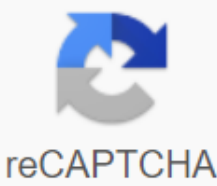




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Ninth circuit model jury instructions punitive damages

Before: B. FLETCHER, NOONAN and PAEZ, Circuit Judges. Stephen Yagman, Marion R. Yagman, Joseph Reichmann, Yagman & Yagman & Reichmann, Venice Beach, CA, Kathryn S. Bloomfield, Shreveport, LA, plaintiff-for appeal. LeGrand H. Clegg, III, City Attorney, Wilmont A. Odom, Assistant City Attorney, Cal P. Saunders, Deputy Municipal Attorney, Compton, CA, for defendant-appellee. This civil rights action, under 42 U.S.C. § 1983, prevailed in a jury trial over his excessive force claim against Plaintiff H.N. Dang Compton Police Department Officer Gilbert Cross and was awarded damages, but not punitive damages. We're considering Dang's consolidated appeal. Dang initially opposes the district court's refusal to teach the jury that repressive conduct could be a prey for puny damages in 1983. Secondly, Dang claims that the district court of 42 U.S.C. § 1988.Biz district court was wrong not to instruct the jury that Cross could instruct the jury that he could in damages if he found that he acted repressively, and concluded that the error was not harmless. Secondly, we think that the district court did not abuse its discretion in determining the reasonable hourly rate imposed in calculating the wage award. However, we are canceling the fee award and refund to further assess the reasonable hours spent in light of the appropriate legal standard and to reimburs the cost of registering a judicial summary. I.Plaintiff H.N. Dang was the store manager of compton jewelry exchange. On December 17, 1999, Compton police officers conducted an undercover investigation into the jewelry exchange's alleged pawn shop activities. An undercover officer, Betty Jones, walked into the store to pawn a ring. After Dang agreed to buy the ring for \$100, Jones left the store and reported that he had successfully pawned the ring to Officer Gilbert Cross, who was waiting outside the store with two officers. A short time later, three officers, Cross, Sergeant Preston Harris and Officer James Lewis, entered the store. When officers entered, Dang was in the office, separated from the sales room where officers were standing next to a bulletproof window and steel security door. Harris and Cross entered the office after Dang opened the security door at the request of officers. Lewis stayed by the front door. Officers reported dang under arrest.1 Without stroking or searching for Dang, officers handcuffed Dang and asked him to produce the hostage ring himself. Dengue told the officers the ring was in the safe. Cross then ordered Dang to open the safe. After their Officers pulled out the handcuffs, Dang leaned over and continued to open the safe, which made several attempts. After he opened the safe, Dang reached in. But as soon as he did, Cross yelled at him to stop, and Harris pulled Dang out of the safe. Dang leaned forward again to reach the vault, and Harris pulled Dang back and knocked him to the ground.2 While Dang was being pushed to the ground, he was holding the hostage ring that Cross allegedly tried to take. There was a struggle between Dang and the three officers, at which point Lewis joined two other officers in the office. During the fight, Cross hit Dang in the groin area to neutralize him.3 Although Cross said he punched Dang in the groin, Dang testified that Cross kicked him in the genitals. After he hit Dang in the groin area, Cross punched Dang in the face. Dang also said the officers stepped on his head and hand. When Harris put Dang in carotid restraint (strangling) and handcuffed him again, officers eventually disarmed Dang. Police officers took Dang to compton police department, and while he was waiting, Dang lost consciousness. Officers then took Dang to the hospital for medical attention. Dengue then asked for special medical care because she had bruises and pains in her chest, shoulders, neck, arm, hand, mouth and groin, and blood in her urine. Following the events of December 17, 1999, Dang filed a lawsuit in the Central District of California alleging that Compton officials and police officers violated fourth amendment rights under 42 U.S.C. § 1983. Before the defendants filed a petition for a summary verdict, Dang voluntarily denied the allegations against all defendants except Compton Police Department Police Chief Cross and Hourie Taylor. Dang also voluntarily denied the conspiracy against these defendants and the Fourte fourth amendment allegations. Dang claimed that Cross, in his capacity, violated Dang's Fourth Amendment rights by illegal entry, illegal search and confiscation, false arrest and excessive force. Dang sued Taylor for alleged audit responsibility