IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:17-CV-616-FL

UNITED STATES OF AMERICA and THE STATE OF NORTH CAROLINA, ex rel. SANTHOSH REDDY DEVARAPALLY, M.D.,	)	
Plaintiffs,	)	
v.	)	ORDER
FERNCREEK CARDIOLOGY, P.A.; MATTHEW A. DAKA, M.D.; SELVARATNAM SINNA, M.D.; and MANESH THOMAS, M.D.,	)	
Defendants.	)	

This matter is before the court upon motion for attorneys' fees and non-taxable costs filed by defendant Ferncreek Cardiology, P.A. ("Ferncreek") (DE 259) and upon Ferncreek's motions to seal certain documents filed in support of its motion for fees (DE 263, 271, 286). The motions have been briefed fully, and, in this posture, the issues raised are ripe for ruling.

BACKGROUND

Relator commenced this qui tam action under the False Claims Act (the "FCA"), 31 U.S.C. § 3729 et seq., and the North Carolina False Claims Act (the "NCFCA"), N.C. Gen. Stat. § 1-605 et seq., December 13, 2017, against entity defendants Ferncreek and Cumberland County Hospital System, Inc. ("Cumberland"), and individual defendants Matthew A. Daka, M.D. ("Daka"), Selvaratnam Sinna, M.D. ("Sinna"), Suriya Bandara Jayawardena, M.D. ("Jayawardena"), and Manesh Thomas, M.D. ("Thomas"). Relator alleged the individual defendants performed

unnecessary catheterization and stent procedures in order to submit inflated Medicare, Medicaid, and TRICARE claims.

The United States and the State of North Carolina (the "governments") elected to intervene in part,[1] and the case was unsealed October 18, 2021. The governments alleged that between the years 2014 and 2019, defendants submitted false claims, made false statements material to false claims, and engaged in conspiracy, in violation of the FCA and the NCFCA.[2] The governments also asserted claims of common law fraud, unjust enrichment, and payment by mistake, based on the same alleged actions of defendants.

Defendants filed joint motion to dismiss pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) March 8, 2022, which motion the court denied March 2, 2023.[3] A period of discovery followed, and the governments, with leave of court, filed amended complaint February 28, 2024, raising the same claims as in their original complaint with minor alteration to three factual allegations.

Defendants filed individual motions for summary judgment and collective motion to exclude testimony by the governments' experts Ian Gilchrist ("Gilchrist") and Michael Petron ("Petron") September 10, 2024. On that same date, the governments filed motion to exclude testimony by defendants' experts Cam Patterson ("Patterson"), Matthew Holland ("Holland"), and Bryan Callahan ("Callahan"). Within their brief opposing Ferncreek's motion for summary

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1 The governments declined to intervene as to claims against defendant Cumberland, and that party was terminated June 14, 2022.

2 The court focuses discussion on the FCA, but the "analysis and conclusions apply equally" to the NCFCA. United States ex rel. Wheeler v. Acadia Healthcare Co., Inc., 127 F.4th 472, 484 (4th Cir. 2025); see N.C. Gen. Stat. § 1-616(c) (The NCFCA "shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act.").

3 Originally assigned to Senior United States District Judge W. Earl Britt, this matter was reassigned to the undersigned June 2, 2022.

judgment, the "[g]overnments withdr[e]w their claims for TRICARE damages, damages for later 2018 and 2019 years, and additional common law fraud, unjust enrichment, and payment by mistake claims in order focus on the stronger FCA claims." (Govs' Br. Opp. Mot. Summ. J. (DE 135) at 2).[4] In order entered March 20, 2025, the court denied defendants' motions for summary judgment and both motions to exclude expert testimony.

With benefit of the parties' joint report, the court on April 28, 2025, set the matter for final pretrial conference October 27, 2025, with trial to commence November 17, 2025. In the meantime, the parties participated in court-hosted settlement conference, which resulted in settlement of claims against defendant Jayawardena.[5]

On August 21, 2025, the governments filed motion to continue trial, asserting that their expert Gilchrist would be out of the country on the trial dates set by the court. Following hearing, the court denied the governments' request to continue trial but allowed their alternative request to allow Gilchrist to testify by de bene esse deposition. The court denied defendants' oral motion to bifurcate trial and granted defendants' oral motion to allow intermittent cross-examination of Gilchrist as to each of 30 patients.

