

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 UNITED STATES OF AMERICA and
5 STATE OF CALIFORNIA ex rel. LOI
6 TRINH and ED TA-CHIANG HSU,

7 Plaintiffs,

8 v.

9 NORTHEAST MEDICAL SERVICES, INC.,

10 Defendant.
11 _____/

No. C 10-1904 CW

ORDER GRANTING
MOTION FOR
RELATORS'
ATTORNEYS' FEES
AND COSTS

(Docket No. 259)

12 Loi Trinh and Ed Ta-Chiang Hsu (Relators) move for attorneys'
13 fees and costs under 31 U.S.C. § 3730(d)(1) and California
14 Government Code section 12652(g)(8). The Court grants Relators'
15 motion as outlined below, and awards \$386,508.00 in fees and
16 \$2,745.92 in costs.

17 BACKGROUND

18 This action arose out of a dispute concerning the scope of
19 the financial reporting obligations owed by Defendant Northeast
20 Medical Services, Inc. (NEMS) under the Medicaid Act. In May
21 2010, Relators, two former NEMS employees, filed this qui tam
22 action against NEMS. Relators asserted claims on behalf of both
23 the United States of America and the State of California
24 (collectively the Governments) under the False Claims Act, 31
25 U.S.C. §§ 3729 et seq., and the California False Claims Act, Cal.
26 Gov't Code §§ 12650 et seq. The United States elected to
27 intervene in August 2012, Docket No. 17, and the State of
28 California followed suit in January 2013, Docket No. 24.

1 Thereafter, the Governments filed their joint Complaint-In-
2 Intervention against NEMS, in which they alleged that NEMS failed
3 to disclose on its annual reconciliation requests all of the
4 payments it received from the San Francisco Health Plan. Docket
5 No. 26. As a result of this failure to report, the Governments
6 alleged, NEMS received roughly twenty million dollars in
7 reconciliation payments between 2001 and 2010 to which it was not
8 entitled. On January 13, 2015, Magistrate Judge Beeler enforced a
9 settlement to which the parties had agreed. Docket Nos. 223, 225
10 and 229. The Court entered judgment on August 19, 2015, which
11 requires NEMS to pay the Governments eight million dollars plus
12 interest, among other things. Docket No. 256. The Court denied
13 NEMS's motions to vacate Magistrate Judge Beeler's order and the
14 judgment entered in this case.¹

15 Relators filed this motion timely on September 1, 2015.
16 Docket No. 259; see also Docket No. 256; L.R. 54-5(a). Relators
17 timely filed their Bill of Costs the following day. Docket Nos.
18 256 and 263; Civ. L.R. 54-1(a). NEMS filed a response on
19 September 15, 2015, Docket No. 266, and Relators filed a reply on
20 September 22, 2015, Docket No. 270. Following the Court's order
21 to file supplemental documentation, Docket No. 273, Relators'
22 counsel filed a supplemental declaration with redacted timesheets
23 attached, Docket No. 274. Relators' motion satisfies the
24 requirements of Civil Local Rule 54-5(b).

25 _____
26 ¹ The Court did, in fact, have the authority to enter
27 Judgment in this case, as explained in the order denying NEMS's
28 motions to alter, vacate or set aside judgment. See Docket No.
259 at 7.

DISCUSSION

Under both federal and state law, Relators are entitled to reasonable attorneys' fees and costs. 31 U.S.C. § 3730(d)(1); Cal. Gov't Code § 12652(g)(8).

I. Attorneys' Fees

Relators brought and prevailed in both federal and California state law claims. The Court applies both state and federal law because both result in the same fee award. In California, as in the Ninth Circuit, reasonable attorneys' fees are determined by first calculating the "lodestar." Ketchum v. Moses, 24 Cal. 4th 1122, 1131 (2001) (citing Serrano v. Priest (Serrano III), 20 Cal. 3d 25 (1977)); Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). The "lodestar" is calculated by compiling the number of hours spent on litigating the case and multiplying it by a reasonable hourly rate of compensation for each attorney. Ketchum, 24 Cal. 4th at 1131-32; Morales, 96 F.3d at 363. A court may adjust the lodestar to address particular circumstances of the lawsuit. Maria P. v. Riles, 43 Cal. 3d 1281, 1294 n.8 (1987) (citing Serrano III, 20 Cal. 3d at 49); Morales, 96 F.3d at 363-64 (permitting adjustments "that are not already subsumed in the initial lodestar calculation").

A. Hourly Rate

Relators seek fees for two attorneys: James T. Diamond at a rate of \$625.00 per hour and Xochitl Carrion at a rate of \$285.00 per hour. Docket No. 260, Diamond Dec. ¶ 13. NEMS "does not dispute the reasonableness of Relators' counsel's hourly rates." Docket No. 266 at 2 n.2.