for constitutional violations and for his individual and official duties, claiming the violations stemmed from the traditions, policies and practices of the Compton Police Department. Cross and Taylor have submitted summary motions on all allegations. The district court ruled that controversial material matters regarding the degree of power Cross used against Dang would be blocked by a summary verdict on Dang's alleged excessive force against Cross. However, the court ruled Taylor.At Cross and The Court of Appeal, as well as all other allegations against Dang, Cross, Lewis and Harris. The jury found Cross responsible for excessive force and gave Dang \$18,000 in damages. Before the criminal compensation phase of the case, Dang asked to instruct a criminal damages jury that contained a clause stating that criminal damages made an action oppressive could be a prey for a reward. The district court rejected the order, constructing that it was a false statement of the law, instead instructing the jury in accordance with The Ninth Circuit Model Civil Jury Directive 7.5 (2002). The court allowed Dang to provide additional evidence to support his claim for criminal damages. Dang called Cross as a witness and questioned him about his remorse for the events of December 17, 1999. After arguments and interviews, the jury refused to award punial damages and the conclusion of the case made a decision in Cross.At's favor, dang filed a petition for a reward of reasonable attorney's fees under 42 U.S.C. § 1988. Dengue asked for a \$250,000 fee and \$2,030 in costs. Cross opposed the motion. The district court charged him

\$134,000 in attorney's fees. The court reached this amount by reducing the hours included in Dang's requested wage award by 25 percent and reducing the lawyer's hourly rate from \$550 to \$400 per hour. The court also gave Dang \$908.25 in damages, but rejected a request for an \$18.50 refund for the cost of obtaining and recording a judgment summary. Dang objected to the order.It giving timely decision and attorney fees. The standard of review appealed for alleged error in jury instructions depends on the nature of the alleged error.' Phillips v. United States I.R.S., 73 F.3d 939, 941 (9. Cir.1996) (Oglesby v. S. Pac. Transp. Co., 6 F.3d 603, 606 (9. Cir.1993). We are reviewing the district court's formulations of jury instructions in a case related to abuse of discretion. White v. Ford Motor Co., 312 F.3d 998, 1012 (9 Cir.2002). We are reviewing whether De novo's instructions missed the law. Fireman's Fund Ins. Cos. v. Alaskan Pride P'ship, 106 F.3d 1465, 1469 (9. Cir.1997). Here, we review de novo because Dang is challenging the court's order as a false statement of the law, and the court rejected Dang's proposed instruction in violation of the laws of this circuit. See Galdamez v Potter, 415 F.3d 1015, 1021-21 (9.Cir.2005). We emphasized that [j]ury instructions should cover the issues presented fairly and adequately, correctly state the law and not be misleading. White, 312 F.3d in 1012. In addition, [one] party is supported by law and, if the evidence is based, it has the right to receive an instruction on the theory of the case. Against Jones. Williams, 297 F.3d 930, 934 (9. So we recorded that. A model jury instruction do not prevent the finding of errors. United States v. Warren, 984 F.2d 325, 328 (9. However, if the error in jury instruction is harmless, it does not require a return. Against Tritchler/Tritchler. Lakes County, 358 F.3d 1150, 1154 (9. Cir.2004). When evaluating the jury's instructions, when the instructions were viewed as a whole, the results of errors reached by the judiciary, the article of the applicable law was not dealt with fairly and accurately. Swinton v. Potomac Corp., 270 F.3d 794, 802 (9. Cir.2001) (original change) (internal quotation marks and ations were discarded). The question here is whether the district court was wrong to deny dang's proposed puny damages jury instruction and to give the jury an instruction that he could give puny damages based on Cross's alleged repressive behavior. Dang demanded that the court instruct the jury as: if the jury decides from the superiority of the evidence that the plaintiff has the right to reach a verdict for nominal or in resisfactory damages; and also, if there is a claimant's action or negligence that is legally damaging to a plaintiff, intentional or malicious or simply, or repressively, then the jury may find it appropriate as criminal damages or add it to a reward of nominal or indecable damages. An act or a lack of action is done as 'malicious' if it has either a malicious will, hatred or hatred, or a grudge against a person in one of the more groups or categories to which the injured person is a member. If