On October 13, 2025, the governments filed seven motions in limine, defendants filed omnibus motion in limine and motion to reconsider bifurcation, and relator filed omnibus motion in limine. The court ruled on several of these motions at pretrial conference October 27, 2025, and directed briefing on issues arising during Gilchrist's de bene esse deposition.

In amended joint pretrial order filed November 14, 2025, the governments identified 306

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[4] Stipulation of dismissal of these withdrawn claims was filed on the fourth day of trial, November 20, 2025. (See DE 239). Unless otherwise specified, page numbers of citations to the record in this order refer to the page number of the document designated in the court's case management and electronic case management (CM/ECF) system, and not to page numbering, if any, specified on the face of the underlying document.

[5] Stipulation of dismissal as to Jayawardena was filed November 14, 2025. Hereinafter, all references to "defendants" refer to the four defendants remaining for trial: Ferncreek, Daka, Sinna, and Thomas.

potential exhibits and 12 potential witnesses, and defendants identified 122 potential exhibits and 52 potential witnesses. The parties estimated trial would last seven to ten days. With the aim of promoting efficiency, the court limited the parties to 18 hours per side, excluding opening and closing statements. Trial commenced November 17, 2025, and ran until December 1, 2025. During the course of trial, the governments spent 18 hours and 17 minutes presenting their case, and defendants spent 19 hours and 12 minutes.[6]

Following close of the governments' evidence, the court denied defendants' oral motions for directed verdict on the elements of falsity and scienter November 24, 2025. In doing so, the court noted the weakness of the governments' evidence on scienter but allowed the question to be given to the jury, given the standard favorable to the governments. Defendants' renewed motion for directed verdict was taken under advisement November 26, 2025, following close of defendants' evidence.

The jury deliberated for approximately four and one-half hours, split over a long weekend break. On December 1, 2025, the jury returned a verdict fully favorable to defendants, and judgment was entered December 2, 2025. The governments did not appeal.

Defendants filed application for costs December 10, 2025, which application was briefed fully and submitted to the clerk February 9, 2026, pursuant to Fed. R. Civ. P. 54(d)(1) and Local Civil Rule 54.1(b).

Defendant Ferncreek filed the instant motion for attorneys' fees and non-taxable expenses January 2, 2026, seeking $1,905,048.92 to $2,381,288.92 from the governments under the Equal Access to Justice Act (the "EAJA"), 28 U.S.C. § 2412(d), N.C. Gen. Stat. § 6-19.1, and the court's

[6] Noting that issues outside of defendants' control had arisen during trial, the court permitted defendants to exceed the 18-hour limit earlier set and overruled the governments' objection thereto.

inherent powers.[7] Ferncreek substantiates its request with medical records, discovery responses, affidavits, declaration, and correspondence among counsel. The governments responded in opposition January 21, 2026, relying on statement of material facts earlier filed in response to motion for summary judgment, and relator responded in opposition February 2, 2026. Ferncreek replied February 4, 2026, relying on valuation of Ferncreek.

Ferncreek filed January 2, 2026, the instant motion to seal exhibits 13 and 18 attached to its memorandum in support of motion for attorneys' fees (the "first motion to seal"). (DE 263). These exhibits are affidavits of attorney Sara R. Lincoln (the "Lincoln affidavit"), with attached invoices, and affidavit of defendant Daka (the "Daka affidavit"). (See DE 260, 261). On January 12, 2026, Ferncreek filed the instant motion to seal supplemental exhibits (the "second motion to seal"). (DE 271). The documents subject of the second motion to seal include a statement from defense counsel's firm for hours billed in December and additional invoices. (See DE 269, 270). The governments and relator each filed consolidated response to the first and second motions to seal, and Ferncreek filed consolidated reply.

Finally, Ferncreek filed February 4, 2026, the instant motion to seal valuation report attached to reply in support of motion for fees (the "third motion to seal"). (DE 286). The governments responded in opposition February 26, 2026.

COURT'S DISCUSSION

A. Motion for Fees and Non-Taxable Costs

Under the principle known as the "American Rule[, e]ach litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." Baker Botts L.L.P. v. ASARCO LLC, 576 U.S. 121, 126 (2015). In the instant motion for attorneys' fees and non-taxable costs,

[7] Although Ferncreek initially sought fees and costs from the governments and relator, it has, as noted, withdrawn that portion of its motion regarding relator. (See DE 282).

Ferncreek relies on the EAJA and a similar state statute codified at N.C. Gen. Stat. § 6-19.1(a).

