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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVANGELINA MENDEZ; ANGEL MENDEZ;)	CV 04-7131 SVW (RCx)
JOSE MENDEZ; and TIFFANY AUTREY,)	
)	ORDER GRANTING PLAINTIFF'S
Plaintiffs,)	MOTION FOR ATTORNEYS' FEES
)	[349]
v.)	
)	
THE COUNTY OF SAN BERNARDINO, THE)	
SAN BERNARDINO COUNTY SHERIFF'S)	
DEPARTMENT; THE CITY OF HESPERIA;)	
DEPUTY CESAR REYES; DEPUTY MARION)	
BROWNE; DEPUTY ROD MEDLEY; SGT.)	
JAMES MARTINEZ; DEPUTY STEVEN)	
LAWYER; and DOES 6 through 10,)	
inclusive,)	
)	
Defendants.)	

I. INTRODUCTION

In April 2005, Plaintiff Evangelina Mendez ("Plaintiff") prevailed in a 42 U.S.C. § 1983 action against the San Bernardino Sheriff's Department.¹ Although the award of costs and attorneys' fees is typically allowed under § 1983, the trial court denied Plaintiff's

¹ Originally, this matter was heard in front of the Honorable Judge George Schiavelli of the Central District of California.

1 request for costs and attorneys' fees. On appeal, the Ninth Circuit
2 reversed the trial court's denial of costs and attorneys' fees and
3 remanded the case to this Court for a determination of costs and
4 attorneys' fees. See Mendez v. County of San Bernardino, 540 F.3d 1109
5 (9th Cir. 2008).

6
7 **II. FACTS**

8
9 **A. § 1983 Claim**

10
11 On July 2, 2002, Plaintiff's son Ignacio was shot and killed by
12 San Bernardino police officers during an armed standoff with police on
13 the driveway of Plaintiff's neighbor. Mendez, 540 F.3d at 1116.
14 Plaintiff and one of her sons, Angel, were not considered suspects in
15 any crime, but both witnessed the event. Id.

16 After the shooting, Plaintiff was placed in the back of a police
17 car on the scene. Id. The officer who placed her in the car testified
18 that he "opened the door and asked her to have a seat." Id. After ten
19 minutes, Plaintiff began to hit the windows, asking to be released.
20 Id. An officer transferred Plaintiff to another nearby police car.
21 Id. She again beat on the windows in an attempt to ask for air, and an
22 officer eventually cracked a window for her. Id. After two hours,
23 Plaintiff and Angel were driven to a police station. Plaintiff was not
24 asked for her consent to be taken to the station, nor was she ever told
25 that she was free to leave. Id.

26 While being questioned, Plaintiff was told to sign a consent form
27 authorizing police officers to search her home. Id. The form included
28

1 a statement that let Plaintiff know that the search of her home was
2 voluntary. Id. Plaintiff, however, did not understand the form
3 because it was written in English, she only understood Spanish, and the
4 form was not translated for her. Id. Instead, a San Bernardino
5 officer simply put the form in front of her and said, "This is a paper
6 you need to sign." Id. Officers then conducted a search of her
7 residence without a warrant. Id.

8

9 **B. Trial Court Decision**

10

11 Plaintiff and Angel brought suit against the County of San
12 Bernardino, the City of Hesperia, the San Bernardino Sheriff's
13 Department, and multiple individual defendants, including Deputy Cesar
14 Reyes who was one of the officers who questioned Plaintiff at the
15 police station. Id. at 1117. The claims included: (1) false arrest of
16 Plaintiff and Angel under state law; (2) false arrest of Plaintiff and
17 Angel under the Fourth Amendment; (3) illegal search under the Fourth
18 Amendment; (4) negligent failure to train the police officers under
19 state law; and (5) allegations that the County was liable for the
20 constitutional violations under Monell v. Department of Social
21 Services, 436 U.S. 658 (1978).

22 Prior to trial, the district court granted summary judgment to the
23 County on the state law negligence claim and the Monell claim. Id.
24 The remainder of the claims were presented to the jury. Id. The jury
25 returned a verdict for Plaintiff against Deputy Reyes for Plaintiff's
26 false arrest under state and federal law, and for the illegal search of
27 her home under federal law. Id. The jury awarded \$1 in nominal
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1 damages on each of these claims, plus \$250,000 in punitive damages
2 against Deputy Reyes due to reckless depravation of Plaintiff's
3 constitutional rights. Id. The jury returned a verdict for the County
4 as to Angel's claims. The trial court reduced the punitive damages
5 award to \$5,000. On appeal, this reduction was affirmed by the Ninth
6 Circuit. Id. at 1120, 1123.

7 8 **C. Attorneys' Fees**

9
10 After the jury returned a verdict, Plaintiff moved for attorneys'
11 fees and costs under 42 U.S.C. § 1988 in the amount of \$727,558. Id.
12 at 1124. An affidavit from lead counsel explained that Plaintiff's
13 attorneys, lawyers at Morrison & Foerster LLP, had spent 2,570 hours
14 preparing for and trying her case, excluding hours spent pursuing her
15 unsuccessful Monell claim and the claims the Mendez family voluntarily
16 dismissed. Id. Plaintiff requested that the two partners who worked
17 on her case be compensated between \$450 and \$550 per hour, their
18 typical billing rates. Id. Plaintiff asked that the two associates
19 that worked on the case be compensated at rates between \$250 and \$300
20 per hour, which was below their market rates. Id. Plaintiff's counsel
21 stated that the fee request included a voluntary discount of partners'
22 hours by 10% and of associates' hours by 20%, as well as a request for
23 only \$70,000 of a total of \$80,000 costs. Id. Plaintiff's final fee
24 request to the trial court came to \$727,307 in fees and \$65,000 in
25 costs. Id. at 1125.

