EXHIBIT 2

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Miller v. HolzmannD.D.C.,2008.Only the Westlaw citation is currently available.

United States District Court,District of Columbia.

Richard F. MILLER, Plaintiff,

v.

Philipp HOLZMANN, et al., Defendants.

Civil Action No. 95-1231 (RCL).

Aug. 12, 2008.

Background: Qui tam relator brought action on behalf of United States against federal contractors, alleging violations of False Claims Act (FCA). Following jury verdict for plaintiffs, relator moved for attorneys' fees and costs.

Holdings: The District Court, Royce C. Lamberth, Chief Judge, held that:
(1) relator was not "prevailing party" as to time-barred claims;
(2) bills of costs were reasonable;
(3) attorneys' fee award of $7.25 million would properly issue; and
(4) attorneys' expense award of $287,000 would properly issue.

Motion granted in part and denied in part.

*** The requested pages begin below ***

***1** Winston Churchill prescribed magnanimity in victory. *See* Winston S. Churchill, THE SECOND WORLD WAR, VOLUME I: THE GATHERING STORM xiii (1948).

***1** But Churchill, of course, spoke of war, not litigation.

***1** On August 10, 2007, relator emerged victorious in this False Claims Act ("FCA") suit of epic duration when this Court entered judgment against six defendants [FN1] for over $90 million.[FN2](*See generally* Judgment [883].) He now seeks another $20 million in attorneys' fees and costs.

***1** Now before the Court are plaintiffs' bills of costs [928, 929, 933] and relator's motion for attorneys' fees, costs, and expenses [930]. Pursuant to Federal Rule of Civil Procedure 54(d)(1) and Local Civil Rule 54.1, the United States asks the Court to tax its $54,437.87 in costs to defendants.[FN3] Relator, in turn, requests reimbursement for $31,973.96 in costs.[FN4] Separately, relator seeks $9,945,765.25 in attorneys' fees [FN5] and $511,723.06 in associated costs and expenses.[FN6]Finally, he proposes a 100 percent enhancement of his attorneys' fees based on exceptional quality of representation, thus raising his overall demand to $20,403,253.56. Defendants, naturally, oppose plaintiffs' requests.[FN7]This Opinion first considers Anderson's argument that he shares liability only for the government's costs. It then examines defendants' challenges to plaintiffs' bills of costs, to relator's attorneys' fees, and to his expenses.

I. Anderson's Liability

***1** [1] Although the jury found for the government on its sole, live claim against Anderson, this Court dismissed relator's claims against Anderson as time-barred. (*See* Verdict Form [858] at 4, 7, 11; Mem. Op. of June 14, 2007 [872] at 29.) In opposing relator's fee petition, Anderson contends the FCA permits only "prevailing parties" to recover fees and costs from a defendant, that relator is not a "prevailing party" as against him, and that accordingly, he is not liable to relator. (Anderson's Opp'n at 2-7.) Relator, however, insists the FCA does not limit fee and cost recovery to prevailing parties, and that because the *government* prevailed on its claim against Anderson, Anderson is jointly and severally liable with the other defendants for *relator's* fees and costs. (Reply to Anderson's Opp'n at 1.)

***2** As the parties (at least, implicitly) concede, this issue is one of first impression. (*See id.* at 4; Anderson's Opp'n at 5.)

***2** In incorporating a fee-shifting provision, the FCA is far from unique among federal statutes that create

private, civil causes of action. *Compare*31 U.S.C. § 3730(d)(1) (2008) (*qui tam* relator may recover "expenses ... necessarily incurred, plus reasonable attorneys' fees and costs," from the defendants), *with*42 U.S.C. § 1988(b) (2008) (court has discretion to award "reasonable attorney's fee as part of [ ] costs" to successful civil rights plaintiffs).

***2** [2] Under many other fee-shifting schemes, a plaintiff may recover his attorneys' fees and expenses from the defendant *only* when he is a "prevailing party." [FN8]*See, e.g., Richlin Sec. Serv. Co. v. Chertoff*, ---U.S. ----, 128 S.Ct. 2007, 2011, 170 L.Ed.2d 960 (2008) (Equal Access to Justice Act, 5 U.S.C. section 504(a)(1), "permits an eligible prevailing party to recover 'fees and other expenses incurred by that party in connection with' a proceeding before an administrative agency"); *Winkelman v. Parma City Sch. Dist.*, --- U.S. ----, 127 S.Ct. 1994, 2002, 167 L.Ed.2d 904 (2007) (Individuals with Disabilities Education Act, 20 U.S.C. section 1315(i)(3)(B)(i)(I), "allow[s] an award [of attorney's fees] 'to a prevailing party who is the parent of a child with a disability' "); *Farrar v. Hobby*, 506 U.S. 103, 109, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992) ("in order to qualify for attorney's fees under [the Civil Rights Attorney's Fees Awards Act, 42 U.S.C.] § 1988, a plaintiff must be a 'prevailing party' ").*Cf.*FED.R.CIV.P. 54.1(d) (providing for recovery of costs other than attorney's fees by "the prevailing party" in civil litigation).

***2** The FCA does not expressly limit fee recovery to "prevailing" relators, but its description of which relators may recoup their fees is not exactly a model of clarity:

> ***2** If the Government proceeds with an action brought by a [relator], such person shall ... receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim.... Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions [that have been publicly disclosed] the court may award ... no [ ] more than 10 percent of the proceeds.... Any payment to a person under the first or second sentence shall be made from the proceeds. *Any such person* shall also receive an amount for reasonable expenses ... necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

***2** 31 U.S.C. § 3730(d)(1) (2008) (emphasis added).[FN9]*Cf.*42 U.S.C. § 1988(b) (2008) (court has discretion to award reasonable attorney's fee to "prevailing party" in suits brought pursuant to certain civil rights statutes).

***2** To interpret the vague phrase "any such person," the Court must look to its context. *See Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."). In light of the immediately preceding sentence, "any such person" must mean any person who receives payment under the statute's first or second sentences. *See*31 U.S.C. § 3730(d)(1) (2008). Those two sentences merely establish the percentage bounty a relator should receive when the government intervenes in the action he has brought and ultimately secures payment for its damages. *See id.*The internal cross-reference thus suggests that *whenever* the government intervenes and obtains relief, no matter the circumstances, the relator should receive both a share of the government's proceeds and reasonable attorneys' fees.

***3** This reading, however, would yield absurd results-at least some of which Congress clearly did not intend. For example, 31 U.S.C. section 3730(e) provides that no court shall have jurisdiction over certain actions, such as those "based upon the public disclosure of allegations or transactions ... unless ... the person bringing the action is an original source of the information"-that is, "an individual who has direct and independent knowledge of the information on which the allegations are based and [who] has voluntarily provided the information to the Government" before filing his *qui tam* complaint. *See*31 U.S.C. § 3730(e)(4) (2008). Logically, having erected a jurisdictional bar to these relators'

claims, Congress could not have intended them to receive attorneys' fees. *See Fed. Recovery Servs., Inc.*, 72 F.3d at 449-50, 453 (affirming district court's denial of attorneys' fees to relator whose claims were dismissed as barred under section 3730(e)(4)).*Cf. United States ex rel. Merena v. SmithKline Beecham Corp.*, 205 F.3d 97, 106 (3d Cir.2000) (Alito, J.) (reversing district court's award of relator's share to relator whose claims were subject to dismissal under section 3730(e)(4)). On the contrary, Congress has sought to *prevent*, not reward, "opportunistic suits by private persons who heard of fraud but played no part in exposing it." *Cooper v. Blue Cross & Blue Shield of Fla., Inc.*, 19 F.3d 562, 565 (11th Cir.1994) (emphasis added) (discussing comprehensive 1986 FCA amendments).

***3** The fee-shifting provision itself does not appear to draw this line-nor, for that matter, any other.[FN10]Relator suggests the Court should interpret this inscrutable language in light of the FCA's goals, which he argues support awarding attorneys' fees to relators, like himself, whose claims are dismissed due to "procedural," vice jurisdictional, defects. (*See* Reply to Anderson's Opp'n at 4-5.) Courts rightly balk at engaging in this sort of arbitrary line-drawing. *E.g.*, *Colgrove v. Battin*, 413 U.S. 149, 182, 93 S.Ct. 2448, 37 L.Ed.2d 522 (1973) (Marshall, J., dissenting) ("Normally, in our system we leave the inevitable process of arbitrary line drawing to the Legislative Branch, which is far better equipped to make ad hoc compromises.").

***3** Happily, here, Congress left an additional, unambiguous clue to its intent in drafting the FCA attorneys' fees provision. In its report accompanying the 1986 amendments, the Senate Judiciary Committee characterized the FCA's fee-shifting scheme as applying to "*prevailing qui tam* relators." S.Rep. No. 99-345, at 29 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5294 (emphasis added). As explained above, the qualifier "prevailing" appears in numerous other federal fee-shifting provisions, and its meaning is well-established. *See, e.g.*, *Farrar*, 506 U.S. at 109-11, 113 S.Ct. 566.Its application here would harmonize the fee-shifting provision with the jurisdictional exclusions in subsection (e) and with more fundamental jurisdictional

[FN11]*See Fed. Recovery Servs., Inc.*, 72 F.3d at 450, 452 (government's intervention does not cure existing jurisdictional defect in relator's complaint so as to permit dismissed relator to recover attorneys' fees); *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1044 (6th Cir.1994) (despite government's intervention and settlement with defendant, if district court on remand determined co-relator lacked standing, it could not recoup attorneys' fees).

***4** As the Supreme Court has observed, "[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail." *Hewitt v. Helms*, 482 U.S. 755, 760, 107 S.Ct. 2672, 96 L.Ed.2d 654 (1987), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). The Senate Report's "ordinary language" undercuts relator's contention that Anderson, against whom *his* claims garnered no relief whatever, should share liability for his attorneys' fees and costs.

***4** Furthermore, contrary to relator's arguments, declining to assess relator's attorneys' fees against Anderson comports with the FCA's underlying purposes. Relator insists Congress enacted the FCA "to encourage the filing of this very kind of lawsuit," in which relator from the outset fingered Anderson as a ringleader in the fraud. (Reply to Anderson's Opp'n at 3-4.)

***4** First, to answer relator's implicit proposition most directly, this Court is confident that potential relators will not be discouraged from filing *meritorious* FCA claims by a holding that 31 U.S.C. section 3730(d)(1) does not permit attorneys' fee awards against defendants who obtain *judgment as a matter of law* on the relator's claims.[FN12]

***4** Second, this Court has encapsulated the FCA's purposes as follows:

> ***4** The False Claims Act seeks, first and foremost, to detect, punish, and deter the submission of false claims, while seeking to restore funds to the federal fisc. The *qui tam* provisions enlist private individuals, often motivated largely by self-interest, to report and

prosecute alleged false claims. Those provisions seek to strike a balance between the interests of the government and the self-interest of relators.

***4** *United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am.*, 474 F.Supp.2d 75, 87 (D.D.C.2007) (Lamberth, J.). "The [FCA's] statute of limitations," this Court reasoned, "advances those governmental interests." *Id.* Yet statutes of limitations, by their nature, also "facilitat[e] the administration of claims[ ] ... [and] promot[e] judicial efficiency." *John R. Sand & Gravel Co. v. United States*, --- U.S. ----, 128 S.Ct. 750, 753, 169 L.Ed.2d 591 (2008) (citations omitted). Thus, Congress clearly did not seek "to encourage the filing of this very kind of lawsuit" at the expense of these governmental interests and prudential considerations.[FN13]Denying attorneys' fees to relators whose claims are time-barred strikes this balance.

***4** Accordingly, the Court concludes that because relator's claims against Anderson were dismissed in their entirety, relator may not recover attorneys' fees, costs, or expenses from Anderson under the FCA. Under Federal Rule of Civil Procedure 54(d)(1), only a "prevailing party" may recover costs, other than attorneys' fees, from a private defendant. FED.R.CIV.P. 54(d)(1). Because relator's legal relationship to Anderson remains wholly unchanged, he may not recover costs from Anderson under this Rule. *See Tex. State Teachers Ass'n*, 489 U.S. at 792-93, 109 S.Ct. 1486; *Graham*, 473 U.S. at 168, 105 S.Ct. 3099.

II. Plaintiffs' Taxable Costs

***5** [3] As stated above, Rule 54(d)(1) permits a "prevailing party" to recoup his costs, other than attorneys' fees, from a private defendant.FED.R.CIV.P. 54(d)(1).*Cf.*31 U.S.C. § 3729(a) (U.S. may recover "the costs of a civil action" brought to recover FCA penalty or damages). While Rule 54(d)(1) affords the court some discretion in awarding costs, the Courts of Appeals have consistently treated the allowance as presumptive, holding "that a court may neither deny nor reduce a prevailing party's request for costs without first articulating some good reason for doing so." *Baez v. U.S. Dep't of Justice*, 684 F.2d 999, 1004 (D.C.Cir.1982) (en banc) (per curiam). The unsuccessful party bears the burden of supplying this "good reason," and "trial judges have rarely denied costs to a prevailing party whose conduct has not been vexatious when the losing party has been capable of paying such costs." *Id.; see, e.g., Bell v. Gonzales*, No. 03-163, 2006 WL 6000485, **2-3, 2006 U.S. Dist. LEXIS 69415, at *7-8 (D.D.C. Sept. 27, 2006) (Bates, J.) (sharply reducing government's "plainly inflated Bill of Costs," where costs were "not well supported factually or legally" and comprised "a punitive effort ... against an unsuccessful discrimination plaintiff").

***5** In particular, by statute, a prevailing party may recover "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case."28 U.S.C. § 1920(2) (2008). This Court's local rules refine this allowance:

> ***5** (6) the costs, at the reporter's standard rate, of the original and one copy of any deposition noticed by the prevailing party, and of one copy of any deposition noticed by any other party, if the deposition was used on the record, at a hearing or trial;
>
> ***5** (7) the cost, at the reporter's standard rate, of the original and one copy of the reporter's transcript of a hearing or trial if the transcript: (i) is alleged by the prevailing party to have been necessary for the determination of an appeal within the meaning of Rule 39(e), Federal Rules of Appellate Procedure, or (ii) was required by the court to be transcribed[.]

***5** Local Civ. R. 54.1(d).

***5** Defendants' sole objection to plaintiffs' bills of costs concerns allegedly duplicative charges for transcripts. Specifically, the United States and relator have each billed for an original and one copy of thirteen individuals' deposition transcripts.[FN14]In some of these cases, it is clear that plaintiffs wish defendants to pay for four copies of exactly the same document.[FN15] Further, the United States and relator each seek reimbursement for an original and one copy of each afternoon's trial transcript. (*See* Ex. 1 to U.S. Bill of Costs [928] at 3-4; Ex.

4 to Relator's Bill of Costs [929] at 1-2.) Again, they repeatedly paid for four copies of the same document, at a premium for expedited preparation.

***5** Such expenditures hardly seem reasonable. The Court does not suggest that as co-plaintiffs, the United States and relator must necessarily have shared a single transcript, prepared according to the court reporter's regular schedule. But for *each* plaintiff to bill for *two copies* of an *expedited* transcript strikes the Court as possibly excessive.[FN16]

***6** Nevertheless, this practice does not fall outside the letter of Local Rule 54.1. The Rule refers to "[a] prevailing party," and its choice of article ("a" rather than "the") implies that *any* prevailing party, even if there is more than one, may invoke its provisions. Local Civ. R. 54.1(a). Further, the Rule specifically provides for reimbursement for an original and one copy of deposition and trial transcripts. Local Civ. R. 54.1(d). Defendants, who bear the burden of demonstrating a "good reason" for denying plaintiffs' costs, offer no authority and little argument for deviating from this presumptive allowance. *See Baez,* 684 F.2d at 1004.Moreover, plaintiffs' "conduct has not been vexatious," and it appears defendants are "capable of paying [these] costs." *See id.*Accordingly, the Court concludes defendants' meager opposition does not overcome the strong presumption in plaintiffs' favor.

***6** Plaintiffs' bills of costs [928, 929] shall be granted in full.[FN17]

III. Relator's Attorneys' Fees

***6** Relator also seeks an award of "reasonable attorneys' fees" against defendants under the FCA. "The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Blum v. Stenson,* 465 U.S. 886, 888, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984).[FN18] A strong presumption exists that the product of these two variables-the "lodestar figure"-represents a "reasonable fee." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air,* 478 U.S. 546, 565, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986). Upward adjustments of the lodestar are warranted only in "rare" and "exceptional" cases, where supported by "specific evidence" and detailed findings. *Blum,* 465 U.S. at 899-901, 104 S.Ct. 1541.