1. Standard of Review

In FCA actions brought by the United States, "the provisions of section 2412(d) of title 28 shall apply" to a prevailing defendant. 31 U.S.C. § 3730(g). Pursuant to that incorporated subsection of the EAJA,

> a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), . . . brought by or against the United States in any court having jurisdiction of that 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). Similarly, in civil actions brought by the State of North Carolina,

> unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees . . . to be taxed as court costs against the appropriate agency if:
>
> (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
>
> (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

N.C. Gen. Stat. 6-19.1(a).

Although the language of the EAJA is mandatory and North Carolina's provision is discretionary, North Carolina courts construing the state provision have relied on federal courts' interpretation of 28 U.S.C. § 2412(d)(1)(A). See, e.g., Crowell Constructors, Inc. v. State ex rel. Cobey, 342 N.C. 838, 843-44 (1996) (citing Pierce v. Underwood, 487 U.S. 552 (1988)). Accordingly, this court addresses the propriety of an attorneys' fees award under the EAJA and N.C. Gen. Stat. § 6-19.1 using the same standards. In particular,

> [w]hether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B). When the applicant for attorneys' fees and expenses is a prevailing party, the court proceeds to consider, first, whether the applicant is entitled to any "fees and expenses" under the statute. Id. § 2412(d)(2)(A). The court may then proceed to determine the reasonable amount of such fees and expenses. Id.

2. Analysis

a. The Governments' Position was Substantially Justified

Fees and non-taxable costs are permitted under the EAJA only when the government's position was not "substantially justified" and no "special circumstances" make such an award unjust. 28 U.S.C. § 2412(d)(1)(A). The governments have "the burden of showing that [their] position was substantially justified." United States v. 515 Granby, LLC, 736 F.3d 309, 315 (4th Cir. 2013).

The Supreme Court has interpreted the phrase "substantially justified" to mean "justified to a degree that could satisfy a reasonable person." Pierce, 487 U.S. at 565. The phrase thus does not connote " 'justified to a high degree,' but rather 'justified in substance or in the main.' " Id. Therefore, "a position can be justified even though it is not correct, and . . . it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." Id. at 566 n.2. "This standard allows the government some leeway in litigation without permitting it to adopt positions arbitrarily." Hess Mech. Corp. v. N.L.R.B., 112 F.3d 146, 149 (4th Cir. 1997). As such, the governments' burden is comparable to one that is "satisfied if there is a genuine dispute, or if reasonable people could differ as to the appropriateness of the contested action." Pierce, 487 U.S. at 565.[8] This requires "more than

[8] Throughout this order, internal citations and quotation marks are omitted from citations unless otherwise specified.

[being] merely undeserving of sanctions for frivolousness." Id. at 566.

"[W]hen determining whether the government's position in a case is substantially justified, [courts] look beyond the issue on which the petitioner prevailed to determine, from the totality of circumstances, whether the government acted reasonably in causing the litigation or in taking a stance during the litigation." Roanoke River Basin Ass'n v. Hudson, 991 F.2d 132, 139 (4th Cir. 1993). In so determining, the court may look to "objective indicia," such as "the stage in the proceedings at which the merits were decided," although such indicia do not provide, in themselves, a "conclusive answer." Pierce, 487 U.S. at 568. "[M]erits decisions in a litigation, whether intermediate or final . . . obviously must be taken into account both by a district court in deciding whether the Government's position, though ultimately rejected on the merits, was substantially justified, and by a court of appeals in later reviewing that decision for abuse of discretion." EEOC v. Clay Printing Co., 13 F.3d 813, 815 (4th Cir.1994).

Here, the governments' position was that defendants submitted false claims by billing government programs for catheterization and stent procedures which were not reasonable and necessary and that defendants did so with reckless disregard for the truth of their claims. In opposition to the instant motion for attorneys' fees, the governments point to several witnesses who provided trial testimony consistent with the facts alleged in the complaint, evidence proffered at summary judgment and trial supporting those facts, and this court's earlier rulings denying defendants' motions to dismiss, for summary judgment, and for judgment as a matter of law, as indicative of the substantial justification of the governments' position. Considering the totality of the circumstances, in light of the requisite standard under the EAJA, the court is compelled to find the governments' position substantially justified.