26 Meanwhile, the County proposed that a reasonable award would
27 reflect 1,999 hours of work at partners' and associates' billing rates
28

1 of \$300 and \$150 per hour, respectively. Id. The County argued that
2 these billing rates, as opposed to Plaintiff's requested rates, were
3 more in line with typical rates for civil rights work. Id. This led
4 to the County's calculation that \$390,225 in fees were reasonably
5 incurred. Id. The County then asked the court to reduce this figure
6 by 75% based on Plaintiff's limited degree of success, resulting in
7 attorneys' fees of \$97,556. Similarly, after a 75% cut, the County
8 argued costs be awarded in the amount of \$18,009. Id. The County,
9 thereby, proposed a total award of \$115,565.

10 The trial court denied Plaintiff's request for attorneys' fees in
11 its entirety, finding that her request was "so excessive that [it]
12 warrant[s] a denial of fees altogether." Id. The district court
13 stated that the request satisfied the "shocks the conscience" test, and
14 emphasized the overall excessiveness of Plaintiff's request in its
15 order denying attorneys' fees.² Id.

16 The Ninth Circuit reversed this finding, stating that "'a court's
17 discretion to deny fees under § 1988 is very narrow and . . . fee
18 awards should be the rule rather than the exception.'" Id. (quoting
19 Herrington v. County of Sonoma, 883 F.2d 739, 743 (9th Cir. 1989)).
20 Furthermore, the Ninth Circuit stated that the required method of
21 calculating attorneys' fees in civil rights cases is "computing a
22 lodestar figure and then, if necessary, making adjustments to that
23 figure based upon reasonableness factors." Id. The Ninth Circuit
24 therefore remanded the case to the district court for a determination
25 of attorneys' fees. Id. at 1130. After Plaintiff's Motion for
26

27
28 ² The "shocks the conscience" test is a test used by other circuits, but has not
been adopted in the Ninth Circuit. Mendez, 540 F.3d at 1127.

1 Attorneys' Fees, Defendant's Opposition, and Plaintiff's Reply,
2 Plaintiff seeks \$837,175.50 in attorneys' fees, based on 2,161.35 hours
3 of legal work and \$49,008 in costs.
4

5 **III. ANALYSIS**

7 **A. Legal Standard**

8
9 "The 'lodestar' is the presumptively reasonable rate, which is
10 reached by multiplying the number of hours reasonably expended by the
11 prevailing party with a reasonable hourly rate, then making any
12 adjustments as necessary to account for factors not already subsumed
13 within the initial lodestar calculation." Mendez, 540 F.3d at 1129
14 (citing Morales v. City of San Rafael, 96 F.3d 359, 362 (9th Cir.
15 1997)). Factors that bear on the reasonableness of the fee include (1)
16 the time and labor required, (2) the novelty and difficulty of the
17 questions involved, (3) the skill requisite to perform the legal
18 service properly, (4) the preclusion of other employment by the
19 attorney due to acceptance of the case, (5) the customary fee, (6)
20 whether the fee is fixed or contingent, (7) time limitations imposed by
21 the client or the circumstances, (8) the amount involved and the
22 results obtained, (9) the experience, reputation, and ability of the
23 attorneys, (10) the undesirability of the case, (11) the nature and
24 length of the professional relationship with the client, and (12)
25 awards in similar cases. Kerr v. Screen Extras Guild, Inc., 526 F.2d
26 67, 70 (9th Cir. 1975).
27
28

1 A court may also reduce an award for attorneys' fees for
2 "unnecessarily duplicative work, if the court provides 'a clear
3 explanation that [the Ninth Circuit] can review' as to why the hours
4 were truly unnecessary." Mendez, 540 F.3d at 1130 (quoting Moreno v.
5 City of Sacramento, 534 F.3d 1106, 1113 (9th Cir. 2008)). In addition,
6 a court is "'not only free but obligated to consider the results
7 obtained by [Plaintiff], or the extent of [her] success.'" Id.
8 (quoting Morales, 96 F.3d at 364).

9 Therefore, to determine reasonable attorneys' fees for the instant
10 civil rights case, the Court must determine the reasonable number of
11 billed hours, the reasonable billing rates for the attorneys, and any
12 additional circumstances that must be considered.

13

14 B. Billable Hours

15

16 1. Background

17

18 The Ninth Circuit, when reviewing the number of hours initially
19 requested by Plaintiff, stated:

20

21 Mendez's initial request reflected 2,570 hours of attorney
22 time, which after the 10 and 20 percent write-downs for
23 partners and associates, respectively, amounted to
24 approximately 2,144 hours. The County, in response,
25 suggested 1,999 hours were reasonably incurred. In reply,
26 Mendez agreed to write off an additional 17.5 hours, thus
27
28

1 bringing the two sides' calculations of hours within a margin
2 of approximately six percent.

3
4 Id. at 1128 n. 1. Thus, the Ninth Circuit recognized that at the trial
5 court level, the opposing parties were close to an agreement regarding
6 the reasonable number of hours billed by Plaintiff's attorneys during
7 litigation. The Ninth Circuit further recognized that "there is no
8 evidence that [Plaintiff's] fee request was either made in bad faith or
9 contained excessive hours spent on unrelated claims." Id. at 1127-28.

10 On remand, Plaintiff requests 2,161.35 billable hours.³ This total
11 is only seventeen hours more than Plaintiff's original request, despite
12 the fact that it includes not only the trial court work, but also the
13 post-trial work as well. Thus, the six percent margin between
14 Plaintiff's new proposal and Defendant's initial proposal remains
15 relatively constant.

16 After appeal and remand, Defendant now claims that 1,254 hours
17 were reasonably expended by Plaintiff's attorneys, rather than the
18 1,999 hours Defendant proposed at the trial court level. (Opp. 22-23.)