***6** [4] In calculating relator's fee award, the Court must thus make three separate determinations: (1) what constitutes a "reasonable hourly rate" for his counsel's services; (2) which among his counsel's claimed work hours were "reasonably expended on the litigation"; and (3) whether relator has offered "specific evidence" demonstrating this to be the "rare" case in which a lodestar enhancement is appropriate, and if so, in what amount. The Court considers each issue in turn.

A. Reasonable Rate

***6** In calculating this component of the lodestar, the Court must resolve two contested issues: (1) which source(s) should supply the reasonable rate; and (2) whether current or historical rates should apply to work performed prior to 2007.[FN19]

1. Established vs. Matrix-Derived Rates

***6** [5] In this Circuit, "an attorney's usual billing rate is presumptively the reasonable rate, provided that this rate is 'in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" *Kattan by Thomas v. District of Columbia,* 995 F.2d 274, 278 (D.C.Cir.1993) (quoting *Blum,* 465 U.S. at 896 n. 11, 104 S.Ct. 1541).

> ***7** [W]hen fixed market rates already exist, there is no good reason to tolerate the substantial costs of turning every attorneys fee case into a major ratemaking proceeding. *In almost every case, the firms' established billing rates will provide fair compensation.*The established rates represent the opportunity cost of what the firm turned away in order to take the litigation; they represent the lawyers' own assessment of the value of their time.

***7** *Laffey v. Northwest Airlines, Inc.*, 746 F.2d 4, 24 (D.C.Cir.1984) (emphasis in original), *overruled on other grounds by Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516 (D.C.Cir.1988).[FN20]"[T]he burden is on the fee applicant to produce satisfactory evidence-in addition to the attorney's own affidavits-that the requested rates" align with prevailing rates. *Blum*, 465 U.S. at 896 n. 11, 104 S.Ct. 1541.*See also Covington v. District of Columbia*, 57 F.3d 1101, 1107 (D.C.Cir.1995) ("a fee applicant's burden in establishing a reasonable hourly rate entails a showing of at least three elements: the attorneys' billing practices; the attorneys' skill, experience, and reputation; and the prevailing market rates in the relevant community").

a. Wilmer Hale

***7** Relator asks that his attorneys be compensated at their standard billing rates, and he has submitted a declaration from his lead counsel, Robert Bell, that provides these standard rates for Wilmer Hale personnel. (*See*Bell Decl. ¶ 108, Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) As one might expect, Bell avows that the requested rates are within the range of prevailing market rates charged by large law firms in the District of Columbia for lawyers and paralegals of similar experience and qualifications. (*See id.* ¶¶ 104, 109.)

***7** To supplement Bell's own assertions, relator offers declarations from two local attorneys. The first, Stephen L. Braga, now a partner at Baker Botts-like Wilmer Hale, a large, international law firm-has practiced complex, civil litigation in the District since 1982. (Braga Decl. ¶ 1, Ex. 3 to [930].) Since 1993, Braga has also instructed law students on the subject of attorneys' fees as an adjunct professor at the Georgetown University Law Center. (*Id.* ¶ 1(g).) Beyond arguing that "[u]nder basic economic principles," Wilmer Hale's standard rates must be considered competitive within the D.C. market, Braga compares rates for four Wilmer Hale partners with those charged by his own firm and other large, D.C. litigation firms for partners with similar backgrounds and litigation experience. (*Id.* ¶ 6.) He asserts that Robert Cultice, Jennifer O'Connor, and Jonathan Cedarbaum could command *higher* hourly rates, and that Robert Bell's rate "appears to be set right where it should be in the Washington legal market."(*Id.*) Braga concludes that Wilmer Hale's established rates "fall squarely within the prevailing market rates in the District of Columbia for experienced counsel to handle complex civil litigation."(*Id.*)

***8** The second attorney declarant, Steven K. Davidson, currently a partner at Steptoe & Johnson-another large, international law firm-has practiced commercial litigation in the District since 1985. (Davidson Decl. ¶ 2, Ex. 5 to [930].) As a member of his firm's Executive Committee, he has assisted with setting professionals' billing rates. (*Id.* ¶¶ 2, 16.)Davidson offers an opinion based not only on anecdotal knowledge of his and competitor firms' standard billing rates but also on two external sources. (*Id.* ¶¶ 19-21.)First, *The National Law Journal's* 2006 annual survey of billing rates indicates that Wilmer Hale's rates are comparable to those reported by other large firms with D.C. offices. (*Id.* ¶ 19;*see id.*Ex. A.) Second, Wilmer Hale's rates also align with those delineated in the *Laffey* matrix, as updated by relator's economist using the nationwide legal services component of the Consumer Price Index, a methodology approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C.2000) (Kessler, J.).[FN21](*Id.* ¶ 20;*see also* Kavanaugh Decl. ¶¶ 9-15, Ex. 4 to [930].) Davidson thus concludes that Wilmer Hale's rates "are comparable to the prevailing market rates and [ ] well within the reasonable range of rates for a law firm such as WilmerHale undertaking matters of the magnitude and complexity of those involved here."(Davidson Decl. ¶ 16, Ex. 5 to [930].)

***8** Relator's evidence demonstrates that Wilmer Hale's established billing rates-those charged to all litigation clients-align with the established rates of lawyers of reasonably comparable skill, experience, and reputation in the D.C. legal community.[FN22]*See Kattan*, 995 F.2d at 278.Thus, the Court will accord these rates a presumption of reasonableness. *See Covington*, 57 F.3d at 1110.

***8** Defendants' rebuttal to this evidentiary showing rests on a single proposition. Under *Blum*, a reasonable rate must align with "those prevailing in the community for

similar services....” 465 U.S. at 896 n. 11, 104 S.Ct. 1541.Whereas relator appears to define “similar services” in terms of complex, federal-court civil litigation, defendants insist “similar” must be construed more narrowly. (*See* HII's Opp'n [949] at 30-34.) In their view, the hourly rates typically charged by FCA relators' counsel are the benchmark against which this Court should evaluate relator's requested rates. (*Id.* at 32-33.)

***8** This contention fails for three reasons. First, the authority on which defendants rely does not support their argument.[FN23]Second, case law in this Circuit does not support the Balkanized approach to fee calculation that defendants advocate. In 1983, then-Chief Judge Aubrey Robinson adopted an hourly rates scheme for complex, federal litigation under which an attorney's years of experience determined his reasonable hourly rate. *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, 371-75 (D.D.C.1983). In the ensuing twenty-five years, this scheme, the *Laffey* matrix, has achieved broad acceptance in this Circuit and has served as a guide in nearly every conceivable type of case. *See, e.g., Hansson v. Norton*, 411 F.3d 231, 236 (D.C.Cir.2005) (employment discrimination); *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 970 (D.C.Cir.2004) (Administrative Procedures Act); *Covington*, 57 F.3d at 1110 (civil rights); *Judicial Watch, Inc. v. BLM*, 562 F.Supp.2d 159, 175 (D.D.C.2008) (Lamberth, J.) (Freedom of Information Act); *MacClarence v. Johnson*, 539 F.Supp.2d 155, 160 (D.D.C.2008) (Facciola, M.J.) (Clean Air Act). The generic matrix's use in such a diverse range of cases cuts against defendants' argument that reasonable rates can be derived only from data peculiar to a case's legal specialty area.

***9** Third, and most critically, defendants have failed to demonstrate that for purposes of calculating a reasonable hourly rate, *qui tam* litigation differs in any meaningful way from other complex, civil litigation that occurs in federal court.[FN24]Defendants contend that “FCA litigation, particularly for relator's counsel, is a specialized, niche practice that is distinct from other types of civil litigation, and certainly differs from the defense-oriented commercial litigation practiced by firms like WilmerHale.”(HII's Opp'n [949] at 33.) If, as defendants suggest, *qui tam* litigation is a “niche” field because FCA-specific treatises and hornbooks, legal symposia, and professional organizations exist, then virtually *every* type of litigated case could be so characterized. The allegation that some attorneys “dedicate their entire practice to representing relators” is no more persuasive. (*Id.* at 34.)Defendants contend the rates charged by FCA specialists at Cincinnati's Helmer, Martins, Rice & Popham (“HMRP”) establish the benchmark for reasonableness. (*Id.* at 35-38.)“[E]ven assuming, *arguendo*, the existence of [ ] a [FCA litigation] submarket,” rates charged by a single, Ohio firm do not constitute “evidence that submarket rates are lower than the prevailing rates in the broader legal market.”*See Covington*, 57 F.3d at 1111.

***9** Defendants point out that HMRP's rates conform almost precisely to those outlined in the *Laffey* matrix, as updated by the U.S. Attorney's Office (“USAO”), and that using rates from *either* source would reduce relator's requested fee award by 38%. (HII's Opp'n [949] at 38-39.) This tremendous disparity gives the Court pause. But two factors overcome its skepticism.

***9** First, simple reference to the *Laffey* matrix cannot defeat the presumption of reasonableness accorded relator's requested rates. Though it “serves as a useful starting point for determining prevailing market rates in the District of Columbia,” *Cobell*, 407 F.Supp.2d at 170, the *Laffey* matrix is not the *only* acceptable starting point. Our Court of Appeals has never held that *Laffey* rates are the only rates that a court may consider reasonable. Instead, it has advised that “an attorney's usual billing rate is presumptively the reasonable rate, provided that this rate” aligns with prevailing community rates. *Kattan by Thomas v. District of Columbia*, 995 F.2d 274, 278 (D.C.Cir.1993).“[F]ee claimants must provide the court with specific evidence of the prevailing community rate.” *Jordan*, 691 F.2d at 521.*See also Blum*, 465 U.S. at 896 n. 11, 104 S.Ct. 1541 (fee applicant must “produce satisfactory evidence-in addition to the attorney's own affidavits-that the requested rates” align with prevailing rates). This evidence *may* include the *Laffey* matrix, in its original form and/or as updated by the USAO. *See Covington*, 57

F.3d at 1110.But it may also consist of comparable fee awards or affidavits from knowledgeable local practitioners, such as those relator has submitted here. *See Jordan,* 691 F.2d at 521.If non-conformity with updated USAO *Laffey* rates could doom a petitioner's request, this would moot the evidentiary showing envisioned by *Blum.*[FN25]*See* 465 U.S. at 896 n. 11, 104 S.Ct. 1541.It would effectively impose a ceiling on the rates courts can award pursuant to fee-shifting statutes-a ceiling never endorsed by Congress. Neither it nor the courts have ever "propose[d] ... that all attorneys be remunerated at the same rate, regardless of their competence, experience, and marketability." *Save Our Cumberland Mountains, Inc. v. Hodel,* 857 F.2d 1516, 1522 n. 4 (D.C.Cir.1988).

***10** Second, the Supreme Court clarified in *Blum* that a reasonable hourly rate should ordinarily reflect the quality of counsel's representation. *See* 465 U.S. at 899, 104 S.Ct. 1541.Defendants balk at the "mega-law firm rates" relator seeks. (HII's Opp'n [949] at 30.) But these rates reflect counsel's "mega-law firm"-quality representation. Having observed more than a few attorneys in the past twenty years, this Court is well-suited to judge the quality of counsel's representation, both in the courtroom and in written submissions. By this Court's assessment, relator's counsel-particularly the more junior trial team members-acquitted themselves admirably. Their zealous, polished, and astute advocacy justifies, and is reflected in, their established billing rates. Further, according to government counsel,

> ***10** [t]he availability of Relator's counsel from WilmerHale was essential in meeting the overwhelming demands of discovery and ultimately of the trial in this matter. Indeed, attorneys and support staff from WilmerHale played a vital role in getting this case ready for trial and ultimately in successfully trying it.

***10** (Morgan Decl. ¶ 7, Ex. 1 to Mot. for Fees, Costs, and Expenses [930].) During the discovery period alone, relator's counsel reviewed 665 boxes of documents, from which they culled over 97,000 documents with over 320,000 pages, attended 40 depositions, taking a leading role in some, and participated in two evidentiary hearings. (Bell Decl. ¶¶ 74-75, 78, 85, Ex. 2 to [930].) Had Wilmer Hale not been able to call on its "mega-law firm" resources, plaintiffs might have struggled to meet these "overwhelming demands." *See Wilcox v. Sisson,* No. 02-1455, 2006 WL 1443981, *2, 2006 U.S. Dist. LEXIS 33404, at *8 (D.D.C. May 25, 2006) (Collyer, J.) ("The market generally accepts higher rates from attorneys at firms with more than 100 lawyers than from those at smaller firms-presumably because of their greater resources and investments....").

***10** For all these reasons, the Court finds defendants have failed to rebut relator's evidentiary showing that the requested rates-Wilmer Hale's established rates-align "with those prevailing in [this] community for similar services by lawyers of reasonably comparable skill, experience and reputation."*See Blum,* 465 U.S. at 896 n. 11, 104 S.Ct. 1541.Wilmer Hale's established billing scale will supply the reasonable hourly rates with which this Court will calculate the lodestar.[FN26]

b. Wiley Rein

***10** Relator also seeks compensation for work performed by four Wiley Rein attorneys (other than Bell) and two paralegals. (Bell Decl. ¶ 103, Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) Of these six individuals, only one, Michael Sturm, remains at Wiley Rein. (*Id.* ¶ 104.)In light of the Court's conclusion concerning Wilmer Hale's rates, Sturm's established billing rate is eminently reasonable.[FN27]

***10** For the other five professionals, however, relator has provided neither their current billing rates nor those of their Wiley Rein peers. Instead, he asks that their work be compensated at rates derived from economist Kavanaugh's *Laffey* matrix. (*See id.* ¶ 104.)Unlike the USAO's matrix, which calculates inflation based on the metropolitan D.C. Consumer Price Index ("CPI"), Kavanaugh's version relies on a legal services subcomponent of the broader, national CPI. (*See* Kavanaugh Decl. ¶ 9, Ex. 4 to Mot. for Fees, Costs, and Expenses [930].)

***11** Kavanaugh's alternative methodology has achieved

only limited acceptance in this District.[FN28]As he did in *Salazar,* Kavanaugh presents a well-reasoned, if condensed, economic argument for his index's superiority. (*See id.* ¶¶ 9-14.)Nevertheless, after reviewing his declarations, the Court is not convinced. Kavanaugh's matrix incorporates price inflation data specific to the market for legal services, while the USAO matrix relies on data specific to the Washington, D.C. metropolitan area. (*Id.* ¶ 9.) Kavanaugh's matrix thus reflects *national* inflation trends, while the USAO matrix accounts for price inflation within *the local community*-a crucial distinction. As the Supreme Court and our Court of Appeals have both emphasized, rates used in calculating the lodestar should accord with those "prevailing in *the community.*" *Blum,* 465 U.S. at 896 n. 11, 104 S.Ct. 1541 (emphasis added); *see also Covington v. District of Columbia,* 57 F.3d 1101, 1108 (D.C.Cir.1995) ("plaintiff must produce data concerning the prevailing market rates in *the relevant community* ") (emphasis added). Kavanaugh's matrix does not comply with this mandate for geographic specificity. Hence, with due respect to its colleagues, the Court declines to adopt Kavanaugh's methodology. It will thus award fees for the remaining five Wiley Rein professionals at USAO *Laffey* matrix rates.[FN29]

2. Current vs. Historical Rates

***11** The time entries included in relator's fee petition span a thirteen-year period: Wiley Rein personnel devoted time to this case from 1995-1999, and Wilmer Hale's involvement has stretched from 1999-2007. (*See* Exs. B-2, D-2, to Bell Decl., Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) Relator seeks to recover all fees at *current* billing rates, (Mot. for Fees, Costs, and Expenses [930] at 12), while defendants favor using historical rates corresponding to the years when the work was performed, (*see* HII's Opp'n [949] at 40-43; BHIC and HUK's Opp'n [948] at 19-21.)

