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 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA and THE)
 11 STATE OF CALIFORNIA *ex rel.* JOSEPH)
 KRZESNI,)

12)
 13 Plaintiffs,)

14 vs.)

15 STARS BEHAVIORAL HEALTH GROUP,)
 16 INC. et al.,)

17 Defendants.)

Case No. C-03-5741-MJJ

) AMENDED NOTICE OF MOTION AND
) MOTION OF *QUI TAM* PLAINTIFF JOSEPH
) KRZESNI FOR ATTORNEYS' FEES AND
) EXPENSES AND MEMORANDUM OF
) POINTS AND AUTHORITIES IN SUPPORT
) THEREOF

) Date: To Be Announced
) Time: To Be Announced
) Courtroom: To Be Announced
) Honorable Martin Jenkins

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 *Qui tam* Plaintiff/Relator Joseph Krzesni seeks through this motion to recover from
4 Defendants Stars Behavioral Health Group, Inc., Starview Adolescent Center, Inc., Stars
5 Adolescent Center, Inc., Starlight Adolescent Center, Inc., Valley Star, Inc., Oasis Rehabilitation
6 Center, Inc., Mary Jane Gross, Peter Zucker and Kent Dunlap (collectively “Defendants”),
7 attorneys’ fees and expenses for successfully resolving this False Claims Act action. An award of
8 attorneys’ fees and expenses is mandatory under both the Federal and California False Claims
9 Acts (the “Acts”). *See* 31 U.S.C. § 3730(d)(1); Cal. Gov’t Code § 12652(g)(8). In investigating,
10 litigating and negotiating this case for nearly four years, Mr. Krzesni has incurred reasonable
11 attorneys’ fees of \$145,732.50 and expenses of \$2,824.14 which Defendants are obligated to pay
12 under the Acts. *See* Exhibits A and B to Declaration of Mary A. Inman, Esq. (hereafter “Inman
13 Decl.”).²

14 The fees and expenses incurred by Mr. Krzesni reflect the significant role his counsel
15 played in achieving the successful resolution of this case. The United States’ and State of
16 California’s recovery in the case, the principal sum totaling \$1 million, was achieved in large
17 measure due to the investigation, analysis, drafting and negotiations conducted by Mr. Krzesni’s
18 counsel, Phillips & Cohen LLP (“P&C”). Thus, much of Krzesni’s counsels’ work formed the
19 basis for the settlement entered into by the parties.

20 The attorneys’ fees and expenses sought by Mr. Krzesni in this application are based on
21 contemporaneous, detailed time records and prevailing market rates for False Claims Act cases.
22 The records, together with the skill and experience of P&C (a firm practicing exclusively in the
23 area of False Claims Act litigation) and the crucial role it played in successfully resolving the case,
24 demonstrate the reasonableness of the lodestar amount of attorneys’ fees and expenses requested.

25
26 _____
27 ²Exhibit A to the Inman Decl. is a summary of P&C’s tasks, time and fees claimed; Exhibit
28 B is (1) a detailed set of P&C’s time records consisting of daily time entries, (2) a detailed report
of P&C’s expenses incurred through this case, and (3) a tally of the total balance requested for
both fees and expenses in this case.

1 Thus, the requested amount of \$145,732.50 in fees and \$2,824.14 in expenses should be awarded
2 to Mr. Krzesni as mandated by the Act.

3 BACKGROUND

4 Relator Joseph Krzesni filed this case in October 2003 seeking to recover treble damages
5 and civil penalties resulting from Defendants' submission of false claims to the Medi-Cal program
6 in connection with Defendants' provision of mental health services in six counties throughout
7 California. Because the Medi-Cal program receives half of its funding from the federal
8 government and the other half from the State of California, Mr. Krzesni alleged Defendants had
9 violated both the Federal and California False Claims Acts.

10 In his complaint, Mr. Krzesni identified two primary areas of fraudulent behavior –
11 fraudulent overstatement of costs in cost reports and fraudulent billing for day treatment services.
12 First, he provided the federal and California governments with evidence that Defendants
13 fraudulently overstated their costs in order to inflate their Medi-Cal reimbursement and avoid their
14 obligation to return to the government revenues that are in excess of their actual costs (“the cost
15 report claims”). Second, Krzesni provided evidence that Defendants billed Medi-Cal for mental
16 health services (so called “day treatment services”) that were not in fact provided (“the day
17 treatment claims”).