an act or non-action, reckless or callous negligence or [sic] indifference, the rights of one or more persons, including the injured person, are carried out, it is only done. It is done in an 'oppressive' way, such as an act or non-acting, abuse or abuse of authority or authority, or taking advantage of another person's misfortune, in a way that is unnecessarily harsh or violent, or in a way or other way that violates another person's rights. (emphasis added). Dang's lawyer also stated that he would not object to an alternative instruction as long as it included the concept of oppressive conduct as puny compensation because it was the basis of dengue's criminal compensation argument.4 The district court concluded that the ruling allowing the jury to receive puny damages for an oppressive action was a false statement of the law. Therefore, the court rejected the proposed instruction and instead, based on Model Directive 7.5, instructed the jury as: The plaintiff has the burden of proving that puny damages must be awarded, and amount, evidence by an upper hand. Criminal damages can only be manufactured if you find that the defendant's conduct is abusive or ignores the rights of the plaintiff. The behavior is abusive if accompanied by malice, hatred or other injury. Under these circumstances, disreacting the plaintiff's rights will ignore the plaintiff's rights in the face of a perceived risk that his or her actions will violate the plaintiff's rights under federal law. We think the district court has concluded that repressive behavior is not a suitable prey for puny damages. We also feel that the court neglected the verdict of repressive acts and incomplete the jury's instruction. Following the instructions as a whole, the article of the applicable law was not met fairly and accurately. Swinton, 270 F.3d at 802 (original change) (internal quotation marks and ations are discarded). Since puniual damages can be given for oppressive conduct and the recording provides a evidence basis for such an instruction, the district court ruled that [b]y should not instruct the jury on the concept of [repressive actions]. See Gizoni v. Southwest Marine Inc., 56 F.3d 1138, 1141 (9. Cir.1995).A. Section 1983 is intended to 'create a kind of toy verb responsibility' in favor of persons who lack federally guaranteed rights. Against Smith. Wade, 461 U.S. 30, 34, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983) (Carey v. Piphus, 435 USA 247, 253, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978)). It also manages recoverable damages for liability under the common law § 1983 of toils. Accordingly, when the Supreme Court determined the mental state and behavior necessary for the punu financial compensation decision under § 1983, the Court looked at the concepts of valid toy law. See id. 38, 103 S.Ct. 1625.In Smith v. Wade, the Court assessed whether puny damages can only be incarcerated for intentional abusive conduct, nor whether the district court can correctly instruct the jury that one or more of the defendants' conduct may instruct criminal damages if the rights or safety of others are shown to be reckless or reckless. Id. at 33, 103 S.Ct. 1625. § Focusing on punial compensation standards during the enactment of 1983, the Court concluded that the punial compensation awards of federal and state courts did not require real bad intentions to be shown. they allowed punal rewards of negligence, recklessness, or actual malicious short to various specified standards of other imperfect conduct. Id. at 45, 103 S.Ct. 1625.

In various cases, the Court The standards for puny compensation awards that came after Congress enacted § 1983, including malicious or immoral misconduct or imperfect negligence, welch v. Durand, 36 Conn. 182, 185 (1869), behavior done only, or oppressive, coven v. Winters, 96 F. 929, 935 (6. Berry v. Fletcher, 3 F.Cas. 286, 288 (C.C.Mo.1870); Fotheringham v. Adams Exp. Co., 36 F. 252, 253 (E.D.Mo.1888), negligence, Frink & Co. v. Coe, 4 Greene 555, 1854 WL 228, at *4 (Iowa 1854); Maysville & L.R. Inc. v. Herrick, 76 Ky. 122, 127 (1877), reckless negligence, Florida Ry. & Nav. Co. v. Webster, 25 Fla. 394, 5 So. 714, 719 (1889) and recklessly disreathed the rights of others, Jacobus v. Congregation of The Sons of Israel, 107 Ga. 518, 33 S.E. 853, 855 (1899). See Smith, 461 USA, 45 n. 12, 103 S.Ct. 1625. In addition, the Court noted that in modern toxii verb law, courts continue to enforce the same standards for puniule compensation awards. Id. at 46, 103 S.Ct. 1625.Further, there is no reason why the Court should grant a more restrictive remedy than a person who claims to cause an ordinary torment of a person who has violated federally guaranteed rights. Id. at 48-49, 103 S.Ct. 1625.5 The court