***11** In 1911, Ambrose Bierce described litigation as "[a] machine which you go into as a pig and come out of as a sausage."AMBROSE BIERCE, THE DEVIL'S DICTIONARY 72 (1979 ed.). Since Bierce's day, the process has become, if anything, more drawn out and contentious. Recognizing that in many cases, an attorney may put in years of effort before realizing any tangible return, the Supreme Court has held that a "reasonable attorney's fee" awarded pursuant to a fee-shifting statute should account for delay in payment. *See Missouri v. Jenkins,* 491 U.S. 274, 282, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989).[FN30]"Clearly, compensation received several years after the services were rendered-as it frequently is in complex [*qui tam*] litigation-is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed...." *Id.* at 283, 109 S.Ct. 2463.Thus, courts should make "an appropriate adjustment for delay in payment-whether by the application of current rather than historic hourly rates or otherwise." *Id.* at 284, 109 S.Ct. 2463.

***12** Courts in this Circuit have frequently employed the Supreme Court's suggested method of adjustment. *See, e.g., Murray v. Weinberger,* 741 F.2d 1423, 1433 (D.C.Cir.1984) ("Current market rates have been used in numerous cases to calculate the lodestar figure when the legal services were provided over a multiple-year period and when use of the current rates does not result in a windfall for the attorneys."); *Muldrow,* 397 F.Supp.2d at 4 n. 4 ("Nor does the Court object to plaintiff's use of the *Laffey* rates for 2005-06 even though much of the litigation took place several years ago. The Supreme Court has held that it is acceptable to use current market rates, rather than historic rates, as a convenient method of compensating prevailing parties for a delay in receiving payment.").*See also Copeland v. Marshall,* 641 F.2d 880, 893 n. 23 (D.C.Cir.1980) (en banc) (noting that lodestar may be "based on present hourly rates, rather than the lesser rates applicable to the time period in which the services were rendered," to reduce or eliminate "harm resulting from delay in payment").

***12** Several observations are in order. First, though relator seeks compensation for 24,584.6 billable hours, spread over thirteen years, roughly half those hours were billed in 2007, the year for which relator has provided Wilmer Hale's standard billing rates. (*See* Exs. C-2, C-4 to Bell Supplemental Decl., Ex. 1 to Reply to

HII's Opp'n [957].) Indeed, only 1,826.3 hours-7.4 percent of the total-were billed prior to 2006. (*See id.*)Thus, defendants' "windfall" objection, discussed below, pertains to only a small portion of relator's overall fee request.

***12** Second, according to Robert Bell, Wilmer Hale's billing cycle averages 89 days. (*See*Bell Supplemental Decl. ¶¶ 23-24, Ex. 1 to [957].) By contrast, here, by the time Wilmer Hale receives payment pursuant to the instant fee award, *at least a full year* will have passed since it billed the last hours addressed therein.

***12** Third, as relator's economist points out, accounting for delay by applying current rates across the board boasts distinct, practical advantages:

> ***12** There may be other ways to compensate [for delay in payment]-that is, to restore the firm that provided the legal services to the level of wealth it could have obtained had it been paid at the time the service was performed-but the other compensation methods are more complex, have higher transaction costs, raise the specter of interest payments and may not be any better than simply using the current prevailing market rates.

***12** (Kavanaugh Decl. ¶ 18, Ex. 5 to Mot. for Fees, Costs, and Expenses [930].) *See also Murray,* 741 F.2d at 1433 ("Ease of administration is an important objective ... because there is a pressing need for simple rules in attorney's fees cases."). Moreover, Kavanaugh's alternative proposed method of compensating for delay-using the historical prime rate to calculate the present value of a timely payment stream for the hours billed-produces a lodestar figure 1.6 percent *higher* than that requested by relator. (Kavanaugh Supplemental Decl. ¶¶ 6-12, Ex. 4 to Reply to HII's Opp'n [957].)

***13** Notwithstanding these various points, defendants oppose applying current rates to compensate for delay for two reasons.[FN31]First, they contend that application of current rates will result in a forbidden "windfall" to relator's counsel. (*See* HII's Opp'n [949] at 40-41; BHIC and HUK's Opp'n [948] at 19-21.) They insist that fee awards must reflect lawyers' experience levels at the time they performed the work, lest they be afforded credit for experience-and the heightened skill, productivity, and efficiency that usually accompany it-they did not then possess. (*See* HII's Opp'n [949] at 40-41; BHIC and HUK's Opp'n [948] at 19-21.) This argument has some superficial appeal, but it misunderstands the rationale behind compensating for delay in payment."[C]ompensation received several years after the services were rendered ... is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed." *Jenkins,* 491 U.S. at 283, 109 S.Ct. 2463.Paying counsel at historical, or even current, rates based on their experience levels when they performed the work would not achieve this equivalence because it ignores the time value of money: one dollar received today is more valuable than it would be if received five years from now for two reasons-first, because it will buy more now than it will after five years of price inflation, and second, because of the interest that can be earned from it in the interim. Paying counsel at their current, established billing rates does not result in a windfall; it simply takes the this second factor into account.

***13** Second, they contend that relator bears responsibility for the delay, and that consequently, he should not be rewarded with a fees adjustment therefor. (HII's Opp'n [949] at 42-43.) Both components of this argument are flawed. Responsibility for the first period of delay defendants cite-June 1995 to March 2001-can be laid at the government's feet, but not relator's. Under the FCA's *qui tam* provisions, once he files his complaint under seal, a relator must simply await the government's decision on intervention. *See*31 U.S.C. § 3730(b) (2008). As this Court expressed in an earlier opinion in this case, the government's "unreasonable inaction" precipitated this first period of delay. (*See* Mem. Op. of June 14, 2007[872] at 30.) All parties contributed to the next, post-seal period of delay: defendants opposed plaintiffs' request to commence discovery in 2003, (*see* Joint Rule 16.3 Report of Nov. 13, 2003[148] at 2), and plaintiffs repeatedly amended their complaints, (*e.g.*, Relator's Third Am. Compl. [233] (filed Mar. 9, 2006); Government's First Am. Compl. [237] (filed Mar. 9, 2006)).

***13** Moreover, regardless of who caused what period of delay, defendants' authorities for denying the responsible party compensation for delay merely confirm that a court's decision to account for delay in awarding attorneys' fees is discretionary. *See Sands v. Runyon*, 28 F.3d 1323, 1334 (2d Cir.1994) (finding no abuse of discretion where district court refused to "apply multiplier to the basic hourly rate to account for the delay between the investment of time and the receipt of the fee award" because plaintiff had caused unnecessary delay); *Paris v. Dallas Airmotive, Inc.*, No. 97-0208, 2004 WL 2100227, **11-12, 2004 U.S. Dist. LEXIS 18893, at *35-36 (N.D.Tex. Sept. 21, 2004) (declining to exercise discretion to award fees at current market rates because, but for plaintiff's actions, case could have been concluded at least three years earlier).

***14** Here, having concluded that no "windfall" will result, and in light of the practical advantages to be derived, the Court will exercise its discretion to compensate relator's counsel for delay in payment by applying current rates in calculating the lodestar.

***14** Appendix I delineates the rates the Court will use for both Wiley Rein and Wilmer Hale professionals.

B. Reasonable Hours

***14** [6][7] Several principles govern the Court's calculation of this second component of the lodestar, "the number of hours reasonably expended on the litigation."*See Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). First, the fee petitioner must submit evidence that justifies the hours he claims his counsel have worked. *Id.*"Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id.* A "fee application need not present the exact number of minutes spent[,] nor the precise activity to which each hour was devoted[,] nor the specific attainments of each attorney." *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319,1327 (D.C.Cir.1982) (internal quotation marks omitted). But where time entries "are so vaguely generic that the Court can not determine with certainty whether the activities they purport to describe were ... reasonable," the petitioner has not met his burden. *Cobell v. Norton*, 407 F.Supp.2d 140, 158 (D.D.C.2005) (Lamberth, J.). Instead, "the application must be sufficiently detailed to permit the District Court to make an independent determination whether or not the hours claimed are justified." *Nat'l Ass'n of Concerned Veterans.*, 675 F.2d at 1327.

***14** Second, "[t]he hours reasonably expended are not necessarily equal to the hours actually expended." *McKenzie v. Kennickell*, 645 F.Supp. 437, 446 (D.D.C.1986) (Parker, J.)."Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority." *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C.Cir.1980) (en banc).*See also Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, 369 (D.D.C.1983) (Robinson, C.J.), *reversed in part on other grounds by* 740 F.2d 1071 (D.C.Cir.1984) ("Counsel is not free ... to exercise its judgment in a fashion that unnecessarily inflates the losing party's fee liability"). The petitioner should exercise billing judgment, making "a good-faith effort to exclude from [his] fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434, 103 S.Ct. 1933.[FN32]As the Court of Appeals admonished in *Copeland*, however, a defendant "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." 641 F.2d at 904.

***14** [8] Third, "[c]ompensable time should not be limited to hours expended within the four corners of the litigation." *Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1335.The petitioner need only show that the hours for which he seeks compensation were "expended in pursuit of a successful resolution of the case in which fees are being claimed." *Id.* While "no compensation should be paid for time spent litigating claims upon which the party seeking the fee did not ultimately prevail," a reduction in fee is appropriate only when the nonprevailing matters " 'are truly fractionable.' " *Copeland*, 641 F.2d at 891-92 & n. 18 (quoting *Lamphere v. Brown Univ.*, 610 F.2d 46, 47 (1st Cir.1979)).

***15** With this guidance in mind, the Court will analyze relator's claimed hours along with defendants' objections to them. The latter fall into two categories. First, defendants contend that certain tasks for which relator's counsel have billed time in this case are *per se* non-compensable. Second, they cite several broader defects in relator's counsel's billing statements which they allege warrant across-the-board, percentage reductions in the fee award. The Court will address each category of complaints in turn.

1. Non-Compensable Tasks

***15** Defendants allege a variety of tasks are non-compensable. The Court has grouped their contentions under the following six subheadings.[FN33]

a. Criminal Case

***15** After relator filed his *qui tam* complaint, the government delayed its prosecution of the civil case to pursue criminal, antitrust charges against Bilhar, Anderson, and others. (*See generally* Mem. Op. of June 14, 2007[872] at 18-26 (describing government's deplorable lack of diligence as reason multiple claims must be dismissed as untimely).) During this period, relator's counsel assisted him in securing immunity from criminal prosecution, in complying with obligations incurred as a result, and in responding to subpoenas in the criminal matter. (*See*Bell Decl. ¶¶ 12-19, Ex. 2 to Mot. for Fees, Costs, and Expenses [930]; Bell Supplemental Decl. ¶¶ 2-15, Ex. 1 to Reply to HII's Opp'n [957].) Defendants argue these efforts are not compensable because the civil and criminal cases were separate and distinct matters, and because relator's immunity deal, not his interest in the *qui tam* litigation, obliged him to cooperate with the Antitrust Division. (*See* BHIC and HUK's Opp'n [948] at 3-5; HII's Opp'n [949] at 4-7.)

***15** On the contrary, most of this work *is* compensable. Relator likely had more than one motivation to appear for depositions, provide documents, and otherwise assist the government with the criminal case. Compliance with the immunity letter's terms was doubtless among them. He also had a strong financial incentive to cooperate: to ultimately secure his relator's share, he needed to maintain good relations with DOJ, with whom he would prosecute the civil case as co-plaintiff, and to assist it in developing evidence that could be used in that case. His motives, however, are irrelevant. The information relator provided to the Criminal Division materially aided its investigation, and the Civil Division later relied on that investigation's fruits in prosecuting the FCA case.[FN34](*See*Bell Decl. ¶¶ 24-27, Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) Relator's cooperation during this early period ultimately proved crucial to the "successful resolution of the case in which fees are [now] being claimed."*See Nat'l Assoc. of Concerned Veterans,* 675 F.2d at 1335.In other circumstances, courts have awarded attorneys' fees for hours expended on prior litigation if those efforts also advanced the instant case. *See, e.g.*, *Kulkarni v. Alexander,* 662 F.2d 758, 766 (D.C.Cir.1978) (legal services rendered in prior administrative proceedings and litigation pertaining to same claim were compensable because "holding of the first suit ... [was] a necessary predicate for a large part of [plaintiff's] claim in the present action").[FN35] This Court has no qualms about following suit and will compensate relator for time his counsel spent assisting him in complying with his immunity obligations and in responding to subpoenas in the criminal matter.

***16** This logic does not extend to time spent *securing* the government's immunity grant, however. Bell now characterizes the immunity letter as "unnecessary" and insists relator would have aided the government regardless. (*See*Bell Supplemental Decl. ¶¶ 2, 14, Ex. 1 to Reply to HII's Opp'n [957].) Thus, any work relator's counsel performed to negotiate or effectuate the immunity deal had no impact whatever on plaintiffs' subsequent success in the civil case and is therefore not compensable.

b. Personal Matters

***16** Relator's counsel's billing statements include research and consultation concerning his personal, financial, and employment matters, and defendants contend these efforts in no way contributed to plaintiffs' success-

ful resolution of the instant case. Conceding to some of defendants' objections, relator has excluded from his revised fee request time entries devoted to unrelated personal matters and preparation of counsel's fee agreement. (*See*Bell Supplemental Decl. ¶ 25, Ex. 1 to Reply to HII's Opp'n [957].) He has not, however, eliminated all challenged entries, and the Court will assess the remaining objections.

i. Relator's Attorney-Client Privilege

***16** Even before relator filed his original complaint under seal, his counsel began researching how to protect relevant documents potentially protected by attorney client privilege or the work product doctrine. Relator claims his counsel were simply being proactive, and that this research "was [ ] designed primarily to prevent eventual disclosure to the civil defendants in this litigation."(Reply to HII's Opp'n [957] at 21.) He points out that defendants sought and failed to obtain certain privileged documents at trial, and that his attorneys had an ethical obligation to preserve his privilege. (*Id.*) He does not, however, point to any *evidence* that supports his bald claim that his attorneys' research and discussions *in 1995* were primarily directed to protecting his privilege in a case that remained under seal until *2001*.

***16** On reviewing the filings associated with defendants' failed motion to compel and the challenged time entries, however, the Court concludes these hours are compensable. In the civil case, the magistrate judge denied defendants discovery of certain privileged materials that relator had voluntarily disclosed to the government, holding that plaintiffs' common interest in the prosecution of common defendants in the then-existing civil case defeated waiver. (*See* Mem. Op. of Feb. 20, 2007[530] (denying motion to compel); Am. Mem. Op. of Mar. 27, 2007[750] (denying motion for reconsideration).) The subject matter of counsel's earlier research suggests they had anticipated this very issue and wanted to ensure the common interest doctrine would protect disclosed materials in the later *qui tam* litigation.[FN36]Rationally, based on the results of these inquiries and discussions, counsel could limit the scope of relator's disclosures to prevent defendants from gaining a tactical advantage in the civil case. Because counsel's early research allowed them to formulate a disclosure strategy focused on the *qui tam* litigation, the Court concludes these hours were "expended in pursuit of a successful resolution of the case in which fees are being claimed."*See Nat'l Ass'n of Concerned Veterans,* 675 F.2d at 1335.

ii. Relator's Ongoing Employment at Jones

***17** Relator continued to work at J.A. Jones after filing his complaint under seal, which named his employer as a defendant. In connection with his continued employment at Jones, relator's counsel: (1) analyzed his potential liability for removing confidential and privileged documents from his employer's offices; (2) advised him on how to respond to an internal Jones investigation commenced after Jones received a grand jury subpoena; and (3) counseled him on how to effectuate his eventual resignation from Jones. Relator deems these tasks compensable because they are "related to representation of a whistleblower and the potential conflicts that arise from assisting the Government."[FN37](Reply to BHIC and HUK's Opp'n [960] at 8.)

***17** "Related to representation of a whistleblower," however, is not the standard in this Circuit for compensable time. While the Court accepts that "[c]ompensable time should not be limited to hours expended within the four corners of the litigation," to hold that the hours challenged here were "expended in pursuit of a successful resolution" of the *qui tam* case would render this phrase meaningless. *See Nat'l Ass'n of Concerned Veterans,* 675 F.2d at 1335.In analyzing his potential liability to his employer, relator's counsel sought to protect their client from a counterclaim in the *qui tam* action or a collateral lawsuit. This was diligent lawyering, but it had no effect on the *qui tam* claims.[FN38]Further, the narratives in counsel's time records indicate they spent *substantial* time weighing whether relator should refuse to cooperate with his employer's internal investigation. Whatever their substantive advice may ultimately have been-and it appears relator resigned rather than cooperate-counsel's drawn out research and strategy development almost certainly hindered Jones' own investigation

of the fraud and may consequently have prolonged this litigation unnecessarily.[FN39]Finally, advice concerning relator's employment status lacks even a tenuous connection to the *qui tam* litigation. For example, relator does not attempt to explain, and the Court cannot surmise, how the "resignation script" his attorneys prepared for him could *possibly* have served to advance the *qui tam* litigation. (*See* 2/23/96 MLS.) Hence, the Court will not compensate relator for time his counsel expended on this set of tasks.

iii. Relator's Share and Attorneys' Fees

***17** Even before relator filed his complaint, his counsel had begun estimating his potential bounty, and after DOJ prioritized the criminal case, counsel researched whether relator could claim a share of any criminal fines. When the Civil Division later settled with various defendants, relator's counsel lobbied heavily for his share and sought attorneys' fees from the settling defendants.[FN40] Defendants object to time entries associated with each of these activities. Relator, of course, asserts that all are compensable.

