UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOHN YOUNG, Plaintiff, v. ARON WOLFE and ROBERTO OCHOA, Defendants.	CV 07-03190 RSWL-AJWx **ORDER Re: PLAINTIFF'S MOTION FOR ATTORNEY'S FEES** [409]

I. INTRODUCTION

This Action arises from Plaintiff John Young's ("Plaintiff") claims of excessive force and malicious prosecution against Defendants Aron Wolfe ("Defendant Wolfe") and Roberto Ochoa ("Defendant Ochoa") (collectively, "Defendants"). On March 24, 2017, a jury found in favor of Plaintiff against Defendant Wolfe on Plaintiff's excessive force claim and awarded Plaintiff $350,000 in damages. ECF No. 381. Currently before the Court is Plaintiff's Motion for Attorney's Fees ("Motion"). Pl.'s Mot. for Att'y's Fees ("Mot."),

ECF No. 409. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion, but reduces the hourly rates and total hours reasonably expended.

II. BACKGROUND

A. Factual Background

On June 27, 2017, this Court issued a ruling on Defendant Wolfe's Motion for Qualified Immunity and to Alter or Amend the Judgment, or in the Alternative, a Motion for a New Trial. Order, ECF No. 420. The Court went into the factual background of the case in its Order, and the parties may refer to that Order for a factual synopsis of the case. Id. at 2:2-21.

B. Procedural Background

This Action began in 2007. After two jury trials in 2009 and 2013 with verdicts that were overturned and several motions for summary judgment, a jury trial commenced on March 21, 2017 on Plaintiff's malicious prosecution and excessive force claims against Defendants. Minutes of Jury Trial, ECF No. 377. At the close of Plaintiff's case-in-chief, Defendants made a motion pursuant to Federal Rules of Civil Procedure ("FRCP" or "Rule") 50(a) for judgment as a matter of law as to Plaintiff's malicious prosecution claim, which this Court granted. Minutes of Jury Trial, ECF No. 380. On March 24, 2017, the jury rendered a verdict in favor of Plaintiff against Defendant Wolfe

as to Plaintiff's excessive force claim and against Plaintiff and for Defendant Ochoa as to Plaintiff's excessive force claim. Minutes of Jury Trial, ECF No. 381. The jury awarded Plaintiff $350,000 in damages. ECF No. 387. On March 24, 2017, Defendants brought a FRCP 50(a) motion for judgment as a matter of law as to Plaintiff's claim for punitive damages, which this Court granted. Minutes of Jury Trial, ECF No. 381. On June 27, 2017, this Court denied Defendant Wolfe's Motion for Qualified Immunity as Judgment as a Matter of Law, or in the Alternative, a Motion for a New Trial. ECF No. 420. On May 15, 2017, Plaintiff brought the instant Motion for Attorney's Fees. ECF No. 409. Defendants filed their Opposition to this Motion on May 30, 2017, and Plaintiff's Reply followed on June 7, 2017. ECF Nos. 412, 416.

III. DISCUSSION

A. Legal Standard

42 U.S.C. § 1988 states that the court, in its discretion, may allow the prevailing party to recover reasonable attorney's fees as part of the costs in any action or proceeding to enforce a § 1983 provision. 42 U.S.C. § 1988(b).

Reasonable attorney's fees under § 1988 can be determined by calculating the "lodestar," by multiplying the number of hours reasonably spent by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). The fee applicant bears the burden of

documenting the appropriate hours and must submit evidence in support of the hours worked. Gates v. Gomez, 60 F.3d 525, 534 (9th Cir. 1995)(internal citation omitted). There is a presumption that the lodestar calculation represents a reasonable fee. Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). Reasonable attorney's fees under § 1988 are to be calculated according to the prevailing market rates in the relevant community, and such rates should be in line with similar services by lawyers of reasonably comparable skill, experience, and reputation. Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984).

In cases where a plaintiff is only partially successful, district courts apply a two-part analysis. Hensley, 461 U.S. at 434-35; Thorne v. City of El Segundo, 802 F.2d 1131, 1141 (9th Cir. 1986). First, the court asks whether the unsuccessful claims were related to the plaintiff's successful claims. Thorne, 802 F.2d at 1141. The test for relatedness is not precise, but related claims will involve "a common core of facts" or will be based on related legal theories, while unrelated claims will be "distinctly different." Id. (internal citation omitted). Some courts look to whether the claims seek relief for essentially the same course of conduct. Id. If the successful and unsuccessful claims are unrelated, a plaintiff may not be compensated for time expended on unsuccessful

claims. Id. However, if the successful and unsuccessful claims are related, courts must then evaluate the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation. Id. A reduced fee award may be appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole. Hensley, 461 U.S. at 440.