21 2. Analysis

23
24 ³ Including additional hours related to post-trial work, Plaintiff's actual total
25 number of attorney hours billed for her lodestar calculation is 2,446.5 hours.
26 (Reply 14.) However, in response to Defendant's Opposition, Plaintiff elected to
27 subtract 25 hours from Graber's hours and 20 hours from West's hours, resulting in
28 2,401.5 hours billed. (Id. at 12-13.) Furthermore, Plaintiff, also in response to
Defendant's Opposition, has elected to further reduce the number of hours billed by
10% across the board, thus resulting in 2,161.35 hours. (Id. at 14.) Plaintiff
quotes this figure as 2,201. However, this total is incorrect, since it does not
take into account the initial subtraction of 25 and 20 hours billed from Graber and
West, respectively.

1 Defendant raises several grounds detailing why Plaintiff's
2 billable hours number should be reduced.

3
4 **a. All of the Hours Billed by Plaintiff's Attorneys**
5 **Were Billed in Quarter-Hour Increments.**
6

7 Across-the-board reductions in billable hours due to quarter-hour
8 increments have been upheld by the Ninth Circuit. Welch v. Metro Life,
9 480 F.3d 942 (9th Cir. 2007). However, proof of actual over-billing,
10 and not simply the possibility of over-billing, is necessary to warrant
11 the reduction. Id. at 949.

12 In Welch, the Ninth Circuit approved a 20% across-the-board
13 reduction in hours billed by plaintiff's counsel because the use of
14 quarter-hour billing increments could result "in a request for
15 compensation for hours not reasonably expended on the litigation." Id.
16 Furthermore, the court noted numerous instances where "calls and e-
17 mails . . . likely took a fraction of the time" actually billed. Id.

18 Here, Defendant cites Welch for the proposition that there are
19 many instances in which meetings or phone calls took less than fifteen
20 minutes, but nonetheless were billed for the full quarter hour, and
21 therefore over-billing occurred. (Opp. 12.) Defendant provides a
22 single example, where Plaintiff's attorney West billed 0.5 hours for a
23 phone call to Defendant's attorney Ramirez, but Ramirez billed only 0.3
24 hours for the same call. (Id.)

25 Defendant's argument is without merit. First, Defendant
26 extrapolates from one billing instance to 600 with no foundation.
27 Defendant has given only one example of potential over billing due to
28

1 billing-hour increments, has not shown conclusively that this instance
2 is an example of over-billing, and has not shown that this example is
3 even remotely similar to the other 600 billing instances to which
4 Defendant cites.

5 Second, there is no evidence that Plaintiff's attorneys padded
6 their billable hours via billing in quarter-hour increments. Unlike in
7 Welch, in which the court was able to correlate its reduction for
8 quarter hour billing to actual over-billing, Defendant provides only
9 one example where quarter-hour billing potentially resulted in over-
10 billing, and after this only casually states that "quarter-hour billing
11 entries raises the *possibility* that the hours billed are excessive."
12 (Opp. 14 (emphasis added).) As such, Defendant has provided no
13 persuasive reasoning as to why a reduction due to quarter-hour billing
14 would be appropriate.

15
16 **b. Block-Billing**

17
18 In the instant case, the Ninth Circuit stated that "block-billed
19 hours . . . may overstate the hours incurred and make it 'more
20 difficult to determine how much time was spent on particular
21 activities.'" Mendez, 540 F.3d at 1128-29 (quoting Welch, 480 F.3d at
22 948). "It was fully appropriate for the [trial] court to reduce
23 [block-billed] hours." Id. at 1129. "[H]owever, the use of block
24 billing does not justify an across-the-board reduction or rejection of
25 all hours." Id.

26 In Welch, the trial court instituted an across-the-board 20%
27 reduction in attorneys' hours due to concerns over block billing.
28

1 Welch, 480 F.3d at 948. "The court arrived at its 20 percent reduction
2 based on a report by the California State Bar's Committee on Mandatory
3 Fee Arbitration, which concluded that block billing 'may increase time
4 by 10% to 30%.'" Id. The Ninth Circuit overruled the trial court,
5 stating that an across-the-board cut was inappropriate. The Ninth
6 Circuit mandated that the trial court only reduce those hours billed in
7 block format and "explain how or why . . . the reduction . . . fairly
8 balance[s] those hours that were actually billed in block format." Id.

9 Here, Defendant claims that some of the hours billed by each of
10 Plaintiff's attorneys were block billed and therefore should be
11 reduced by 20%.⁴ (Opp. 12.) In Welch, the Ninth Circuit states that
12 "[i]t was reasonable for the district court to conclude that Welch
13 failed to carry her burden, because block billing makes it more
14 difficult to determine how much time was spent on particular
15 activities." 480 F.3d at 948. Similarly here, Plaintiff's attorneys'
16 use of block-billing has made it difficult to determine the amount of
17 time actually spent on particular activities. As such, the Court finds
18 a reduction of 10% of only the block-billed hours would balance any
19 inflation due to block-billing.

20 21 **3. Conclusion**

22
23 In summary, the total number of hours currently requested by
24 Plaintiff is 2,161.35, including two individual discrete subtractions
25 and a 10% reduction from its primary billable-hours total. Meanwhile,

26
27 ⁴ Defendant argues that the following hours were block-billed: 96 hours by Sneed,
28 208.75 by Graber, 177.5 by West, 149.25 by Gonzalez, and all 342.5 of Icasiano's
hours, totalling 974 block-billed hours. The proposed 20% reduction would reduce
the number of hours billed by 194.8.

1 at the trial court level, Defendant proposed 1,999 hours and currently
2 proposes 1,254 hours.

3 Further, the Court finds that the block-billed hours should be
4 reduced by an additional 10%. This reduces Plaintiff's billable hours
5 by another 97.4 hours, bringing Plaintiff's total hours to 2,064 hours.

