

Federal Judge Reduces Fees Requested by 75%

Posted on August 24, 2009 by [Gary A. Bresee](#)

In *Mendez v. The County of San Bernardino*, US District Court, Central District of California, (a case in which I submitted a declaration in opposition to the fees requested), The Honorable Judge Wilson found the initial lodestar of \$696,923 should be reduced by 75%. As such, the Court granted Plaintiffs' motion for attorneys fees, but awarded fees in the amount of \$174,230.

In an action against the San Bernardino County Sherriff's Department for false arrest and an illegal seach and seizure, many of the claims were dismissed at the summary adjudication stage. Plaintiff eventually obtained a jury verdict for a nominal \$2 in compensatory damages and \$5,000 in punitives for the claims which survived.

The first federal judge denied the fees altogether finding them to be so excessive that they failed to pass muster under the "shocks the conscience" test. The Court denied the fees altogether. The Ninth Circuit then reversed and remanded back to the District Court for another determination of the Plaintiff's reasonable fees. *Mendez v. The County of San Bernardino*, 540 F.3d 1109 (9th Cir. 2008).

On remand, Plaintiff sought approximately \$837,000 in fees and \$49,000 in costs. Judge Wilson performed an excellent analysis of the fees requested, finding:

1. A 10% reduction is appropriate for the block billed entries, which made it difficult to determine the amounts billed for some activities, and citing other Ninth Circuit authority for the percentage reduction;
2. The firm's use of 2005 hourly rates was reasonable due to the delay in payment, and since they may be overcompensated for the 2003 and 2004 time, but undercompensated for the time incurred 2006 - 2009;
3. However, the Court reduced the hourly rates (e.g., from \$550 to \$400 per hour for some partners) due to the lack of evidence -- other than counsel's own affidavits -- regarding the prevailing rates for similar work in the community.

Thus, the initial requested lodestar of \$837,000 was reduced to \$696,923. The Court then considered additional *Kerr* factors (*Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975) to find, *inter alia*:

- A. Six individuals, including two partners and two associates, billing a total of 2,064 hours, was deemed excessive for a straightforward civil rights case; and
- B. The award of \$2 in nominal damages and \$5,000 in punitive damages demonstrated plaintiffs' limited success on the merits.

The Court therefore concluded the \$696,923 lodestar should be reduced by 75%. Plaintiffs were awarded fees in the amount of \$174,230.