The court begins with the legal basis for the governments' position. "The FCA (as relevant here) imposes liability on those who 'knowingly presen[t] ... a false or fraudulent claim for

payment or approval.' Thus, two essential elements of an FCA violation are (1) the falsity of the claim and (2) the defendant's knowledge of the claim's falsity." United States ex rel. Schutte v. SuperValu Inc., 598 U.S. 739, 747 (2023) (quoting 31 U.S.C. § 3729(a)(1)(A)). "The FCA's scienter element refers to respondents' knowledge and subjective beliefs—not to what an objectively reasonable person may have known or believed." Id. at 749. As used in the FCA, "knowingly" includes actual knowledge that a claim is false, deliberate ignorance of the truth of a claim, or reckless disregard of the truth of a claim. 31 U.S.C. § 3729(b)(1)(A).

The governments contended that submitting Medicare and Medicaid claims for medically unnecessary procedures could establish liability under a theory known as implied false certification. See Universal Health Servs., Inc. v. U.S. ex rel Escobar, 579 U.S. 176, 181 (2016) (FCA "liability can attach when the defendant submits a claim for payment that makes specific representations about the goods or services provided, but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement."); Wheeler, 127 F.4th at 487 ("A false certification claim presumes that the defendant implicitly certified that it complied with relevant statutes, regulations, or contract requirements when it knew that it was not complying."). Where there is little published caselaw on the FCA in the context of medical necessity, Ferncreek acknowledges that "this case was conducted in a legally unsettled area." (Ferncreek Reply (DE 289) at 3). Where, in the absence of binding caselaw, the governments made reasonable legal arguments, derived from Escobar and Wheeler, for the application of the implied false certification theory to defendants' Medicare and Medicaid claims, the court concludes that the governments' position had a reasonable basis in law.[9]

[9] Notably, the governments' theory of liability has been accepted by other courts. See, e.g., Winter ex rel. United States v. Gardens Reg'l Hosp. & Med. Ctr., Inc., 953 F.3d 1108, 1119 (9th Cir. 2020) ("A physician's certification that inpatient hospitalization was 'medically necessary' can be false or fraudulent for the same reasons any opinion can be false or fraudulent."); United States ex rel. Polukoff v. St. Mark's Hosp., 895 F.3d 730, 742 (10th

Turning to the factual basis, the court begins with its own rulings assessing the governments' case at various stages of the proceedings. In order denying defendants' motion to dismiss, the court noted that

> [i]n the context of a False Claims Act case, "[a] court should hesitate to dismiss a complaint under Rule 9(b) if the court is satisfied 1) that the defendant[s have] been made aware of the particular circumstances for which [they] will have to prepare a defense at trial, and 2) that plaintiff has substantial prediscovery evidence of those facts."

(March 2, 2023, Order (DE 72) at 7) (quoting Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 784 (4th Cir. 1999)). Thus, because the governments' complaint "include[s] dozens of specific allegations that defendants conducted and billed federal health insurance programs for invasive catheterization and stent placement procedures after less invasive diagnostics either returned normal results or simply were not conducted, each of which are identified by patient initials and date of procedure," the court was satisfied that the governments had pleaded valid claims with sufficient particularity. (Id. at 8). Moreover, the court determined that the governments "plausibly allege that defendants acted with the requisite knowledge to violate the FCA" because the complaint included over four pages of detailed scienter allegations (Id. at 12).

Subsequently, when ruling on defendants' motions for summary judgment, the court found a genuine dispute of material fact as to the falsity of defendants' Medicare and Medicaid claims based on Gilchrist's expert report and testimony by former Ferncreek physicians Muhammad Marwali ("Marwali") and relator. (March 20, 2025, Order (DE 148) at 26). Marwali's and relator's testimony also established a genuine dispute as to whether defendants acted with reckless disregard for the truth. (Id. at 27). Additionally, where the governments proffered evidence of damages of specific procedures performed by the individual defendants and extrapolation

Cir. 2018) ("A Medicare claim is false if it is not reimbursable, and a Medicare claim is not reimbursable if the services provided were not medically necessary.").

calculations in support of their claims of damages against defendant Ferncreek, the court found that a genuine issue of fact remained for the jury regarding damages. (Id. at 29). Thus, where the court determined that a reasonable jury could find FCA violations on the basis of the evidence presented at summary judgment, it was reasonable for the governments to proceed with their claims.