***18** Fortunately, other courts have weighed these issues before. The Court of Appeals for the Sixth Circuit has considered whether the FCA requires a liable defendant to pay attorneys' fees a prevailing relator incurs in pursuing his relator's share. *See Taxpayers Against Fraud,* 41 F.3d at 1045-46.Relator Miller offers, in essence, the same argument the court rejected in that case: " 'that as between [him] and the wrongdoer [defendant], it is the wrongdoer who should bear the costs.'"[FN41]*See id.* at 1046 (quoting *Bigby v. City of Chicago,* 927 F.2d 1426, 1428 (7th Cir.1991)) (second alteration in original). There, as here, the defendant had no "right to participate" in relator's share negotiations between the relator and the government, and "nothing suggest[ed] that [the defendant] prolonged the [ ] process or could have hastened its conclusion." *Id.* Thus, the court concluded, "the defendant [ ] should not be required to pay the costs incurred by the prevailing plaintiffs in the course of their collateral litigation." *Id.*[FN42] This Court finds the Sixth Circuit's reasoning persuasive and will follow it here. Accordingly, hours relator's counsel devoted to recovery of a relator's share from the government are not compensable.[FN43]

***18** Authority from this Circuit speaks to the second issue presented here: whether a relator may recover attorneys' fees from non-settling defendants for time devoted to obtaining such fees from settling defendants. "It is well settled that hours reasonably devoted to negotiating and/or litigating a statutory fee award are compensable." *Laffey v. Northwest Airlines, Inc.,* 572 F.Supp. 354, 367 n. 21 (D.D.C.1983), *reversed in part on other grounds by* 740 F.2d 1071 (D.C.Cir.1984).*See also Copeland v. Marshall,* 641 F.2d 880, 896 (D.C.Cir.1980) (en banc) ("time spent litigating the fee request is itself compensable"). Thus, the only remaining question is whether liability for attorneys' fees under the FCA is joint and several, such that non-settling defendants share liability for fees incurred in obtaining fees from settling co-defendants.

***18** Though never presented with the precise situation here, other courts have unanimously concluded that fee liability under the FCA *is* joint and several.[FN44]*See United States ex rel. Greendyke v. CNOS, P.C.,* No. 04-4105, 2007 WL 2908414, *7, 2007 U.S. Dist. LEXIS 72987, at *21-22 (D.S.D. Sept. 27, 2007) (adhering to "general rule that co-defendants are to be held jointly and severally liable for costs and attorney's fees," where defendants failed to cite authority for departing from it); *United States ex rel. Abbott-Burdick v. Univ. Med. Assocs.,* No. 96-1676, 2002 WL 34236885, **4-5, 2002 U.S. Dist. LEXIS 26986, at *18-20 (D.S.C. May 23, 2002) (holding defendants jointly and severally liable for attorneys fees because FCA's "other provisions dictate a joint and several relationship among culpable parties," and due to "unequivocal congressional intent of encouraging *qui tam* suits and the unique pro-plaintiff structure of litigation under the [FCA]"); *United States ex rel. Wiser v. Geriatric Psychological Servs., Inc.,* No. 96-2219, 2001 WL 286838, *3, 2001 U.S. Dist. LEXIS 12930, at *11 (D.Md. Mar. 22, 2001) (holding that "attorneys fees awarded under 31 U.S.C. § 3730(d)(1) should [not] be apportioned among defendants [because] all other recovery need not be").

***19** Thus, under a scheme of joint and several liability

for attorneys' fees, if hours devoted to obtaining fees are, themselves, compensable, then each and every defendant against whom relator prevails is liable for fees the relator incurred in obtaining fees from each and every other non-prevailing defendant. The hours relator's counsel spent attempting to recover attorneys' fees from settling co-defendants are thus compensable.[FN45]

c. Settlement Efforts

***19** Relator's petition also includes hours his counsel spent in settlement negotiations with various defendants, both successfully and unsuccessfully, and in court-ordered mediation. Contrary to defendants' protests, these tasks are uniformly compensable. The FCA's *qui tam* provisions make clear that a prevailing relator may recover fees when settlement efforts succeed. *See*31 U.S.C. § 3730(d)(1) (2008). Under the statute, a relator receives a share "of the proceeds of the action or settlement of the claim," and any person who receives such a share "shall also receive ... reasonable attorneys' fees and costs."*Id.* More broadly, settlement efforts, by their nature, are directed toward "successful resolution of the case." *See Nat'l Ass'n of Concerned Veterans,* 675 F.2d at 1335.Here, pretrial settlements with some defendants narrowed the trial's scope and yielded cooperation from key players in the conspiracy, whose testimony significantly bolstered plaintiffs' case and doubtless contributed to the jury's verdict.[FN46]Other settlement negotiations and court-ordered mediation in this case did not produce such tangible results, but hours relator's counsel devoted to these efforts were no less "expended *in pursuit of* a successful resolution."[FN47]*See id.* (emphasis added). Moreover, substantial authority supports relator's claim to compensation for his attorneys' pursuit of settlement, whatever the ultimate outcome.[FN48]

d. Travel

***19** In the course of this litigation, relator's counsel traveled throughout the United States and Europe to meet with Antitrust Division attorneys and to depose witnesses. Defendants contend this time is non-compensable "absent a showing that the time charges relate to work done in transit," and that in any event, productive travel time "is reimbursable at only half the regular rate."(HII's Opp'n [949] at 13.)

***19** Our Court of Appeals has "not specifically addressed whether an attorney's fee award may include travel time." *Cooper v. United States R.R. Retirement Bd.,* 24 F.3d 1414, 1417 (D.C.Cir.1994). In *Cooper,* the Court first observed that "[o]ther circuits allow payment for attorney travel time, although sometimes at a lower hourly rate," then somewhat cryptically "conclude[d] that travel time *in this case* will be compensated at half the base hourly rate." *Id.* (emphasis added). Seizing on the emphasized phrase, relator insists that because the attorney in *Cooper* billed for thirteen hours spent driving to and from oral argument, only *unproductive* travel time should be compensated at half the base hourly rate, and that to ensure counsel receive a fully compensatory fee, productive travel time must be compensated at the full rate.[FN49] (Reply to HII's Opp'n [957] at 23 & n. 37.) Yet other courts in this Circuit have read *Cooper* as a more definitive statement. *See, e.g., Doe v. Rumsfeld,* 501 F.Supp.2d 186, 193 (D.D.C.2007) (Sullivan, J.) ("Travel [ ] time is supposed to be compensated at half the attorney's hourly rate."); *Blackman v. District of Columbia,* 397 F.Supp.2d 12, 15 (D.D.C.2005) (Friedman, J.) ("In this circuit, travel time generally is compensated at no more than half the attorney's appropriate hourly rate.").[FN50] This Court will follow suit and will compensate travel time at half counsel's standard billing rates.[FN51]

e. Clerical Work

***20** At various times, relator's counsel and paralegals performed clerical tasks, and relator's fee petition includes some time entries embracing these tasks. A prevailing party entitled to "reasonable" attorneys' fees may not recoup fees for time professionals spend on purely clerical tasks because such tasks "ought to be considered part of normal administrative overhead." *Michigan v. United States EPA,* 254 F.3d 1087, 1095-96 (D.C.Cir.2001).*Cf. Missouri v. Jenkins,* 491 U.S. 274, 288 n. 10, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) ("Of course, purely clerical or secretarial

tasks should not be billed at a paralegal rate, regardless of who performs them."). Though paralegals, like attorneys, should be compensated at their market rates, they may only recover fees for services that are legal in nature, *Cobell*, 407 F.Supp.2d at 156, such as "factual investigation, locating and interviewing witnesses; assistance with depositions, interrogatories and document production; compilation of statistical and financial data; checking legal citations; and drafting correspondence," *Jenkins*, 491 U.S. at 288 n. 10, 109 S.Ct. 2463.

***20** Relator insists the clerical duties that appear in his counsel's billing statements are compensable because they "requir[ed] familiarity with the documents, case, and issues."(Reply to BHIC and HUK's Opp'n [960] at 11.) He points to a supplemental declaration from attorney Davidson, who claims that it is customary in the District of Columbia to bill clients for clerical tasks performed by paralegals, and that "much of the 'clerical work' ... of which [defendants] complain[ ] is not clerical at all."(*See* Davidson Supplemental Decl. ¶¶ 32-35, Ex. 2 to Reply to HII's Opp'n [957].)

***20** Because the law in this Circuit is to the contrary, however, neither custom nor post-facto rationalizations will render clerical tasks compensable. The Court recognizes that certain seemingly clerical tasks-such as quality checking and otherwise preparing documents for production, (*see, e.g.*, 5/24/2006 Tillotson, 5/25/2006 Tillotson, 6/1/2006 Tillotson)-necessarily involve, or are at least rendered more efficient by, an in-depth understanding of the underlying legal issues. But the Court simply cannot fathom how, for example, telephone calls to obtain corporate addresses can be deemed "legal" in nature.[FN52](*See, e.g.*, 6/21/95 FHQ; 6/23/95 FHQ; 6/26/95 FHQ.) Similarly, the notion that filing a change of address notice constitutes substantive legal work strains credulity. (*See* 4/28/2006 MMB.) The Court will not award fees for such administrative housekeeping.

***20** Defendants have not attempted to identify all time entries that include clerical tasks, and they argue that the Court should either require relator to expunge them from his petition or discount all paralegal fees by 50 percent. (BHIC and HUK's Opp'n [948] at 10.) Relator has declined the former invitation and insists the latter request is excessive. (Reply to BHIC and HUK's Opp'n [960] at 11-12.) Even if the Court were to examine counsel's time entries line by line, their practice of block billing would still obscure the true number of hours devoted to clerical work. In the course of preparing this Opinion, the Court has reviewed many of relator's time entries, and it is convinced that clerical tasks occupied only a very small portion of the hours billed by attorneys and a slightly larger portion of those billed by paralegals. Based on these observations, the Court will discount all attorney hours by one-half percent and all paralegal hours by five percent to ensure the fee award does not include compensation for clerical tasks.

f. Non-Prevailing Claims[FN53]

***21** While relator achieved a stunning victory on the claims litigated at trial, this Court had previously dismissed several other claims, which were not submitted to the jury.[FN54]Specifically, it adopted Magistrate Judge Facciola's ruling that this Court had personal jurisdiction over HUK only as to Contract 20A, (Mem. & Order of Mar. 6, 2007[618]), and it dismissed all claims against Bill L. Harbert on statute of limitations grounds, (Order of May 4, 2007[854], at 3). Defendants assert that relator's fee petition improperly includes time devoted to pursuit of these failed claims. (BHIC and HUK's Opp'n [948] at 5-8.); *see Copeland*, 641 F.2d at 891-92 & n. 18 ("no compensation should be paid for time spent litigating claims upon which the party seeking the fee did not ultimately prevail").

***21** Relator has acknowledged that his original fee petition did include some hours devoted solely to his claims against Bill Harbert, and Bell has itemized the time entries now conceded as non-compensable. (*See* Reply to BHIC and HUK's Opp'n [960] at 10; Bell Supplemental Decl. ¶ 25, Ex. 1 to Reply to HII's Opp'n [957].) To the extent defendants seek to exclude time spent on matters involving Bill Harbert *and* other defendants, the Court finds this time is compensable. Plaintiffs alleged an overarching conspiracy to rig bids on government contracts of which Harbert was a ringleader. (*See, e.g.*, Order of Mar. 6, 2007[613] at 12.) Their claims against

Harbert and against the present defendants were "part and parcel of one matter"-those against Harbert were by no means "fractionable." *See Lamphere v. Brown Univ.*, 610 F.2d 46, 47 (1st Cir.1979). To illustrate their objection, defendants describe counsel's preparation of discovery requests propounded to Harbert and others. (*See* BHIC and HUK's Opp'n [948] at 5-6.) Even leaving aside relator's claim that he sent "similar or identical written discovery [ ] to all parties," (*see* Reply to BHIC and HUK's Opp'n [960] at 10), Harbert's responses to relator's discovery demands almost certainly yielded material helpful to plaintiffs' case against the other defendants.[FN55]Hence, the Court is satisfied with Bell's redactions.

***21** [9] As to relator's dismissed claims against HUK, defendants contend that discovery requests directed to HUK and time counsel expended on the personal jurisdiction issue should not be compensable in full. (*See* BHIC and HUK's Opp'n [948] at 7-8.) Defendants misapprehend the law. The Court of Appeals in *Copeland v. Marshall* did, at one point, state that "no compensation should be given for hours spent litigating *issues* on which plaintiff did not ultimately prevail."*See* 641 F.2d at 902 (emphasis added). But the opinion as a whole leaves the court's position quite clear: "no compensation should be paid for time spent litigating *claims* upon which the party seeking the fee did not ultimately prevail." *Id.* at 891-92 (emphasis added). A reduction in fee is appropriate only when the non-prevailing claims " 'are truly fractionable.' " *Id.* at 892 n. 18 (quoting *Lamphere v. Brown Univ.*, 610 F.2d 46, 47 (1st Cir.1979)). This interpretation accords with positions taken by other Circuits.[FN56]It also accords with common sense: even efforts directed to non-prevailing issues may be "expended in pursuit of a successful resolution of the case."*See Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1335.

***22** The Supreme Court's language in *Hensley* echoes this standard. There, the Court indicated that the lodestar should be adjusted downward where the plaintiff "fail[s] to prevail on claims that were *unrelated* to the claims on which he succeeded." 461 U.S. at 434, 103 S.Ct. 1933 (emphasis added). It explained:

> ***22** In some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories. In such a suit, even where the claims are brought against the same defendants ... counsel's work on one claim will be unrelated to his work on another claim. Accordingly, work on an unsuccessful claim cannot be deemed to have been "expended in pursuit of the ultimate result achieved."

***22** *Id.* at 434-35, 103 S.Ct. 1933 (citation omitted). Here, plaintiffs alleged that HUK participated in an overarching conspiracy involving Contracts 20A, 29, and 07. (*See, e.g.*, Order of Mar. 6, 2007[613].) The Contract 20A claims on which they succeeded were closely intertwined with the Contract 29 and 07 claims on which they failed. While these latter claims did involve some "different facts," plaintiffs developed and presented these same facts to the jury in pursuing claims against the other defendants, HUK's co-conspirators, as to Contracts 29 and 07.

***22** Where, as here, a "plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee," and the award "should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." *Hensley*, 461 U.S. at 435, 103 S.Ct. 1933.The Court will make no reductions based on the dismissal of relator's Contract 29 and 07 claims against HUK.

g. Summary

***22** For the reasons explained above, the Court will not award fees for the following classes of time entries: hours devoted to securing immunity from prosecution for relator, tasks arising from his ongoing employment at J.A. Jones, research and other efforts to obtain his relator's share, and clerical tasks performed by attorneys and paralegals. For the first three classes, the Court has reviewed the parties' submissions and has made reasonable reductions. Appendix II to this Opinion itemizes these deductions. Percentage reductions for clerical tasks appear in Appendix III, along with other subtractions for broad defects in the fee petition.