6 As such, the Court finds that the following hours are appropriate:
7

8	Arturo Gonzalez:	234 hours
9	Derek West: ⁵	537 hours
10	Geoffrey Graber:	885 hours
11	Secret T. Sneed:	125 hours
12	Pilarica Icansiano:	274 hours
13	Mary Howell:	9 hours

14
15 **C. Billable Rates**

16
17 **1. Background**

18
19 Plaintiff does not seek recovery based on 2008 rates, but rather,
20 on 2005 rates when the trial began. (Mot. 16.) Plaintiff currently
21 seeks the following rate schedule for her attorneys:
22

23	Arturo Gonzalez (partner):	\$550 per hour
24	Derek West (partner):	\$475 per hour

25
26

⁵ In Plaintiff's Reply, this person is noted as Derek West. (Reply 14.) However,
27 in other documents, including Arturo Gonzalez's initial declaration, he is referred
28 to as Tony West. (See, e.g., Arturo Gonzalez's initial Declaration in Support of
Attorneys' Fees ("Init. Gonz. Decl.") at 3.) At hearing, the Court confirmed that
Tony and Derek West are in fact the same person.

1 Geoffrey Graber (associate): \$375 per hour
2 Secret T. Sneed (associate): \$285 per hour
3 Pilarica Icasiano (paralegal): \$185 per hour
4 Mary Howell (paralegal): \$185 per hour
5

6 (Reply 15-16.) In Plaintiff's initial motion for attorneys' fees,
7 Plaintiff requested the following rates:
8

9 Arturo Gonzalez (partner): \$500 per hour in 2003, \$525 per
10 hour in 2004 and \$550 per hour
11 in 2005 and after
12 Derek West (partner): \$400 per hour in 2003, \$450 per
13 hour for 2004, \$475 per hour in
14 2005 and after
15 Geoffrey Graber (associate): \$300 per hour (discounted from 2004
16 level of \$320 per hour and 2005
17 level of \$375)
18 Secret T. Sneed (associate): \$250 per hour (discounted from 2004
19 level of \$285 per hour)
20 Pilarica Icasiano (paralegal): \$150 per hour (discounted from
21 2004 rate of \$175 per hour and
22 2005 rate of \$185 per hour)
23 Mary Howell (paralegal): Not yet staffed
24

25 (Init. Gonz. Decl. at 1-5; Hurley Decl., Ex D.) The difference in
26 rates is due to a combination of discounts that were previously offered
27 in the original motion, but no longer offered in the instant motion,
28

1 and a difference in 2004 and 2005 rates. Further, Plaintiff requested
2 rates that were based on applicable rates from different years in the
3 initial motion (e.g., Derek West requested different rates for three
4 different years), while now Plaintiff requests billing rates based on
5 2005, when the case was tried.

6 7 **2. Analysis**

8 9 **a. Current versus Historical Rates**

10
11 District courts may award "current rather than historic hourly
12 rates" to compensate for delay in payment. Missouri v. Jenkins, 491
13 U.S. 274, 282-84 (1989). "District courts have the discretion to
14 compensate prevailing parties for any delay in the receipt of fees by
15 awarding fees at current rather than historic rates in order to adjust
16 for inflation and loss of the use funds." Gates v. Deukmejian, 987
17 F.2d 1392, 1406 (9th Cir. 1992). "The district court has the
18 discretion to choose the method by which it will adjust the fee to
19 compensate for delay in payment and that it may do so 'by adjusting the
20 fee based on historical rates to reflect its present value,' or
21 'otherwise,'" including the payment of interest. Id. at 1407 (quoting
22 Jenkins, 491 U.S. at 282).

23 In Gates, the plaintiffs filed a complaint and motion for class
24 certification in the district court in 1988. Id. at 1395. Due to the
25 length of the proceedings, the district court awarded the plaintiffs'
26 current, then 1990, San Francisco community rates rather than historic
27 rates. Id. at 1406. The Ninth Circuit affirmed, stating that the
28

1 district court had the discretion to adjust the fee based on historical
2 rates to reflect its present value. Id.

3 In the instant matter, the Court holds that Plaintiff is entitled
4 to the 2005 billing rates requested in the current motion. First,
5 Plaintiff was initially denied attorneys fees on September 11, 2006.
6 Thus, approximately two and a half years have passed from the denial to
7 the instant motion, and even more time has passed since the attorneys
8 began work on this case in 2003. Like in Gates, in which significant
9 time passed between the beginning of litigation to the award of fees,
10 Plaintiff's attorneys have been working on this case for more than five
11 years.

12 Second, Plaintiff's request to use 2005 billing rates is
13 reasonable. While Plaintiff could potentially argue that under Gates,
14 Plaintiff's attorneys should be compensated at 2008 levels, Plaintiff
15 has chosen 2005 rates in an attempt to avoid an unreasonable rate
16 request. Furthermore, while using 2005 levels would mean that
17 Plaintiff may be overcompensated for work performed in 2003 and 2004,
18 Plaintiff would also be under-compensated for work performed in 2006
19 through 2009. Because of this fact, and because a great portion of the
20 hours billed by Plaintiff's attorneys were billed in 2005, when the
21 trial took place, 2005 represents a reasonable assessment of the
22 appropriate billing rates.

23 Therefore, the Court finds that 2005 billing rates are
24 appropriate.

25
26 **b. Previous Rate Reductions**
27
28

1 Plaintiff offered rate discounts in her initial motion for
2 attorneys' fees that were not offered in the instant motion. This
3 includes a discount of \$75 per hour for Graber, \$35 per hour for Sneed,
4 and \$35 per hour for Icasiano. (Init. Gonz. Decl. at 2-5.)