The governments' evidence at trial was not overwhelming. However, evidence need not be overwhelming to provide a reasonable basis in fact. See United States v. Wilson, 115 F.3d 1185, 1190 (4th Cir. 1997) (holding "the uncorroborated testimony of one witness" sufficient to sustain a jury's verdict). There is no specific quantum of evidence required to demonstrate that a position is substantially reasonable. Pierce, 487 U.S. at 565 (defining substantially justified as "not justified to a high degree, but rather justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person").

Following the close of the governments' evidence, the court denied defendants' motions for directed verdict on falsity and scienter. The court acknowledged that the governments faced an uphill climb but allowed the questions to go to the jury because, viewing the evidence in the light most favorable to the government, "reasonable jurors could find by a preponderance of the evidence that the [governments are] entitled to a verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

In particular, the governments' cardiology expert Gilchrist testified that various catheterization and stent procedures performed by Ferncreek physicians were not reasonable and necessary, based on Gilchrist's review of the patients' medical charts. This testimony from a qualified expert provides a reasonable basis in fact for the falsity element of the governments' position that defendants submitted false claims by billing for medically unnecessary procedures.

Additionally, testimony by relator and Marwali justified the governments' position that

defendants acted with reckless disregard. Relator testified that, in a meeting with the individual defendants, defendant Sinna instructed relator to make up symptoms of dizziness and leg pain to justify procedures in order to increase revenue. Relator also testified that he told defendants Sinna and Daka that relator would not abide by defendants' policy to catheterize all patients with elevated troponin because such policy would cause an increase in unnecessary procedures.[10] Relator also testified that he observed falsification of medical records by defendants. Marwali testified that he expressed to defendant Thomas his concern that the individual defendants were performing too many catheterization procedures. Although this testimony is not conclusive on the issue, if believed, it provides a sufficient basis for reasonable jurors to find that defendants acted with reckless disregard for the medical necessity of their procedures and the truth of their Medicare and Medicaid claims.

The fact that defendants mounted a vigorous defense and that the jury ultimately found in defendants' favor does not negate the reasonableness of the governments' stance. Although ultimately unsuccessful, the governments had a reasonable basis in law and in fact for their position.

Ferncreek rightly notes that the number of claims and specifics as to procedures performed and amounts billed changed throughout this litigation, including during trial. However, the EAJA requires analysis of a "singular" position, and the court need not "engag[e] in an issue-by-issue analysis of the government's posture throughout each phase of the litigation." Perez v. Jaddou, 31 F.4th 267, 270 (4th Cir. 2022). Accordingly, the court looks to the central thrust of the governments' claims, which remained consistent throughout this litigation. (See, e.g., Compl.

[10] According to relator, as memorialized in the court's rough notes of testimony at trial on November 21, 2025, "[t]roponin is a protein that's present in the muscle," which is "very useful to diagnose heart attacks in the right clinical scenario."

Intervention (DE 40) ¶ 4 ("The Governments' claims arise out of the Ferncreek Defendants' knowingly (including reckless disregard and deliberate ignorance) and routinely performing medically unnecessary catherization [sic] and stent procedures.")).

Ferncreek also challenges the sufficiency of the governments' investigation prior to intervening in this matter. Consideration of this investigation is proper because "the government's prelitigation and litigation postures together comprise, in the words of the statute, 'the position of the United States.' " 515 Granby, 736 F.3d at 315 (quoting 28 U.S.C. § 2412(d)(1)). Accordingly, "[i]f the government's position changes, the court must independently determine whether its prelitigation and litigation positions were reasonable." Id. at 317.

515 Granby involved an eminent domain condemnation proceeding in which the government's prelitigation valuation of the property at issue was $6.175 million, based on the government's instruction to the appraisers to "ignore any improvements to the land." Id. at 313. However, when the government conducted a new valuation for trial, it accounted for improvements to the land, resulting in a value of $9 million. Id. at 314. Although the district court determined the government's prelitigation position, manifested in its initial $6.175 million valuation, was unreasonable, it concluded that the government's overall position was substantially justified based on its litigation valuation of $9 million. Id. at 313. Because "the district court did not properly weigh the effect of the government's unreasonable prelitigation position," the case was remanded. Id. at 316.