18 Mr. Krzesni worked for Defendant Stars Behavioral Health Group, Inc. (“SBHG”) from
19 1995 until October 2003. From 1995 to 2002, Krzesni provided consultation to SBHG on matters
20 of program development, licenses and certifications. From March 2002 until October 2003,
21 Krzesni was Director of the Northern Region of SBHG. In this capacity, Mr. Krzesni became
22 aware that Defendants were both improperly overstating costs on their cost reports and billing
23 Medi-Cal for day treatment services that were not provided.

24 In October 2003, Mr. Krzesni commenced this action by filing under seal a complaint
25 drafted by P&C. On February 13, 2004, Mr. Krzesni, with his counsel, Phillips & Cohen
26 (“P&C”), met with Alex Tse (the Assistant United States Attorney assigned to the case), Suzanne
27 Giorgi (the Deputy Attorney General for the State of California assigned to the case) and various
28

1 federal and state auditors and agents and disclosed to them substantially all of the information that
2 formed the foundation of this False Claims Act case. Inman Decl., ¶ 4.

3 In order to facilitate the government investigations, Mr. Krzesni and his counsel prepared a
4 lengthy disclosure statement attaching 2,679 pages of documents supporting Mr. Krzesni's
5 allegations. *Id.* Mr. Krzesni and his counsel assisted both the federal and California
6 investigations, working with both attorneys Tse and Giorgi and their respective agents in
7 preparing subpoenas and reviewing certain of the documents produced. *Id.* More than mid-way
8 through this case, Attorney Tse left the United States Attorney's Office and Attorney Giorgi left
9 the California Department of Justice and were replaced with new counsel unfamiliar with the case.
10 *Id.*

11 Four years after filing the complaint, following a lengthy investigation and settlement
12 negotiations, the United States, the State of California, Mr. Krzesni, and Defendants agreed to a
13 settlement of \$1 million to be paid to the United States and California governments. Inman Decl.,
14 ¶ 2. As part of the Settlement Agreement, Defendants received a release from both Krzesni and
15 the State of California for both the cost report and day treatment claims, whereas the United States
16 only gave Defendants a release for the day treatment claims. Inman Decl., ¶ 5. The United States
17 and the State of California each gave Krzesni a relator's share award of 20 % of their respective
18 settlement proceeds in recognition of the contribution to the case made by Mr. Krzesni and his
19 counsel. Inman Decl., ¶ 5. On November 8, 2007, except for Krzesni's attorney's fee claims, the
20 remainder of this action was dismissed with prejudice. *Id.*

21 Over the course of the past four years, P&C has worked a total of 372.50 hours toward the
22 resolution of this case, resulting in \$145,732.50 in fees and \$2,814.31 in expenses. Inman Decl.,
23 ¶¶ 3, 4 & Exhibits A, B. Through this motion, Mr. Krzesni seeks to recover from Defendants
24 these attorneys' fees and expenses as mandated by the Acts.

25 ARGUMENT

26 **I. RELATOR IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND** 27 **EXPENSES.**

28

1 Relator Krzesni is entitled to an award of attorneys' fees and expenses under both the
2 Federal and California False Claims Acts. The Federal False Claims Act provides that a *qui tam*
3 plaintiff who receives a percentage of the "proceeds of the action or settlement of the claim ...
4 shall also receive an amount for reasonable expenses which the court finds to have been
5 necessarily incurred, plus reasonable attorneys' fees and costs." 31 U.S.C. § 3730(d)(1) (emphasis
6 added). These fees and costs are to "be awarded against the defendant." *Id.*; see *United States v.*
7 *Stern*, 932 F.Supp. 277, 278 (M.D. Fla. 1993) (ordering fees and costs to be taxed against the
8 defendant under 31 U.S.C. § 3730(d)(1)). Here, the United States awarded Mr. Krzesni a relator's
9 share of 20 % of its settlement proceeds. Inman Decl., ¶ 6. Thus, under the Federal Act, Krzesni
10 must receive the reasonable fees and costs incurred by the work of his counsel.