1 Determining a reasonable hourly rate is a critical inquiry.
2 Jordan v. Multnomah Cnty., 815 F.2d 1258, 1262 (9th Cir. 1987)
3 (citing Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984)). The fee
4 applicant has the burden to produce evidence, other than the
5 declarations of interested counsel, that the requested rates are
6 in accordance with those prevailing in the community for attorneys
7 of comparable skill and reputation. Id. at 1263; see also
8 Ketchum, 24 Cal. 4th at 1132. In establishing the reasonable
9 hourly rate, the court may take into account: (1) the novelty and
10 complexity of the issues; (2) the special skill and experience of
11 counsel; (3) the quality of representation; and (4) the results
12 obtained. See Cabrales v. Cnty. of L.A., 864 F.2d 1454, 1464 (9th
13 Cir. 1988), vacated, 490 U.S. 1087, remanded to 886 F.2d 235
14 (reinstating the original opinion). These factors are subsumed in
15 the initial lodestar calculation, and should not serve as
16 independent bases for adjusting fee awards. Morales, 96 F.3d at
17 363-64. Other factors that can be considered are (1) the time and
18 labor required; (2) the preclusion of employment by the attorney
19 due to acceptance of the case; (3) time limitations imposed by the
20 client or circumstances; (4) the amount involved and the results
21 obtained; (5) the "undesirability" of the case; and (6) awards in
22 similar cases. Hensley v. Eckerhart, 461 U.S. 424, 430 n.3
23 (1983).

24 The Court agrees with the parties that the proposed rates are
25 reasonable for several reasons. The requested rates are in
26 accordance with comparable rates within the community for
27 comparable work. See Docket No. 261. Further, state and federal
28 false claims suits are complex, and Relators' counsel have handled

1 this years-long and highly-contested case with skill. Finally, an
2 eight million dollar judgment is an excellent outcome. The Court
3 proceeds using the agreed-upon rates.

4 B. Hours Expended

5 Under federal law, "the fee applicant bears the burden of
6 submitting 'evidence supporting the hours worked'"
7 Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1121 (9th Cir. 2000)
8 (quoting Hensley, 461 U.S. at 433). This requires the fee
9 applicant to "show that the time spent was reasonably necessary
10 and that its counsel made 'a good faith effort to exclude from
11 [the] fee request hours that are excessive, redundant, or
12 otherwise unnecessary.'" Jordan, 815 F.2d at 1263 n.8 (quoting
13 Sealey, Inc. v. Easy Living, Inc., 743 F.2d 1378, 1385 (9th Cir.
14 1984)). California law also requires a fee applicant to submit
15 evidence supporting the fee award. See, e.g., Martino v. Denevi,
16 182 Cal. App. 3d 553, 559 (1986) (concluding that the testimony of
17 an attorney as to the number of hours worked sufficed); Weber v.
18 Langholz, 39 Cal. App. 4th 1578, 1586-87 (1995) (holding that an
19 applicant's declaration with hourly rate, statement that all fees
20 were connected to services, total amount of money, and a general
21 description of the work done sufficed). Here, under both federal
22 law and California law, Relators have satisfied this burden.
23 Relators' counsel described the work performed and submitted
24 redacted timesheets. Docket No. 259 at 8-11²; Docket No. 260
25 ¶¶ 7, 15-25; Docket No. 274.

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27 _____
28 ² Page numbers refer to the docketed page numbers.

1 Originally, Relators sought fees for Mr. Diamond for 595.7
2 hours and for Ms. Carrion for 83.8 hours. Docket No. 259 at 11.
3 Relators updated their request by reducing Mr. Diamond's hours
4 five percent to 565.7 hours in response to one of NEMS's
5 arguments, discussed below. Docket No. 270 at 8. Relators also
6 requested fees for fifteen additional hours for Mr. Diamond's work
7 relating to the reply brief for this motion and other post-
8 judgment work. Id.

9 NEMS's arguments in response to the motion relate to the
10 number of hours Relators' attorneys worked.³ First, NEMS argues
11 that Relators are not entitled to fees stemming from a forfeited
12 claim. Docket No. 266 at 5-6. Relators' initial complaint
13 contained two claims: the Medi-Cal claim in which the Governments
14 ultimately intervened and a separate Medicare claim. Id. at 5.
15 Relators later notified the Court that the Governments' Complaint-
16 In-Intervention superseded their original complaint, and that
17 Relators no longer intended to pursue the Medicare claim. Docket
18 No. 86 at 2. Relators agree that they should not receive fees for
19 the forfeited claim. Docket No. 270 at 6. Following the Court's
20 order for supplemental documentation, Relators submitted more
21 detailed timesheets and a declaration noting which entries related
22 to both claims and which entries related to the forfeited claim.
23 Docket No. 274. Mr. Diamond declared that 45.2 hours worth of
24 entries were evenly split between the two claims. Id. ¶ 3. He

25 ³ NEMS argues that Relators have not provided enough
26 information to support their motion. Docket No. 266 at 3-5. The
27 Court need not discuss this argument because, ultimately, Relators
28 filed the billing records upon which the fee motion is based.
Docket No. 274.