Decisions like Hensley have emphasized that "the district court has discretion in determining the amount of a fee award." Id. at 437. This is appropriate because of the district court's superior understanding of the litigation. Id.

B. Analysis

1. Defendants' Objections to Carol Sobel's Declaration

Defendants object to several paragraphs of attorney Carol Sobel's Declaration ("Sobel Declaration"), which was provided by Plaintiff in support of his requested hourly rate. Defendants object to paragraphs 11, 12, 13, 27, 31, 33, 34, 35, 36, 37, 38, 39, 40, and 41. See generally Defs.' Obj. to Sobel Decl., ECF No. 412-16. Defendants object on largely redundant grounds: relevance and improper expert opinion, and one objection on the basis of lack of personal knowledge. Id.

While many of Defendants' objections are boilerplate and "devoid of any specific argument or

analysis as to why any particular exhibit or assertion in a declaration should be excluded," United States v. HVI Cat Canyon, Inc., 213 F. Supp. 3d 1249, 1257 (C.D. Cal. 2016), the Court **OVERRULES as MOOT** all of Defendants' objections as to paragraphs 11, 12, 13, 27, 31, 33, 34, 35, 36, 37, 38, 39, 40, and 41 of the Sobel Declaration because the Court does not rely on any of the specific portions of the Sobel Declaration to which Defendants object.

2. Plaintiff is Entitled to Attorney's Fees at Reduced Hourly Rates and Reduced Hours Expended

First, the Court must determine the lodestar figure, which is the reasonable hourly rate multiplied by the reasonable hours expended. Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1110 (9th Cir. 2014). Then, the Court must determine if for any reason the lodestar figure should be adjusted. Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992). In Kerr, the Ninth Circuit found the following factors important in determining whether attorney's fees are reasonable: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by

the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Id.

a. *Reasonable Hourly Rates*

"Fee applicants have the burden of producing evidence that their requested fees are 'in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" Chaudhry, 751 F.3d at 1110 (quoting Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980 (9th Cir. 2008)). The relevant community is the forum in which the district court sits. Id. The district court has discretion in determining which fees are reasonable. Id.

Lead counsel, Jeff Dominic Price ("Mr. Price") requests an hourly rate of $775. Mot. 12:5. Mr. Price argues that his rate is within the range of market rates routinely awarded to civil rights counsel of comparable skill, experience, and reputation within this District and provides the Court with the Sobel Declaration to support his position. Id. at 9:14-17. Defendants argue that Plaintiff's reliance on the Sobel Declaration is misguided because the cases she cites to in support of her opinion are factually and legally distinguishable. Defendants request an hourly rate of

$250 for Mr. Price. Defs.' Opp'n to Pl.'s Mot. for Att'y's Fees ("Opp'n") 6:6-16, 9:9-12.

In Cervantes v. Cnty of Los Angeles, No. 12-09889 DDP (MRWx), 2016 WL 756456, at *3-4 (C.D. Cal. Feb. 24, 2016), the court found that $700 was an appropriate hourly rate for lead counsel in a § 1983 excessive force case. The plaintiff alleged constitutional violations related to plaintiff's initial detention by police as well as a claim of malicious prosecution. However, lead counsel in Cervantes was admitted to the California bar in 1978, a full ten years before Mr. Price was admitted to the Oregon bar in 1988 (Mr. Price was admitted to the California bar in 1993). Decl. of Jeff Price ("Price Decl."), ¶¶ 1-2, ECF No. 409-2. Additionally, the court there found plaintiff's counsel satisfied his burden of establishing his rate was in line with the rates charged by other attorneys with comparable skill, experience, and reputation; this is something that is lacking in the present case. Cervantes, 2016 WL 756456, at *3.

The Sobel Declaration attached several opinions of various cases and attorney's fees awards, none of which are compelling to this Court's analysis. Exhibit 2 to the Sobel Declaration is a Los Angeles Superior Court case where the court awarded plaintiff's counsel an hourly rate of $790. Decl. of Carol Sobel ("Sobel Decl."), Ex. 2, ECF No. 409-7. However, the opinion said nothing about how it came to that rate, the

attorney's years of experience, area of expertise, and any other factors the court used in determining the reasonable rate. Exhibit 3 to the Sobel Declaration is an approval of a wage and hour class-action settlement by the Los Angeles Superior Court where the parties agreed to a range of rates for attorneys from $350-$795. This was not a civil rights action and the court there did not go into its reasoning for the rates that it found were appropriate. Sobel Decl., Ex. 3, ECF No. 409-8. While in her declaration Sobel goes into the number of years some of the attorneys she compares to Mr. Price have been licensed to practice, there is no way for this Court to determine what factors were used by the various courts in determining their reasonable rates. Sobel Decl. 13:26-14:21. Additionally, it is not clear if the parties in the class-action settlement agreed to that amount or if the court made its own findings. Exhibit 4 to the Sobel Declaration is similarly not a civil rights action. Sobel Decl., Ex. 4, ECF No. 409-9.