11 Similarly, the California False Claims Act provides that "[i]f the state ... or the *qui tam*
12 plaintiff prevails in *or settles* any action under subdivision (c), the *qui tam* plaintiff shall receive
13 an amount for reasonable expenses that the court finds to have been necessarily incurred, plus
14 reasonable costs and attorneys' fees." Cal. Gov't Code §12652(g)(8) (emphasis added). Again,
15 expenses, costs and fees "shall be awarded against the defendant." *Id.* Here, California settled its
16 claims against Defendants and negotiated a relator's share award of 20% of the proceeds. *Id.*
17 Relator is thus entitled to recover reasonable expenses from Defendants, plus reasonable costs and
18 attorneys' fees.

19
20 That the United States did not give Defendants a False Claims Act release for the cost
21 report claims does not require a reduction in the amount of fees to which Krzesni is entitled.
22 Under Hensley v. Eckerhart, a court will not award fees for time spent on unsuccessful claims if
23 the unsuccessful claims were unrelated to the successful claims. 461 U.S. 424, 234-35 (1983).
24 However, for Hensley to apply, a claim must have been determined to be unsuccessful and at least
25 two False Claims Act cases have held that settlement does not determine whether a claim is
26 successful or unsuccessful for purposes of Hensley. See United States ex rel. Poulton v.
27 Anesthesia Associates of Burlington, Inc., 87 F. Supp. 2d 351, 357 (D. Vt. 2000) ("Settlement
28 does not determine which claims are meritorious, and effective work by Plaintiff's attorneys on all

1 claims serves as fuel for productive settlement discussions.”); United States ex rel. Greendyke v.
 2 CNOS, P.C., No. 04-4105, 2007 U.S. Dist. LEXIS 72987, at 20-21 (D. S.Dakota Sept. 27, 2007)
 3 (holding “there has been no determination of successful versus unsuccessful claims in this action”
 4 where the parties settled the claims and jointly stipulated to their dismissal). Here, there was no
 5 determination of the merits of the cost report claims. Instead, these claims were included as part
 6 of the Settlement Agreement, with both the State of California and Relator releasing Defendants
 7 for these claims. Having been settled, the cost report claims cannot be later deemed to be
 8 unsuccessful for purposes of reducing Relator’s attorney’s fee claim.³

9
 10 Even if the court were to somehow conclude from its failure to give Defendants a release
 11 that the United States’ cost reporting claims were unsuccessful, no reduction of Relator’s
 12 attorney’s fee and cost claim would be required. Under Hensley, where issues are common and
 13 the hours expended are reasonable for the overall relief obtained, courts will award fees without
 14 requiring apportionment between successful and unsuccessful claims. 461 U.S. 424, 434-35
 15 (1983). Similarly, applying Hensley, the Ninth Circuit in Schwarz v. Secretary of Health &
 16 Human Services found that the district court should award fees for work done even on the
 17 unsuccessful claim where “some of the work performed in connection with the unsuccessful claim
 18 also aided the work done on the merits of the successful claim.” 71 F.3d 895, 903 (9th Cir. 1995)
 19 (citing Herrington v. County of Sonoma, 883 F.2d 739, 747 (9th Cir. 1989)).

20 Here, since the federal and state cost report claims are identical, Relator still would have
 21 performed the same work in connection with his successful California cost report claims even if
 22 his federal cost report claims were determined to be unsuccessful. In other words, the work for
 23 federal and California cost report claims is coextensive. Therefore, no reduction would be
 24 appropriate even if the court were to find the federal cost reports claims to be unsuccessful.

25 **II. THE AMOUNT OF ATTORNEYS’ FEES REQUESTED IS REASONABLE.**

26
 27 ³ The Settlement Agreement specifically states that no inference on the merits of the claims
 28 – positive or negative – can be drawn from the fact of settlement. Inman Decl., Exh. F at ¶ H
 (“This Agreement is neither an admission of liability by Stars nor a concession by the United
 States, California, or Relator that their claims are not well founded.”)