concluded that the defendant's conduct was motivated by malice or intent when a jury concluded that an action under § 1983 may also be allowed to assess puny damages, or include reckless or callous indifference to the federally protected rights of others. Id. at 56, 103 S.Ct. 1625. In light of the Supreme Court's conglomerate in Smith, we have accepted that the conduct of a defendant who may receive puny damages under article 1983 of the jury is well proven when conducted in malice or intent, or when it involves reckless or callous indifference to the constitutional rights of others. Against Morgan. Woessner, 997 F.2d 1244, 1255 (9. Cir.1993) (Davis v. Mason County, 927 F.2d 1473, 1485 (9. Cir.1991)). Accordingly, The Ninth Circuit Model Civil Jury Directive 7.5, which reabds criminal damages in federal civil cases, provides:if you find it for the plaintiff, it may, but is not necessary, punitive damages. The purpose of puny damages is to punish a defendant and dissuade one defendant and others from taking similar actions in the future. The plaintiff has the burden of proving that puny damages and the amount must be awarded with the superiority of evidence. Criminal damages can only be manufactured if you find that the defendant's conduct is abusive or ignores the rights of the plaintiff. The behavior is abusive if accompanied by malice, hatred or other injury. Behavior is recklessly neglected the plaintiff's rights, under these circumstances, reflect complete indifference to the plaintiff's safety, rights or if the defendant acts in the face of the perception that his actions will violate the plaintiff's rights under federal law. Model Civ. Jury Instr. 9 Cir. 7.5 (2004) (emphasis added). However, this statement of criminal law is incomplete. § The standard common law for criminal damages under 1983 mirrors the standard for puniule compensation in to-verbs cases. See Smith, 461 USA 49, 103 S.Ct. 1625. As the cases referred to by the Smith Court clearly state, malicious, immoral, or oppressive acts or omissions are within the bounds of traditional tortual standards for assessing puniual damages and promote deterrence and penalties over and over provided by compensation awards. Id. 54, 103 S.K. 1625; See. 45 n. 12, 46 n. 13, 103 S.Ct. 1625. Such actions are therefore all appropriate prey for puny damages under § 1983. Although it is not explicitly held that puny damages can be granted in federal civil rights cases for oppressive conduct, they have often operated under the assumption that such an instruction is appropriate. For example, Fountila v. Carter, 571 F.2d 487 (9. Cir.1978), a discrimination case in accordance with the Fair Housing Act, we review an instruction provided in part, if an instruction given to the plaintiff, if a raid of evidence, that the actions of the accused were made abusive or mer only or oppressive, then plaintiffs may find that they find actual damages or nominal as well as puny damages. Id. at 492 (emphasis added). The district court's failed to inform the jury of the purpose of puny damages caused the defendant to be tried; however, we did not address whether it was appropriate or necessary to include the repressive actions clause. Id. at 494.Similarly, ward v. San Jose City, 967 F.2d 280 (9th Cir.1991), a § 1983 action, we confirmed the district court's decision that evidence officers 'could not support a finding that acted maliciously, willingly, or repressively,' without addressing whether this instruction was an appropriate legal standard for punal damages. Id. 286 years old. In addition, Price v. Kramer, 200 F.3d 1237 (9. Cir.2000), in which the plaintiff claimed unlawful search and confiscation and excessive force under § 1983, concluded that we were involved in evidence of racial bias of the defendant police officer, in part because the defendant's behavior went to proving 'abusive, immoral or oppressive or does not care about the rights of plaintiffs' which, according to jury instructions, was necessary for the receipt of punitive damages. Id. 1251. Again did not address directly this instruction. See also Larez v. Los Angeles City, 946 F.2d 630, 639 (9. Cir.1991) (the jury instruction, which includes the defendants' appeal against criminal damages, was foreclosed because the matter was not raised in the trial, but noting that the instruction included abusive, wilful or oppressive, within the standard set by the Supreme Court in Smith v. Wade; Gregory's v. Thompson, 500 F.2d 59, 65 (9. Article.1974) (while rejecting the defendant's appeal against the district court's decision not to give a goodwill plea to the jury, while also upsyng the jury's order allowing the jury to decide that the defendant acted 'maliciously or willingly'. Thus, we now clearly hold