Exhibit 5 to the Sobel Declaration is an order awarding attorney's fees in this District where the court found that $375, $550, and $750 per hour were appropriate rates for three attorneys after they provided the court with declarations detailing their skills and experience as civil rights attorneys and past fee awards they received. Sobel Decl., Ex. 5, ECF No. 409-10. Here, Plaintiff did not provide any fee

awards for any of the three attorneys seeking their fees. Exhibit 6 is nothing more than a declaration Sobel provided in a different district court case; however there is no order regarding the actual attorney's fees award. Sobel Decl., Ex. 6, ECF No. 409-11. Exhibit 7 of the Sobel Declaration is a Ninth Circuit opinion regarding attorney's fees; however the case was a class-action federal antitrust case. Sobel Decl., Ex. 7, ECF No. 409-12. Exhibit 8 is an order from this District granting rates of $300, $325, and $725 per hour to three attorneys. However, this case was not a civil rights trial, but a Federal Torts Claim Act trial. Sobel Decl., Ex. 8, ECF No. 409-13. None of the exhibits attached to Sobel's Declaration support the rate Mr. Price, Mr. Corey Carter ("Mr. Carter"), and Ms. Mary McCaffrey ("Ms. McCaffrey") seek. While they show that attorneys have been awarded rates similar to those sought in the instant case, the cases are not factually similar or even in the same area of law for this Court to conclude they support the rates Plaintiff seeks. Moreover, Sobel's Declaration seems to add commentary to these orders based on her knowledge of the attorneys involved to justify the rates that were awarded; however the orders themselves do not provide the same support.

The Court is also in receipt of and has reviewed Defendants' expert, Mr. Gerald Knapton's Declaration on his opinions regarding reasonable hourly rates for Mr.

Price, Mr. Carter, and Ms. McCaffrey. See Decl. of Gerald Knapton ("Knapton Decl."), ECF No. 412-13. While Mr. Knapton's opinions are well-taken, the Court finds that $250 per hour for Mr. Price is too low an hourly rate given his skill, his experience, and other fee awards that have been given in this District in civil rights cases. In the instant case, the Real Report 2016 does not accurately reflect what an attorney with Mr. Price's experience should be paid. Therefore, the Court declines to rely on Mr. Knapton's opinions.

Given the lack of reliable evidence Plaintiff has provided to support a reasonable hourly rate, the Court finds that $525 is a reasonable hourly rate for Mr. Price. Considering Mr. Price's experience and expertise, and the fact that Plaintiff's suggested rate of $775 is not supported, $525 is more than reasonable as an hourly rate. Additionally, Mr. Price provided not one fee award from any of his prior cases to justify such a high hourly rate request. While the Court is aware of the number of years of Mr. Price's legal experience, the Court is unaware of how many civil rights cases he has taken to trial, his successes and attorney's fees awards in those cases, and other factors that would assist the Court in determining an appropriate hourly rate. It is difficult for the Court to reconcile Plaintiff's request with the lack of evidence that has been provided. In Ingram v. City of

San Bernardino, No. EDCV 05-925-VAP (SGLx), 2007 WL 5030225, at *7 (C.D. Cal. Aug. 27, 2007), the court found that $500 was a reasonable hourly rate in an excessive force case where the jury awarded the plaintiff over $800,000. Plaintiff's counsel in that case was admitted to practice in California in 1988. Here, Mr. Price was admitted to practice in Oregon in 1988 and in California in 1993. While Ingram was decided in 2007, $525 per hour adequately accounts for any change in rates over the years.

Additionally, in Contreras v. City of Los Angeles, No. 2:11-cv-1480-SVW-SH, 2013 WL 1296763, at *1-3 (C.D. Cal. Mar. 28, 2013), Judge Wilson awarded plaintiff's counsel a rate of $675 in an excessive force case where a jury awarded the plaintiff $4.5 million dollars for the present value of future costs of medical care and $1.225 million dollars for past and future physical care. Judge Wilson noted that plaintiff's counsel ran a relatively small firm and in a prior trial in the Northern District, he was awarded $525 per hour. Id. Here again, the Court does not have any evidence of Mr. Price's prior awards because none were provided. Moreover, the jury award in this case was much lower than the two cases above and Mr. Price is a solo practitioner. Additionally, there is no indication that Mr. Price was unable to take on other cases during the pendency of this litigation as is evident in Plaintiff's *Ex Parte* Application to this Court to

extend the time to file the instant Motion. In that Application, Mr. Price indicated he needed an extension because he was preparing for another trial in this District. See Pl.'s *Ex Parte* App., ECF No. 405. Based on other awards in similar cases in this District, $525 is a reasonable hourly rate.