1 **A. Calculating “Reasonable” Attorneys’ Fees.**

2 Federal courts have repeatedly held that the only proper method for determining attorneys’
3 fees is to calculate the “lodestar” amount. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 888 (1984).
4 The Supreme Court explained in *Blum* that the lodestar is to be calculated by multiplying the total
5 number of attorney and law clerk hours expended on the case by the reasonable hourly rate that
6 persons of equivalent experience and quality are charging in the community. *Blum* 465 U.S. at
7 896. “When . . . the applicant for a fee has carried his burden of showing that the claimed rate and
8 number of hours are reasonable, *the resulting product is presumed to be the reasonable fee . . .*”
9 *Blum*, 465 U.S. at 897, 104 S.Ct. At 1548 (emphasis added). Congress has made clear that in
10 calculating attorneys’ fees under the False Claims Act, “[t]he term ‘reasonable attorneys’ fees’ is
11 intended to incorporate the standard applied in the United States Supreme Court case of *Blum v.*
12 *Stenson . . .*” Cong. Rec. (Oct. 7, 1986) at H9389 (statement of Rep. Berman); *see also Burr v.*
13 *Blue Cross and Blue Shield of Florida, Inc.*, 882 F.Supp. 166, 169 (M.D. Fla. 1995) (“Federal
14 courts have applied the standard ‘lodestar’ methodology in determining a reasonable amount of
15 attorneys’ fees in *qui tam* actions.”)

16
17 **B. The Attorneys’ Fees Mr. Krzesni Seeks Are Based On Reasonable Hours As**
18 **Evidenced By Detailed Time Records, Efficient Staffing, The Absence of**
19 **Unnecessary Charges and The Amount of The Relator’s Share Award.**

20 To determine the proper number of compensable hours, the court should first consider the
21 documentation provided by Relator’s counsel in support of the hours claimed. Courts look
22 favorably on accurate, specific and contemporaneous time records -- records that specify precisely
23 the work performed and that were made when the work was actually done. *Hensley v. Eckerhart*,
24 461 U.S. 424, 440 (1986).

25 The time records presented here were kept at the time that the work was actually
26 performed and accurately record the hours spent. Inman Decl., ¶¶ 3-7. They were then
27 computerized and collated chronologically to allow the Court to scrutinize every activity for which
28 Mr. Krzesni seeks compensation and the amount of time spent on each of these activities. *Id.*

1 In assessing the reasonableness of attorneys' time, courts also routinely look to see
2 whether work is efficiently delegated and allocated among the attorneys staffing the case. *See*
3 *Hensley*, 461 U.S. at 434; H. Newberg, *Attorney Fee Awards*, § 4.27 (1986).⁴ Relators' counsel
4 staffed this case very efficiently. Initially, only two attorneys were principally staffed on this case:
5 Mr. Brown, a former senior P&C associate who performed most of the day-to-day work on the
6 case, including factual and legal research and investigating and drafting of the complaints and
7 disclosure statement, and Mr. Meagher, a former senior partner at P&C, who handled various
8 communications with government attorneys, supervised Mr. Brown's work and consulted on
9 various strategies for the case. Inman Decl., ¶10 & Exhibits A, B. Mr. Brown, an associate with a
10 lower billing rate at P&C, was responsible for over 64% of the hours billed, billing a total of
11 241.70 hours. *Id.* Mr. Meagher was responsible for approximately 10% of the hours billed, and
12 billed a total of 40.25 hours over the course of two years.⁵ *Id.* After Mr. Meagher left P&C in
13 January 2005, Mr. Brown handled the case largely unassisted. After Mr. Brown left P&C in
14 February 2007, the case was assigned to Ms. Inman.

