

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.

After considering the parties' memoranda and oral arguments on *qui tam* plaintiff Robert Costa's motion for an award of attorney fees pursuant to California Government Code § 12652(g)(8), the court issued an order granting Costa's motion in part on May 29, 2006. Doc #361. Costa has submitted a modified fee petition which, in addition to conforming to the court's order, requests fees associated with the current motion practice that were not included in his initial request. Doc ##364, 365 (Second Supp

1 Chatfield Decl). Defendant Baker & Taylor availed itself of an
2 opportunity to respond. Doc #366. Costa submitted an unsolicited
3 reply. Doc #367.

4 Baker & Taylor contends that the court failed to find
5 that Costa's request, as modified, is reasonable in light of the
6 results he achieved notwithstanding what Baker & Taylor
7 characterizes as Costa's "limited success." As support for the
8 proposition that such a finding is required, Baker & Taylor relies
9 principally upon Hensley v Eckerhart, 461 US 424 (1983), in which
10 the Supreme Court expounded upon principles that govern fee
11 requests under federal law. "The issue of whether [Costa] is
12 entitled to the full amount of [his] attorney fees request under
13 state law * * * poses a separate question not answerable simply by
14 reference to [Hensley]." Sokolow v County of San Mateo, 213 Cal
15 App 3d 231, 249 (1989) (citing Serrano v Unruh, 32 Cal 3d 621, 639
16 n 29 (1982) ("Serrano IV") ("We envision an independent state
17 rule.")). It is thus irrelevant that a California court, in the
18 context of awarding fees pursuant to 42 USC § 1988, relied upon
19 Hensley for the proposition that a court, after determining that
20 successful and non-successful claims are interrelated, "'must still
21 determine whether the total fees requested are reasonable in
22 relation to results obtained.'" Doc #366 at 2:26-27 (misquoting
23 Sokolow, 231 Cal App 3d at 248).

24 Putting aside Baker & Taylor's misplaced reliance upon
25 Hensley, the court does not doubt that "a reduced fee award is
26 appropriate when a claimant achieves only limited success."
27 Sokolow, 231 Cal App 3d at 249. At least, "there is nothing in
28 [Serrano IV] to suggest that a trial court should not reduce the

1 amount of the attorney fees to be awarded where a prevailing party
2 plaintiff is actually unsuccessful with regard to certain
3 objectives of its lawsuit." Id.

4 It is unclear what objective of the lawsuit went
5 unfulfilled. The United States and nearly a score of states
6 obtained settlements totaling approximately \$18.5 million, of which
7 \$4 million went to the State of California. To be sure, Costa
8 cannot claim responsibility for all this success and it is true
9 that Costa was dismissed as a *qui tam* plaintiff under the federal
10 False Claims Act (FCA). But the FCA claim itself, for which Costa
11 acted as a midwife, remained viable and ultimately the United
12 States obtained substantial settlements. Cf Sokolow, 213 Cal App
13 at 249-50 (distinguishing Sundance v Municipal Court, 192 Cal App
14 3d 268 (1987), on the ground that "[i]t was only the theories that
15 were unsuccessful, not the claims in support of which the theories
16 were advanced"). To the extent Baker & Taylor asserts that the FCA
17 claim was unsuccessful, it overlooks the realities of this
18 litigation.

19 Regardless, the court agrees that Costa is entitled to
20 nothing more than reasonable fees for his prosecution of the CFCA
21 claim. In this regard, the court finds that the amount requested
22 by Costa, as modified by the court's earlier order, is reasonable
23 in light of the results obtained on the CFCA claim, with one
24 caveat:

25 Costa now requests fees for 225.2 hours spent almost
26 entirely by experienced attorneys in connection with the instant
27 fee petition. That amount of time represents roughly ten percent
28 of the total hours that a hard-working lawyer would bill in an

1 entire year. Yet, as Baker & Taylor observes, litigating Costa's
2 fee petition involved law with which counsel is presumably very
3 familiar and billing records that were not exceptionally
4 complicated. For this reason, the court finds it appropriate to
5 deduct 100 hours from Costa's revised fee petition. The court
6 multiplies this time by \$405/hour, which represents the
7 intermediate billing rate of the three lawyers who worked on the
8 petition. See Second Supp Chatfield Decl, Ex A. The court further
9 multiplies the resulting product of \$40,500 by a factor of 1.1, the
10 enhancement applicable to fee-related fees. See Doc #361 at 18.
11 Costa's revised fee request is accordingly reduced by \$44,550.

12 In sum, Costa's request for attorney fees, costs and
13 expenses is GRANTED. Baker & Taylor is hereby ORDERED to pay
14 attorney fees, costs and expenses in the amount of \$1,274,833.53.
15 The clerk is DIRECTED close the file and terminate all pending
16 motions.

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18 SO ORDERED.

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21 VAUGHN R WALKER

22 United States District Chief Judge
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