Associate attorney, Mr. Carter requests a rate of $495 per hour. Mot. 12:6-7. The court in Cervantes awarded an associate attorney $400 per hour because it determined that the attorney there practiced primarily criminal defense and did not have experience in civil rights cases. Cervantes, 2016 WL 756456 at *3. Here, Mr. Carter has been licensed to practice law for six years and from his resume it appears Mr. Carter has not practiced in the area of civil rights at all but has practiced in bankruptcy, contracts, and insurance law. Decl. of Corey Carter ("Carter Decl."), Ex. D, ECF No. 409-17. Given that Mr. Carter has only 6 years of experience and no experience with civil rights cases, $325 is an appropriate hourly rate in this case.

Associate attorney Ms. McCaffrey requests a rate of $295 per hour. Mot. 12:7-8. In Cervantes, the court awarded a rate of $275 per hour to an attorney with two years of experience who was participating in his first federal trial. Cervantes, 2016 WL 756456 at *3. Ms. McCaffrey has only six months of experience, having graduated from law school and passed the bar in 2016. The Court was also given scant evidence on her

experience, presumably because Ms. McCaffrey does not have much legal experience given her recent admission to the California bar. Given all of these factors, $175 is an appropriate hourly rate for her role in this case.

b. *Reasonable Hours Expended*

Mr. Price requests compensation for a total of 843.8 hours, Mr. Carter requests compensation for a total of 52.9 hours, and Ms. McCaffrey requests compensation for a total of 206.4 hours. Mot. 12:4-7. Plaintiff argues he has provided detailed billing records and is entitled to compensation for all time reasonably expended on this litigation. Id. at 11:3-28. Defendants argue the number of hours Plaintiff claims is not reasonable because there are hours that were not reasonably expended in pursuit of the result achieved including undated entries, block-billed entries, insufficiently documented entries, hours for Plaintiff's criminal proceedings, and hours for unrelated and unsuccessful claims. Opp'n 10:11-18:19. Plaintiff argues there is no block-billing, reconstruction of billing entries is appropriate and permitted when necessary as is in the instant case, and Plaintiff's success in the case achieved a substantial good for the public interest. Pl.'s Reply to Mot. for Att'y's Fees ("Reply") 8:7-10:10.

i. *Entries Without a Date*

Defendants argue that Plaintiff has 59.8 hours that

are undated and insufficiently documented, and they request a 30% reduction in these hours because it is difficult to determine their reasonableness. Opp'n 13:10-13.

A district court has "wide latitude in determining the number of hours that were reasonably expended by the prevailing lawyers." Sorenson v. Mink, 239 F.3d 1140, 1147 (9th Cir. 2001). The fee applicant "bears the burden of documenting the appropriate hours expended in litigation and must submit evidence in support of hours worked." Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir. 1992). Therefore, "where the documentation of hours is inadequate, the district court may reduce accordingly." Sorenson, 239 F.3d at 1147 (internal quotation marks and citation omitted). Further, when faced with a massive fee application, a district court "has authority to make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure," and a court "is not required to set forth an hour-by-hour analysis of the fee request." Gates, 987 F.2d at 1400; Sorenson, 239 F.3d at 1146. However, the court must give a "concise but clear" explanation for doing so. Gates, 987 F.2d at 1399.

In this case, there are a significant number of entries that do not include a date, and further, most entries provided are exceptionally vague. See Price Decl., Ex. B, ECF No. 409-4. Given the vast nature of

this litigation, initially beginning ten years ago in 2007 with twelve claims against sixteen defendants, and given the need to award fees based only upon related claims, the documentation provided is insufficient. The billing entries are not "sufficient[ly] detail[ed] that a neutral judge can make a fair evaluation of the time expended." Hensley, 461 U.S. at 441 (Burger, J., concurring). Undated entries such as "TC client" (4 hours and 11 minutes), "Trial" (10 hours), and "Prepare for trial" (4 hours) along with at least forty other undated entries offer no assistance to the Court in determining when the work was done, for what trial or dispositive motion, and as to which Defendant. This problem is only exacerbated by the fact that the entries are listed in no chronological order, with some entries dated skipping about from year to year. As a result, it is nearly impossible to match the hours recorded by Mr. Price with what happened during the entirety of this litigation. The Court, after thoroughly having reviewed each of Mr. Price's undated entries, was able to account for at least 57 hours that were undated.[1] The Court finds it appropriate to reduce the undated hours by a minimum of 30%. A 30% reduction is appropriate and will account for possible incorrect and inflated entries along with possible duplicative entries. Therefore, 17.1 hours will be reduced.