15 As further evidence of P&C's lean staffing and the reasonableness of its hours, Mr. Brown
16 frequently delegated the initial legal research on this case to P&C's senior law librarian, Janice
17 Kelly, whose billing rate is half that of Brown's. Inman Decl., ¶ 8. With a Master's Degree in
18 Library Science and over 20 years' experience performing legal research, Ms. Kelly performed
19 most of the initial legal research regarding pertinent Medi-Cal rules and regulations, a task that is
20 ordinarily performed by attorneys like Mr. Brown. *Id.* Ms. Kelly was responsible for
21 approximately 10% of the hours billed. *Id.*

22
23
24 ⁴ Moreover, in cases where counsel is a small firm such as P&C, which through the course
25 of this litigation had no more than 11 attorneys in the entire firm, hours are rarely reduced,
26 because staffing is, of necessity, lean. As is demonstrated by the time records in this action, small
27 firms simply do not have the resources to overstaff a case. *See Roberts v. Nat'l Bank*, 556 F. Supp.
28 724, 728 n.1 (E.D. Mich. 1983).

⁵ One of P&C's other senior partners, Eric Havian, participated minimally in the case. Mr.
Havian billed .50 hours at a rate of \$550/hour. Inman Decl., ¶ 11 & Exhibits A, B. P&C's former
senior paralegal, Jessica Meyer, billed a total of 2.50 hours at a rate of \$200/hour. *Id.*

1 Moreover, the time spent by the P&C attorneys and paralegals was reasonably necessary
2 for the proper prosecution of this action and was not wasted on frivolous tactics or motions. The
3 attorneys and law clerks of P&C have worked 372.50 hours over the past four years of this case,
4 performing many crucial tasks, including investigating allegations against Defendants, drafting the
5 complaint and disclosure statement containing much of the pertinent evidence, conducting
6 damages analyses and participating in negotiating the settlement agreement. *See* Inman Decl., ¶ 6
7 & Exhibits A, B. Because P&C is paid on a contingency and not hourly basis by its clients, it does
8 not behoove its attorneys to increase or “pad” their hours unnecessarily. *Id.*, ¶ 12. In light of the
9 complexity of this Medicare fraud matter and based on each attorney’s skill level and experience,
10 each of the attorneys and law clerks spent a reasonable amount of time completing his or her
11 assigned tasks. *Id.*, ¶ 6.

12 The significant contribution of Relator and his counsel is reflected in the decision by the
13 federal government and California to pay a “relator’s share award” of 20 percent, which is solidly
14 in the middle of the statutory range of between 15 and 25 % for relator’s share awards in
15 intervened cases. Inman Decl., ¶ __. The government attorneys involved with the case recognized
16 the contribution made by Relator and his counsel to discovering the fraud, initiating this action
17 and assisting the government with prosecution and successful settlement of the claims. See United
18 States ex rel. Poulton v. Anesthesia Assoc., 87 F. Supp. 2d 351, 356-57 (D. Vt. 2000) (relator’s
19 share reflects in part Government’s assessment of relator’s contribution to success).

20 Because the attorneys’ fees requested are based on reasonable hours, as evidenced by
21 detailed time records, efficient staffing, the absence of unnecessary tasks, and the governments’
22 relator’s share award, Mr. Krzesni’s request for those fees should be granted.

23 **C. The Requested Fees Are Based On Reasonable Rates Consistent With**
24 **Prevailing Market Rates.**

25 After the court has determined the number of compensable hours, it must then decide the
26 proper rate to be applied to those hours. As the Supreme Court stated in *Blum v. Stenson*, 465
27 U.S. at 895, “ ‘reasonable fees’ . . . are to be calculated according to the prevailing market rates in
28

1 the relevant community . . .” *Accord Norman v. Housing Authority of City of Montgomery*, 836
2 F.2d 1292, 1299 (11th Cir. 1988).

3
4 Relator seeks to recover fees based on the standard hourly rates charged by each lawyer
5 and law clerk that worked on this case. The rates (listed below) are consistent with those
6 prevailing in the San Francisco legal community for comparably qualified attorneys. The
7 following is a list of the attorneys and paralegals who worked on this case for P&C with their
8 billing rates and hours worked.