2. Broader Defects

***22** Defendants have also identified several pervasive flaws in relator's fee petition, on which basis they seek across-the-board, percentage reductions in the lodestar.[FN57](*See* BHIC and HUK's Opp'n [948] at 11-18; HII's Opp'n [949] at 16-30.)

a. Inadequate Records

***22** As noted above, a fee petitioner must provide sufficient support for his claim to "permit the District Court to make an independent determination whether or not the hours claimed are justified." *Nat'l Ass'n of Concerned Veterans.,* 675 F.2d at 1327.Defendants contend relator has failed at this endeavor in at least two respects: 1) counsel's time entries consistently refer to research, meetings, and telephone conferences without specifying their subject matter; and 2) counsel have followed the practice of block billing.[FN58](*See* BHIC and HUK's Opp'n [948] at 11-13; HII's Opp'n [949] at 23-27.)

i. Vague Descriptions

***23** First, defendants cite several examples of time entries for which counsel's narrative descriptions are so vague as to preclude meaningful review. They point to two of Robert Bell's time entries from March 2001, in which he billed for "telcon Carolyn Mark" and "telcon Carolyn Mark re: tactics." (*See* HII's Opp'n [949] at 24 (citing 3/13/2001 RBB; 3/14/2001 RBB).) Even more egregiously meaningless are Michael Sturm's time entries for "review and analyze issues re development."(*See id.*(citing 11/2/1998 MLS; 11/3/1998 MLS; 5/27/1999 MLS).) Similarly, Jennifer O'Connor's time entry for November 8, 2006 includes the wholly uninformative phrases "confer with Mr. Bell, Mr. Connell re strategy questions" and "confer with Mr. Shapiro re same."(*See* BHIC and HUK's Opp'n [948] at 13 (citing 11/8/2006 JMO).)

***23** As defendants observe, these entries and others in relator's petition are *virtually identical* to the sorts of descriptions this Court and others have repeatedly deemed inadequate:

> ***23** For example, many of plaintiffs' time records "provide little or no reference to the substance of the work claimed."Entries such as: "research read cases; searched Westlaw"; "meet with attys"; "prepare for trial"; [and] "further trial preparation and document review"... are so vaguely generic that the Court can not determine with certainty whether the activities they purport to describe were ... reasonable.
>
> ***23** ... Other time records make, "no mention ... of the subject matter of a meeting, telephone conference or the work performed during hours billed."Entries illustrative of this particular problem include: "conference call with Dennis & E. Worliss"; "telephone call to KH re: general update"; "call for Plaintiffs"; "background research for RD"; "confce call and follow-ups."
>
> ***23** Similarly infirm are those time entries containing "vague and cryptic designations," such as: "rvw & respond to email inquiry from A. Jarett"; "confer w/ RD"; "Discussed strategy w/Dennis, Thad, Bob & Keith"; "Met w/Keith & Bob re: strategy"; "conference with Elliott Levitas regarding strategy and legal issues"; "confer w/RD & RP re: legal strategy."

***23** *Cobell,* 407 F.Supp.2d at 158-59 (citations omitted).*See also Hensley,* 461 U.S. at 437 n. 12, 103 S.Ct. 1933 ("at least counsel should identify the general subject matter of his time expenditures"); *In re Meese,* 907 F.2d 1192, 1204 (D.C.Cir.Spec.Div.1990) (time entries in which "no mention is made of the subject matter of a meeting, telephone conference or the work performed during hours billed" are "not adequately documented"); *In re Olson,* 884 F.2d 1415, 1428-29 (D.C.Cir.Spec.Div.1989) (decrying time entries "that wholly fail to state, or to make any reference to the subject discussed at a conference, meeting or telephone conference" as well as generic references to "strategy" conferences); *Kennecott Corp. v. EPA,* 804 F.2d 763, 767 (D.C.Cir.1986) (per curiam) (citing "[a]nalysis of final NSO regulations; first joint petition for review; research" as too generalized to meet fee applicant's bur-

den). The resemblance is uncanny.

***24** Relator characterizes defendants' examples as having been "cherry-picked" from among otherwise "sufficiently detailed" time entries.[FN59](*See* Reply to HII's Opp'n [957] at 13-14.) Had the Court not examined relator's counsel's time entries at some length, it might give credence to this argument. Instead, its review of the entire fee application confirms that counsel's time records are simply rife with ambiguous and nugatory entries.[FN60]Michael Sturm, for example, has billed time for "review[ing] and analyz[ing] issues re strategy" no fewer than *sixteen* times. (*See* 6/26/1995 MLS; 8/14/1995 MLS; 8/30/1995 MLS; 9/8/1995 MLS; 1/19/1996 MLS; 2/14/1996 MLS; 2/28/1996 MLS; 6/25/1997 MLS; 2/26/1998 MLS; 5/7/1998 MLS; 2/25/1999 MLS; 5/28/1999 MLS; 6/15/1999 MLS; 6/24/2999 MLS; 9/8/1999 MLS; 9/13/1999 MLS.) Other gems include "reviewing and revising memorandum to file; research on bid-rigging cases," (1/7/2000 RBB), for which relator's counsel seek $650.00; "review indices, docs; confer with G. Reece," (6/20/2006 MMB), for which counsel billed $1,295.00; and "prepare for trial," (3/14/2007 CR; 3/15/2007 CR; 3/16/2007 CR; 3/17/2007 CR; 3/18/2007 CR), for which counsel charged $30,021.50.

***24** The relevant question is not *whether* the lodestar should be reduced due to counsel's impenetrable narratives, but by *how much.*Not all counsel's time entries exhibits such flaws. Indeed, some far exceed the minimum level of detail needed for meaningful analysis. And as relator urges, certain vague descriptions acquire greater substance when considered in context. *See Heard v. Dist. of Columbia,* No. 02-296, 2006 WL 2568013, **14-16, 2006 U.S. Dist. LEXIS 62912, at *44-46 (D.D.C. Sept. 5, 2006) (Kotelly, J.) (surrounding entries must be taken into account in reviewing allegedly vague time entries).*Cf. Cobell,* 407 F.Supp.2d at 159 (declining to "cross-reference each of plaintiffs' voluminous time entries to compensate for [counsel's] failure to more fully describe his activities in the first instance" because this "responsibility rests squarely with plaintiffs"). For example, on one of the five consecutive days for which Colin Rushing billed only "prepare for trial," (3/14/2007 CR), Bell's time record indicates he met for some period of time with Rushing and others to discuss "trimming [the] case," (3/14/2007 RBB), and Cedarbaum's entry for that day notes Rushing was present for a meeting regarding "demonstratives," (3/14/2007 JC). It seems unlikely, however, that these two meetings consumed the entire thirteen hours Rushing billed that day. Moreover, contextual analysis saves only a small portion of the problematic time entries.

***24** Accordingly, the Court agrees with defendants that counsel's time entries' ambiguity warrants an across-the-board reduction. Based on the Court's review of the full fee application, it considers 10 percent to be reasonable and appropriate.[FN61]

ii. Block Billing

***24** Defendants also criticize counsel's use of block billing-that is, their time entries aggregate all tasks performed for this case on a given day, with no indication as to how much time counsel spent on each individual task.[FN62]As our Court of Appeals has observed, block billing "make[s] it impossible for the court to determine, with any degree of exactitude, the amount of time billed for a discrete activity," leaving the court "to estimate the reduction to be made because of such insufficient documentation." *In re Olson,* 884 F.2d at 1428-29.*See also Role Models Am., Inc.,* 353 F.3d at 971 (time records that "lump together multiple tasks[ ] mak[e] it impossible to evaluate their reasonableness"). In *Cobell,* this Court refused to "undertake the futile task of separating plaintiffs' block entries into their constituent tasks and apportioning a random amount of time to each." 407 F.Supp.2d at 160.Instead, it "exercise[d] the discretion accorded it by the *Hensley* Court and reduce[d] the time requested." *Id.* (citing *Hensley v. Eckerhart,* 461 U.S. 424, 437 n. 12, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).[FN63]

***25** Relator attempts to justify his counsel's block time entries by turning again to fellow attorneys' declarations: Davidson contends block billing is "[t]he most prevalent practice among firms in the Washington, D.C. marketplace," and Braga characterizes it as "standard

fare in today's billing world."(Davidson Decl. ¶ 12, Ex. 5 to Mot. for Fees, Costs, and Expenses [930]; Braga Supplemental Decl. ¶ 2, Ex. 3 to Reply to HII's Opp'n [957].) Davidson also insists that more truly contemporaneous time-keeping would be "burdensome" and "disruptive to the flow of work involved."(Davidson Supplemental Decl. ¶ 8, Ex. 2 to [957].)

***25** Such platitudes fail the common sense test. Wilmer Hale's time records clearly reveal a policy of billing in six-minute increments, while Wiley Rein's counsel seem to have billed in fifteen-minute increments. In several instances, an individual attorney performed only one task on this case in a given day and billed only six or fifteen minutes. (*See, e.g.,* 6/30/2006 HS (0.10 hours billed for "confer with Ms. O'Connor"); 12/9/1998 RBB (0.25 hours billed for "telephone call with Mr. Dillon re status of investigation").) Thus, counsel were clearly *able,* under both firms' existing record-keeping systems, to document the time spent on individual tasks. The Court acknowledges that more consistently precise time-keeping might prove somewhat disruptive to workflow, but in a fee-shifting case, it is necessary to facilitate subsequent judicial review. Most saliently, counsel's time entries are riddled with conferences, telephone calls, and meetings involving multiple professionals, but it is impossible to determine how long these conclaves lasted-or, as noted above, what subject matter they involved. Without such basic details, the Court simply cannot ascertain whether this time was reasonably expended.

***25** Because relator's counsel's time records "lump together multiple tasks, making it impossible to evaluate their reasonableness," this Court finds that a wholesale reduction in the lodestar is appropriate. *See Role Models Am., Inc.,* 353 F.3d at 971.It will thus reduce the tentative lodestar by a further 10 percent.[FN64]

b. Unnecessary Work

***25** Defendants next contend that relator's counsel engaged in unnecessary work, gratuitously inflating the fee petition. (BHIC and HUK's Opp'n [948] at 13-14.) Such superfluous time is not compensable. *See Hensley,* 461 U.S. at 434, 103 S.Ct. 1933 (requiring petitioner "to exclude from [his] fee request hours that are excessive, redundant, or otherwise unnecessary"); *Laffey v. Northwest Airlines, Inc.,* 572 F.Supp. 354, 369 (D.D.C.1983) (Robinson, C.J.) ("Counsel is not free ... to exercise its judgment in a fashion that unnecessarily inflates the losing party's fee liability").

***25** Specifically, defendants claim that "[o]nce the government intervened, there was no need for the Relator to continue to amend his complaint, merely asserting the same claims as those contained in the government's complaints."(BHIC and HUK's Opp'n [948] at 13.) Hence, they argue, the Court should order relator's counsel to identify all time entries associated with these amendments and should exclude them from the fee award. (*Id.* at 14.)

***26** This demand fails for two reasons. First, defendants again mistake the governing "reasonableness" standard for one of *necessity. See Hensley,* 461 U.S. at 433, 103 S.Ct. 1933 (lodestar calculated based on "hours reasonably expended on the litigation"). Even an unnecessary amendment might yet be reasonable. Second, in each of the three instances in which relator amended his complaint after the government had intervened, Magistrate Judge Facciola or this Court authorized the amendment. (*See* Order of Mar. 9, 2006[232] (magistrate judge granted relator's motion for leave to file a third amended complaint); Scheduling Order of Apr. 10, 2006[253] (magistrate judge ordered that parties comply with April 24, 2006 deadline for filing amended complaints); Mem. Op. & Order of Mar. 6, 2007[620] (this Court granted relator's motion for leave to file fifth amended complaint).) The Court will not deny compensation for work it authorized. *Cf. Wilkett v. ICC,* 844 F.2d 867, 874 (D.C.Cir.1988) ("[a]ny work ordered by this Court is [ ] compensable").

c. Inefficiencies

***26** Next, defendants point to sundry inefficiencies reflected in counsel's time records that fall into two broad categories. Their "too many lawyers" complaints include: (1) an excessive number of meetings and confer-

ence calls, many of uncertain duration, involving multiple senior personnel; (2) assignment of a *per se* unreasonable number of different time-keepers to the case; and (3) assignment of too many high-billing partners to the case. Their "too many hours" complaints include: (1) excessive time spent drafting relator's original complaint; (2) an unreasonable amount of time devoted to basic research; and (3) plaintiffs' continued agreements to seal. The Court will briefly examine each purported inefficiency and will then determine whether, in light of its findings, an across-the-board reduction for "excessive, redundant, or otherwise unnecessary" hours is appropriate. *See Hensley,* 461 U.S. at 434, 103 S.Ct. 1933.

i. Too Many Lawyers

***26** First, defendants highlight several "team meetings" that illustrate their concern over the innumerable, multi-participant meetings and conference calls that litter counsel's time records. On December 12, 2006, for example, no fewer than eleven people attended a "team meeting." (*See* 12/12/2006 MB; 12/12/2006 AB; 12/12/2006 RBB; 12/12/2006 MMB; 12/12/2006 JC; 12/12/2006 MG; 12/12/2006 AFM; 12/12/2006 JMO; 12/12/2006 GR; 12/12/2006 HS; 12/12/2006 STS.) Howard Shapiro's time entry indicates the meeting lasted 0.6 hours, and Stephen Smith's time entry reveals it pertained to that day's deposition of plaintiffs' expert, Terry Musika. (*See* 12/12/2006 HS; 12/12/2006 STS.) The price tag: $4,885.00.

***26** Relator argues "such interactions and collaboration" were necessary in "a case as complex and fast-paced as this one."(Reply to BHIC and HUK's Opp'n [960] at 14.) Indeed, "conferences between attorneys to discuss strategy ... are an essential part of effective litigation" and facilitate "proper supervision and efficient staffing." *McKenzie v. Kennickell,* 645 F.Supp. 437, 450 (D.D.C.1986) (Parker, J.). This Court recognizes the value of information-sharing and dialogue [FN65] but it agrees with defendants that "neither preparation for the defense of [Musika's] deposition nor debriefing after [ward] ... justifies" billing $5,000.00 for a thirty-six minute period.[FN66] (*See* BHIC and HUK's Opp'n [948] at 15.)

***27** Similarly, the Court cannot condone counsel's June 2006 conference calls with BHIC's counsel. On June 23, four attorneys participated in a teleconference with June Ann Sauntry regarding follow-up questions to defendants' discovery responses. (6/23/2006 MMB; 6/23/2006 JC; 6/23/2006 JMO; 6/23/2006 GR.) Due to counsel's block time entries, the Court cannot ascertain how long this call lasted, but its hourly price tag was a whopping $1,740.00. Four days later, at this same, $1,740.00 per hour rate, these four attorneys conferred by phone again with Sauntry and then held a separate meeting amongst themselves. (6/27/2006 MMB; 6/26/2006 JC; 6/26/2006 JMO; 6/23/2006 GR.)

***27** This troublesome pattern extends to counsel's written work product: *seven* different attorneys worked on relator's fifth amended complaint. (*See, e.g.,* 1/30/2007 JC; 1/31/2007 JC; 1/31/2007 MB; 12/22/2006 AB; 1/30/2006 AB; 12/26/2006 RBB; 1/30/2006 RBB; 11/25/2006 MMB; 1/31/2007 MMB; 12/22/2006 MG; 1/30/2007 MG; 1/30/2007 JMO; 1/31/2007 JMO.) Relator claims seven lawyers' participation was reasonable "because, as the last Complaint filed before trial, various attorneys needed to review it before it was filed to ensure that facts they knew based on their particular areas of expertise on the case were incorporated."(Reply to BHIC and HUK's Opp'n [957] at 14.) This explanation contradicts his justification for the innumerable "team meetings" that occurred throughout the case: team members shared information so freely and regularly to ensure knowledge would not be compartmentalized. (*See id.*)Furthermore, this Court granted leave to amend "solely for the purpose of curing the 9(b) deficiency ... pertaining to [HC's] involvement in the alleged fraudulent conspiracy."(Mem. Op. & Order of Mar. 6, 2007[620] at 3.) Satisfying this limited mandate did not call for such excessive drafting manpower. Relator explains that he also sought to add additional facts, (*see* Reply to BHIC and HUK's Opp'n [960] at 14 n. 14), but given that relator had *eleven years* to prepare the factual allegations in his fourth amended complaint, the Court finds it difficult to believe seven different drafters were necessary to document any "new" facts.

Moreover, while the Court accepts that others must review a drafter's work, drafting by committee is a recipe for inefficiency.

***27** Relator's justification for dispatching three attorneys to certain depositions, also attended by government counsel, is similarly flawed. (*See* Ex. A to Bell Decl., Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) The Court does not dispute that the FCA "contemplates [ ] continued participation by a relator after the government intervenes in a *qui tam* action." *United States ex rel. Abbott-Burdick v. Univ. Med. Assocs.*, No. 2:96-1676-12, 2002 WL 34236885, **14-15, 2002 U.S. Dist. LEXIS 26986, at *47-48 (D.S.C. May 23, 2002). Given relator's status as co-plaintiff with the United States, it was perfectly reasonable for his counsel to attend depositions, regardless of government counsel's presence. Further, while the Court questions its necessity, it cannot conclude that dispatching two Wilmer Hale attorneys to each deposition was wholly unreasonable. At three, however, it draws the line.[FN67] More is not always better.