5 Because these discounts were included in the previous rate
6 proposal when determining their rates for work performed in the year
7 2005, the Court finds that the discounts should also be included for
8 the instant proposal.⁶ Plaintiff gives no explanation why these
9 discounts are no longer warranted. Therefore, these discounts should
10 remain in place.

11 ///

12 ///

13 ///

14 ///

15 **c. Additional Billing Rate Reduction**

16
17 Factors (2) and (3) stated in Kerr include (2) the novelty and
18 difficulty of the questions involved and (3) the skill requisite to
19 perform the legal service properly. These factors determine whether
20 Plaintiff's attorneys' billing rates should be reduced based on the
21 nature of the instant litigation.

22 "Billing rates 'should be established by reference to the fees
23 that private attorneys of an ability and reputation comparable to that
24 of prevailing counsel charge their paying clients for legal work of
25

26
27 ⁶ The same reasoning applies for Sneed even though she left in 2004. Because the
28 discount was included for Sneed in Plaintiff's initial proposal, this discount
should once again be included when determining her relevant 2004 rate for this
case.

1 similar complexity.'" Welch, 480 F. 3d at 946 (quoting Davis v. City
2 and County of San Francisco, 976 F.2d 1536, 1549 (9th Cir. 1992)).

3 "The burden is on the fee applicant to produce satisfactory evidence--
4 in addition to the attorney's own affidavits--that the requested rates
5 are in line with those prevailing in the community for similar services
6 by lawyers of reasonably comparable skill, experience and reputation."
7 Dang v. Cross, 422 F.3d 800, 814 (9th Cir. 2005).

8 In Welch, the plaintiff's attorney "satisfactorily bore her burden
9 of demonstrating that \$375 to \$400 per hour is in line with the
10 prevailing market rate by submitting two pieces of evidence: (1) rate
11 determinations in other cases litigated by the Kantor & Kantor firm
12 awarding fees at rates between \$300 and \$375 per hour; and (2)
13 declarations from comparable ERISA lawyers attesting that the market
14 sustains a rate above \$400 per hour." Id. at 947.

15 In Dang, "the district court considered the evidence produced by
16 the parties, including fee rates of other attorneys in similar
17 practices, awards in comparable cases, counsel's experience and
18 reputation level, and the market rates, as well as two additional Kerr
19 factors: the novelty/difficulty of the issues and the preclusion of
20 other work." Dang, 422 F.3d at 813-14. Utilizing these factors, the
21 court determined that an appropriate rate for the civil rights case was
22 \$400 per hour. Id. On appeal, the Ninth Circuit affirmed this
23 decision. Id.

24 Here, like the plaintiff's attorneys in Welch, Plaintiff's
25 attorneys have clearly shown that their typical billing rates match or
26 exceed those charged in the instant case. Plaintiff's attorneys have
27 supplied numerous declarations showing that, for example, Gonzalez
28

1 typically bills \$550 or more per hour to other clients. (Current
2 Gonzalez Decl. at 3.)

3 Plaintiff, however, has not met her burden of presenting
4 "satisfactory evidence--in addition to the attorney's own affidavits--
5 that the requested rates are in line with those prevailing in the
6 community for similar services by lawyers of reasonably comparable
7 skill, experience and reputation." Dang, 422 F.3d at 814 (emphasis
8 added). In Dang, the Ninth Circuit upheld a district court's reduction
9 of billing rates from \$550 to \$400, stating that \$400 per hour was a
10 reasonable rate for a highly-experienced civil rights attorney in Los
11 Angeles for a trial with decisions rendered in 2002 and 2003, only two
12 years before the decision in the instant case.

13 The Court finds that a maximum billing rate of \$400 per hour is
14 appropriate for the instant case. First, Plaintiff has the burden of
15 justifying proposed billing rates, and Plaintiff has not provided
16 adequate support for a \$550 per hour rate in this instance. This action
17 concerned a garden variety false arrest and illegal search. The Court
18 is aware of and has considered Gonzalez's and West's experience and
19 reputation, the typical market rates in the San Francisco and Los
20 Angeles areas, and the preclusion of other work while Gonzalez and West
21 were engaged in the instant case. However, the Court finds that no
22 complex or novel issues of law were presented in the instant case.
23 Further, Plaintiff has provided no support detailing why Plaintiff's
24 attorneys' typical billing rates, usually associated with complex civil
25 and criminal legal matters, are warranted for the instant case.
26 Plaintiff has provided little to no support that billing rates above
27 \$400 per hour are typical for experienced civil rights attorneys.
28

1 Finally, Plaintiff has provided no evidence that any of Plaintiff's
2 lawyers possessed any special expertise or experience in this area of
3 law.

4
5 **3. Conclusion**

6
7 The Court finds Plaintiff is entitled to the 2005 billing rates
8 requested in the instant motion. However, the discounts offered in the
9 initial motion will be applied. Furthermore, both West's and Gonzalez's
10 rate is reduced to \$400 per hour. Therefore, the Court finds the
11 following rates appropriate:

12
13 Arturo Gonzalez (partner): \$400 per hour
14 Derek West (partner): \$400 per hour
15 Geoffrey Graber (associate): \$300 per hour
16 Secret T. Sneed (associate): \$250 per hour
17 Pilarica Icasiano (paralegal): \$150 per hour
18 Mary Howell (paralegal): \$185 per hour

19
20 **D. Costs**

21
22 Plaintiff currently requests \$49,008 in costs. Defendant requests
23 that the costs be reduced to \$37,781. (Opp. 25-26; Reply 23-24.)