Timekeeper	Total Hours	Hourly Rate	Total Fees
Michael Brown	241.70	\$400.00	\$96,680.00
Eric Havian	.50	\$550.00	\$275.00
Mary Inman	47.30	\$425.00	\$20,102.50
Janice Kelly	40.25	\$200.00	\$8,050.00
Stephen Meagher	40.25	\$500.00	\$20,125.00
Jess Meyer	2.50	\$200.00	\$500.00
Total Hours	372.50		
Total Fees			\$145,732.50

15
16 In considering whether the rates relators seek are consistent with the prevailing rates in the
17 San Francisco area, the Court considers the qualifications, experience, and specialized competence
18 of the attorneys involved. Schwarz, 73 F.3d at 908. Phillips & Cohen LLP is the nation’s most
19 successful law firm representing whistleblowers in qui tam lawsuits. P&C repeatedly has been
20 recognized by the National Law Journal as one of the nation’s top 20 “hot” plaintiffs’ litigation
21 firms due to its success in representing whistleblowers, including the recent list for 2007. This
22 ranking is amply supported by the fact that lawsuits brought by P&C on behalf of whistleblowers
23 have returned more than \$2.6 billion to the U.S. Treasury, making it by far the top whistleblower
24 law firm in the country.

25 As the Supreme Court directed in Blum, courts regularly rely on declarations of fellow
26 practitioners in determining the reasonableness of attorneys’ rates. 465 U.S. at 896 n.11 (1984);
27 see also United Steelworkers v. Phelps Dodge Corp., 896 F.2d 403 (9th Cir. 1990). Here, Relator
28 provides the declarations of two prominent San Francisco attorneys, Wayne Lamprey and Paul

1 Scott, who also specialize in representing relators in False Claims Act litigation in the San
2 Francisco Bay Area and are familiar with the work of the attorneys handling this case for P&C.
3 Mr. Lamprey and Mr. Scott both attest that the rates being sought by the P&C attorneys involved
4 in this case are reasonable for *qui tam* practitioners with their level of skill, experience,
5 background and reputation. Declaration of Wayne T. Lamprey at ¶¶ 2-4; Declaration of Paul D.
6 Scott at ¶¶ 2-4.

7 The rate charged by Mr. Meagher, \$500 per hour, is comparable to that charged by other
8 *qui tam* attorneys of like skill in similar cases. Mr. Meagher was a partner of P&C for 11 years
9 and was chairman of the Justice Department's Health Care Fraud Task Force in Northern
10 California prior to that. *See* Inman Decl., ¶ 8 & Exhibit C (resume of Stephen L. Meagher).
11 Having been an Assistant United States Attorney for seven years, he specializes in health care
12 fraud matters. *Id.* In light of his years of experience and accomplishments in the health care fraud
13 legal community, it is reasonable that his billing rate be \$500 per hour, which is the rate P&C
14 charges in all of its current *qui tam* cases for his time. *See id.*

15 The rate charged by Mr. Brown, \$400 per hour, is also comparable to that charged by other
16 *qui tam* attorneys of like skill in similar cases. Mr. Brown, a 1995 graduate of the University of
17 California, Davis School of Law, was an associate with P&C between May 2002 and February
18 2007. Inman Decl., ¶ 9 & Exhibit D (resume of Michael P. Brown). Prior to joining P&C, he
19 was law clerk for the United States District Court and Court of Appeals as well as a litigation
20 associate with O'Melveny & Myers LLP. *Id.* At P&C, he only worked on *qui tam* matters and
21 accordingly built an expertise in litigation like this one. *Id.* Similarly, the rates charged for the
22 other P&C attorneys and law clerk who worked on this matter are the same reasonable amounts
23 that are charged by P&C in all of its current *qui tam* cases. *Id.*, ¶ 7.

24 Indeed, Mr. Krzesni is seeking a lodestar calculated at very conservative rates. These rates
25 do not reflect the risk that Mr. Krzesni's attorneys would be paid nothing if the litigation was
26 unsuccessful, *see* Inman Decl., ¶ 12 & Exh. E (Retainer Agreement), but are instead comparable to
27 rates charged by attorneys who are paid whether they win or lose. Congress specifically
28

1 recognized that attorneys in False Claims Act cases are entitled to higher rates than the rates billed
2 by lawyers who are paid regardless of the outcome of the case:

3 It is important . . . to draw a distinction between marketplace rates
4 on a contingency case, such as a case filed under the False Claims
5 Act, and marketplace rates paid by a client to an attorney where
6 payment will be made on a previous (usually monthly) basis
7 irrespective of the outcome of the matter. *On such cases, that rate
8 would be substantially greater than a rate where payment was
9 guaranteed on a monthly basis regardless of whether the case was
10 won or lost.*