[1] 57 hours and 45 minutes was the actual total amount of undated hours.

ii. *Block-Billing*

Defendants argue for a 30% reduction of the 330.3 hours Defendants claim are improperly block-billed because it does not allow for a determination of whether the fees are reasonable and block-billed hours tend to inflate overall legal fees. Opp'n 14:1-3. Plaintiff argues there are no block-billed hours because the entries make clear what tasks were completed and do not make it difficult to determine if the hours were reasonable. Reply 9:1-8.

Block-billing is the "time-keeping method by which each lawyer . . . enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks." Welch v. Metro. Life Ins. Co., 480 F.3d 942, 945 n.2 (9th Cir. 2007)(internal quotation marks and citation omitted). Courts may reduce block-billed hours because block-billing "makes it more difficult to determine how much time was spent on particular activities." Id. at 948. Courts generally impose a 5% to 20% reduction for hours block-billed. Pierce v. Cnty of Orange, 905 F. Supp. 2d 1017, 1031 (C.D. Cal. 2012); see Welch, 480 F.3d at 948 (finding a 20% reduction was appropriate for block-billed hours); Robinson v. Plourde, 717 F. Supp. 2d 1092, 1100 (D. Haw. 2010)(reducing block-billed hours by 15%). Even where entries are sufficiently detailed to give courts an accurate sense of the task performed, block-billing runs the risk that the time spent was

inflated, even if only slightly, and does not allow a court to precisely determine whether the time devoted to each individual task was reasonable. Pierce, 905 F. Supp. 2d at 1031-32.

In this case, Mr. Price has a two-fold problem with some of his billing entries: (1) they are large block-billed time periods and (2) they insufficiently describe the tasks performed. Mr. Price has block-billed at least 330 hours, not including trial days where at some entries Mr. Price billed 14, 18, and 19 hours for one trial day or entries where he billed over 8 hours to "Prep for trial" with no further description of the tasks he performed. Price Decl., Ex. B, ECF No. 409-4. While this Court need not go into the specifics, it is troubling that Mr. Price billed 19 hours for "Trial and trial prep," when this could have easily been split into more than one entry.

Additionally, this Court presided over the three trials that have taken place and the Court can definitively say that no trial day exceeded 8-9 hours (including 1-1 ½ hours for lunch breaks), yet Mr. Price has numerous entries for trial days exceeding 10-11 hours for the day, which leads to the conclusion that Mr. Price has included time spent on other tasks. However, there is no way for the Court to determine what those tasks were and how much time was spent on them. Moreover, although Mr. Price titles each entry with a task, such tasks are not detailed enough to give

the Court an accurate sense of the work performed. For example, Mr. Price has three entries where he billed over ten hours each labeled "Prepare opening brief" and on the following day he billed over eights hours to "Finalize opening brief." Such entries, along with numerous others, certainly do not allow the Court to evaluate whether the time spent was inflated, and accordingly, there runs the risk that such time was inflated. These entries block out time frames as large as 19 hours while offering little information as to the work actually being done. For this reason, the Court finds it appropriate to reduce Mr. Price's block-billed hours by 20%. Therefore, 66 hours will be reduced.

As to Ms. McCaffrey's billing, there is a concern as to block-billing and insufficiently described billing entries as well. Ms. McCaffrey included entries billing 5.46 hours for "Martinez testimony," 6.32 hours for "Ochoa charts," and 8.07 and 9.44 hours for "MIL development." The Court was able to locate at least 40 hours that were not only block-billed but also were insufficiently described. The Court is unable to determine what, if any, of these are inflated or are hours billed for several tasks that were not clearly described. The Court finds a 20% reduction of Ms. McCaffrey's block-billed hours appropriate. Therefore, 8 hours will be reduced.

iii. *Reconstructed Hours*

Defendants also request a 30% reduction of the

149.9 hours they argue were "reconstructed" hours, which are an "unreviewable guess" of the actual time Mr. Price spent on a matter. Opp'n 13:17-27. Plaintiff counters by arguing that reconstructed hours are permitted when necessary and he has submitted a declaration evidencing good faith efforts for the hours that were reconstructed. Reply 9:9-14.

While a court may not outright deny a motion for attorney's fees because an attorney has failed to maintain adequate records or because the application is not based on "contemporaneous records," courts may reduce fees to a reasonable amount. Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1121 (9th Cir. 2000). While Plaintiff is correct that hours may not be reduced completely because they are reconstructed, courts strongly prefer contemporaneous time keeping. However, "a court may rely on reconstructed time records so long as the court concludes that the records are accurate and the time billed does not appear to be inflated." Defenbaugh v. JBC & Associates, Inc., No. C-03-0651 JCS, 2004 WL 1874978, at *12 (N.D. Cal. Aug. 10, 2004)(citing United States v. $12,248 U.S. Currency, 957 F.2d 1513, 1521 (9th Cir. 1992)).