24 Defendant objects to Plaintiff's copying over 82,000 pages at
25 twenty-one cents per page, for a total charge of \$17,226. (Opp. 26.)
26 Defendant claims this is excessive, and requests the Court reduce this
27 charge to \$1,000, or 10,000 copies at ten cents per page. (Id.)
28

1 Defendant cites Ninth Circuit Rule 39-1.3 for the proposition that the
2 copies should be priced at no more than ten cents per page. (Id.) In
3 response to Defendant's Opposition, Plaintiff reduced her copying cost
4 request by \$5,000. (Reply 23.)

5 Defendant's argument is without merit. "Rule 39-1.3 addresses the
6 Clerk's authority to tax photocopies as costs; it does not bar
7 compensation for photocopies as part of an attorney's fee award."
8 Gomez v. Reinke, No. CV91-299-S-LMB, 2008 U.S. Dist. LEXIS 60547, at
9 *128 (D. Idaho Aug. 7, 2008). Furthermore, Defendant gives no other
10 reason why the number of pages copied is excessive. Finally, in
11 response to Defendant's Opposition, Plaintiff reduced the amount of
12 costs associated with copies by \$5,000, thus alleviating any concerns
13 regarding excessive copying.

14 Therefore, the Court finds \$49,008 in costs is appropriate.

15
16 **E. Initial Lodestar Calculation**

17
18 From the above findings, the initial lodestar calculation is as
19 follows:

21	Arturo Gonzalez:	234 hours x \$400 per hour = \$93,600
22	Derek West:	537 hours x \$400 per hour = \$214,800
23	Geoffrey Graber:	885 hours x \$300 per hour = \$265,500
24	Secret T. Sneed:	125 hours x \$250 per hour = \$31,250
25	Pilarica Icansiano:	274 hours x \$150 per hour = \$41,100
26	Mary Howell:	9 hours x \$185 per hour = \$1,665

1 Costs: \$49,008

2 Initial Lodestar Total: \$696,923

3
4 **F. Additional Circumstances**

5
6 **1. Background**

7
8 As stated above, factors that bear on the reasonableness of the
9 fee include (1) the time and labor required, (2) the novelty and
10 difficulty of the questions involved, (3) the skill requisite to
11 perform the legal service properly, (4) the preclusion of other
12 employment by the attorney due to acceptance of the case, (5) the
13 customary fee, (6) whether the fee is fixed or contingent, (7) time
14 limitations imposed by the client or the circumstances, (8) the amount
15 involved and the results obtained, (9) the experience, reputation, and
16 ability of the attorneys, (10) the "undesirability" of the case, (11)
17 the nature and length of the professional relationship with the client,
18 and (12) awards in similar cases. Kerr, 96 F.3d at 70.

19 Further, a court may also reduce an award for attorneys' fees for
20 unnecessarily duplicative work, if the court provides "a clear
21 explanation that [the Ninth Circuit] can review" as to why the hours
22 were truly unnecessary. Mendez, 540 F.3d at 1129-30 (quoting Moreno,
23 534 F.3d at 1113). In addition, the Ninth Circuit stated that the
24 court is "not only free but obligated to consider 'the results
25 obtained' by [Plaintiff], or the extent of [her] success.'" Id.
26 (quoting Morales, 96 F.3d at 364).

1 **2. Percentage Reduction Based on the Time and Labor**
2 **Required, the Novelty and Difficulty of Questions Involved,**
3 **and the Skill Requisite to Perform the Legal Service Properly**
4

5 Kerr factors (1) and (2) state that factors that bear on the
6 reasonableness of the fee include "(1) the time and labor required and
7 (2) the novelty and difficulty of the questions involved." 96 F.3d at
8 70. The Court may reduce an award for attorneys' fees if the case "was
9 overstaffed and hours are duplicated," or "if the hours expended are
10 deemed excessive or otherwise unnecessary." Chalmers v. Los Angeles,
11 796 F.2d 1205, 1210 (9th Cir. 1986).

12 Courts have drastically reduced the number of billable hours
13 allowed in fee requests when the requests are clearly excessive. See
14 e.g., Maldonado v. Houstoun, 256 F.3d 181 (3rd Cir. 2001); Hotel &
15 Restaurant Employers Local 25 v. JPR, Inc., 136 F.3d 794 (D.C. Cir.
16 1998). For example, in Maldonado, the plaintiff prevailed on a single
17 constitutional law claim. 256 F.3d at 183. Plaintiff's fee motion
18 included, among other things, a claim of 550 hours billed by ten
19 lawyers on a single-issue appeal for a total of over \$100,000. Id. at
20 182-83. The Third Circuit harshly criticized the excessive nature of
21 the request, stating that it was "stunned that over 550 hours are
22 claimed for researching, briefing, conferring, preparing a supplemental
23 appendix, and arguing the single constitutional issue." Id. at 186.
24 Therefore, the court drastically reduced the number of billable hours
25 for the plaintiff's attorneys. Id. at 188.

26 Defendant notes many individual instances that Defendant argues
27 demonstrate Plaintiff's overstaffing and duplicate work on this case.
28

1 (Opp. 11-22.) More specifically, Defendant argues that Plaintiff's
2 attorneys spent too much time on particular tasks and often
3 unnecessarily assigned multiple attorneys to perform simple tasks, thus
4 leading to excessively billed hours. (Id.)

5 In the instant case, Plaintiff's attorneys staffed six separate
6 employees, including two partners and two associates, for a total of
7 2,064 hours on a straightforward civil rights case. Like the billing
8 record in Maldonado, this billing record demonstrates extreme waste and
9 excessiveness. Here, the prominent claims of the case included garden
10 variety illegal arrest and search claims. The case involved no complex
11 or novel issues of law for an attorney with a background in civil
12 rights litigation. 2,064 hours is clearly in excess of the "time and
13 labor required" for a civil rights case involving claims as
14 straightforward as an illegal arrest and an illegal search.

