, the Honchariws could have recovered their fees because they had a bona fide attorney-client relationship—as the Opinion Below expressly recognized here. (Op. at p. 20 ["[T]he representation is a 'true' one in the sense that the non-attorney spouse has authorized the attorney-spouse to act on his or her joint behalf and intends to be bound by the attorney-spouse's actions"].) Nicholas and Sharon had a formal attorney-client relationship (AA 102 ¶ 2; AA 103–104 ¶ 1); Sharon selected Nicholas as her attorney because of his real estate financing expertise (AA 102 ¶ 2); in other situations, Sharon hired outside counsel (AA 102 ¶4); and Sharon and Nicholas each had separate property potentially at jeopardy if the home sold for less than the bridge loans' value (AA 102 ¶ 3.)

Further, under the Court of Appeal's opinion in *Rickley* and dicta in *Gillotti*, the Honchariws could have recovered their fees because their litigation vindicated the public interest. Courts have recognized that actions to enforce Civil Code section 1671—including the Honchariws' actions against their lenders—serve

the public interest. (See *Honchariw I, supra*, 83 Cal.App.5th at pp. 899–900; *Honchariw II, supra*, 2024 WL 5182340, at p. *3; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407 [actions to enforce Civil Code section 1671 serve the public interest], disapproved on other grounds by *Olson v. Automobile Club of So. Cal.* (2008) 42 Cal.4th 1142.) This public-interest showing would independently support a fee award. (See *Rickley*, *supra*, 207 Cal.App.4th at p. 1537; *Gillotti*, *supra*, 11 Cal.App.5th at p. 906; see also *Trope, supra*, 11 Cal.4th at pp. 283–284 [recognizing public interest exception], citing *Consumers Lobby, supra*, 25 Cal.3d at pp. 879, 915, fn. 13.)

D. The proper test for spousal attorney fee recovery is a recurring issue of statewide concern.

This issue affects a substantial number of litigants. California has nearly 200,000 licensed attorneys, many of whom are married. Construction defect cases, real estate disputes, landlord-tenant matters, consumer actions, and contract actions often involve married couples whose home, business, or other shared property is at stake. In those cases, an attorney-spouse may be the most sensible choice of counsel, yet prevailing-party fee recovery remains uncertain. The current split makes the answer depend on geography rather than law.

Legal commentators have recognized the *Gorman–Rickley* conflict as significant and unresolved. (See, e.g., 7 Witkin, Cal. Proc. 6th (2025) § 165 [noting split between *Rickley* and *Gorman*]; *California Court Rules That Statutory Attorney's Fees May Be Available To Attorneys Who Represent Themselves And Non-*

Attorney Spouses In Matters In Which They Have Identical Interests And Incur Identical Damages, 50 No. 9 Professional Liability Reporter NL 7 (Sept. 2025) [discussing *Gogal* and the growing tension between the *Rickley* and *Gorman* lines of authority]; *C.A. Strikes Award of Fees for Services of Lawyer/Spouse: Edmon Devises New Test, Rejecting Inquiry as to Whether There Was True Attorney-Client Relationship*, Metropolitan News–Enterprise, Jan. 5, 2026, <http://www.metnews.com/articles/2026/feesforlawyerspouse_010526.htm> [discussing Opinion Below]; *Section 1717: Fee Recovery By Self-Represented Husband Reversed As A Matter Of Law Under Trope Prohibition, With CCP § 1021 Characterization Being Inconsequential: Plus, Wife Also Represented By Husband Lawyer Had Commonly Held Interests, So Her Fees Were Barred Under Trope*, Cal. Attorney's Fees, Dec. 31, 2025, <https://calattorneysfees.com/section-1717-fee-recovery-by-self-represented-husband-reversed-as-a-matter-of-law-under-trope-prohibition-with-ccp-%C2%A7-1021-characterization-being-inconsequential/> [same]; see also Jared S. Sunshine, *Clients, Counsel, and Spouses: Case Studies at the Uncertain Junction of the Attorney-Client and Marital Privileges* (2018) 81 Alb. L. Rev. 489, 541, 545 [identifying challenges arising at the "uncertain junction" of attorney-client and marital relationships, including the *Gorman–Rickley* tension].)

Nothing in this Court's precedents compels the denial of fees to attorneys representing their spouses. The moral hazards this Court identified in *Trope* and *Musaelian* are diminished

where an attorney represents a spouse. The risks of oppressive leverage and unchecked inefficiency are mitigated by the presence of an independent client—a spouse with his or her own stake in the outcome—who has reason to prefer efficient resolution over protracted litigation. And the principle of mutuality that underlies Civil Code section 1717 supports, rather than undermines, fee recovery for attorney-spouses. A rule denying fees to the Honchariws, while permitting PMF to recover fees had it prevailed, is precisely the one-sided outcome section 1717 was designed to prevent given that Sharon, like PMF, was represented by legal counsel in the dispute. (Cf. *PLCM Group*, *supra*, 22 Cal.4th at p. 1097.)

The public interest dimension of this case also supports review. Attorneys are well positioned to identify and challenge unlawful conduct and to vindicate important public values, and that remains true when the dispute touches their own households. This case illustrates the point: the Honchariws prevailed on their core claim that lenders imposed unlawful default interest charges, yet the Opinion Below denied them any fee recovery. The line of authority rejected by the Opinion Below would enable similarly situated litigants to vindicate their families' rights without sacrificing remedies available to other successful litigants. This Court should resolve this entrenched conflict and provide a uniform rule for California's married attorney-litigants.

II. Review is also warranted to resolve whether self-represented attorneys may recover fees by agreement pursuant to Code of Civil Procedure sections 1021 and 1033.5.

This Court has not resolved whether pro se attorneys may be awarded fees as prevailing-party costs under sections 1021 and 1033.5 of the Code of Civil Procedure. The statutes at issue in *Trope* and *Musaelian* both limited recoverable fees to those "incurred" by a party. (*Trope*, *supra*, 11 Cal.4th 274, citing Civ. Code, § 1717; *Musaelian*, *supra*, 45 Cal.4th 512, citing Code Civ. Proc., § 128.7, subd. (d).) Sections 1021 and 1033.5 are not by their terms limited to attorney fees actually "incurred."[9]

In *Trope*, this Court addressed section 1021 only in passing, noting that it gives individuals a broad right to agree to fee-shifting, subject to section 1717's limitations "***in cases to which that provision applies.***" (11 Cal.4th at p. 279, emphasis added.) This Court thus left open whether a pro se attorney may recover fees under section 1021 in a case to which section 1717 of the Civil Code does not apply (see *ibid.*), such here, where the

[9] Section 1021 of the Code of Civil Procedure provides: "Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided." Section 1033.5, subdivision (a)(10)(A), of the Code of Civil Procedure provides that "[a]ttorney's fees, when authorized by … [c]ontract[,]" are "allowable as costs under Section 1032" of the Code of Civil Procedure.

Honchariws' claim was based on a violation of Civil Code section 1671.[10]

Indeed, the *Trope* Court reserved decision on whether pro se attorneys could recover fees under sources of law other than section 1717 of the Civil Code. (11 Cal.4th at p. 292, citing, inter alia, *Leaf*, *supra*, 150 Cal.App.3d 1184.) In *Leaf*, the court of appeal approved an award of attorney fees to a pro se attorney and his wife in an inverse condemnation proceeding under section 1036 of the Code of Civil Procedure. (*Leaf*, at p. 1189.) As discussed (*supra*, § I.A), although this Court disapproved *Leaf* and similar decisions, it did so only "to the extent they state or imply" that this Court's earlier precedents "are no longer valid or should not be followed." (*Trope*, at p. 292.) This Court emphasized that it expressed "no opinion regarding any other aspect of the reasoning or the holdings" of those decisions, and "no opinion" regarding attorney fees to pro se litigants "in the context of the equitable exceptions to the American rule." (*Ibid.*) Thus, *Trope*

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[10] The Honchariws' cause of action for violation of Civil Code section 1671 is not an action "on a contract" that would be governed by Civil Code, section 1717. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 615 ["[S]ection 1717 applies only to actions that contain at least one contract claim."].) Further, section 1717 by its terms applies only to contracts providing that attorney fees "shall be awarded" to a prevailing party (Civ. Code, § 1717, subd. (a))—yet another reason section 1717 does not apply here. PMF's fee-shifting agreement provided that "the referee ***may*** award attorneys' fees … to the prevailing party." (AA 33 ¶ 12(b), emphasis added.) To the extent of any ambiguity in the loan modification agreement that PMF drafted, it must be construed in favor of the Honchariws. (See Civ. Code, § 1654.)

did not disturb *Leaf* as it applies to fee claims under statutes other than Civil Code section 1717.

The Opinion Below extended *Trope*'s reasoning based on Civil Code section 1717 to Code of Civil Procedure sections 1021 and 1033.5, reasoning that the phrase "attorney's fees" should carry the same meaning across all three statutes. (Op. at p. 14.) The court discerned no reason "why the Legislature would have intended that phrase to have a different meaning in Code of Civil Procedure sections 1021 and 1033.5 than it does in Civil Code section 1717." (Op. at p. 14.)

This holding conflicts with *Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051. In *Lockton*, a law firm that had represented itself in successfully defending a malpractice action sought fees under a retainer agreement. (*Id.* at pp. 1058–1060.) The Court of Appeal (Second District, Division Four) held that while the firm could not recover fees under Civil Code section 1717, the fee provision was sufficiently broad to permit an award under Code of Civil Procedure section 1021. (*Id.* at pp. 1075–1077.) *Lockton* thus treated section 1021 as an independent basis for fee recovery, free from *Trope* and section 1717's limitations.

In arriving at a conclusion at odds with *Lockton*, the Opinion Below deepened a split of authority that had been emerging among unpublished decisions. (Compare *Quinn Emanuel Urquhart & Sullivan v. Kurtin* (Cal. Ct. App., 2d Dist. Div. 5, July 28, 2014, No. B250245) 2014 WL 3707163, at *3–6 [nonpub. opn.] [following *Lockton* and distinguishing *Trope*], with *Biggins v. Madison* (Cal. Ct. App., 2d Dist. Div. 6, Nov. 22, 2011,

No. B220202) 2011 WL 5843441, at *3 [nonpub. opn.] [declining to follow *Lockton*].)

This issue is intertwined with the attorney-spouse question presented in Section I. This Court should grant review to resolve both issues together and provide coherent guidance to lower courts and families navigating legal disputes.

III. This case is an ideal vehicle to resolve the issues presented.

Both attorney-fee issues were squarely presented and decided on the merits in a published decision. The Opinion Below considered and rejected the competing *Rickley–Gogal* approach, deepening an acknowledged split in authority. The Opinion Below also broke new ground by extending *Trope* beyond Civil Code section 1717 to Code of Civil Procedure sections 1021 and 1033.5—the first published decision to do so, directly conflicting with *Lockton* and deepening a split of authority that had been emerging in unpublished opinions.

This case is a clean vehicle for resolving both issues presented. The Court should do so to ensure uniformity of decision on these recurring questions of statewide importance.

CONCLUSION

The Court is respectfully urged to grant review.

Dated: February 6, 2026

Respectfully submitted,

THE NORTON LAW FIRM PC

Josephine K. Petrick
Attorneys for Petitioners Nicholas
and Sharon Honchariw

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed Petition for Review is produced using 13-point Century Schoolbook font and contains 8,399 words, including footnotes. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: February 6, 2026

Josephine K. Petrick

CERTIFICATE OF SERVICE

I, Diana Abad, am employed in the City of Oakland California, am over 18 years of age, and am not a party to the above-captioned action. My business address is 300 Frank H. Ogawa Plaza, Suite 450, Oakland, CA 94612. I hereby certify that on February 6, 2026, I caused the following documents:

PETITION FOR REVIEW

to be served on the parties below:

Matthew Edward Lilly
Finlayson Toffer Roosevelt & Lilly, LLP
15615 Alton Pkwy
Suite 270
Irvine, CA 92618
Counsel for Private Mortgage Fund, LLC, PMF CA REIT, LLC, and PMF Managers, Inc.

Via TrueFiling

Court of Appeal of the State of California
Second Appellate District, Division 3
Via TrueFiling

Clerk of Court
Superior Court for the State of California, County of Los Angeles
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012
Via U.S. Mail

By Electronic Mail, Truefiling, and U.S. Mail: I caused the documents to be sent to the persons at the email addresses and street addresses listed above. I did not receive, within a reasonable period of time, after the transmission, any electronic

message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2026 at Oakland, California.

Diana Abad

APPENDIX A: COURT OF APPEAL OPINION

Filed 12/31/25

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NICHOLAS HONCHARIW et al., Plaintiffs and Appellants, v. PMF CA REIT, LLC, et al., Defendants and Appellants.	B337927 (Los Angeles County Super. Ct. No. 21STCV25191)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed in part and reversed in part.

Nicholas Honchariw, in pro. per., for Plaintiffs and Appellants.

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of plaintiffs' cross-appeal.

Finlayson Toffer Roosevelt & Lilly and Matthew E. Lilly, for Defendants and Appellants.

These appeals arise out of a $6.2 million mortgage loan made by hard money lender PMF CA REIT, LLC and its affiliated companies (collectively, lenders) to Nicholas and Sharon Honchariw (collectively, plaintiffs).[1] When plaintiffs missed a payment due under the loan, lenders imposed a default interest rate on the loan balance, which increased the interest rate from 8.99 percent to 19.50 percent. Plaintiffs refinanced the loan with another lender, paid off the loan balance, and sued lenders to recover the default interest payments and statutory penalties. The case was referred to a referee, who found for plaintiffs on one of their four causes of action and awarded them default interest payments of $261,489, plus attorney fees of $251,200. The trial court entered judgment on the referee's award. Lenders appealed from the attorney fee award, and plaintiffs cross-appealed from the denial of their claim for treble damages under Business and Professions Code section 10242.5.

In the published portion of this opinion, we conclude that because plaintiffs were self-represented, *Trope v. Katz* (1995) 11 Cal.4th 274 (*Trope*) precluded an award to them of attorney fees. In the unpublished portion of this opinion, we conclude that plaintiffs forfeited their appellate contention that they were entitled to treble damages under Business and Professions Code

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[1] We will refer to plaintiffs by their first names where it is necessary to distinguish between them.

section 10242.5 because their cross-appellants' opening brief does not address the evidence on which the referee's section 10242.5 finding was based. We therefore reverse the attorney fees award and affirm the referee's findings on Business and Professions Code section 10242.5.

FACTUAL AND PROCEDURAL BACKGROUND

I. Plaintiffs' mortgage loan.

Plaintiffs owned a home in Tiburon, California from about 1990 until about 2023. As of 2019, the home was encumbered by a mortgage of approximately $5.6 million, which was set to mature in October 2019. To replace that loan, plaintiffs obtained an interest-only bridge loan of $6.1 million from lenders. The loan was for a term of 24 months, at a fixed rate of 8.99 percent annually, with a balloon payment of $6,145,699 due on November 1, 2021.

Plaintiffs missed their April 1, 2020 payment. On May 6, 2020, they entered into a modification agreement with lenders that provided for an additional advance of $120,000 to cover monthly payments and additional costs. The modification agreement also provided that if any payment was more than 30 days late, a "default rate" of 19.50 percent annual interest would apply to the entire unpaid principal balance.

The modification agreement contained two attorney fees provisions. Paragraph 12(b) provided: "[A]ny and all disputes arising or related to this Agreement and/or any of the Loan Documents shall be heard by a referee in accordance with the general reference provisions of California Code of Civil Procedure Section 638 . . . . The parties shall share the cost of the referee and reference proceedings equally; provided that, the referee may

award attorneys' fees and reimbursement of the referee and reference proceedings equally; provided that, the referee may award attorneys' fees and reimbursement of the referee and reference proceedings fees and costs to the prevailing party . . . ." Separately, paragraph 13(d) provided: "If any Party takes any legal action . . . against another to enforce any of the terms hereof or because of the breach by any Party of any of the terms hereof, the prevailing party in such action . . . shall be entitled to recover its attorneys' fees, costs and expenses . . . incurred in connection with such action, including any appeal thereof, in addition to all other relief."

Plaintiffs missed their January 2021 payment. Lenders thereafter advised plaintiffs that the default interest rate would apply to the remaining balance, increasing plaintiffs' monthly payments from $46,598 to $101,075. Plaintiffs were unable to make the monthly payments and fell further behind on their loan obligations.

Plaintiffs refinanced the loan with another lender in May 2021. With the proceeds of the new loan, plaintiffs paid off lenders' loan, including accrued interest at the default interest rate.

II. The present action.

Plaintiffs filed the present action in July 2021. The operative second amended complaint (complaint) alleged that the default interest charges were void as a penalty under Civil Code section 1671, which prohibits certain "unreasonable" liquidated damages (first cause of action); the loan violated Business and Professions Code sections 10240 to 10248.3 (real property loan law), which impose requirements on loans made or negotiated by real estate brokers (second and third causes of action); and the

lenders committed fraud by misrepresenting the loan's late charges (fourth cause of action).

The parties stipulated to the appointment of a referee, who held a three-day evidentiary hearing in April 2023. Nicholas, a semi-retired real estate attorney, represented himself and Sharon at the hearing. In July 2023, the referee issued a statement of decision in which he found for plaintiffs on the first cause of action, concluding that the default interest rate was a penalty barred by Civil Code section 1671. On the second and third causes of action, the referee found for lenders, finding that the real property loan law, specifically Business and Professions Code section 10242.5, did not apply. Finally, the referee found for lenders on the fourth cause of action, finding that plaintiffs had not proved that lenders' actions were deliberately deceitful. The referee therefore awarded plaintiffs default interest payments of $261,489, and provided that "[i]nterest, costs, fees and other ancillary relief may be sought by either side, as may be appropriate, by motion filed within thirty days of the date of this Statement of Decision."

III. Plaintiffs' motion for attorney fees.

Plaintiffs filed a motion seeking attorney fees of $352,000, calculated as a lodestar fee of $238,400, enhanced by a 1.5 multiplier. Plaintiffs also sought costs of $91,114. Plaintiffs urged that they had prevailed on their core claim that the default interest rate was unlawful, and therefore they were entitled to attorney fees under paragraph 13(d) of the modification agreement. Plaintiffs acknowledged that the Supreme Court had held in *Trope*, *supra*, 11 Cal.4th 274 that a self-represented attorney could not recover prevailing party attorney fees under Civil Code section 1717, but they urged *Trope* did not apply

because they were seeking fees under Code of Civil Procedure section 1021, *not* Civil Code section 1717, and because Sharon was not self-represented. Finally, plaintiffs contended that Nicholas had reasonably spent 298 hours litigating the case, his reasonable hourly rate was $800, and he was entitled to a multiplier of 1.5.

Lenders opposed the attorney fees motion. They urged that plaintiffs were self-represented and thus were not entitled to recover attorney fees under *Trope*. Further, lenders said Nicholas's alleged representation of his wife did not change the analysis because Sharon did not owe Nicholas anything for his representation, and the plaintiffs' interests in the litigation were indivisible. Finally, lenders urged that Nicholas's proposed hourly rate was excessive, a multiplier was unwarranted, and plaintiffs prevailed on only one of their four causes of action.

In February 2024, the referee awarded plaintiffs attorney fees of $251,200 and costs of $91,114, plus interest. The trial court entered judgment on the referee's award, from which both parties timely appealed.

LENDERS' APPEAL

Lenders' appeal focuses entirely on the award of attorney fees to plaintiffs. Lenders assert that the statutory basis for the attorney fee award was Civil Code section 1717, which the Supreme Court held in *Trope* does not permit an award of attorney fees to a self-represented litigant. Lenders thus assert that the referee erred in awarding attorney fees to Nicholas, who represented himself, and to Sharon, who did not suffer any damages separate from her husband. Alternatively, lenders assert that *Trope* also bars an award of attorney fees to plaintiffs

under Code of Civil Procedure section 1021. For the reasons that follow, we agree.

I. Standard of review.

Code of Civil Procedure section 638, subdivision (a), provides that a referee may be appointed by agreement of the parties to "hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision." The judgment based on a statement of decision following a voluntary general reference is treated as if the action had been heard by the court, and it is reviewed on appeal using the same rules that apply to a decision by the trial court. (See Code Civ. Proc., § 644, subd. (a); *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191; *Barickman v. Mercury Casualty Co.* (2016) 2 Cal.App.5th 508, 516.)

A trial court's determination that a litigant is a prevailing party, along with its award of fees and costs, is generally reviewed for abuse of discretion. However, where, as here, the question presented is a pure issue of law, our review is de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332; *Lampkin v. County of Los Angeles* (2025) 112 Cal.App.5th 920, 926.)

II. The referee erred in awarding attorney fees to plaintiffs.

A. Awards of attorney fees to self-represented parties.

"California follows what is commonly referred to as the American rule, which provides that each party to a lawsuit must ordinarily pay his own attorney fees. [Citations.] The Legislature codified the American rule in 1872 when it enacted

Code of Civil Procedure section 1021, which states in pertinent part that 'Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties. . . .' (See, e.g., *Bruno v. Bell* (1979) 91 Cal.App.3d 776, 781 [American rule codified by Code Civ. Proc., § 1021].)" (*Trope*, *supra*, 11 Cal.4th at pp. 278–279.)

The Legislature has since enacted several statutory exceptions to the American rule. As relevant here, Code of Civil Procedure section 1033.5, subdivision (a)(10) provides that attorney fees may be awarded as costs when authorized by "[c]ontract." Separately, Civil Code section 1717, subdivision (a) provides: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

In *Trope*, *supra*, 11 Cal.4th at pages 278 to 279, our Supreme Court considered whether a self-represented litigant could recover attorney fees under Civil Code section 1717. There, a law firm represented itself in an action against a former client for unpaid legal fees. (*Trope*, at pp. 277–278.) The law firm prevailed and then sought attorney fees under a provision of its retainer agreement. The trial court denied the fee request, concluding that the law firm could not recover fees because it had represented itself in the litigation. (*Id.* at p. 278.)

The Supreme Court agreed and affirmed the denial of attorney fees. (*Trope*, *supra*, 11 Cal.4th at p. 278.) It noted that

Civil Code section 1717 applies to contracts that permit an award of "attorney's fees and costs, which are incurred to enforce that contract." The court reasoned that a "fee" is a " 'recompense for an official or professional service,' " and an "attorney fee[]" is a " '[c]harge to [a] client for services performed.' " (*Trope*, at pp. 279–280.) Accordingly, "the usual and ordinary meaning of the words 'attorney's fees,' both in legal and in general usage, is the consideration that a litigant actually pays or becomes liable to pay in exchange for legal representation. An attorney litigating in propria persona pays no such compensation." (*Id.* at p. 280.) Further, to " 'incur' " a fee is "to become obligated to *pay* it," and thus an attorney litigating in propria persona cannot be said to have "incur[red]" a fee. (*Ibid.*)

The court went on to note that prior to the adoption of Civil Code section 1717 in 1968, every California court to have considered the issue had held that self-represented attorneys could not recover attorney fees because those attorneys did not pay or become liable to pay consideration in exchange for legal representation. (*Trope*, *supra*, 11 Cal.4th at pp. 280–281.) Specifically, *Patterson v. Donner* (1874) 48 Cal. 369 held that a self-represented attorney could not recover fees under a mortgage that was the subject of the litigation; *Bank of Woodland v. Treadwell* (1880) 55 Cal. 379, 380, held that a creditor who did not pay an attorney to represent it in a foreclosure proceeding was not entitled to recover attorney fees under a provision in a mortgage because "[t]he object of the law allowing counsel fees is . . . to reimburse [the creditor], in a proper amount, for a sum which he pays, or becomes liable to pay"; *City of Long Beach v. Sten* (1929) 206 Cal. 473, held that an attorney representing himself in a condemnation proceeding could not recover attorney

fees under former Code of Civil Procedure section 1255a; and *O'Connell v. Zimmerman* (1958) 157 Cal.App.2d 330, 336–337, held that an attorney representing himself in an interpleader action could not recover attorney fees under Code of Civil Procedure section 386.6. (*Trope*, at pp. 280–282.) These cases, the court said, "support our conclusion that the usual and ordinary meaning of the words 'reasonable attorney's fees' is the consideration that a litigant pays or becomes liable to pay in exchange for legal representation." (*Id.* at p. 282.)

Finally, the court noted that awarding fees to attorneys but not to other self-represented litigants "would be to hold that the time and opportunity that an attorney gives up when he chooses to litigate a case in propria persona are somehow qualitatively more important and worthy of compensation than those of other pro se litigants." (*Trope*, *supra*, 11 Cal.4th at p. 285.) This "would in effect create two separate classes of pro se litigants—those who are attorneys and those who are not—and grant different rights and remedies to each." (*Id.* at p. 277.) Such "disparate treatment" would conflict with the legislative purpose of Civil Code section 1717 and " 'would be viewed by the public as unfair.' " (*Trope*, at p. 286.) The court concluded: " 'In our view, the public perception of fairness in the legal system is of greater moment than a lawyer litigant's claim to an attorney fee award if he elects to represent himself.' " (*Ibid.*)

Fourteen years after *Trope*, the Supreme Court extended its analysis in *Musaelian v. Adams* (2009) 45 Cal.4th 512 (*Musaelian*) to conclude that a self-represented attorney could not recover attorney fees as sanctions. *Musaelian* arose under Code of Civil Procedure section 128.7, subdivision (d), which permits a trial court to sanction a party for filing a frivolous

pleading, including by entering " '*an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation*.' " (*Musaelian*, at p. 516.) The *Musaelian* court found that "the inclusion of the words 'incur' and 'attorney's fees' in section 128.7 implies an agency relationship under which the client and the party are not one and the same, and out of which the attorney expects remuneration." (*Id.* at p. 517.) The court thus held that "an attorney who responds in pro se to a filing abuse may not recover sanctions under section 128.7 in the form of an award of attorney fees." (*Id.* at p. 520.)

Following *Trope* and *Musaelian*, appellate courts have held that self-represented attorneys may not recover attorney fees under a variety of different statutes. For example, in *In re Marriage of Erndt & Terhorst* (2021) 59 Cal.App.5th 898, 905, the court held that a self-represented lawyer could not recover attorney fees under Family Code section 271, which permits "an award of attorney's fees and costs" based on "the extent to which any conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." Similarly, in *Witte v. Kaufman* (2006) 141 Cal.App.4th 1201, 1207–1209, the court held that self-represented attorneys could not recover prevailing party attorney fees under the anti-SLAPP statute, which provides, in subdivision (c)(1), that "a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs." (Code Civ. Proc., § 425.16, subd. (c)(1); see also *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244 [reversing

attorney fees award under anti-SLAPP statute to self-represented law firm].) And, in *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1175, 1177, the court held that a self-represented attorney could not recover a monetary discovery sanction under former Code of Civil Procedure section 2023, subdivision (b)(1) (now Code of Civil Procedure section 2023.030, subdivision (a)), which permits the award of "reasonable expenses, including attorney's fees, incurred by anyone as a result of" misuse of the discovery process.

With these principles in mind, we turn to the attorney fees awarded in the present case.

B. The referee erred by awarding attorney fees to Nicholas.

As noted above, the modification agreement contained two separate attorney fees provisions. Paragraph 13(d) provided for an award of attorney fees to the prevailing party in an action "to enforce any of the terms hereof or because of the breach by any Party of any of the terms hereof." Separately, paragraph 12(b) provided that any disputes "arising or related to" the modification agreement would be heard by a referee, who would have discretion to "award attorneys' fees . . . to the prevailing party."

Lenders assert that plaintiffs sought attorney fees under Civil Code section 1717, and thus a fee award was barred by *Trope*.[2] Alternatively, they assert that even if plaintiffs were

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[2] Plaintiffs assert that lenders' position on appeal is inconsistent with their position below. We do not agree. In their opposition to plaintiffs' fee motion, lenders argued both that an award of fees was subject to paragraph 12(b), not paragraph 13(d), of the modification agreement, *and* that Civil Code

awarded attorney fees under another statute, those fees would still be barred because *Trope* was not solely tethered to Civil Code section 1717, but rather was based on a line of cases holding that self-represented attorneys could not recover attorney fees because they did not pay or become liable to pay consideration in exchange for legal representation. Finally, lenders assert that both plaintiffs were self-represented within the meaning of *Trope* because their interests in the litigation were identical.

Plaintiffs assert that *Trope* does not apply because their fee award was based on Code of Civil Procedure section 1021, not Civil Code section 1717. They further urge that even if Nicholas was self-represented, Sharon was not, and thus she was entitled to recover fees for Nicholas's legal work.

The referee did not specify the statutory basis for the attorney fees award, and thus we cannot determine whether fees were awarded pursuant to Civil Code section 1717 or Code of Civil Procedure section 1021. That issue is irrelevant to our analysis, however, because as we discuss, the referee lacked discretion to award Nicholas attorney fees under either section.

Code of Civil Procedure section 1021 provides that "[e]xcept as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties." Section 1021 operates in conjunction with Code of Civil Procedure

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section 1717 applied regardless of the contractual provision at issue. This is entirely consistent with their appellate claim that the fee award is subject to Civil Code section 1717. We therefore reject plaintiffs' contention that lenders "invited" any error with regard to the fee award.

section 1033.5, subdivision (a)(1), which provides: "The following items are allowable as costs under Section 1032: . . . (10) *Attorney's fees*, when authorized by any of the following: (A) Contract. (B) Statute. (C) Law." (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 607, fn. 4 ["Code of Civil Procedure section 1021 does not independently authorize recovery of attorney fees. Rather, consistent with subdivision (a)(10) of Code of Civil Procedure section 1033.5, Code of Civil Procedure section 1021 recognizes that attorney fees incurred in prosecuting or defending an action may be recovered as costs only when they are otherwise authorized by statute or by the parties' agreement"].)

Plaintiffs assume that self-represented attorneys may recover fees under Code of Civil Procedure sections 1021 and 1033.5, but they cite no authority to support that proposition. We conclude otherwise. As noted above, our Supreme Court held in *Trope* that the plain language of Civil Code section 1717 precludes an award of attorney fees to a self-represented attorney because the "usual and ordinary meaning of the words 'attorney's fees,' both in legal and general usage, is the consideration that a litigant *actually pays* or *becomes liable to pay* in exchange for legal representation." (*Trope*, *supra*, 11 Cal.4th at p. 280, italics added.) Like Civil Code section 1717, Code of Civil Procedure sections 1021 and 1033.5 both refer to "attorney's fees." We can imagine no reason—and plaintiffs suggest none—why the Legislature would have intended that phrase to have a different meaning in Code of Civil Procedure sections 1021 and 1033.5 than it does in Civil Code section 1717.

Trope also concluded that it would be " 'palpably unjust' " to permit self-represented attorneys to receive compensation

pursuant to Civil Code 1717 for their time spent litigating their own cases, but not to allow self-represented non-attorneys to do the same. (*Trope*, *supra*, 11 Cal.4th at p. 286 [" 'The system would be one-sided, and would be viewed by the public as unfair, if one party (a lawyer litigant) could qualify for a fee award without incurring the potential out-of-pocket obligation that the opposing party (a nonlawyer) ordinarily must bear in order to qualify for a similar award [i.e., without paying or becoming liable to pay consideration in exchange for legal representation]. Moreover, if both parties opt to litigate pro se, it would be palpably unjust for one of them (the lawyer litigant) to remain eligible for an attorney fee award, while the other becomes ineligible. . . . [¶] . . . [¶] In our view, the public perception of fairness in the legal system is of greater moment than a lawyer litigant's claim to an attorney fee award if he elects to represent himself' "].) Again, we can think of no reason, and plaintiffs suggest none, why the same analysis would not apply equally to Code of Civil Procedure sections 1021 and 1033.5.

For all the foregoing reasons, we conclude that Nicholas, as a self-represented attorney, cannot recover attorney fees under either Civil Code section 1717 or Code of Civil Procedure sections 1021 and 1033.5.

C. The referee also erred by awarding attorney fees to Sharon.

Having concluded that Nicholas could not recover attorney fees based on his own legal work, we next consider whether Sharon could recover attorney fees based her husband's work.

The Courts of Appeal have reached somewhat inconsistent results in deciding whether nonattorneys represented by attorney spouses in joint litigation are "self-represented" within the

meaning of *Trope*. In *Gorman v. Tassajara Development Corp*. (2009) 178 Cal.App.4th 44 (*Gorman*), an attorney and his wife, jointly represented by the husband's law firm, brought a construction defect action against the contractors and subcontractors who built the couple's home. (*Id.* at pp. 53–54.) After the plaintiffs settled with a number of contractors, they sought attorney fees under a fee provision in the construction contract. (*Id.* at p. 56.) The trial court awarded only about one-third of the fees sought, and the plaintiffs appealed, urging that the fee award was inadequate. (*Id.* at pp. 56–57.) The Court of Appeal held that the husband could recover fees for work done by other members of his firm, but not for his own legal work. (*Id.* at pp. 96–97.) The wife also could not recover for her husband's legal work even though she allegedly had entered into a written retainer agreement with his law firm. The court explained: "We can certainly imagine cases in which a true attorney-client relationship exists between spouses. However, in this case, husband and wife sued for and obtained recovery for the defective construction of their residence. There is no indication that [wife] suffered any damages apart from those suffered by her husband. Their interests in this matter appear to be joint and indivisible. There is no claim that [husband] spent extra time in this case representing his wife in addition to the time he spent representing himself. There is no claim that each of them owes half his fees. Their community estate is liable for their contracts. (Fam. Code, § 910, subd. (a).) Since [husband's] billable hours appear to be entirely attributable to representing his common interests with [wife], we conclude that the rule of *Trope* applies to this situation." (*Id.* at p. 95.)

The Court of Appeal reached a different result in *Rickley v. Goodfriend* (2012) 207 Cal.App.4th 1528 (*Rickley*). There, the plaintiffs, a married couple, brought nuisance actions against their neighbors for carrying out an unpermitted remodel and for encroaching on and burying construction debris on the plaintiffs' property. (*Id.* at pp. 1530–1531.) One of the plaintiffs was an attorney, and she represented herself and her wife in the litigation. The trial court ordered the defendants to abate the nuisance; when they failed to do so, the plaintiffs filed a contempt action. The trial court found the defendants guilty on three counts of contempt, fined them, and ordered one defendant to spend three days in jail. The plaintiffs then sought their attorney fees associated with prosecuting the contempt action, including fees incurred in connection with legal work performed by the attorney-spouse. (*Ibid.*) The trial court denied the fee request on the ground that the plaintiffs were self-represented, but the Court of Appeal reversed. (*Id.* at p. 1532.) The appellate court noted that although the plaintiffs had initiated the nuisance proceeding to protect their property and economic interests, the subsequent contempt proceeding was a quasi-criminal proceeding, in which the plaintiffs were assisting the court and the public interest by seeking to enforce a court order. (*Id.* at p. 1537.) The attorney-spouse, thus, "can be said to be vindicating an important public interest by ensuring [defendants'] compliance with the contempt order." (*Ibid.*) Under these circumstances, the court said, "the dispositive factor in awarding fees is not whether [the spouses] were liable for or obligated to pay fees, but whether there was an attorney-client relationship between [the attorney-spouse] as an attorney and [the couple] as homeowners." (*Id.* at pp. 1537–1538.)

In so concluding, the *Rickley* court rejected *Gorman*'s conclusion that the result depended on the married couple's unity of interest in the litigation. The court explained: "[W]e do not feel that identical damages, nor joint and indivisible interests between the spouse-attorney and the other spouse defeat the attorney-client relationship. Instead, we must determine whether [the nonattorney spouse] consulted [the attorney spouse] in her professional capacity and whether their relationship in terms of this lawsuit was for the purposes of obtaining legal advice. As the record indicates, the trial court did not make a determination about whether an attorney-client relationship existed. The matter therefore must be remanded before the issue of entitlement to fees can be adjudicated." (*Rickley*, *supra*, 207 Cal.App.4th at p. 1538.)

The Court of Appeal rejected *Rickley*'s analysis and adopted *Gorman*'s in *Gillotti v. Stewart* (2017) 11 Cal.App.5th 875 (*Gillotti*), review granted Aug. 23, 2017, S242568, review dism. Mar. 21, 2018. *Gillotti* was a construction defect action brought by an attorney and his wife. After the trial court entered judgment for the homeowners against the builder, the homeowners sought attorney fees under Civil Code section 1717 for legal work done by the husband on behalf of himself and his wife. (*Gillotti*, at p. 904.) The trial court found that neither spouse could recover attorney fees based on the husband's legal work, and the Court of Appeal agreed. In so finding, the court said the rule set out in *Rickley* applied only in cases where self-represented parties were assisting the court and the public interest. (*Id.* at p. 906.) *Rickley* did not apply to the case before the court because "here there is . . . no public interest being vindicated." (*Ibid.*)

Finally, in *Gogal v. Deng* (2025) 112 Cal.App.5th 1161 (*Gogal*), the Court of Appeal attempted to reconcile *Gorman* and *Rickley* in the context of a retaliatory eviction claim brought jointly by a husband and wife against their landlord and litigated by the husband, an attorney. After prevailing on the retaliatory eviction claim, the spouses sought to recover half of the husband's legal fees, which they attributed to his representation of his wife. (*Id.* at p. 1165.) The trial court followed *Gorman* and concluded that the wife could not recover fees because the spouses' interests were " 'joint and indivisible.' " (*Ibid.*)

The Court of Appeal held that whether the wife could recover legal fees turned on whether " 'a true attorney-client relationship exist[ed] between [the] spouses.' " (*Gogal*, *supra*, 112 Cal.App.5th at p. 1165.) To answer that question, the trial court should consider a number of factors, including whether the non-attorney spouse consulted the attorney-spouse "in his or her 'professional capacity,' " whether the non-attorney spouse was obligated to pay fees, whether "the record supports a concern of 'self-dealing' by the attorney," whether the spouses had a "joint claim," and "whether the attorney-spouse has an indivisible pecuniary interest in the outcome of the litigation." (*Id.* at pp. 1168–1169.) In the absence of "other evidence"—including "any facts tending to show that the nonattorney spouse played a significant substantive role in the litigation rather than merely deferring to the other spouse"—a nonattorney spouse "with totally joint interests and seeking only coincident damages will generally be unable to establish a true attorney-client relationship." (*Id.* at p. 1172.) In the case before it, the appellate court found that the spouses did not introduce "key evidence" of "[the wife's] role in the litigation, the circumstances of her

consultations with [the husband], and their purpose. . . . Simply put, [the spouses] did not introduce evidence sufficient to overcome the natural inferences that arise from an attorney-spouse pursuing an entirely joint claim with entirely coincident damages, evidence that is necessary to demonstrate a bona fide attorney-client relationship in this context." (*Ibid.*) The court thus affirmed the denial of the wife's attorney fee request. (*Ibid.*)

To the extent that *Rickley* and *Gogal* hold that a non-attorney's ability to recover attorney fees for legal work performed by his or her spouse turns on whether a "true" attorney-client relationship exists between the spouses, we disagree. We assume that in most cases in which attorneys represent themselves and their spouses, the representation is a "true" one in the sense that the non-attorney spouse has authorized the attorney-spouse to act on his or her joint behalf and intends to be bound by the attorney-spouse's actions. The relevant question under *Trope*, however, is not the scope of an attorney's authorization to act, but whether a party is self-represented. (*Trope*, *supra*, 11 Cal.4th at p. 277 [considering whether fees may be awarded to attorney who "chooses to litigate in propria persona"].)

We believe that whether a litigant represented by an attorney-spouse is "self-represented" within the meaning of *Trope* depends on whether the litigation concerns a commonly held interest or asset. In *Witte v. Kaufman*, *supra*, 141 Cal.App.4th at p. 1210, the court held that a law firm represented by several of its attorneys was in propria persona because "[t]he attorneys of [the law firm] are the law firm's product. When they represent the law firm, they are representing their own interests. As such, they are comparable to a sole practitioner representing himself or

herself." (*Id.* at p. 1211.) We think the same analysis applies when attorneys represent themselves and their spouses in litigation concerning a community property asset. A community property asset is not owned by the spouses individually, but by the marital community. Likewise, "the fruits of the community's expenditures of time, talent, and labor are community property." (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 850.) Indeed, "the basic concept of community property is that marriage is a partnership where spouses devote their particular talents, energies, and resources to their common good. [Citation.] Acquisitions and gains which are directly or indirectly attributable to community expenditures of labor and resources are shared equally by the community." (*Id.* at pp. 850–851.) Thus, when an attorney-spouse represents both himself and his spouse in litigation over a community asset, *both* spouses are self-represented because a community asset—the attorney-spouse's labor—is being applied for the benefit of the community as a whole.

It is in this sense that we believe the *Gorman* and *Gillotti* courts found no "true attorney and client relationship[s]" existed between the spouses. The relevant issue as defined in those cases was not whether the nonattorney-spouse had formally retained the attorney-spouse or played an active role in managing the litigation, but whether the spouses had a common interest in the subject of the litigation. Because the spouses *did* have a common interest—that is, because their interests were "joint and indivisible" as co-members of the marital community (*Gorman*, *supra*, 178 Cal.App.4th at p. 95)—the community as an entity was effectively self-represented. (*Ibid.*; see also *Gillotti*, *supra*, 11 Cal.App.5th at pp. 904–906.)

In the present case, although Sharon asserted that she "retained" Nicholas to represent her in this action, neither she nor Nicholas asserted that she had an interest in the property that was separate from Nicholas's. To the contrary, Sharon testified at her deposition that she did *not* have a separate property interest in the home, which she and Nicholas held as community property. She also testified that she had not paid, and did not owe, any fees in connection with Nicholas's representation in this case. And, there is no indication that the assets that were used to repay the loan, including the interest charges, were anything other than community property, or that any of Nicholas's billable hours in this case were attributable to representing anything other than plaintiffs' common interest. As such, both Nicholas and Sharon were effectively self-represented within the meaning of *Trope*, and neither could recover attorney fees based on the reasonable value of Nicholas's legal work.