Here, the Court has great concerns over the reconstructed hours Plaintiff has submitted, 148 hours and 18 minutes. Of particular concern are at least ten entries that were reconstructed where Mr. Price billed more than 10 hours each. This included one on July 23,

2011 labeled “Prepare opening brief” (10 hours and 40 minutes), a second on July 24, 2011 labeled “Prepare opening brief” (10 hours and 40 minutes), and a third on July 25, 2011 labeled “Prepare opening brief” (13 hours and 40 minutes). Mr. Price does this similar billing pattern with several other entries raising a concern of possible inflation. The Court finds it appropriate to reduce the reconstructed hours by 25% to account for possible inflation. Therefore, 37 hours will be reduced.

iv. *Unrelated and Unsuccessful Claims*

Defendants request not only a reduction of 16.2 hours from Mr. Price’s total hours for unrelated and unsuccessful claims, they also request an overall 50% reduction in the total lodestar figure because of what they argue is Plaintiff’s limited success as a whole given the entirety of the litigation. Opp’n 14:25-28. Plaintiff was only successful on his excessive force claim against one Defendant and also pursued numerous unmeritorious claims against individuals who should not have been part of the litigation. Id. at 16:19-20, 18:4-6, 18:21-23. Plaintiff argues that he achieved an excellent result, mot. 12:8-10, and the result achieved a substantial good for the public interest. Reply 9:15-16. Additionally, Plaintiff argues there are no unrelated claims for which he did not prevail because all of Plaintiff’s claims arise from the incident of excessive force against him. Mot. 13:7-10, 14:12-13.

Where a plaintiff brings multiple claims and is only partially successful, district courts must apply a two-part analysis to determine which claims are compensable. Thorne, 802 F.2d at 1141. First, the court asks whether the unsuccessful claims were related to the plaintiff's successful claims. Id. Related claims will involve a same common core of facts or be based on related legal theories. Id. If the successful and unsuccessful claims are unrelated, the fee may not include time expended on the unsuccessful claims. Id. (citing Hensley, 461 U.S. at 434-35). However, if the unsuccessful and successful claims are related, the court must then evaluate the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation. Id. (citing Hensley, 461 U.S. at 435). If the relief is limited in comparison to the scope of the litigation as a whole, a reduced fee may be appropriate. Hensley, 461 U.S. at 435.

In this case, Plaintiff's malicious prosecution claims are unrelated to the excessive force claim on which Plaintiff prevailed. These claims turned on the notion that Defendants had some role in the decision to file criminal charges against Plaintiff following the incident. This involves a completely separate set of facts from the details of the physical confrontation at issue in the excessive force claim. To prevail on his malicious prosecution claim, Plaintiff needed to prove

that Defendants caused Plaintiff to be prosecuted without probable cause and that Plaintiff was damaged as a result. Pl.'s Memo. Cont. Fact & Law 3:18-21, ECF No. 92. Plaintiff's key facts for this claim were that Defendants falsified police reports accounting for the incident to shield themselves from criminal and civil liability, Defendant Christina Martinez ("Martinez") falsely stated that she was injured during the attack in order to initiate criminal charges, and Defendants testified falsely in court. Id. at 5:1-14. These facts are distinct from those relevant to the excessive force claim that include how many times Defendant Wolfe hit Plaintiff, whether Plaintiff was injured in the showers, and whether Plaintiff was wandering the module unsupervised. Further, Plaintiff relied on a distinct legal theory of conspiracy to advance the malicious prosecution claim, separate from the excessive force theory.

Plaintiff was unsuccessful in his malicious prosecution claim and it is unrelated to the judgment Plaintiff received on his excessive force claim against Defendant Wolfe. Evidence concerning whether Defendants caused Plaintiff to be criminally charged was not material and relevant to evidence of whether Defendants used excessive force against Plaintiff. Thorne, 802 F.2d 1131, 1141 (9th Cir. 1986).

Even if the Court were to assume that the claims are related, Plaintiff still fails to satisfy the

second prong of the analysis. Plaintiff's overall relief obtained is not significant in comparison to the scope of the litigation as a whole, and therefore a reduced fee is appropriate. Hensley, 461 U.S. at 431; Thorne, 802 F.3d at 1141. Plaintiff's initial Complaint alleged twelve claims against sixteen defendants. Plaintiff was successful on one claim against one Defendant. The fact that a party is successful on one out of several claims is a factor that should be considered when determining reasonable attorney's fees. McCown v. City of Fontana, 565 F.3d 1097, 1103 (9th Cir. 2009).