***28** Having perused counsel's records in full, and having studied the examples defendants cite in detail, the Court concludes that too many attorneys were assigned to discrete tasks. In many circumstances, assigning more than one attorney to a task makes eminent good sense. The work may be burdensome and readily divisible, a deadline may be fast approaching, or as the maxim holds, two heads may prove better than one. But relator's counsel, quite simply, went overboard.

***28** Second, HII contends it was *per se* unreasonable for Wilmer Hale to assign fifty-two attorneys and thirty paralegals to this case.[FN68](*See* HII's Opp'n [949] at 19.) As they point out, relator's co-plaintiff, the United States, devoted only five attorneys to the case, and they managed to perform substantially the same volume and types of tasks-attending and defending depositions, responding to discovery requests, filing pleadings, and advocating at trial-for which Wilmer Hale needed more than ten times the staff. (*See id.* at 20-21.)

***28** As relator notes, however, HII has not identified specific time entries it believes reflect duplication of effort. (*See* Reply to HII's Opp'n [957] at 13.) Furthermore, in calculating the lodestar, the Court's duty is to ascertain "the number of hours reasonably expended on the litigation," not the number of lawyers reasonably assigned. *See Hensley*, 461 U.S. at 433, 103 S.Ct. 1933; *Donnell v. United States*, 682 F.2d 240, 250 n. 27 (D.C.Cir.1982) ("The issue is not whether [petitioners] used too many attorneys, but whether the work performed was unnecessary.").

***28** Moreover, defendants' attack on the number of Wilmer Hale attorneys who assisted the government with the "overwhelming[ly] demand[ing][ ] discovery" that occurred in this case, (*see* Morgan Decl. ¶ 7, Ex. 1 to Mot. for Fees, Costs, and Expenses [930]), rings hollow, *see Copeland v. Marshall*, 641 F.2d 880, 904 (D.C.Cir.1980) (en banc) (defendant "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response"). Wilmer Hale's ability to leverage additional human resources as the case's demands changed may actually have rendered its representation *more* efficient. Moreover, both partners and associates frequently change firms or move between public and private practice; consequently, one would expect some turnover in assigned personnel over the course of twelve years. Hence, the Court cannot conclude Wilmer Hale's aggregate staffing was *per se* inefficient.

***28** Third, and in the same vein, defendants contend Wilmer Hale's assignment of five different partners-none with prior FCA litigation experience-to the case was unreasonable, leading to inflated billings. (*See* HII's Opp'n [949] at 29-30.) In total, partners Robert Bell (1980 law graduate), Jonathan Cedarbaum (1996), Robert Cultice (1978), Jennifer O'Connor (1997), and Howard Shapiro (1985), billed 7,667.05-or about 31 percent-of the 24,626.5 hours listed in relator's original fee petition. (*See* Exs. B-1, D-1 to Bell Decl., Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) This equates to $4,310,980.00-or about 43 percent-of the $10,014,707.00 in fees sought in that petition. (*See* Exs. B-1, D-1 to Bell Decl.)

***29** Defendants style this objection as one concerning "duplication of work," (*see* HII's Opp'n [949] at 29),

and indeed, *Hensley* prescribes exclusion of "redundant" efforts from a fee petition, 461 U.S. at 434, 103 S.Ct. 1933.Yet defendants do not identify any specific areas in which they believe Wilmer Hale's efforts, or those of an individual partner, were truly duplicative of others.[FN69]Perhaps some of the work performed by the five partners-at $495 per hour and up-might have been delegated to associates with lower hourly rates, but defendants have neither made this argument explicitly nor endeavored to identify examples. The Court finds the previous paragraph's calculations rather troubling: despite the involvement of so many different attorneys and the assignment of associates to the "core" team, five partners' time accounts for nearly *half* the fees relator seeks. Nonetheless, without evidence of duplication, the Court will not speculatively second-guess Wilmer Hale's staffing decisions in the invited manner.

ii. Too Many Hours

***29** Defendants' first "too many hours" objection concerns relator's original complaint: by their count, counsel devoted 141.50 hours to drafting, reviewing, and revising this document. (HII's Opp'n [949] at 27.) A single sentence encapsulates their argument: "After three years of being involved in the case, it is hard to imagine how Wiley Rein could spend 141.5 hours in drafting a Complaint which thereafter required five successive amendments...."(*Id.*)Relator's counsel's practice of block billing has inflated defendants' figure: attorney time entries listing work on the complaint also include other, unrelated tasks. (*See, e.g.* 6/21/1995 LD; 6/21/2005 CRY.) Further, counsel drafted a thirty-page, factually detailed confidential disclosure statement along with the complaint, preparation of which required document review and privilege considerations. (*See, e.g.*, 6/21/2005 MLS; 6/21/2005 RBB.) Hence, the Court cannot conclude counsel devoted excessive time to drafting the complaint and accompanying disclosure statement. *Cf. Cobell*, 407 F.Supp.2d at 161 (finding excessive 20.7 hours spent "drafting a two-page filing containing no legal analysis or discussion," 122.33 hours spent "drafting a nine-page filing entitled Plaintiffs' Reply to Defendants' Opposition to Setting a Trial Date," and 852.47 hours spent "drafting Appellee's 66-page Response Brief").

***29** Second, defendants contend relator's counsel spent 300.55 hours on "the most basic 'getting up to speed' " research. (HII's Opp'n [949] at 27-28.) Again, this figure is inflated due to counsel's block time entries, and defendants' examples are ill-chosen. They highlight, for instance, that on June 13, 1995, Robert Bell reviewed an ABA publication on the False Claims Act. (*Id.* (citing 6/13/1995 RBB).) Yet the Court suspects that even an attorney with prior FCA experience would wish to ensure his familiarity with recent developments in the field. (*Accord* Braga Supp. Decl. ¶ 3, Ex. 3 to Reply to HII's Opp'n [957] ("it is prudent for even the most expert counsel ... to perform additional research on topics they are otherwise familiar with in order either to confirm their beliefs in the state of the law or to ascertain any changes in the state of the law as a result of recent developments").) On June 12, 1995, Luis de la Torre-in addition to reviewing a memo from a colleague-researched cases interpreting the FCA's statute of limitations and drafted a memo on the subject. (6/12/1995 LD.) Given that timeliness proved a significant and fiercely contested issue in this case, this research seems entirely justified.

***30** More broadly, the Court finds attorney declarant Davidson's pragmatic comments on this point particularly apt:

> ***30** Experts in substantive practice areas are still required to conduct "research" (indeed, a lawyer would be negligent if he or she did not conduct "research") to determine the current state of the law[,] and no practitioner would be expected to know all answers to legal questions, even within the practitioner's area of expertise. Moreover, regardless of an attorney's level of expertise, the pertinent authorities need to be referenced and researched when briefing or considering the legal issues in the case. This time will be described as "research." Undertaking "research" does not mean that the attorney involved is undertaking basic research on the substantive law. In my opinion, and in my practice, it is customary for attorneys at all levels to review case law-to do "research"-as it becomes relevant for the task they are performing.

***30** (Davidson Supplemental Decl. ¶ 29, Ex. 2 to Reply to HII's Opp'n [957].) Having reviewed the supposedly offensive time entries, (*see* Ex. 1 to HII's Opp'n [949]), the Court concludes defendants' objection to counsel's "basic" research is unfounded.

***30** Finally, defendants argue plaintiffs' repeated agreements to extend the sealed period in this case were unreasonable because they unduly prolonged the litigation.[FN70](*See* HII's Opp'n [949] at 28-29.) This Court has stated, and still believes, that relator did himself a grave disservice by conceding to the government's numerous motions to extend the seal. (*See* Apr. 27, 2007 PM Tr. at 165-66; Mem. Op. [872] at 29.) Nevertheless, in each instance, the government sought, and a judge granted, the extension. The Court will not deny relator's counsel compensation for work it authorized.[FN71]*Cf. Wilkett v. ICC,* 844 F.2d 867, 874 (D.C.Cir.1988) ("[a]ny work ordered by this Court is [ ] compensable").

iii. Inefficiencies Summary

***30** To summarize, the Court has considered each alleged inefficiency identified by defendants and concludes that counsel's time records do evince one problematic trend. At least during the litigation's later stages, too many attorneys were assigned to discrete tasks. The Court does not propose to dictate law firms' staffing, and it acknowledges the benefits of a division of labor. But it is common knowledge that at some point, allocating portions of a task among group members ceases to raise productivity and instead begins to hinder it. As illustrated above, relator's counsel passed this equilibrium point. The Court finds the resulting inefficiency unreasonably inflated counsel's billing statements and thus warrants an across-the-board reduction of five percent. [FN72]

C. Lodestar

***30** Relator originally sought $599,351.00 as compensation for 1054.5 hours worked by Wiley Rein personnel. (*See* Ex. B-2 to Bell's Decl., Ex. 2 to Petition for Fees, Costs, and Expenses [930].) His supporting documents reflect a slightly lesser total of 1054.25 hours. (*See* Ex. B-3 to Bell's Decl.) The time entry-specific deductions detailed in Appendix II, *infra,* along with relator's voluntary withdrawals for inadvertently included time, reduce the Wiley Rein total to 936.05 hours. At the rates set forth in Appendix I, *infra,* fees for these hours amount to $497,763.30-$3,875.00 for paralegal work, and $493,888.30 for attorney work.

***31** For Wilmer Hale personnel, relator originally sought $9,415,356.00 as compensation for 23,572 hours' work. (*See* Ex. D-2 to Bell's Decl.) After the Appendix II deductions and relator's voluntary withdrawals, Wilmer Hale's total compensable hours amount to 23,283 hours. At Appendix I rates, fees for this time run to $9,268,467.75-$677,748.75 for paralegal work, and $8,590,719.00 for attorney work.

***31** As set forth in Appendix III, the Court has concluded that systematic defects in relator's fee petition warrant across-the-board reductions in these subtotals: ten percent for ambiguous time entries, ten percent for block billing, and five percent for inefficient staffing. Further, the Court will discount all attorney hours by one-half percent and all paralegal hours by five percent to omit compensation for clerical work. The Court will apply the total percentage reductions-25.5 percent of attorney fees and 30 percent of paralegal fees-to fees for compensable time, computed above, vice requested time. For Wiley Rein, these percentages translate to reductions of $1162.50 in paralegal fees and $125,941.52 in attorney fees. Subtracting these amounts from the fees for compensable hours, calculated above, yields lodestar values of $2,712.50 for Wiley Rein paralegals and $367,946.78 for Wiley Rein attorneys. For Wilmer Hale, these percentages translate to reductions of $203,324.62 in paralegal fees and $2,190,633.34 in attorney fees. Subtracting these amounts from the fees for compensable hours, calculated above, yields lodestar values of $474,424.13 for Wilmer Hale paralegals and $6,400,085.66 for Wilmer Hale attorneys.

***31** The resulting lodestar sub-components appear in the table below:

	wiley Rein	**Wilmer Hale**
Attorney Fees	$367,946.78	$6,400,085.66
Paralegal Fees	$2,712.50	$474,424.13
Total Lodestar	$370,659.28	$6,874,509.79

***31** The total lodestar value-"the number of hours reasonably expended on the litigation times a reasonable hourly rate," *Blum v. Stenson*, 465 U.S. 886, 888, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)-thus equals $7,245,169.07.

D. Enhancement

***31** A "strong presumption" exists that the lodestar figure, without more, constitutes a reasonable fee award. *City of Burlington v. Dague*, 505 U.S. 557, 562, 112 S.Ct. 2638, 120 L.Ed.2d 449 (1992). Yet in "rare" and "exceptional" cases, a fee applicant may rebut this strong presumption against upward adjustments to the lodestar by producing "specific evidence" that shows "an adjustment is *necessary* to the determination of a reasonable fee." *Blum*, 465 U.S. at 898-99, 104 S.Ct. 1541 (emphasis added).

***31** Relator must believe his case to be exceedingly rare, indeed: he claims his counsel's quality of representation and the "exceptional results" achieved "entitle[ ]" them to *double* the lodestar amount. (Mot. for Fees, Costs, and Expenses [930] at 27.) He further suggests the FCA's incentive structure supports his eye-watering request. (*Id.* at 38-40.)The Court will evaluate each of these three proposed bases for a 100 percent lodestar enhancement in turn, but first, it will set out the applicable law.

***32** In his fee petition, relator relies principally on *Blum*, one of the Supreme Court's early pronouncements on the subject of fee enhancements. (*See* Mot. for Fees, Costs, and Expenses [930] at 27-28.) There, the district court had granted a fifty percent enhancement for, *inter alia*, quality of representation and result obtained, and the Supreme Court deemed this an abuse of discretion. 465 U.S. at 891, 902, 104 S.Ct. 1541.It left the door open to lodestar multipliers, noting that "in some cases of exceptional success an enhanced award may be justified," but it instructed that the lodestar amount "is presumed to be the reasonable fee." *Id.* at 897, 104 S.Ct. 1541 (quotation marks and citation omitted). Of particular relevance here, it observed that

> ***32** [t]he "quality of representation" ... generally is reflected in the reasonable hourly rate. It, therefore, may justify an upward adjustment only in the rare case where the fee applicant offers specific evidence to show that the quality of service rendered was superior to that one reasonably should expect in light of the hourly rates charged and that the success was "exceptional."

***32** *Id.* at 899, 104 S.Ct. 1541.Absent such "specific evidence," an enhancement for quality of representation would constitute "a clear example of double counting." *Id.* Additionally, though relevant, the result obtained "normally should not provide an independent basis for increasing the fee award." *Id.* at 900, 104 S.Ct. 1541.Indeed, as another court in this district has observed, these two factors are necessarily intertwined: "a review of [ ] exceptional results is integral to an analysis of the quality of representation." *McKenzie v. Kennickell*, 684 F.Supp. 1097, 1106 (D.D.C.1988) (Parker, J.)

***32** Two years later, the Court adopted an even less permissive stance with respect to lodestar enhancements. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 106 S.Ct. 3088, 92 L.Ed.2d

439 (1986). There, the Court elevated *Blum's* presumption that the lodestar represents the reasonable fee to a *strong* presumption, explaining that fee-shifting statutes "were not designed as a form of economic relief to improve the financial lot of attorneys, nor were they intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client." *Id.* at 565, 106 S.Ct. 3088.To that end, both quality of representation and results obtained "are presumably fully reflected in the lodestar amount." *Id.* Fundamental ethical principles dictate this conclusion:

> ***32** [W]hen an attorney first accepts a case and agrees to represent the client, he obligates himself to perform to the best of his ability and to produce the best possible results commensurate with his skill and his client's interests. Calculating the fee award in a manner that accounts for these factors, either in determining the reasonable number of hours expended on the litigation or in setting the reasonable hourly rate, thus adequately compensates the attorney, and leaves very little room for enhancing the award based on his post-engagement performance.

***33** *Id.* at 565-66, 106 S.Ct. 3088.Thus, to avoid double counting, "the overall quality of performance ordinarily should not be used to adjust the lodestar." *Id.* at 566, 106 S.Ct. 3088.*See also Donnell*, 682 F.2d at 254 ("We have found it all too common for the district courts to adjust the lodestar upward to reflect what the courts view as a high ... quality of representation. This trend should stop.").

***33** With these principles in mind, the Court will weigh relator's enhancement arguments.

1. Results Obtained

***33** In this *qui tam* action, the jury returned a total verdict of $34.4 million against six defendants after several others agreed to pretrial settlements. Relator and his "experts" dwell effusively on its aggregate size. (*See* Mot. for Fees, Costs, and Expenses [930] at 28 ("this is one of the three largest jury verdicts in the almost 200-year history of the FCA, and the fourth largest U.S. jury verdict in 2007 at the time it was handed down"); Braga Decl. ¶ 6, Ex. 3 to [930] (calling verdict "historical"); Davidson Decl. ¶ 34, Ex. 5 to [930] ("this size of a verdict from a jury in the District of Columbia is rare and demonstrates exceptional success").) The Court does not dispute that $90 million-the trebled damages value-is a staggering sum.