Plaintiffs urge that Nicholas was not representing solely community interests because Sharon had separate property that could have been seized to satisfy her joint and several liability under the note. But the lenders' note was secured by plaintiffs' home, which was a community property asset. Because the home's value was significantly greater than the amount of the loan—the loan was for $6.2 million, and the home sold for approximately $12 million—Sharon's separate property was not at risk.

For all the foregoing reasons, we conclude that neither Sharon nor Nicholas may recover attorney fees based on Nicholas's legal work. We therefore reverse the award of attorney fees to plaintiffs.

PLAINTIFFS' CROSS-APPEAL

Plaintiffs' cross-appeal pertains solely to the referee's finding on the second cause of action for violations of Business and Professions Code section 10242.5. That section limits the late fees that may be applied to home mortgage loans negotiated by mortgage loan brokers. (See *Akopyan v. Wells Fargo Home Mortgage, Inc.* (2013) 215 Cal.App.4th 120, 131–135.) Plaintiffs alleged that the modification agreement violated section 10242.5 because the default interest rate exceeded the statutory maximum, and thus that they were entitled to treble damages.

The referee found that plaintiffs had not established that Business and Professions Code section 10242.5 applied because they did not demonstrate that their claims arose out of a loan " 'made or negotiated by real estate brokers acting within the meaning of subdivision (d) of [Business and Professions Code] section 10131 or subdivision (b) of [Business and Professions Code] section 10240.' " Instead, the referee said, "The record reflects that, for the most part, Mr. Honchariw 'negotiated' the terms of the loan himself."

Plaintiffs challenge the referee's finding, urging that they "introduced dispositive evidence, including defendants' own admissions, that the loan was negotiated by brokers." However, plaintiffs' opening brief does not contain a statement of facts, and nearly all of plaintiffs' citations in support of their cross-appeal are to an appendix containing copies of some of the exhibits offered at the evidentiary hearing. Plaintiffs do not provide citations to demonstrate that these exhibits were authenticated or that the referee admitted them into evidence. Further, with just a few exceptions, they do not cite to testimony concerning the

contents of these documents. And, plaintiffs do not discuss any of the lenders' evidence on which the referee relied.

We conclude that plaintiffs have forfeited their challenge to the referee's findings because their discussion of the relevant evidence is wholly insufficient to permit meaningful appellate review. "When an appellant contends there is insufficient evidence to support a finding of fact, we apply the substantial evidence standard of review. (*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 581.) Under that standard of review, 'the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact.' (*Grainger v. Antoyan* (1957) 48 Cal.2d 805, 807, italics omitted (*Grainger*).) . . . .'

"In every appeal, the appellant has the duty to fairly summarize all of the facts in the light most favorable to the judgment. (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658.) 'Further, the burden to provide a fair summary of the evidence "grows with the complexity of the record. [Citation.]" ' (*Boeken*, at p. 1658, citing *Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 290.) To meet its burden on appeal to show a finding of fact is not supported by substantial evidence, appellants cannot recite only evidence in their favor, but must ' "set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived." [Citations.]' (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman & Clark Corp.*).)

"When an appellant's opening brief states only the favorable facts, ignoring evidence favorable to respondent, the appellate court may treat the substantial evidence issues as waived and presume the record contains evidence to sustain every finding of fact. (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1072; see also *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218 [appellant waived substantial evidence challenge because 'his opening brief sets forth only his version of the evidence, omitting any reference to the conflicting evidence submitted by [the respondent]'].) 'As with all substantial evidence challenges, an appellant challenging [a finding of fact] must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden.' (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.)" (*Slone v. El Centro Regional Medical Center* (2024) 106 Cal.App.5th 1160, 1173–1174; see also *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2025) 112 Cal.App.5th 519, 544 [unless appellant sets forth all material evidence, "we may treat the substantial evidence issues as waived and presume the record contains evidence to sustain every finding of fact"].)

Plaintiffs' summary of the evidence presented at the three-day evidentiary hearing is, as lenders urge, manifestly insufficient to carry their appellate burden. Plaintiffs' briefs contain no discussion—none—of the lenders' evidence on which the referee relied. At best, plaintiffs discuss only their own evidence—and even that evidence is of uncertain evidentiary value because we cannot determine from plaintiffs' record cites

whether a foundation was laid for the introduction of plaintiffs' exhibits, whether the exhibits were admitted into evidence, and if so, if they were admitted for the truth of the matters contained therein. Accordingly, we conclude that plaintiffs have forfeited their substantial evidence challenge.

Plaintiffs contend they were not required to discuss lenders' evidence because their cross-appeal raises solely a question of law, not a substantial evidence challenge. But that contention presupposes that all the relevant facts were undisputed. They were not. Plaintiffs contend lenders violated Business and Professions Code section 10242.5 because there was "overwhelming" evidence that PMF Managers, Inc. "actually acted [as] and was paid as a broker." Lenders do not concede this issue; to the contrary, they urge that there was "a wealth of evidence at trial" that "(1) no broker was involved in negotiating the subject Loan, (2) the [plaintiffs] fully understood that there was no broker involved, [and] (3) the alleged broker here, [PMF Managers, Inc.], was not licensed as a broker, based upon advice of counsel that [it] did not broker loans and, therefore, did not need a license."

In short, plaintiffs' claim turns on disputed facts, and thus they have forfeited their appellate claims by failing to accurately summarize all the evidence presented at the evidentiary hearing.

DISPOSITION

The attorney fees award to plaintiffs Nicholas and Sharon Honchariw is reversed, and the judgment is otherwise affirmed. On remand, the trial court is directed to enter an amended judgment omitting an award of attorney fees. Defendants and appellants PMF CA REIT, LLC, et al. are awarded their appellate costs.

CERTIFIED FOR PARTIAL PUBLICATION

EDMON, P. J.

We concur:

ADAMS, J.

HANASONO, J.