Similarly, Plaintiff's supervisory and Monell claims are unrelated to the excessive force claim. These claims hinged on Plaintiff proving that the Los Angeles County Sheriff's Department had a pattern and practice of deliberate indifference to the constitutional rights of Plaintiff and that this policy caused damage to Plaintiff. Pl.'s Memo. Cont. Fact & Law 3:21-25. Plaintiff's key facts for this claim were that the Los Angeles County Sheriff's Department had a pattern and practice of permitting the beating of inmates, of writing false police reports to cover beatings, of submitting false reports to the District Attorney to initiate the filing of false and malicious charges against inmates, and of permitting deputies to testify falsely. Id. at 5:1-14. These facts and theories are also distinct from those advanced for the

excessive force claim that focused on the specific events of the day of the incident and Defendant Wolfe's use of force against Plaintiff. Accordingly, time spent on the supervisory and Monell claims are unrelated, and the time spent advancing them need not be compensated.

Claims of excessive force against Defendants Wolfe, Ochoa, Martinez, and Michael Smith ("Smith") are related because they turn on the same facts regarding the physical confrontation and the same legal theories on excessive force. However, because the relief obtained by Plaintiff was extremely limited, despite Plaintiff's argument that it was substantial, and because Plaintiff prevailed on only a single claim against a single defendant, the Court is justified in reducing the fee award. This is especially the case because prior to the jury trial, Plaintiff voluntarily made the decision to dismiss Defendants Martinez and Smith from the case.

The Ninth Circuit in McCown held that attorney's fees awards under § 1988 "must be adjusted downward where the plaintiff has obtained limited success on his pleaded claims, and the result does not confer a meaningful public benefit." Id. This follows Hensley's ruling that "[a] reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." Id.; (quoting Hensley, 461 U.S. at 440).

Plaintiff argues that he obtained an excellent result that conferred a public benefit because "[c]ivil rights awards by their nature contribute significantly to the deterrence of civil rights violations in the future." Mot. 9:15-20 (internal citation omitted). However, Plaintiff is incorrect that an award of any amount is an automatic finding of an excellent result. While civil rights awards may confer a public benefit, this is strongly dependent on the facts of the case and the harm alleged. The Ninth Circuit has held that a public benefit must have enough of an impact to the public to justify awarding full attorney's fees despite the limited success of a plaintiff. McCown, 565 F.3d at 1105. Courts "should consider whether the plaintiff has affected a change in policy or a deterrent to widespread civil rights violations." Id.

In the present case, it is difficult for Plaintiff to successfully argue that his award "has affected a change in policy or a deterrent to widespread civil rights violations" when Plaintiff was only successful on one out of twelve claims against one out of sixteen Defendants at a third re-trial. Id. Moreover, the Court must look to the reasonableness of the attorney's fees award in light of some of the Kerr factors. 526 F.2d at 70. Plaintiff has failed to establish that this case had such novel and/or difficult questions that it requires such a substantial attorney's fees award in light of the jury award. While this case has

been litigated from 2007 with various appeals to the Ninth Circuit, there is nothing in the record to indicate that this case took over Mr. Price's practice such that he spent more time on it than other cases to the point he was unable to take on other matters. Other than the appeals, this was a straightforward case where the trials included repeated witness testimony and the presentation of the same legal theories. Plaintiff has failed to show the Court that this case, while prolonged for several years, raised difficult legal theories warranting such a high award given the jury's damages award. Given the experience, reputation, and ability of Mr. Price along with the results obtained, an overall reduction in the lodestar figure is appropriate. The Court cannot separate the billing entries to determine which entries were for Plaintiff's one successful claim against Defendant Wolfe. Accordingly, the lodestar figure is reduced 45% to account for Plaintiff's limited success in prevailing on one claim against one Defendant.

v. *Criminal Proceedings*

Defendants request that the 33.2 hours Mr. Price expended in defending Plaintiff in the criminal action be reduced from the overall fee award because: (1) the charges stemmed from allegations of battery on several officers, not just Defendant Wolfe, (2) Plaintiff was acquitted of the charges, (3) Plaintiff was unsuccessful in his malicious prosecution claim against

all Defendants, and (4) the criminal proceedings took place years before the instant litigation and were therefore not necessary and were not time expended in pursuit of the ultimate results achieved. Opp'n 10:20-11:12. Plaintiff argues he is entitled to compensation for the criminal proceedings because the criminal proceedings were a necessary prerequisite to resolve the civil rights claims. Mot. 15:1-7.