1 further declared that 7.9 hours worth of entries related to time
2 spent solely on the forfeited claim. Id. ¶ 4.

3 The Court agrees that fees should not be awarded for the
4 forfeited claim. The number of hours for which Mr. Diamond is
5 entitled to claim fees is equal to the total number of hours
6 claimed (610.7)⁴ minus half of the split time (22.6) and minus his
7 time spent on the forfeited claim (7.9). Thus, the Court will
8 award Mr. Diamond fees for 580.2 hours.

9 Second, NEMS argues that the attorneys' fees motion is
10 unreasonable because it fails to disentangle how much time
11 Relators' attorneys spent on a "theory of liability" from which
12 the Governments purportedly shifted. Docket No. 266 at 6-8.
13 According to NEMS, the Governments' Complaint-In-Intervention
14 rested on a theory that NEMS failed to report all revenue
15 received, but after summary judgment the Governments contended
16 that NEMS had built the cost of third-party services into its
17 rate. Id. at 6-7. NEMS cites no legal authority in support of
18 its argument that it must be able to separate time spent on
19 different legal theories to rebut the fees motion.

20 NEMS's premise is faulty under both federal and state
21 attorneys' fees law. The Supreme Court explained in Hensley that,
22 where a plaintiff brings multiple unrelated claims in a single
23 lawsuit and is successful on some but not others, "no fee may be
24 awarded for services on the unsuccessful claim." 461 U.S. at 435.
25 Conversely, a plaintiff's claims may "involve a common core of

26 ⁴ This number is equal to the total number of hours
27 originally claimed, 595.7 hours, plus the supplemental hours for
28 reply briefing and post-judgment work, fifteen hours.

1 facts or will be based on related legal theories." Id. In these
2 instances, the lawsuit "cannot be viewed as a series of discrete
3 claims. Instead, the district court should focus on the
4 significance of the overall relief obtained by the plaintiff in
5 relation to the hours reasonably expended on the litigation."
6 Id.; see also Tutor-Saliba Corp. v. City of Hailey, 452 F.3d 1055,
7 1063 (9th Cir. 2006); Webb v. Sloan, 330 F.3d 1158, 1168 (9th Cir.
8 2003) (related claims "involve a common core of facts or are based
9 on related legal theories") (emphasis in original). California
10 courts and courts calculating attorneys' fees under California law
11 have adopted this approach. See, e.g., ComputerXpress, Inc. v.
12 Jackson, 93 Cal. App. 4th 993, 1018-19 (2001) (adopting the
13 Hensley approach to relatedness in the private attorney general
14 context); Trulsson v. Cnty. of San Joaquin Dist. Attorney's
15 Office, 2014 WL 5472787, at *4-*5 (E.D. Cal.) (applying the
16 Hensley approach to relatedness to a state Fair Employment and
17 Housing Act claim); Nguyen v. Wells Fargo & Co., 2015 WL 78738
18 (Cal. App.) (describing this concept as the inquiry that applies
19 in "cases of limited success" in California).

20 Here, Relators' claims and the Governments' claims involved a
21 common core of facts, which alone suffices to demonstrate that the
22 work performed was for a single related claim. Further, the two
23 legal theories were related; thus the Court need not decide
24 whether the two legal theories NEMS describes are actually
25 distinct. The Court will not reduce attorneys' fees for hours
26 spent on the initial "theory."⁵

27 ⁵ The Court need not address Relators' other arguments in
28 response to NEMS's relatedness argument in the reply brief.

1 In sum, the Court awards Relators' counsel the following
2 fees.

3 Attorney	Hours	Rate	Total
4 James T. Diamond	580.2	\$625.00	\$362,625
5 Xochitl Carrion	83.8	\$285.00	\$23,883

6 The Court need not adjust the award for any other reason.
7 See Morales, 96 F.3d at 363-64.

8 II. Costs

9 Relators move for costs for fees to the Clerk and
10 interpreters. The Court finds these costs reasonable.

11 CONCLUSION

12 For the foregoing reasons, the Court awards to Relators'
13 counsel \$386,508.00 in fees and \$2,745.92 in costs. NEMS shall
14 pay this sum forthwith.

15
16 Dated: February 17, 2016



17 CLAUDIA WILKEN
18 United States District Judge