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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ex  
rel. DONALD CLOYCE WAGDA,  
  
Plaintiff,  
  
v.  
  
AT&T CORP., a corporation, et  
al.  
  
Defendants.

No. 2:19-cv-01057-JAM-AC

**ORDER DENYING DEFENDANTS' MOTION  
FOR ATTORNEYS' FEES**

Donald Cloyce Wagda ("Realtor") filed this *qui tam* case against AT&T Inc. and its subsidiaries (collectively referred to as "Defendants") under § 3729(a)(1)(C) and (D) of the False Claims Act ("FCA"). See Compl., ECF No. 1. On July 1, 2022, the Court dismissed Realtor's claims with prejudice under Federal Rule of Civil Procedure 12(b)(7) for failing to join an indispensable party and Realtor appealed. See Order at 6, ECF No. 56; Notice of Appeal, ECF No. 62.

This matter is now before the Court on Defendants' motion for attorney's fees. See Def.'s Mot. for Attorney's Fees ("Mot."), ECF No. 61. Plaintiff opposes the motion. See Opp'n, ECF No. 70. Defendants replied. See Reply, ECF No. 71. For the reasons set

1 forth below, Defendants' motion is denied<sup>1</sup>

2 I. OPINION

3 A. Jurisdiction

4 "The effective filing of a notice of appeal transfers  
5 jurisdiction from the district court to the court of appeals  
6 with respect to all matters involved in the appeal." Masalosalo  
7 by Masalosalo v. Stonewall Ins. Co., 718 F.2d 955, 956 (9th Cir.  
8 1983). "The district court retain[s] the power to award  
9 attorneys' fees after the notice of appeal from the decision on  
10 the merits has been filed." Id. at 957. Thus, this Court can  
11 decide the motion for fees despite Relator's pending appeal.

12 B. Attorneys' Fees Under the FCA

13 Under the "American Rule," each party in a lawsuit  
14 "ordinarily bears its own attorney's fees unless there is express  
15 statutory authorization to the contrary." Hensley v. Eckerhart,  
16 461 U.S. 424, 429 (1983). The FCA provides that "[i]f the  
17 Government does not proceed with the action and the person  
18 bringing the action conducts the action, the court may award to  
19 the defendant its reasonable attorneys' fees and expenses if the  
20 defendant prevails in the action and the court finds that the  
21 claim of the person bringing the action was clearly frivolous,  
22 clearly vexatious, or brought primarily for purposes of  
23 harassment." 31 U.S.C. § 3730(d)(4). Here, the Government  
24 declined to intervene. As a result, the Court must determine  
25 whether Plaintiff's action was "clearly frivolous, clearly  
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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for October 18, 2022.

1 vexatious, or brought primarily for purposes of harassment" to  
2 entitle Defendants to the requested attorneys' fees as §  
3 3730(d)(4) prescribes.

4 Defendants argue this Court should grant attorneys' fees  
5 because Realtor's claims were frivolous. See Mot. at 2-3, 6-8.  
6 Courts have found an FCA "claim is frivolous when, viewed  
7 objectively, it may be said to have no reasonable chance of  
8 success, and present no valid argument to modify present law."  
9 Mikes v. Straus, 274 F.3d 687, 705 (2d Cir. 2001) (abrogated on  
10 other grounds by Universal Health Services, Inc. v. U.S., 136 S.  
11 Ct. 1989 (2016)). Accordingly, "[t]he award of fees under the  
12 [FCA] is reserved for rare and special circumstances," Pfingston  
13 v. Ronan Eng'g Co., 284 F.3d 999, 1006-07 (9th Cir. 2002), and  
14 subject to "exacting standards" that are difficult to fulfill.  
15 See U.S. ex re. Madden v. General Dynamics Corp., 4 F.3d 827, 831  
16 (9th Cir. 1993) Nonetheless, there are few decisions awarding  
17 attorneys' fees under the FCA. In turn, this Court follows the  
18 Ninth Circuit's reasoning that 42 U.S.C. § 1988 "cases are  
19 instructive in deciding whether fees are appropriate under the  
20 [FCA]" because the award of attorneys' fees under the FCA "tracks  
21 the formulation as to when fees are appropriate under [ ]  
22 § 1988 . . . ."

23 When analyzing a § 1988 attorneys' fees claim, this  
24 jurisdiction applies the Christianburg standard that only awards  
25 attorneys' fees when "the plaintiff's action was frivolous,  
26 unreasonable, or without foundation, even though not brought in  
27 subjective bad faith." Christianburg Garment Co. v. EEOC, 434  
28 U.S. 412, 421 (1978). "In determining whether this standard has

1 been met, a district court must assess the claim at the time the  
2 complaint was filed, and must avoid post hoc reasoning by  
3 concluding that, because a plaintiff did not ultimately prevail,  
4 his action must have been unreasonable or without foundation.”  
5 Tutor-Saliba Corp. v. City of Hailey, 452 F.3d 1055, 1060 (9th  
6 Cir. 2006) (internal citations omitted). As a result, under  
7 Christianburg, attorneys’ fees are not awarded routinely or  
8 simply because a defendant succeeds. Christianburg, 434 U.S. at  
9 421.

10 After review, the Court finds that Defendants failed to  
11 satisfy the strict governing standard for fee awards to  
12 prevailing defendants in a FCA case. Although Realtor’s claims  
13 were unsuccessful, they were not “frivolous, unreasonable, or  
14 without foundation” when filed. Id. Defendants did not prove  
15 exceptional circumstances exist warranting a fee award.<sup>2</sup>  
16 Accordingly, the Court declines to exercise its discretion to  
17 award attorney’s fees under the § 3730(d)(4) of the FCA .

18 II. ORDER

19 For the reasons set forth above, the Court DENIES  
20 Defendants’ Motion for Attorneys’ Fees.

21 IT IS SO ORDERED.

22 Dated: December 5, 2022

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24   
25 JOHN A. MENDEZ  
26 SENIOR UNITED STATES DISTRICT JUDGE

26 \_\_\_\_\_  
27 <sup>2</sup> Even if attorney’s fees were recoverable, the Court notes that  
28 Defendants’ request for \$100,247.61 for a motion to dismiss is  
grossly excessive and any award would have been significantly  
reduced.