11 Congr. Record, House of Representatives, H9388, October 7, 1986 (Statement of Rep. Berman)
12 (emphasis added).

13 Mr. Krzesni's counsel, however, is not charging higher than the market rate here. The fact
14 that Mr. Krzesni is seeking attorneys' fees using the prevailing rate for similarly-experienced
15 attorneys in non-contingency cases -- even when they may charge higher market rates to reflect
16 the contingency risk -- additionally demonstrates the reasonableness of his request for
17 \$145,732.05 in fees. *See United States ex rel. Poulton v. Anesthesia Associates of Burlington,
18 Inc., 87 F.Supp.2d 351, 358-59 (D. Vt. 2000) (adjusting lodestar upward to reflect risk of not
19 recovering notwithstanding relator's counsel's recovery of contingency fee).*

20 **III. QUI TAM PLAINTIFFS ARE ALSO ENTITLED TO AN AWARD FOR 21 NECESSARY EXPENSES AND COSTS INCURRED.**

22 Both the Federal and California False Claims Acts specifically provide that defendants are
23 liable for expenses and costs in addition to fees. 31 U.S.C. § 3730(d)(1); Cal. Gov't Code §
24 12652(g)(8). The expense records attached to the Inman Declaration identify the \$2,824.14 in
25 expenses and costs that Relator's counsel reasonably incurred in the underlying litigation. Those
26 modest costs are summarized below and should be included as part of an award of fees, costs and
27 expenses.

Expense	Total
Courier	\$164.74
Duplicating	\$1,835.99
Experts	\$170.00
FedEx	\$67.96
Filing Fees	\$150.00
Postage	\$33.92

1	Research	\$358.81
2	Telephone	\$18.64
	Travel	\$14.25
3	Total	\$2,814.31

4 See Inman Decl., Exh. B. Included in these costs is \$170 in expert fees. *Id.* ¶ 13, Exh. B.
5 Given the complexity of the Medi-Cal regulations and reimbursement regime in this case, P&C
6 retained John W. Schilling, a Medicare reimbursement expert, to consult with P&C. *Id.* ¶ 13. Mr.
7 Schilling helped P&C conduct the initial evaluation of this case and expended a total of two hours
8 on this case. *Id.* Given his 13 years of experience in the Medicare reimbursement field, including
9 five years as a senior fraud investigator for United States Government Services, LLC, the hours
10 and rate being sought by Mr. Schilling are reasonable. *Id.* ¶ 14, Exhibit F (resume of John W.
11 Schilling).

12
13 The remainder of the expenses (\$2,654.14) include reasonable and necessary costs of
14 P&C's postage, photocopying, overnight mail, long distance telephone, telefaxing, local
15 transportation to meetings, and Lexis-Nexis research over the past four years.

16 In addition to \$2,824.14 in costs incurred in the underlying litigation, as stated below,
17 Relator is also seeking costs incurred in connection with this fees and costs petition.

18 **IV. Relator Is Entitled To Recover Fees for Time Spent Seeking Attorney's Fee Award.**

19 Under well-established federal and California precedent, Relator is entitled to recover
20 attorney's fees and costs spent pursuing attorneys' fees. Manhart v. City of Los Angeles, 652 F.2d
21 904, 909 (9th Cir. 1981) ("[i]t would be inconsistent to dilute an award of fees by refusing to
22 compensate an attorney for time spent to establish a reasonable fee"), vacated and remanded on
23 other grounds, 461 U.S. 951 (1983); United States ex rel. Doe v. Pennsylvania Blue Shield, 54 F.
24 Supp. 2d 410, 417, 420 (M.D. Pa. 1999) (awarding relator 745 hours spent pursuing fee
25 application as reasonable); Serrano v. Unruh, 32 Cal.3d 621, 638 (1982) ("fees recoverable . . .
26 ordinarily include compensation for all hours reasonably spent, including those necessary to
27 establish and defend the fee claim"). Accordingly, in its reply brief, Relator will present billing
28