***33** But this result must also be placed in perspective. Plaintiffs sought up to $60.8 million in damages-nearly twice the jury's ultimate award. (*See* May 1, 2007 PM Tr. at 73 (seeking $42 million in damages on Contract 20A); Mar. 23, 2007 AM Tr. at 84 (original Contract 29 bid was $137.3 million); May 1, 2007 PM Tr. at 76 (arguing fair and reasonable Contract 29 bid would have been $120 million); *id.*(suggesting $1.5 million damages award on Contract 07).) Given the sum sought, the jury verdict's magnitude is far from astounding.

***33** Relator also insists the criminal case's results-four guilty pleas, one conviction, and over $140 million in fines-are "highly relevant in awarding an enhancement."(Mot. for Fees, Costs, and Expenses [930] at 28.) The Court fails to see how. As BHIC and HUK point out, relator cites no authority for awarding a fee enhancement to counsel in a civil action based on the outcome of other litigation.[FN73](*See* BHIC and HUK's Opp'n [948] at 22.) As discussed above, counsel will be compensated for their representation of relator throughout his assistance with the government's criminal investigation. *See supra* part III.B. 1.a. But the Court does not believe they deserve a bonus for *Government* counsel's success in translating the information relator provided into a full-fledged antitrust investigation that culminated in criminal penalties.[FN74]

***33** Next, relator emphasizes that the jury's damages award here "goes directly to benefit the public interest by compensating the Government for Defendants' proven fraud."(Mot. for Fees, Costs, and Expenses [930] at 29.) Yet this is true of *every* damages award in False Claims actions: any recovery *always* goes to the government. By relator's logic, successful *qui tam* relators' counsel would receive lodestar enhancements *in every case*.[FN75]The Supreme Court's admonition that the result obtained "normally should not provide an in-

dependent basis for increasing the fee award" forecloses this outcome. *See Blum*, 465 U.S. at 900, 104 S.Ct. 1541.

***34** All in all, the Court finds the result obtained, while laudable, does not weigh strongly in favor of awarding a fee enhancement in this case.

2. Representation Quality

***34** Relator next argues the quality of his counsel's performance merits a lodestar enhancement, and he identifies three separate facets of this performance as establishing its superiority: (1) his counsel's "essential" and "vital" role, and their coordination with the government, produced efficiencies not reflected in the lodestar; (2) Bell's cradle-to-grave involvement in the case also yielded such efficiencies; and (3) a small core of young lawyers who performed well beyond their seniority levels bore principal responsibility for relator's representation. (Mot. for Fees, Costs, and Expenses [930] at 30, 32, 33.) Because relator's first two justifications both take aim at the strong presumption that the lodestar adequately reflects representation quality, *Delaware Valley*, 478 U.S. at 565, 106 S.Ct. 3088, the Court will address them together.

a. Unaccounted-for Efficiencies

***34** To support his contention that the lodestar fails to capture certain efficiencies achieved by his counsel, relator turns to two sources: government counsel Keith Morgan's affidavit, and his "expert" declarations. (*See* Mot. for Fees, Costs, and Expenses [930] at 30-33.)

***34** He begins with the proposition that

> ***34** [b]ut for relator's counsel's active and integral participation in this suit, it would have been extremely difficult for the Government to prevail because it may not have been able to respond to the plethora of motions effectively, meet the highly intense demands of discovery, and present this case as effectively at trial.

***34** (*Id.* at 30-31.)To support this characterization of his counsel's role, he relies on Morgan's declaration:

> ***34** The availability of Relator's counsel from Wilmer Hale was essential in meeting the overwhelming demands of discovery and ultimately of the trial in this matter. Indeed, attorneys and support staff from Wilmer Hale played a vital role in getting this case ready for trial and ultimately successfully trying it.... Throughout this period counsel for the United States and Relator's counsel met regularly to coordinate our efforts to ensure that there was no duplication of efforts and that we worked as an integrated team.

***34** (Morgan Decl. ¶¶ 7-8, Ex. 1 to [930].)

***34** Relator and his attorney declarants cast this straightforward prose as effusive praise, repeatedly quoting the words "essential" and "vital" from Morgan's otherwise terse narration of the case's progress. (*See* Mot. for Fees, Costs, and Expenses [930] at 31; Braga Decl. ¶ 6, Ex. 3 to [930] ("The fact that the Civil Division of the United States Attorney's office is willing to recognize that Wilmer Hale's role in this case was both 'essential' and 'vital' to the successful preparation and trial of this 'overwhelming' case speaks volumes"); Davidson Decl. ¶ 46, Ex. 5 to [930] ("The statements by the Government in support of Wilmer Hale's efforts are not at all typical and reflect the extraordinary contribution the Wilmer Hale team provided for the public benefit.").)

***35** Read objectively, however, Morgan's two-page affidavit offers only faint praise. His first statement, concerning counsel's "availability," reveals nothing about the quality of counsel's performance-it merely suggests Wilmer Hale provided additional warm bodies to supplement the government's resources. His second statement does reflect significant credit on the Wilmer Hale team: their participation was "vital" to successful prosecution of the government's claims. But starting from relator's premise-that the government could not have handled this case without Wilmer Hale's assistance-counsel owed a duty to their client to offer up the additional resources needed to permit success, lest relator walk away with nothing. *See Delaware Valley*, 478 U.S. at 565, 106 S.Ct. 3088 ("When an attorney first accepts a

case and agrees to represent the client, he obligates himself to perform to the best of his ability and to produce the best possible results commensurate with his skill and his client's interests."). The same logic applies to Morgan's third statement: that relator's counsel coordinated their efforts with the government to avoid duplication merely indicates they endeavored to avoid *inefficiency;* such conduct should serve as a baseline in client representation and does not justify a bonus.

***35** Relator's arguments concerning Bell's continuous involvement are similarly unpersuasive. His attorney declarants' praise for Bell's loyalty to his client, "over a total of 16 years and across his shift in law firms," borders on hyperbole. (*See* Braga Decl. ¶ 6 (relator was "blessed to have complete continuity of his lead counsel, Robert Bell," and such long-term attorney-client relationships are "rare indeed in this modern legal world"); Davidson Decl. ¶ 42 (Bell's continuous involvement was "invaluable and result[ed] in substantial savings").) Likewise, where plaintiffs' lead counsel "remain[ed] at the helm" throughout fifteen years of litigation, another court in this district observed that "[s]uch continuity promotes tremendous efficiency and necessarily reduces the ultimate expenditure of hours." *McKenzie v. Kennickell,* 684 F.Supp. 1097, 1107 (D.D.C.1988) (Parker, J.).*See also Hartman v. Duffey,* 973 F.Supp. 199, 202 (D.D.C.1997) (Robertson, J.) (awarding enhancement in part due to continuity of lawyers' efforts, which promoted efficiency and reduced overall time expenditure).

***35** Ordinarily, this Court would concur. Here, however, the Court has already concluded that counsel's time records reveal substantial inefficiencies caused by assignment of too many attorneys to discrete tasks. *See supra* part III.B.2.c.i. Though nominally "lead counsel," Bell was one of *five* Wilmer Hale partners, and *fifty-two* attorneys total, to work on this case, and he did not represent relator at trial. Bell, who claims he "only added people to our team when necessary," managed the Wilmer Hale battalions, "set strategy for the team," and "supervise[d] and direct[ed][his] colleagues so that they could use their time more effectively."(Bell Decl. ¶ 66, Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) Bell, then, presumably bears responsibility for the staffing overkill.

***36** This Court does not doubt that Bell's knowledge of the case history and his relationships with government counsel contributed to plaintiffs' win. But the Court believes the lodestar adequately accounts for Bell's lengthy involvement: he will be compensated at his standard, partner's billing rate of $650.00 for each of the 1,991.55 hours he reasonably expended. Presumably, he will also benefit from the contingency fee Wilmer Hale will receive once the government pays relator his bounty. (*See* Ex. 2 to Mot. for Leave to File Surreply [937] at 3.) But the Court will not reward him for phantom "efficiencies" belied by the record.[FN76]

***36** Consequently, the Court concludes neither efficiency for which relator alleges the lodestar fails to account overcomes the "strong presumption" against fee enhancements for quality of representation. *See Delaware Valley,* 478 U.S. at 565-66, 106 S.Ct. 3088.

b. Beyond-Paygrade Performance

***36** Relator proposes one further basis for a lodestar enhancement based on quality of representation. Specifically, he contends that "young" lawyers comprised the bulk of the Wilmer Hale team, and that these attorneys performed "well beyond the standards expected of attorneys of similar experience."[FN77](Mot. for Fees, Costs, and Expenses [930] at 33.) He offers that Gottlieb, Bunch, Baumgartner, and Reece "functioned in roles-sitting at counsel table, examining witnesses at trial, taking depositions, interviewing witnesses, and preparing witnesses-in which much more senior lawyers typically engage."(*Id.* at 34 (citing Bell Decl. ¶ 114, Ex. 2 to [930]).) Attorney declarant Braga emphasizes that

> ***36** [o]rdinarily traditional law firm staffing would have involved a lesser number of junior associates and a greater number of senior associates.... Wilmer Hale's standard hourly rates for these junior associates do[ ] not fairly capture the degree of difficulty and level of responsibility at which they performed their services in this case.

***36** (Braga Decl. ¶ 6, Ex. 3 to [930].) Similarly, relator contends that O'Connor and Cedarbaum, "both young partners," excelled beyond their paygrades. (Mot. for Fees, Costs, and Expenses [930] at 34.) O'Connor served as lead counsel in discovery and other pretrial matters and played a major role at trial, while Cedarbaum served as "lead motions attorney." (*Id.*) Both were far junior to defendants' lead trial counsel. (*Id.*) At Wilmer Hale, more junior partners typically bill "at lockstep rates on the basis of seniority," so relator contends O'Connor and Cedarbaum's rates do not accurately reflect their superior skill levels. (*Id.* at 35.)

***36** This Court heartily agrees that relator's counsel generally, and the more junior team members in particular, performed at a consistently high standard throughout this litigation. Nothing in this Opinion should be read as dismissing the Wilmer Hale associates' outstanding written and oral advocacy for their client. They are to be commended. Similarly, young partners O'Connor and Cedarbaum acquitted themselves creditably in their leadership roles. But as this Court observed above, Wilmer Hale's established billing rates are "reasonable" precisely because they align with those of other *highly skilled* attorneys in the District of Columbia legal community. *See supra* part III.A.1. Simply put, these superstars already bill at superstar rates.

***37** Relator's declarations do not alter this assessment. His attorney declarants' pronouncements are too superficial to be of much evidentiary value. For example, Braga asserts that O'Connor and Cedarbaum "provided services at a level significantly above that contemplated by their standard hourly rates."(Braga Decl. ¶ 6, Ex. 3 to [930].) But he does not then explain what sort of services he believes a client can reasonably expect for $510 or $495 per hour. Nor does he indicate what rates would be reasonable for the level of service provided. Another assertion in relator's motion is equally bewildering: he declares that certain young Wilmer Hale associates "functioned in roles ... in which much more senior lawyers typically engage."(Mot. for Fees, Costs, and Expenses [930] at 34 (citing Bell Decl. ¶ 114, Ex. 2 to [930]).) This implies that Wilmer Hale would not ordinarily permit a fourth-year associate and former U.S. Supreme Court clerk, such as Gottlieb, to sit at counsel table, take depositions, or examine, interview, or prepare witnesses. Relator does not, however, describe the tasks that would typically fall to Wilmer Hale associates of Gottlieb's seniority and credentials. In sum, relator's evidence that counsel's established billing rates do not adequately reflect the quality of their performance is simply too paltry to overcome the "strong presumption" against fee enhancements for quality of representation. *Delaware Valley*, 478 U.S. at 565-66, 106 S.Ct. 3088.Absent amplifying details, this "evidence" consists of nothing more than superlative-laden platitudes.[FN78]

***37** As the Supreme Court has cautioned, "the overall quality of performance ordinarily should not be used to adjust the lodestar." *Id.* at 566, 106 S.Ct. 3088.When they agreed to represent relator, Bell and his colleagues obligated themselves "to perform to the best of [their] abilit[ies] and to produce the best possible results commensurate with [their] skill and [their] client's interests." *Id.* at 565, 106 S.Ct. 3088.Their having fulfilled this duty to entitles them only to compensation at a reasonable rate for the hours they reasonably expended-no more.[FN79]

3. Statutory Purpose

***37** Finally, relator argues that awarding an enhancement here would "satisfy" the FCA's "incentive structure." (Mot. for Fees, Costs, and Expenses [930] at 38.) Even if true, this contention would not provide an independent basis for awarding an enhancement absent other, recognized factors (such as quality of representation, discarded above) weighing in favor. Hence, the Court will treat it only briefly.

***37** Relator begins with the uncontroversial proposition that Congress enacted the FCA's fee-shifting and relator's share provisions to encourage private citizens to expose fraud against the government through lawsuits on its behalf. (*See id.*)In particular, he argues, Congress wanted to enable prospective *qui tam* relators to retain private counsel whose assistance would prevent

"resource mismatch" situations, in which "the Government's enforcement team is overmatched by the legal teams major contractors retain[ ]."*See*S. Rep. 99-345, at 8 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5273.[FN80]Thus, relator reasons, "Congress's goal was for relators to be equally [ ] well-represented as FCA defendants, and therefore, the fee-shifting provision is intended to attract counsel of the highest quality."(Mot. for Fees, Costs, and Expenses [930] at 39.)

***38** Here, relator's logic begins to break down. The Senate Report indicates Congress believed relators' counsel could supplement the government's efforts, ameliorating any resource disadvantage. Construed *extremely* liberally, it could be read to endorse resource parity between plaintiffs and defendants. But both the Report and the statutory text clearly view relator's efforts, and those of his counsel, as secondary to those of the federal government. *See*31 U.S.C. § 3730 (2008) ("[i]f the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action"); S. Rep. 99-345, at 8 (1986), 1986 U.S.C.C.A.N. 5266, 5273 (*qui tam* relators and their counsel will "bolster[ ] the Government's fraud enforcement effort"). The fee-shifting provision thus aims to top up the government's formidable resources,[FN81] not to bankroll relators' recruitment of private counsel of equal caliber to defendants' counsel.

***38** Even were the Court to disregard this flaw in relator's reasoning, his ultimate conclusion rests on shaky factual ground. He contends that "[w]ithout an enhancement, large firms like Wilmer Hale-which are necessary to match talented defense counsel ...-would have little reason to take on such contentious, long-running cases."(Mot. for Fees, Costs, and Expenses [930] at 39; *accord* Davidson Decl. ¶ 36, Ex. 5 to [930].) First, while large law firms frequently offer high-quality representation, "mega-firm" attorneys are not the only lawyers equipped to "match talented defense counsel." More than a few talented attorneys have practiced before this Court, among them solo practitioners, government attorneys, and lawyers at small and medium-sized firms. Second, in this very case, Wilmer Hale accepted representation-and indeed, has continued it for *nine* years, with no guarantee of a fee enhancement. To the extent that relator suggests his counsel *assumed from the beginning* that they would receive a bonus-otherwise, they "would have [had] little reason to take on such [a] contentious, long-running case[ ]," (*see* Mot. for Fees, Costs, and Expenses [930] at 39)-this was foolishly presumptuous.

***38** Furthermore, the Supreme Court's opinion in *Delaware Valley* forecloses this line of argument: "In short, the lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable' attorney's fee, and *it is unnecessary to enhance the fee ... in order to serve the statutory purpose of enabling plaintiffs to secure legal assistance.*" 478 U.S. at 566, 106 S.Ct. 3088 (emphasis added).[FN82]

4. Enhancement Summary

***38** For the reasons discussed above, the Court concludes no fee enhancement is warranted in this case. Without minimizing the significance of the result obtained, the Court does not find it so extraordinary as to justify a bonus for relator's counsel. Further, the FCA's incentive structure supports only compensation at a reasonable rate for hours reasonably expended-without any additional enhancement-in this case. Finally, though the Court commends counsel's performance-particularly that of the more junior attorneys-it concludes the lodestar, calculated using counsel's established billing rates, adequately reflects this superior quality of representation. In *Donnell*, our Court of Appeals lamented district courts' increasing predilection for "adjust [ing] the lodestar upward to reflect what the courts [subjectively] view as a high ... quality of representation," urging that "[t]his trend should stop." 682 F.2d at 254.It stops here.