The Ninth Circuit has held that "attorney services in prior court proceedings that are a necessary prerequisite to resolve a federal civil rights action can be awarded under § 1988." Beltran Rosas v. Cnty of San Bernadino, 260 F. Supp. 2d 990, 994 (C.D. Cal. 2003). However, the Ninth Circuit has not directly addressed the issue of whether § 1988 allows for an award of attorney's fees for services defending state criminal proceedings. Id. Case law supports that it is not necessary to compensate attorneys for time spent on criminal proceedings under § 1988. Marshall v. Kirby, No. 3:07-cv-00222-RAM, 2010 WL 4923486, at *7 (D. Nev. Nov. 29, 2010)("attorney's fees incurred in connection with [the] [p]laintiff's underlying criminal matter are not allowed [to be compensated under § 1988]"); Fletcher v. O'Donnell, 729 F. Supp. 422, 430 (E.D. Penn. 1990)("[s]ince [the] [p]laintiff's criminal defense was not an action within the scope of § 1988, [the court] find[s] that the hours devoted to it are not compensable as such"); Greer v. Holt, 718 F.2d 206,

208 (6th Cir. 1983)(holding that the term "proceeding" within the § 1988 statute itself cannot be construed broadly enough to encompass criminal proceedings, and therefore attorney's fees could not be awarded for criminal defense work).

Because the Ninth Circuit has not yet formally addressed the issue of awarding attorney's fees for prior criminal proceedings, the decision to do so remains within the discretion of the district court. Here, the facts of the case weigh against granting such attorney's fees. The criminal proceedings in the instant case began and concluded years before the civil action was filed (the felony complaint was filed in 2004 and this Action was filed in 2007), and so there is no indication that Mr. Price's representation of Plaintiff in the criminal proceedings was in an effort to advance Plaintiff's civil rights claims. Further, the criminal charges for assault against a peace officer were brought with respect to a number of officers besides Defendant Wolfe, and Plaintiff was ultimately unsuccessful in his malicious prosecution claims. As a result, even if Plaintiff had been found guilty of battery against a number of the other officers, that conviction would have no bearing on his civil case regarding Defendant Wolfe because Defendants Martinez and Smith were dismissed prior to the start of the third trial and Plaintiff was not successful on his malicious prosecution claims against any Defendants.

Plaintiff asserts that such an award is proper under Beltran. The court in Beltran allowed for the award of attorney's fees for a prior criminal proceeding. 260 F. Supp. 2d at 995. However, Beltran is not dispositive in this case and there are distinguishable facts from the instant case. As an initial matter, Beltran is not binding precedent on this Court, and the case did not set forth a rule or precedent mandating for the recovery of attorney's fees in prior criminal proceedings in a § 1983 case. Additionally, the Ninth Circuit in Borunda v. Richmond, 885 F.2d 1384 (9th Cir. 1988) simply allowed the evidence of the cost of the criminal proceedings to be admitted at trial so the jury could decide whether to factor such costs into compensatory damages; it did not award costs of criminal proceedings as attorney's fees pursuant to 42 U.S.C. § 1988. Beltran, 260 F. Supp. 2d at 994-95.

Moreover, the timing in Beltran is quite different than in this case. In Beltran, the plaintiff first filed a civil rights claim and a felony complaint was subsequently filed. Id. at 992. As discussed above, the felony complaint here was filed three years before Plaintiff filed his Complaint in this Court. The criminal proceedings were "ancillary" to the civil case and Mr. Price's representation of Plaintiff during the criminal proceedings were not "useful [nor] of a type ordinarily necessary to advance the civil rights

litigation." Id. at 993 (internal quotation marks and citation omitted). Plaintiff's expenditure for attorney services in the criminal proceedings was not "unquestionably, a foreseeable result of [Defendants'] actions," and therefore the Court exercises its discretion to not compensate Mr. Price for his representation of Plaintiff in the criminal proceedings. Id. at 994.

While Plaintiff's arguments might offer support for granting an award for hours spent defending the criminal proceedings, Plaintiff's arguments in no way require this Court to do so here. Because the criminal proceedings were not necessary for Plaintiff's ultimate victory since two Defendants were dismissed prior to trial, and Plaintiff was not successful in his malicious prosecution claims against the remaining two Defendants, the Court therefore reduces the 32 hours spent on the criminal proceedings from Mr. Price's total hours.

IV. CONCLUSION

For the reasons set forth above, the Court **GRANTS** Plaintiff's Motion, but reduces the hourly rates and hours reasonably expended. Mr. Price's reasonable hourly rate of $525 multiplied by 691.7 hours reasonably expended yields a total attorney's fees of $363,142.50. Mr. Carter's reasonable hourly rate of $325 multiplied by 52.9 hours reasonably expended yields a total attorney's fees of $17,192.50. Ms.

McCaffrey's reasonable hourly rate of $175 multiplied by 198.4 hours reasonably expended yields a total attorney's fees of $34,720, bringing the total amount of attorney's fees to $415,055. When this lodestar figure is reduced to account for Plaintiff's limited success by 45%, the total attorney's fees Plaintiff shall be awarded is $228,280.25.

IT IS SO ORDERED.

DATED: July 26, 2017

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge