

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

UNITED STATES OF AMERICA ex rel No C 95-1825 VRW
ROBERT COSTA and STATE OF
CALIFORNIA ex rel ROBERT COSTA, ORDER

Plaintiffs,

v

BAKER & TAYLOR, INC d/b/a BAKER &
TAYLOR BOOKS, and W R GRACE & CO
- CONNECTICUT,

Defendants.

Qui tam plaintiff Robert Costa moves for an award of
attorneys' fees, costs and expenses pursuant to the California
False Claims Act (CFCA), Cal Gov't Code § 12650 et seq. Doc #348.
Costa's motion is GRANTED IN PART. Costa is entitled to fees,
costs and expenses in an amount to be determined following further
submissions of the parties as set forth more fully below.

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I

Relators Robert Costa and Ronald Thornburgh (collectively "relators") filed this *qui tam* action on behalf of the United States and the State of California in 1995, alleging that defendants Baker & Taylor, Inc, d/b/a Baker & Taylor Books ("Baker & Taylor"), and its prior parent company W R Grace & Co (collectively "defendants"), had schemed to overcharge public libraries, schools and federal and state offices and agencies for books. Ultimately, seventeen other states intervened as plaintiffs. Relator Thornburg was dismissed on statute of limitations grounds on March 20, 1998, and is no longer a party. Doc #144.

On March 9, 1999, the court concluded that much of the alleged fraud had been publicly disclosed prior to the filing of this action and accordingly dismissed relator Costa as a *qui tam* plaintiff for lack of subject matter jurisdiction pursuant to the public disclosure bar of the False Claims Act (FCA), 31 USC § 3730(e)(4)(A). Doc #251. Because the CFCA is patterned on the FCA and there was no authoritative case law construing the California public disclosure bar at the time of the court's dismissal, the court employed Ninth Circuit precedent in concluding that Costa's California *qui tam* claim was also barred under the CFCA. The court denied relators' subsequent motion for leave to file a motion for reconsideration. Doc #261.

On June 25, 1999, the United States settled its claims against Baker & Taylor for \$3 million. Doc #350 (Chatfield Decl) ¶14; see also Doc #253 (order dismissing United States' claims against Baker & Taylor with prejudice pursuant to settlement). On

1 July 31, 2000, the United States, the State of California and the
2 seventeen intervening states entered into a global settlement with
3 defendants. The global settlement resolved the United States'
4 claims against W R Grace for \$3 million, California's claims
5 against both defendants for \$4 million and the remaining states'
6 claims against both defendants for a total of \$8.5 million. Id
7 ¶16. The United States and the State of California each paid
8 relators 15% of their respective settlement proceeds to relators.
9 Id ¶¶15, 17-18. Relators also applied for attorneys' fees, costs
10 and expenses pursuant to the FCA and the CFCA. Doc #284. The
11 court denied relators' application based on the earlier order of
12 dismissal. Doc #329.

13 Notwithstanding the global settlement, final judgment was
14 not entered because the United States' claim against W R Grace
15 remained open pending a criminal investigation in a different
16 district. Further, the court denied relators' motion to certify
17 the appealability of their dismissals. Doc #329. Entry of
18 judgment was further delayed by a bankruptcy petition filed by W R
19 Grace in Delaware. See Doc #330. Relators sought and obtained an
20 order from the bankruptcy court clarifying that the bankruptcy stay
21 did not encompass Baker & Taylor. Doc #359 (Chatfield Supp Decl)
22 ¶9. Relators also sought, but were denied, an order from the
23 bankruptcy court allowing their claims to proceed against W R
24 Grace. W R Grace was eventually dismissed per the stipulation of
25 all parties on August 31, 2004. Doc #338.

26 At the end of this procedural maze was an opening for
27 Costa to file a motion for reconsideration of the court's order
28 dismissing him as a *qui tam* plaintiff, Doc #335, which the court

1 denied as to the FCA claim but granted as to the CFCA claim in
2 light of intervening California authority interpreting California's
3 public disclosure bar more narrowly than its federal counterpart.
4 Doc #347. His status as a proper CFCA relator now established,
5 Costa now moves for attorneys' fees, costs and expenses pursuant to
6 California Government Code § 12652(g)(8).

8 II

9 Whether Costa is entitled to attorneys' fees and the
10 manner in which those fees should be calculated are both governed
11 by California law. E g, Mangold v California Public Utilities
12 Com'n, 67 F3d 1470, 1478-79 (9th Cir 1995). Section 12652(g)(8)
13 provides: "If the state, political subdivision, or the *qui tam*
14 plaintiff prevails in or settles any [CFCA action initiated by the
15 *qui tam* plaintiff], the *qui tam* plaintiff shall receive an amount
16 for reasonable expenses that the court finds to have been
17 necessarily incurred, plus reasonable costs and attorney's fees."
18 Although Baker & Taylor does not dispute Costa's entitlement to
19 fees, costs and expenses under § 12652(g)(8), Baker & Taylor
20 challenges the amount of the fee.

21 "[T]he fee setting inquiry in California ordinarily
22 begins with the 'lodestar,' i e, the number of hours reasonably
23 expended multiplied by the number multiplied by the reasonable
24 hourly rate." PLCM Group, Inc v Drexler, 22 Cal 4th 1084, 1095
25 (2000). The reasonable hourly rate is the "prevailing rate for
26 private attorneys in the community conducting noncontingent
27 litigation of the same type." Ketchum v Moses, 24 Cal 4th 1122,
28 1133 (2001) (original emphasis omitted); see also Serrano v Unruh,

32 Cal 3d 621, 640 n 31 (1982) ("Serrano IV") (quoting other courts' formulations of reasonable hourly rates as "comparable salaries earned by private attorneys with similar experience and expertise in equivalent litigation" and the "hourly amount to which attorneys of like skill in the area would typically be entitled" (quotations omitted)).

Costa's fee request is organized along two matrices. First, fees are apportioned across four phases of litigation:

PHASE	DESCRIPTION	HOURS	X CURRENT STANDARD RATES
One	"investigation and drafting, filing and service of the complaint and detailed disclosure statement"	152.5	\$74,730.00
Two	"investigation and assisting the government in prosecution of this action including as well as assisting the government with settlement strategy"	1,683.25	\$824,682.50
Three	"advocating for Relators in this case, opposing motions to dismiss, and negotiating a relators' share"	474.35	\$211,962.50
Four	"taking steps to secure an award of attorneys' fees, expenses and costs," including efforts to obtain clarification from bankruptcy court regarding the scope of the stay	353.35	\$139,608.75 (\$59,368.75 in connection with bankruptcy)
TOTAL:		2,663.45	\$1,250,983.75

Chatfield Decl ¶¶7, 12, 22, 29.

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Second, the requested fees are apportioned according to whether work benefitted the federal claims, the California claims (or both):

CLAIMS	HOURS	X CURRENT STANDARD RATES
Federal only	76	\$37,412.50
California only	217.75	\$106,225.00 (\$15,137.50 in connection with negotiating relator's share)
Both Federal and California	2,369.70	\$1,125,346.25
TOTAL:	2,663.45	\$1,268,983.75

Id ¶30 & n 2.

Before turning to the parties' arguments, the court notes a discrepancy in the above totals of precisely \$18,000. At the hearing, counsel explained that digits in one of the addend figures were inadvertently transposed (specifically, that \$842,682.50, not \$824,682.50, in fees were incurred in "Phase Two"). Costa should address this discrepancy in his next submission to the extent necessary in light of the modifications prescribed herein.

III

The court first addresses Baker & Taylor's objections to the number of hours included in Costa's fee request.

A

Baker & Taylor contends that Costa is not entitled to fees for services rendered only in connection with the FCA claim because of his earlier dismissal. Costa initially reiterated (but

1 understandably relegated to a footnote) his earlier failed argument
2 to the contrary, Doc #349 at 9 n 5, but clarified in his reply that
3 he does not seek fees for services that benefitted the FCA claim
4 only, Doc #354 at 10 n 6.

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6 B

7 Next, Baker & Taylor argues that Costa is not entitled to
8 fees for services that benefitted both the FCA and CFCA claims.
9 The court disagrees.

10 "Where the issues are so interrelated that it is
11 impossible to separate them into claims for which fees are and are
12 not awardable, no apportionment need be made." LeVine v Weis, 90
13 Cal App 4th 201, 214 (2001) (deferring to trial court's discretion
14 in setting amount of fees and affirming fee award despite non-
15 apportionment among successful CFCA claim and other claims that
16 failed early in the litigation). "All expenses incurred on the
17 common issues qualify for an award." Akins v Enterprise Rent-a-Car
18 Co, 79 Cal App 4th 1127, 1133 (2000) (citing Reynolds Metals Co v
19 Alperson, 25 Cal 3d 124, 129-30 (1979)). There can be little doubt
20 that questions of liability under the FCA and the CFCA overlapped
21 significantly. The best Baker & Taylor can muster to the contrary
22 is that the narrower scope of the CFCA's public disclosure bar
23 demonstrates the two statutes are distinct. Doc #354 (Opp) at 11
24 n 6. But as Costa suggested at the hearing, Baker & Taylor's
25 argument proves too much: Prior to the recent divergence of
26 California and federal law on the public disclosure bar, the CFCA
27 essentially mirrored the FCA on questions of liability due to its
28 newness and concomitant lack of interpretive case law. Because the

1 FCA claim was sufficiently interrelated to the CFCA claim,
2 apportionment is not necessary and, in any event, would be a
3 difficult and impractical undertaking for the court. Accordingly,
4 Costa will not be denied fees for services that benefitted the CFCA
5 claim simply because those services also benefitted the FCA claim.

7 C

8 Next, Baker & Taylor argues that Costa is not entitled to
9 reimbursement for fees for services rendered between the denial of
10 his first motion for reconsideration of his dismissal and the
11 filing of his second, partially successful, motion for
12 reconsideration (which, according to Baker & Taylor, amounts to
13 355.75 hours valued at \$143,000, including 12.25 hours billed at
14 \$6,300 attributable only to the FCA claim). Opp at 12 & n 7.
15 Within this subset of billed time, Baker & Taylor alternatively
16 argues that Costa should not be reimbursed for attorney effort
17 expended in connection with W R Grace's bankruptcy (which,
18 according to Baker & Taylor, accounts for 188.25 hours billed at
19 \$67,093.75). Id at 12 & n 8; Doc #353 (Wallach Decl) ¶4 & Ex B.

20 The court agrees that little, if any, of this time was
21 "necessarily incurred," Cal Gov't Code § 12652(g)(8), to advance
22 the CFCA claim on its merits. Specifically, fees in connection
23 with Costa's motions for reconsideration of his dismissal and a
24 certificate of appealability of his dismissal, as well as his first
25 application for fees and costs, were not "necessarily incurred" to
26 advance the CFCA claim. The same is true for Costa's efforts
27 before the bankruptcy court, which occurred after the United States
28 and the State of California had settled their claims against

1 defendants. Rather, the foregoing items were, in essence, directed
2 at obtaining reinstatement (either on appeal or, as it turned out,
3 from this court) of relators' status as nominal parties in order to
4 (1) increase one or both relators' bounty and (2) secure an award
5 of attorneys' fees and costs provided for by statute. And as
6 counsel conceded at the hearing, after the United States and the
7 State of California settled their claims against defendants and
8 paid Costa a relators' share, the only purpose of further
9 litigation was to secure a fee award.

10 "[A]bsent circumstances rendering the award unjust, fees
11 recoverable * * * ordinarily include compensation for all hours
12 reasonably spent * * * to establish the fee claim." Serrano IV, 32
13 Cal 2d at 639; see also Ketchum, 24 Cal 4th at 1141. Although the
14 court is aware of no specific California case law addressing fees
15 for fee-related litigation in the CFCA context, the court has
16 little doubt that California courts would apply the general rule
17 stated above were this case before them. Cf Ketchum, 24 Cal 4th at
18 1142 (applying without analysis Serrano IV's principles regarding
19 fees for fee litigation, which were rendered in the context of Cal
20 Code Civ Proc § 1021.5, in the context of Cal Code Civ Proc
21 425.16). Baker & Taylor does not argue the contrary.

22 Further, fees for fee-related litigation should not be
23 denied simply because those proceedings are unusually protracted.
24 See Serrano IV, 32 Cal 3d at 632, 634-35 (opining that because the
25 private attorney general doctrine "will often be frustrated,
26 sometimes nullified, if awards are diluted or dissipated by
27 lengthy, uncompensated proceedings to fix or defend a rightful fee
28 claim," fees for fee-related litigation should be awarded even

1 "[i]n cases where entitlement is vigorously contested" and "the
2 hours demanded * * * dwarf those spent to establish the claim on
3 the merits"); cf Graham v DaimlerChrysler Corp, 34 Cal 4th 553,
4 580-84 (blessing enhancement of fee-related lodestar under
5 appropriate circumstances). Accordingly, fees for steps taken by
6 counsel to reinstate Costa's status as a proper CFCA relator are
7 not precluded simply because, at the end of the day, that status
8 entitles Costa to nothing more than attorneys' fees. Still, the
9 court concludes that Costa is not entitled to fees for certain
10 categories of what was essentially fee-related work.

11 First, the court finds it inappropriate to award fees for
12 relators' first motion for attorneys' fees. Costa was not a proper
13 *qui tam* plaintiff in the eyes of the law at that time. In denying
14 that motion, the court noted that relators had cited no authority
15 for the proposition that they were entitled to fees despite their
16 dismissal. See Doc #329 at 4. It would approach absurdity to
17 award Costa fees for an earlier, legally unsupported, fee
18 application that the court denied.

19 The court also finds that time expended in connection
20 with relators' FRCP 54(b) motion was not reasonably spent. In
21 denying that motion, the court summarily found relators' request
22 for immediate appealability to be wholly unjustified given that
23 federal and state prosecuting authorities' diligent pursuit of
24 their respective claims was propelling the case to final judgment.
25 *Id* at 3. (It bears mention that the stay effected by W R Grace's
26 bankruptcy petition was not on the horizon at that time.) Under
27 these circumstances, although Costa's FRCP 54(b) motion may have
28 been directed toward reinstatement of his status as a proper

1 relator and his corresponding right to attorneys' fees, it was
2 wasted effort that need not — and will not — be reimbursed. See
3 Serrano IV, 32 Cal 3d at 635 & n 21.

4 Turning to Costa's efforts before the bankruptcy court,
5 the court concludes that Costa should be awarded fees for some, but
6 not all, of this time. California courts have acknowledged the
7 propriety of awarding fees for efforts in collateral proceedings
8 "that may not have been absolutely necessary to the action in which
9 fees are awarded but was nonetheless closely related to the action
10 in which fees are sought and useful to its resolution." Children's
11 Hospital and Medical Ctr v Bonta, 97 Cal App 4th 740, 779-80 (2002)
12 (relying upon Wallace v Consumers Cooperative of Berkeley, Inc, 170
13 Cal App 3d 836 (1985)). It is doubtful whether this principle
14 applies in the CFCA context given that § 12652(g)(8) explicitly
15 permits fee awards only for time "necessarily incurred." Even
16 overlooking this wrinkle, the fact that Costa failed to obtain
17 relief from the bankruptcy stay as to W R Grace belies any
18 suggestion that counsel's efforts toward that end were "useful" to
19 the resolution of any issues in this case, fee-related or
20 otherwise. On the other hand, Costa's efforts to obtain
21 clarification from the bankruptcy court that Baker & Taylor was not
22 encompassed by the stay appear to have been both successful and
23 necessary to place this case in a posture that would allow Costa to
24 pursue the present fee claim.

25 The time entries accounting for motion practice before
26 the bankruptcy court do not indicate whether one of these two
27 distinct issues dominated counsel's time. At the hearing, counsel
28 represented that the majority of the time was dedicated to lifting

1 the stay as to Baker & Taylor but could not estimate what share
2 with any degree of precision. Accordingly, the court finds it
3 appropriate to allow fees for two-thirds of the time spent in
4 connection with the bankruptcy proceedings.

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6 D

7 Finally, Baker & Taylor contends that Costa should be
8 denied fees for services related to long-dismissed co-relator
9 Thornburg, which, according to Baker & Taylor, accounts for 41.75
10 hours valued at \$35,612.50. Wallach Decl ¶3 & Ex A. Costa
11 concedes that time related to moving for reconsideration of
12 Thornburg's dismissal should not be billed but contends that most
13 other entries mentioning Thornburg reflect are properly billed.
14 After reviewing the contested entries, the court concludes that the
15 bill should be adjusted as proposed in the supplemental Chatfield
16 declaration. See Chatfield Supp Decl ¶13 at 6-7.

17
18 IV

19 Baker & Taylor also challenges the rates at which
20 counsel's time is billed.

21 Representing Costa in this matter are Eric Havian and
22 Peter Chatfield, both partners in the law firm of Phillips & Cohen
23 LLP, which has offices in Washington, D C, and San Francisco.
24 According to one False Claims Act practitioner, Phillips & Cohen is
25 "one of the preeminent firms in the country that specializes in
26 representing qui tam relators. The firm has been a leader in the
27 field, and enjoys an outstanding reputation." Doc #357 (Lamprey
28 Decl) ¶3. Messrs Havian and Chatfield began practicing law in 1981

1 and 1987, respectively. Both have impressive academic and
 2 professional credentials and both began specializing in False
 3 Claims Act claims when they joined Phillips & Cohen in 1994.
 4 Chatfield Decl, Ex 2. Mr Havian's time is billed at a rate of
 5 \$550/hour, Mr Chatfield's at \$475/hour. Id, Ex 1. In support of
 6 the reasonableness of counsel's billing rates, Costa submitted
 7 declarations of two *qui tam* practitioners in San Francisco, both of
 8 whom state that the foregoing rates "are reasonable for *qui tam*
 9 practitioners in the San Francisco Bay Area and commensurate with
 10 [Havian and Chatfield's] level of skill, experience, background and
 11 reputation." Lamprey Decl ¶7; Doc #356 (Scott Decl) ¶4.

12 When, as in this case, fees are awarded long after the
 13 underlying litigation has run its course, it is both acceptable and
 14 common practice in California to calculate the lodestar based on
 15 current billing rates in lieu of adjusting a lodestar based on
 16 rates prevailing at time services were rendered. See Graham, 34
 17 Cal 4th at 584 (citing Copeland v Marshall, 641 F2d 880, 893 n 23
 18 (DC Cir 1980)); Richard M Pearl, California Attorney Fee Awards §
 19 12.30 (2d ed Supp 2004). Doing so compensates counsel for any
 20 erosion of purchasing power during the delay in receiving payment.

21 As suggested by Mr Havian's declaration, however, *qui tam*
 22 representation is rarely compensated on a non-contingent basis, Doc
 23 #355 (Havian Decl) ¶4. It is therefore fair to conclude that the
 24 going rate for *qui tam* representation accounts for the risk of non-
 25 recovery. But the lodestar calculation must be based on the
 26 "prevailing rate for private attorneys in the community conducting
 27 noncontingent litigation of the same type." Ketchum, 24 Cal 4th at
 28 1133 (emphasis in original). Accordingly, the rates submitted by

counsel are an inappropriate starting point for the lodestar calculation.

Consistent with the prior practice of the undersigned in calculating lodestars, the court will refer to the Laffey matrix, “[o]ne well-established objective source for rates that vary by experience.” In re HPL Technologies, Inc Sec Litig, 366 F Supp 2d 912, 921 (ND Cal 2005) (Walker); see also Laffey v Northwest Airlines, Inc, 572 F Supp 354 (DDC 1983), aff’d in part, rev’d in part on other grounds, 746 F2d 4 (DC Cir 1984). According to this benchmark, average hourly rates for attorneys with 20+ years of experience during the period of June 1, 2005, through May 31, 2006, is \$405/hour. See http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_5.html. This figure is, however, tailored to the District of Columbia, which has a somewhat lower cost of living than the San Francisco Bay area; the court will adjust these figures accordingly. The locality pay differentials within the federal courts — which, like law firms, employ lawyers — can approximate this difference. The Washington-Baltimore area has a 17.5% locality pay differential; the San Francisco-Oakland-San Jose area has a 26.68% locality pay differential. See http://jnet.ao.dcn/Human_Resources/Pay_Tables/2006_Pay_Tables/Judiciary_Salary_Plan_Pay_Table_2006/Judicial_Salary_Plan.html. Thus, adjusting the Laffey matrix figures upward by 10% will yield rates appropriate for the Bay area.¹ Applying this adjustment and rounding upward, the court obtains a rate of \$450/hour for Mr Havian. The rough accuracy of this estimate is confirmed by the

¹ $(128.68\% - 117.5\%) / 117.5\% = 0.0951489$, or about 10%.

1 fact that in the recent past, Mr Havian commanded a rate of
2 \$475/hour in a non-contingency matter. Havian Decl ¶4. The court
3 therefore finds that \$450/hour is a reasonable hourly rate for Mr
4 Havian's services in this matter.

5 With regard to Mr Chatfield, the court begins by
6 observing that according to Phillips & Cohen's website, and as
7 confirmed by counsel at the hearing, Mr Chatfield works in
8 Washington, D C. See <http://www.phillipsandcohen.com/CM/Attorneys>.
9 The California Supreme Court has indicated that it is appropriate
10 to use rates prevailing in the market "where counsel is located."
11 PLCM Group, 22 Cal 4th at 1096. Chatfield has been practicing law
12 for 19 years. The Laffey matrix indicates a rate of \$360/hour for
13 attorneys with 11-19 years experience. Notably, however, Mr
14 Chatfield served as a law clerk to a federal judge for one year
15 following his graduation from law school. In the court's view,
16 such experience is a substitute for at least one year of litigation
17 practice. Accordingly, the court finds it appropriate to ascribe
18 20 years of experience to Mr Chatfield for purposes of the Laffey
19 matrix, which yields a rate of \$405/hour (which need not be
20 adjusted because Mr Chatfield works in the District of Columbia).
21 The court finds this rate to be reasonable for Mr Chatfield's
22 services in this case.

23
24 V

25 Next, the court considers the propriety of a lodestar
26 enhancement. Costa requests that the lodestar be adjusted upward
27 by a factor of 1.5; Baker & Taylor contends that no enhancement is
28 justified.

1 As an initial matter, the court observes that although no
2 case has addressed whether lodestar enhancements are proper under
3 § 12652(g)(8), the California Supreme Court presumes that the
4 lodestar adjustment method applies unless the relevant statutory
5 fee provision clearly states the contrary, as, for example,
6 California Code of Civil Procedure § 1021.5, which provides that
7 fees "shall not be increased or decreased by a multiplier based
8 upon extrinsic circumstances." Ketchum, 24 Cal 4th at 1135-36. In
9 the absence of any similar restriction in this statutory context,
10 the court concludes that the lodestar adjustment approach applies.

11 "The lodestar adjustment approach * * * allows a court
12 awarding attorney fees to include a fee enhancement for the
13 purpose, e g, of compensating the attorney who agreed to undertake
14 such representation at the risk of nonpayment or delayed payment,
15 in an amount approaching the market rate for legal services." Id
16 at 1136. Other relevant considerations include the novelty and
17 difficulty of the issues, the skill displayed in presenting them
18 and the extent to which the nature of the litigation precluded
19 other employment by the attorneys. Serrano v Priest, 20 Cal 3d 25,
20 49 (1977) ("Serrano III"). But "when determining the appropriate
21 enhancement, a trial court should not consider these factors to the
22 extent they are already encompassed within the lodestar." Ketchum,
23 24 Cal 4th at 1138.

24 Two considerations are irrelevant in this case. First,
25 because the court has utilized current market rates for legal
26 services in counsels' respective geographic markets, a lodestar
27 enhancement to compensate for delay in payment is not justified.
28 Second, although Baker & Taylor contends that counsel have already

1 been compensated for the risk of nonpayment by whatever they may
 2 have been paid by Costa from his share of the settlement, this does
 3 not appear to be an appropriate basis upon which to deny an
 4 enhancement. See Horsford v Bd of Trustees of Cal State Univ, 132
 5 Cal App 4th 359, 401 (2005) (“[T]he trial court abused its
 6 discretion in requiring plaintiffs’ counsel to look to their
 7 clients, under a contingency fee arrangement, to make up for any
 8 undercompensation arising from the court’s statutory fee award.”).

9 As noted, compensation for *qui tam* representation is
 10 typically contingent in nature. Thus, the court concludes that the
 11 originally requested rates of \$550/hour and \$475/hour account for
 12 the risk of nonpayment. And “for the most part, the difficulty of
 13 [the] legal question[s] and the quality of representation are
 14 already encompassed in the lodestar,” Ketchum, 24 Cal 4th at 1139.
 15 See Lamprey Decl ¶7 (stating that rates of \$550/hour and \$475/hour
 16 are “commensurate with [counsels’] level of skill, experience,
 17 background and reputation”); Scott Decl ¶4 (same). Accordingly,
 18 the court finds it appropriate to derive a multiplier from
 19 counsels’ originally requested rates. The court does so by
 20 dividing the sum of counsels’ originally requested rates by the sum
 21 of their Laffey-based rates (effectively averaging each pair of
 22 rates), which yields a multiplier of 1.2.²

23 Further, applying the multiplier to fee-related work is
 24 appropriate in this case, in view of the fact that much uncertainty
 25 surrounded Costa’s entitlement to fees even after the substantive
 26 objectives of the action were attained. See Graham, 34 Cal 4th at

27
 28 ² (\$550/hour + \$475/hour) / (\$450/hour + \$405/hour) = 1.1983,
 or about 1.2.

583. Relief from the bankruptcy stay as to Baker & Taylor and reinstatement of Costa as a proper *qui tam* plaintiff were certainly not results upon which the undersigned would have bet the farm. But because a lower enhancement, if any, is generally appropriate for fee litigation, see *id*, and because some of the fee-related litigation (i e, the present motion) was not clouded by uncertainty, the court finds it appropriate to apply a lower multiplier of 1.1 for fee-related litigation.

VI

Costa shall submit a revised fee application consistent with this order on or before June 9, 2006. Specifically, Costa's revised application shall:

- (1) exclude time that benefitted the FCA claims only;
- (2) exclude time spent in connection with relators' FRCP 54(b) motion and earlier motion for attorneys' fees, costs and expenses;
- (3) exclude one-third of time spent by Messrs Havian and Chatfield, respectively, in connection with the W R Grace bankruptcy proceedings;
- (4) exclude time related to dismissed co-relator Thornburg as set forth in ¶13 of the supplemental Chatfield declaration, Doc #359;
- (5) bill Mr Havian's efforts at a rate of \$450/hour;
- (6) bill Mr Chatfield's efforts at a rate of \$405/hour; and
- (7) segregate fees incurred in advancing the substantive claims from fee-related fees.

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1 Baker & Taylor may file a response not exceeding five pages on or
2 before June 16, 2006, at which time the matter will be submitted.

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4 SO ORDERED.

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7 VAUGHN R WALKER

8 United States District Chief Judge
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