IV. Relator's Litigation Expenses

***39** In addition to attorneys' fees, the FCA entitles a prevailing relator to an award against the defendant of "an amount for reasonable expenses which the court finds to have been necessarily incurred."31 U.S.C. § 3730(d)(1) (2008). Relator seeks $511,723.06 under this provision. (*See*Bell Supplemental Decl. ¶¶ 26-28, Ex. 1

to Reply to HII's Opp'n [957]).

***39** Defendants contend this award must be limited to costs and expenses reimbursable under the Equal Access to Justice Act ("EAJA"), because the FCA's wording is similar to the EAJA's. (BHIC and HUK's Opp'n [948] at 27-28.)

***39** This argument is a non-starter. Having compared the statutes side-by-side, the Court sees no similarity whatsoever. The EAJA refers to "other expenses, in addition to any costs awarded pursuant to subsection (a), incurred ... in any civil action ... unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."28 U.S.C. § 2412(d)(1)(A) (2008). By contrast, the FCA refers to "reasonable expenses which the court finds to have been necessarily incurred."31 U.S.C. § 3730(d)(1) (2008).*Cf. id.* § 3730(g) (EAJA governs award of fees and expenses to prevailing *defendant* in FCA action). The FCA's statutory text requires the court to determine whether the expenses are "reasonable" and "necessarily incurred"-not whether defendants' position "was substantially justified," nor whether "special circumstances [exist that] make an award unjust."*Compare*31 U.S.C. § 3730(d)(1) (2008), *with*28 U.S.C. § 2412(d)(1)(A) (2008).

***39** Moreover, defendants have cited no precedent for applying the EAJA's limitations to a costs award under the FCA. Rather, as they explicitly recognize, courts commonly look to judicial interpretations of 42 U.S.C. section 1988 for guidance as to FCA expenses awards. *See, e.g., United States ex rel. J. Cooper & Assocs., Inc. v. Bernard Hodes Group, Inc.,* 422 F.Supp.2d 225, 237-38 & n. 17 (D.D.C.2006) (Urbina, J.); *United States ex rel. Coughlin v. IBM,* 992 F.Supp. 137, 145-46 (N.D.N.Y.1998).*Cf. Neal v. Honeywell, Inc.,* 191 F.3d 827, 834 (7th Cir.1999) ("Having assimilated § 3730(h)[, FCA attorneys' fees and costs provision applicable in whistleblower retaliation cases,] to § 1988 on fee issues, we finish the job by assimilating it to § 1988 on cost issues.").

***39** Under section 1988, compensable expenses include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Laffey v. Northwest Airlines, Inc.,* 746 F.2d 4, 30 (D.C.Cir.1984), *overruled on other grounds by Save Our Cumberland Mountains, Inc. v. Hodel,* 857 F.2d 1516 (D.C.Cir.1988).*See also Salazar v. District of Columbia,* 123 F.Supp.2d 8, 16-17 (D.D.C.2000) (Kessler, J.) (finding "out-of-pocket litigation expenses for postage, photocopying, telephone calls, facsimile transmissions, messengers, local travel, Westlaw, transcripts, medical records and miscellaneous [items] ... eminently reasonable in light of the extensive legal services performed"). Applying this standard in FCA cases, where the court must find the expenses to have been necessarily incurred, courts have held that "relators are under a duty to minimize their expenses," and that "those expenses incurred without proper documentation should be disallowed." *United States ex rel. Abbott-Burdick v. Univ. Med. Assocs.,* No. 2:96-1676-12, 2002 WL 34236885, *23, 2002 U.S. Dist. LEXIS 26986, at *75 (D.S.C. May 23, 2002) (citations omitted). Further, they have limited recovery to "those costs which are 'incidental and necessary' to the representation of the client." *Coughlin,* 992 F.Supp. at 145."[C]osts are not allowed if they cannot be attached to the advancement of a specific claim, or if they are so general that they could be placed under the cost umbrella of overhead or office expense." *Id.* This Court will review relator's expenses according to these standards. [FN83]

***40** [10] First, costs and expenses associated with time entries this Court has determined to be non-compensable are, likewise, non-compensable. Where hours were not "expended in pursuit of a successful resolution of the case in which fees are being claimed," *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.,* 675 F.2d 1319, 1335 (D.C.Cir.1982), associated costs cannot have been "necessarily incurred," *see*31 U.S.C. § 3730(d)(1) (2008). Thus, the Court must exclude costs associated with efforts to secure immunity from prosecution for relator, tasks arising from his ongoing employment at J.A. Jones, and research and other efforts to obtain his relator's share.[FN84]

***40** The Court has cross-referenced the time entries including immunity-related work with relator's itemized expenses, and it finds that no expenses need be excluded on this basis. (*Compare infra* Appendix II, *with* Ex. C-2 to Bell Decl., Ex. 2 to Mot. for Fees, Costs, and Expenses [930].) For expenses arising from relator's ongoing employment at Jones and efforts to secure his relator's share, Bell has proposed cost reductions the Court may apply should it conclude time associated with these activities is not compensable. (*See* Ex. F to Bell Supplemental Decl., Ex. 1 to Reply to HII's Opp'n [957].) Bell's proposed cost reductions correspond to his proposed fee reductions. (*Id.*) While the Court adopted Bell's proposals with respect to numerous time entries, it also deducted time from entries Bell did not address. (*See infra* Appendix II.) Rather than comb through counsel's cryptic expenses documentation and speculate about line items' purposes, the Court will adopt Bell's proposed deductions, with proportional adjustments.[FN85]Of the 89.55 hours the Court deducted for relator's share recoupment efforts, Bell identified 65.80 hours, and the Court identified a further 23.75 hours. (*See id.*)Bell recommends a corresponding expenses reduction of $745.61, (Ex. F to Bell Supplemental Decl., Ex. 1 to [957]), which the Court will adjust proportionally to $1,014.73. Of the 67.35 hours the Court deducted as arising from relator's ongoing employment, Bell identified 47.00 hours, and the Court identified a further 20.35 hours. (*See infra* Appendix II.) Bell recommends a corresponding expenses reduction of $250.18, (Ex. F to Bell Supplemental Decl., Ex. 1 to [957]) which the Court will adjust proportionally to $358.50. The total reduction for these three categories sums to $1,373.23.

***40** Second, defendants contend certain charges-for books and other publications, office supplies, and offsite storage-should be deemed non-compensable "overhead" expenses.[FN86](BHIC and HUK's Opp'n [948] at 32.) They do not, however, direct the Court to the specific line items they consider problematic. Moreover, in his declaration, Bell avers that Wiley Rein and Wilmer Hale "incurred ... [the requested expenses] in connection with this litigation."(Bell Decl. ¶¶ 106, 116, Ex. 1 to Mot. for Fees, Costs, and Expenses [930].) He further declares the costs he claims "are typical of the costs that law firms incur in this type of complex and protracted litigation, and typical of costs that law firms reasonably charge to their clients, separately, and not part of their overhead expenses."(*Id.* ¶ 116.)Defendants do not specifically rebut Bell's claims or cite to any relevant case law. Hence, the Court will take Bell at his word.

***41** Finally, defendants argue that relator's expenses documentation is inadequate in two respects. (*See* BHIC and HUK's Opp'n [948] at 30-31.) First, they note that relator's records do not associate charges for computerized research, copying, freight, and courier services, with any particular subject matter. Second, and relatedly, many of these charges do not correspond to attorneys' time entries. In theory, one could look to an attorney's time entry for the day the cost was incurred to determine the subject matter of his research. But in several instances, relator has not billed any time, or time on the relevant days, for the attorney who conducted the research. (*See, e.g.*, Ex. C-2 to Bell Decl., Ex. 2 to [930], at 2 ($55.88 Westlaw research charge for Sam Dickson on June 29, 1995); Ex. E-2 to Bell Decl., Ex. 2 to [930], at 11 ($633.00 Westlaw research charge for Michael Gottlieb on April 23, 2006).) Because these charges are so vaguely described, defendants argue, the Court cannot meaningfully assess whether they were "necessarily incurred" in pursuing this litigation. *See*31 U.S.C. § 3730(d)(1) (2008).

***41** Relator defends his time entries in three ways: (1) as a matter of standard practice, law firms charge their clients for research and photocopies without identifying, or even keeping track of, their subject matter; (2) keeping more detailed records would be "unduly cumbersome and [would] waste valuable attorney time"; and (3) the discrepancies between research charges and time records stem from Bell's voluntary exclusions and from simple imprecision. (*See* Reply to BHIC and HUK's Opp'n [960] at 23-24.)

***41** This last defense proves most compelling. Bell's original declaration explained that he had excluded time for twelve lawyers and six paralegals from Wiley Rein, and 34 lawyers and 27 paralegals from Wilmer Hale,

"to avoid litigation over the reasonableness of [the firms'] hours." (Bell Decl. ¶¶ 105, 112, Ex. 2 to [930].) He did not, however, pledge that he had omitted any charges for *expenses* they incurred, so the presence of charges by mystery researchers is perfectly explicable. More broadly, lawyers regularly use research tools to perform substantive tasks, and some might reasonably have listed only the broader task, such as drafting a motion, without itemizing the computer and print-resource research, writing, and editing which that task entailed. Hence, the discrepancies defendants cite do not render counsel's expenses unreasonable.

***41** Relator's other two justifications, however, lack equal logical force. Attorney declarant Davidson insists "[i]t is not customary to provide the details concerning every item of expense in a major litigation," nor "to identify each piece of paper copied."(Davidson Supplemental Decl. ¶ 39, Ex. 2 to Reply to HII's Opp'n [957].) Requiring a fee petitioner to identify each sheet of paper copied would, as relator suggests, be "unduly cumbersome." But the Court does not believe it would "waste valuable [ ] time" to briefly indicate that the copied documents were, for example, "motions *in limine*," "exhibits," or "research memos." The same logic applies to research charges. *Some* substantive information would permit the Court to ascertain that these expenses were "necessarily incurred." *See*31 U.S.C. § 3730(d)(1) (2008). Relator's counsel's records list only "duplicating" or "photocopy-DC-for [date]," followed by the number of pages, or "computerized research Westlaw," followed by the researcher's name and the date. (*See generally* Ex. E-2 to Bell Decl., Ex. 2 to [930].) To "find" that such vaguely described charges "were necessarily incurred," this Court would have to function as a rubber stamp. This, it will not do.[FN87]

***42** [11] This Court imposed a ten percent across-the-board reduction on relator's billed hours due to generic and ambiguous narrative descriptions. *See supra* part III.B.2.a.i. Vague entries are scattered throughout relator's time records, but in their expense records, such entries are downright ubiquitous. Accordingly, the Court concludes a forty percent across-the-board reduction in compensable expenses is appropriate.

***42** Relator seeks $511,723.06 in litigation expenses. (*See*Bell Supplemental Decl. ¶¶ 26-28, Ex. 1 to Reply to HII's Opp'n [957]). Subtracting non-compensable charges from this total, and accounting for the acknowledged duplication with relator's bill of costs, *see supra* note 17, leaves $478,375.87. Applying the forty percent wholesale reduction brings relator's total compensable expenses to $287,025.52.

CONCLUSION

***42** For the reasons set forth above, the Court shall grant in part and deny in part relator's motion for attorneys' fees, costs, and expenses [930]. Pursuant to 31 U.S.C. section 3730(d)(1), the Court shall order defendants BHIC, HUK, Bilhar, HII, and HC to pay relator $7,245,169.07 in reasonable attorneys' fees, and $287,025.52 in reasonable expenses, which this Court finds were necessarily incurred-in total, $7,532,194.59.

***42** Further, the Court shall grant plaintiffs' bills of costs [928, 929]. Pursuant to Federal Rule of Civil Procedure 54(d)(1) and Local Civil Rule 54. 1, the Court shall direct the Clerk to tax $54,437.87 in costs to all defendants, including Anderson, on the United States' behalf. It shall further direct the Clerk to tax $31,973.96 to defendants BHIC, HUK, Bilhar, HII, and HC on relator's behalf.

***42** A separate order shall issue this date.

ORDER

***1** The Court has considered plaintiffs' bills of costs [928, 929, 933], relator's motion for attorneys' fees, costs, and expenses [930], the entire record herein, and the applicable law. For the reasons set forth in the accompanying memorandum opinion, it is hereby:

***1** ORDERED that the United States' initial and supplemental bills of costs [928, 933] are GRANTED. Pursuant to Federal Rule of Civil Procedure 54(d)(1) and Local Civil Rule 54. 1, the Clerk is directed to tax $54,437.87 in costs to all defendants. It is further

***1** ORDERED that relator's bill of costs [929] is GRANTED. The Clerk is directed to tax $31,973.96 to defendants BHIC, HUK, Bilhar, HII, and HC. It is further

***1** ORDERED that relator's motion [930] is GRANTED in part and DENIED in part. Pursuant to 31 U.S.C. section 3730(d)(1), defendants BHIC, HUK, Bilhar, HII, and HC shall pay relator $7,245,169.07 in reasonable attorneys' fees, and $287,025.52 in reasonable expenses, which this Court finds were necessarily incurred-in total, $7,532,194.59.

***1** SO ORDERED.

APPENDIX I

The following table lists the billing rates applied in calculating the lodestar, per the discussion in part III.A, *supra*.

Name	Firm	Hourly Rate	Source
Yaa A. Apori	Wilmer Hale	$485	Bell Decl. ¶ 108, Ex. 2 to [930]
Matthew Baumgartner	Wilmer Hale	$350	Bell Decl. ¶ 108, Ex. 2 to [930]
Ashley Baynham	Wilmer Hale	$350	Bell Decl. ¶ 108, Ex. 2 to [930]
Robert B. Bell	Wilmer Hale	$650	Bell Decl. ¶ 108, Ex. 2 to [930]
David Bowsher	Wilmer Hale	$485	Bell Decl. ¶ 108, Ex. 2 to [930]
Monya M. Bunch	Wilmer Hale	$350	Bell Decl. ¶ 108, Ex. 2 to [930]
Mary Beth Caswell	Wilmer Hale	$210	Bell Decl. ¶ 108, Ex. 2 to [930]
Jonathan Cedarbaum	Wilmer Hale	$495	Bell Decl. ¶ 108, Ex. 2 to [930]
Annie L. Chelovitz	Wiley Rein	$125	USAO *Laffey* Matrix 2007-08 [88]
Robert Cultice	Wilmer Hale	$625	Bell Decl. ¶ 108, Ex. 2 to [930]
Michael Gottlieb	Wilmer Hale	$385	Bell Decl. ¶ 108, Ex. 2 to [930]
Keven C. Heffel	Wilmer Hale	$315	Bell Decl. ¶ 108, Ex. 2 to [930]
Monika Moore	Wilmer Hale	$385	Bell Decl. ¶ 108, Ex. 2 to [930]
Allison F. Murphy	Wilmer	$275	Bell Decl. ¶ 108, Ex. 2 to

	Hale		[930]
Jennifer M. O'Connor	Wilmer Hale	$510	Bell Decl. ¶ 108, Ex. 2 to [930]
F.H. Quaynor	Wiley Rein	$125	USAO *Laffey* Matrix 2007-08
Gregory Reece	Wilmer Hale	$385	Bell Decl. ¶ 108, Ex. 2 to [930]
Colin Rushing	Wilmer Hale	$485	Bell Decl. ¶ 108, Ex. 2 to [930]
Howard Shapiro	Wilmer Hale	$750	Bell Decl. ¶ 108, Ex. 2 to [930]
Milton R. Shook	Wilmer Hale	$210	Bell Decl. ¶ 108, Ex. 2 to [930]
Stephen T. Smith	Wilmer Hale	$385	Bell Decl. ¶ 108, Ex. 2 to [930]
Stanley R. Soya	Wiley Rein	$440	USAO *Laffey* Matrix 2007-08
Michael L. Sturm	Wiley Rein	$495	Bell Decl. ¶ 104, Ex. 2 to [930]
Laura K. Terry	Wilmer Hale	$485	Bell Decl. ¶ 108, Ex. 2 to [930]
Nancy Tillotson	Wilmer Hale	$175	Bell Decl. ¶ 108, Ex. 2 to [930]
Luis de la Torre	Wiley Rein	$390	USAO *Laffey* Matrix 2007-08
Chris R. Yukins	Wiley Rein	$390	USAO Laffey Matrix 2007-08

APPENDIX II

D.D.C.,2008.
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--- F.Supp.2d ----, 2008 WL 3319032 (D.D.C.)

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