15 Furthermore, the lack of any showing that Plaintiff's lawyers had
16 significant civil rights litigation background suggests that
17 significant time was spent by Plaintiff's attorneys simply learning the
18 applicable standards of civil rights litigation in preparation for the
19 case rather than efficiently litigating the case. This, of course, is
20 not to say that the Court is discouraging firms and attorneys from
21 undertaking cases outside their respective areas of expertise. Nor is
22 it to suggest that lawyers should not diligently prepare for cases
23 before them. However, this case demonstrates the gross waste that can
24 take place when reasonable steps are not taken by attorneys to reduce
25 inefficiency. Even if steps were taken by Morrison & Foerster to
26 reduce inefficiencies, Morrison & Foerster still chose to staff six
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28

1 separate employees on this case and allowed them to bill an
2 extraordinarily high number of hours, resulting in unnecessary waste.

3 The level of staffing by Morrison & Foerster is a level typically
4 seen in complex *commercial* litigation rather than in civil rights
5 actions. The instant case warranted no greater staffing levels than on
6 the order of a single lead attorney and a single support attorney.
7 Staffing two partners who each billed significant hours at very high
8 billing rates in addition to the support attorneys and paralegals was
9 simply unwarranted.

10 This fee request is exactly the type of request that has been
11 criticized in cases such as Maldonado and JPR. It is incomprehensible
12 that two partners and four other employees at Morrison & Foerster were
13 necessary to litigate this straightforward § 1983 claim. Therefore a
14 reduction in the fee award is warranted under Kerr factors (1) and (2):
15 the time and labor required; and the novelty and difficulty of the
16 questions involved.

17
18 **3. Percentage Reduction Based on Plaintiff's Success**

19
20 **a. Background**

21
22 After voluntarily dismissing separate claims, the trial court
23 considered the claims of: (1) false arrest of Plaintiff and Angel under
24 state law; (2) false arrest of Plaintiff and Angel under the Fourth
25 Amendment; (3) illegal search under the Fourth Amendment; (4) negligent
26 failure to train the police officers under state law; and (5)

1 allegations that the County was liable for the constitutional
2 violations under Monell.

3 Prior to trial, the district court granted summary judgement on
4 the state law negligence claim and the Monell claim. Thereafter, the
5 jury returned a verdict for Plaintiff on three claims: (1) her
6 constitutional claim of unreasonable search against Deputy Reyes; (2)
7 her constitutional claim of false arrest against Deputy Reyes; and (3)
8 her state law claim of false arrest against Deputy Reyes, the County of
9 San Bernardino, the San Bernardino Sheriff's Department and the City of
10 Hesperia. Mendez, 540 F.3d at 1125.

11 An affidavit from lead counsel explained that Morrison & Foerster
12 had spent 2,570 hours preparing for and trying her case, excluding
13 hours spent pursuing her unsuccessful Monell claim and the claims the
14 Mendez family voluntarily dismissed. Id.

15
16 **b. Analysis**

17
18 "The extent of a plaintiff's success is a crucial factor in
19 determining the proper amount of an award of attorney's fees under 42
20 U.S.C. § 1988." Dang, 422 F.3d at 812-13. "To determine fees in cases
21 of partial success, such as the action at issue here, a court must
22 consider (1) 'whether the plaintiff failed to prevail on claims that
23 were unrelated to the claims on which he succeeded,' and (2) 'whether
24 the plaintiff achieved a level of success that makes the hours
25 reasonably expended a satisfactory basis for making a fee award.'" Id.
26 at 813 (quoting Watson v. County of Riverside, 300 F.3d 1092, 1096 (9th
27 Cir. 2002)).

1 "The first step requires the district court to determine whether
2 the successful and unsuccessful claims were unrelated." Id. "Claims
3 are *unrelated* if the successful and unsuccessful claims are 'distinctly
4 different' *both* legally and factually." Id. (citation omitted).
5 "Claims are related, however, if they 'involve a common core of facts
6 or are based on related legal theories.'" Id. (citation omitted).
7 "The focus is on whether the unsuccessful and successful claims arose
8 out of the same course of conduct." Id. (citation omitted).

9 "If, however, the unsuccessful and successful claims are related,
10 then the court must apply the second part of the analysis, in which the
11 court evaluates the significance of the overall relief obtained by the
12 plaintiff in relation to the hours reasonably expended on the
13 litigation." Id. "When a plaintiff has achieved only partial or
14 limited success, the product of hours reasonably expended on the
15 litigation as a whole times a reasonable hourly rate may be an
16 excessive amount." Id. "Nonetheless, a plaintiff does not need to
17 receive all the relief requested in order to show excellent results
18 warranting the fully compensatory fee." Id.

19 The Ninth Circuit has upheld substantial fee reductions in cases
20 relatively similar to the instant case. For example, in Harris v.
21 Marhoefer, Bryan Harris brought a § 1983 action against multiple
22 defendants, including the County of San Bernardino, County Deputy
23 Sheriff John Marhoefer and ten unnamed deputy sheriffs based on claims
24 of excessive force following the stop of a vehicle in which he was a
25 passenger. 24 F.3d 16, 17 (9th Cir. 1994). The case went to trial
26 against five individual deputies and the County, and Harris sought
27 damages totaling \$5 million. Id.

28

1 The district court dismissed Harris' Monell claim against the
2 County. Id. Following a bifurcated trial, the jury returned a verdict
3 in favor of four of the deputy sheriffs, and against Deputy Alvarez on
4 the issue of liability." Id. The jury then returned a partial verdict
5 as to causation, finding that Alvarez caused damage to Harris, but
6 deadlocked as to the amount of damages. Id. at 17-18. Following a
7 mistrial on that issue, a second jury awarded Harris damages totaling
8 \$25,000.00. Id. at 18.