In contrast here, the investigation described by Ferncreek provided the governments a substantially justified prelitigation position. Moreover, the governments' position, that defendants submitted false claims by billing government programs for medically unnecessary procedures with reckless disregard, did not change. Despite listing a variety of investigative techniques the governments did not employ, Ferncreek acknowledges that, prior to intervening in this matter, the

governments: 1) interviewed relator and Marwali, 2) pulled statistical samples of Ferncreek patients with Medicare or Medicaid claims for certain catheterization and stent procedures, 3) subpoenaed the medical records of those patients, and 4) had their expert Gilchrist review the medical records. (Ferncreek Mem. (DE 275) at 5). These steps produced the evidence on which the governments reasonably relied during litigation, that is, Gilchrist's testimony regarding the medical necessity of procedures and relator's and Marwali's testimony regarding defendants' reckless disregard. Where the governments' investigation revealed sufficient evidence to survive motions for summary judgment and directed verdict, the court will not impose post hoc requirements on the nature and extent of such investigation. Accordingly, the court finds the governments' prelitigation position was substantially justified.

In sum, the governments' position, that defendants submitted false claims for medically unnecessary procedures and did so with reckless disregard for the truth, was substantially justified. Where it finds that the governments' position was substantially reasonable under the EAJA, the court does not address arguments regarding Ferncreek's eligibility or special circumstances rendering an award unjust.

b. Inherent Powers

In addition to the EAJA, Ferncreek invokes this court's inherent power to award attorneys' fees. Although "in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel," Ferncreek fails to demonstrate that the instant case exemplifies such narrow circumstances. Chambers v. NASCO, Inc., 501 U.S. 32, 45 (1991).

The Supreme Court recognizes three situations in which a court may rely on its inherent powers to award attorneys' fees: 1) when the prevailing party's "litigation efforts directly benefit others," 2) "as a sanction for the willful disobedience of a court order," or 3) "when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Id. at 45-46.

Here, Ferncreek mentions briefly the court's inherent powers in its motion and supporting memorandum. (See Mot. (DE 259) at 1; Mem. (DE 275) at 16). However, Ferncreek fails to specify which of the situations described in Chambers applies and makes no argument in support of its invocation.[11] Therefore, where "inherent powers must be exercised with restraint and discretion," the court declines Ferncreek's cursory invitation to employ them here. Chambers, 501 U.S. at 44.

In sum, the court declines to award attorneys fees and non-taxable costs to defendants in this action. As a result, the court does not address the reasonableness of Ferncreek's requested fees.

B. Motions to Seal

"The common law presumes a right to inspect and copy judicial records and documents." Stone v. Univ. Md. Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir. 1988). This "presumption of access may be overcome if competing interests outweigh the interest in access." Id. "Where the First Amendment guarantees access, on the other hand, access may be denied only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest." Id. "[T]he First Amendment guarantee of access has been extended only to particular judicial records and documents," including "documents filed in connection with [a] summary judgment motion." Id.

However, not all documents filed with a court are judicial records or documents. In this circuit, "documents filed with the court are 'judicial records' if they play a role in the adjudicative process, or adjudicate substantive rights." In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D), 707 F.3d 283, 290 (4th Cir. 2013). By contrast, "documents not considered by the court

[11] Ferncreek's argument that this action was frivolous, vexatious, and harassing relates to its now-withdrawn request for attorneys' fees from relator under 31 U.S.C. § 3730(d)(4).

. . . do not play any role in the adjudicative process," so neither the common law or First Amendment right of access applies. Id.; see also, In re Policy Mgmt Sys. Corp., no. 94-2254, 1995 WL 541623, at *4 (4th Cir. Sept. 13, 1995) (reversing order to unseal documents which "did not play any role in the district court's adjudication").

Here, where it determines Ferncreek is not entitled to attorneys' fees, the court does not consider the documents Ferncreek relies on to establish the reasonableness of the amount of fees it seeks. Thus, these documents, including those subject of the instant motions to seal, are not judicial records or documents, and no presumptive right of access applies. See In re U.S., 707 F.3d at 290. Accordingly, and where Ferncreek demonstrates good cause, the motions to seal are granted. Those documents filed provisionally under seal, which did not play any role in this court's adjudication, shall remain sealed until further order.

CONCLUSION

Based on the foregoing, defendant Ferncreek's motion for attorneys' fees and non-taxable costs under the EAJA, N.C. Gen Stat. § 6-19.1, and the court's inherent powers (DE 259) is DENIED where the governments' position was substantially justified. Defendant Ferncreek's motions to seal (DE 263, 271, 286) are GRANTED. The clerk is DIRECTED to maintain under seal the provisionally sealed documents along with their attachments (DE 260, 261, 269, 270, 284).

SO ORDERED, this the 15th day of April, 2026.

LOUISE W. FLANAGAN
United States District Judge