9 "The district court determined that Harris achieved only partial
10 success based upon the 'results obtained,' i.e., the amount of damages
11 recovered versus the amount sought, and the number of claims prevailed
12 upon versus the number of claims dismissed or decided in defendant's
13 favor," and therefore reduced attorneys' fees by 50%. Id. On appeal,
14 the Ninth Circuit affirmed, holding that "[t]he *degree* of the
15 plaintiff's success in relation to the other goals of the lawsuit is a
16 factor critical to the determination of the size of a reasonable fee,
17 not to eligibility for a fee award at all," and that "the district
18 court properly exercised its discretion because 'the relief, however
19 significant, is limited in comparison to the scope of the litigation as
20 a whole.'" Id. at 18-19 (quoting Hensley v. Eckert, 461 U.S. 421, 440
21 (1983)).

22 The Ninth Circuit has also vacated attorneys' fee awards on the
23 ground that the award was greatly disproportionate to a plaintiff's
24 monetary award. In McGinnis v. Kentucky Fried Chicken, a plaintiff
25 successfully sued his employer based on discrimination, obtaining an
26 award of \$234,000 inclusive of punitive damages and \$148,000 in
27 attorneys' fees. 51 F.3d 805 (9th Cir. 1994). A later finding
28

1 determined that punitive damages were not allowed, reducing the award
2 to \$34,000, but attorneys' fees were not adjusted. Id. at 808-10. The
3 Ninth Circuit vacated the trial court's ruling on attorneys' fees,
4 stating that "[l]awyers might reasonably spend \$148,000 worth of time
5 to win \$234,000[, b]ut no reasonable person would pay lawyers \$148,000
6 to win \$34,000." Id.

7 Here, the Parties agree that all claims are factually related, and
8 therefore step one of the analysis stated in Dang is satisfied.
9 Therefore, the Court must move to step two where the Court will
10 evaluate the "significance of the overall relief obtained by the
11 plaintiff in relation to the hours reasonably expended on the
12 litigation." Dang, 422 F.3d at 813.

13 On the one hand, Plaintiff was relatively successful in her
14 claims. Numerically, Plaintiff was successful on 60% of the claims
15 presented to the trial court, with Plaintiff losing on two of the five
16 claims at summary judgment, and succeeding on three of the five claims
17 at trial. Accordingly, Plaintiff was somewhat more successful with
18 regard to her individual claims than the plaintiff in Harris.
19 Furthermore, the claims on which Plaintiff prevailed are constitutional
20 claims that advance a public interest.

21 In addition, Plaintiff has already separated hours related to the
22 failed Monell claim. Therefore, Plaintiff was successful in three out
23 of the four claims presented to the trial court that are currently
24 under consideration for attorneys' fees.

25 Finally, Plaintiff's claims that were lost at the summary judgment
26 stage of litigation consumed considerably less time than the successful
27 claims presented to the jury. A review of Plaintiff's lawyers' billing
28

1 entries reveals that not a great deal of time was specifically budgeted
2 toward the claims lost at summary judgment, thus confirming that
3 Plaintiff's attorneys spent the largest portion of their time on the
4 successful claims.

5 These facts alone create a foundation that Morrison & Foerster
6 should receive some of their requested fees. On the other hand,
7 Plaintiff's recovery is extremely low compared to the amount sought.
8 Like in Harris, in which Harris sought damages totaling \$5 million but
9 only received damages totaling \$25,000.00, Plaintiff asked for a
10 "reasonable award" but received nominal damages in the amount of only
11 \$2 and punitive damages of \$5,000. \$5,002 is certainly significantly
12 less than the "reasonable amount" originally sought by Plaintiff.

13 Furthermore, while it is true that "civil rights suits should not
14 be evaluated *solely* on the amount of damages obtained," the amount is
15 still a significant factor illustrating Plaintiff's success. Mendez,
16 540 F.3d at 1128 (emphasis added). As stated in the words of McGinnis,
17 it is hard to believe that a reasonable person would pay lawyers
18 \$696,923 to win \$5,002. This factor warrants a significant reduction
19 in attorneys' fees.

20 Based on these considerations, while Plaintiff prevailed on
21 multiple claims at trial, Plaintiff's success is extremely limited. In
22 particular, the award of only \$5,002 in nominal and punitive damages
23 demonstrates Plaintiff's limited success. Therefore a significant
24 reduction in the award of attorneys' fees is warranted.

25
26 **4. Conclusion**
27
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1 As such, the Court finds: (1) Plaintiff was largely successful in
 2 the most significant of her claims (the constitutional claims); (2) the
 3 success in prevailing on constitutional claims likely provided a
 4 societal benefit; but (3) Plaintiff failed in two out of the five total
 5 claims considered by the court; (4) Plaintiff's award was considerably
 6 less than what she sought, despite the fact that her request was only
 7 for a "reasonable award;" (5) a reasonable person would not pay
 8 lawyers \$696,923 to win \$5,002; and (6) Morrison & Foerster staffed and
 9 treated this case as a large-scale commercial case rather than as a
 10 straightforward civil rights case.

11 In light of the above findings, the Court finds that the initial
 12 lodestar amount should be reduced by 75%.

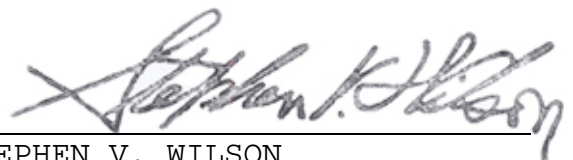
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IV. CONCLUSION

For the reasons outlined above, the Court finds the initial
 lodestar of \$696,923 should be reduced by 75%. As such, the Court
 GRANTS Plaintiff's Motion for Attorney's Fees, and awards Plaintiff
 fees in the amount of \$174,230.

IT IS SO ORDERED.

DATED: 7/1/09



STEPHEN V. WILSON
 UNITED STATES DISTRICT JUDGE