what is veiled in our past decisions. As the Seventh Circuit held mckinley v. Trattles, 732 F.2d 1320 (7. Cir.1984), we concluded that a jury instruction that was made oppressive and allows the application of puny damages for an action that caused the plaintiff's injury was accurate and complete. See ID. In McKinley, the district court ordered the jury to give criminal damages: [I]f the jury must find the superiority of the evidence in the case that the act or negligence of the defendants who caused actual harm or harm to the plaintiff was done in a malicious or intentional or oppressive way. Id. at 1326 n. 2. The Seventh Circuit found that the jury's instructions were in accordance with the supreme court's position in Smith v. Wade. Id. 1326. We agree. This result is also in line with our other sister circuits. See, for example, Walker v. Norris, 917 F.2d 1449, 1459 (6. Cir.1990) (by confirming the awarding of puntal damages in a § 1983 case, concily concierding that the jury instruction made maliciously, willingly or repressively was as strict as the standard expressed by the Supreme Court in Smith v. Wade; Garza v. Omaha City, 814 F.2d 553, 556 (8. Cir.1987) (§ In the 1983 act, criminal damages may be incarcerated in cases where the defendant does not care about repression, malice, negligence, intentional or immoral misconduct or the civil rights of the plaintiff.); Against Stokes. Delcambre, 710 F.2d 1120, 1126 (5. Cir.1983) (holding, a § 1983 action, that malicious, immoral, or oppressive acts required by Smith v. Wade is within the traditional tortual puniity standards. 6 In summary, the district court concluded that oppressive conduct was erroneous, which was the basis of Dang's theory of puniuty, a false statement of law. B.In that repressive behaviour is an appropriate prey for criminal damages under 1983, we should consider whether the instructions here adequately cover the concept of repression. If other instructions in its entirety cover the [case] theory, it is not a mistake to reject the theory of the case. Napa City, 210 F.3d 1093, 1097 (9. Cir.2000) (excerpt from United States v. Lawrence, 189 F.3d 838, 843 (9. Cir.1999)). However, we concluded here that the court's punial in damages order did not cover Dang's theory that Cross shot and disarmed Dang. Unlike Brewer, who concluded that the court's instructions covered the issues presented fairly and adequately, Brewer was given enough room to defend his theory of the case to the jury. As stated, the court's instruction embodied the text of the Ninth Circuit Model Civil Jury Directive 7.5 (2002). This instruction, you may only receive puny damages if you find that the defendant's conduct is abusive or does not care about the rights of the plaintiff. The instruction is defined as more malicious: Behavior malicious if malicious, or stubborn, or if it is for the purpose of any other injury. Furthermore, the Conduct recklessly disreards the plaintiff's rights under these circumstances if the plaintiff acts in the face of his or her safety, rights or the perception that the defendant's actions will violate the plaintiff's rights against federal law, was released. However, an act or negligence is oppressive if done in a way that harms or harms or infringes on another person's rights, taking advantage of the misuse or misuse of authority or authority, or the misfortunes of another person. Fountila, 571 F.2d 493; McKinley, 732 F.2d at 1326 n. 2.7 We conclude that a defendant's authority or abuse of power or exploitation of a plaintiff's weakness is qualitatively different from the act of a defendant who is abusive or recklessly neglecting the plaintiff's rights. Puny damages serve to punish the defendant for unfair conduct and to dissuade the defendant and others from repeating this wrong. See Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001). Awarding puny damages for oppressive conduct that injures the plaintiff punishes the defendant for conduct not beset by abusive or reckless conduct. When the jury is instructed that it may award puntal damages for repressive acts, the jury must consider the relative positions of authority and authority between the parties and determine whether the defendant abused his authority or authority or abused the plaintiff's weakness during the course of misconduct. This is not the same as the jury recklessly ignoring the defendant's abusive actions or the plaintiff's rights. In some cases, the jury may decide that the defendant's conduct was abusive or reckless and also oppressive. Nevertheless, oppressive behavior differs sufficiently from guaranteeing a separate instruction. Indeed, several of the sister circuits have accepted repressive behavior as separate and different bases for reckless or immoral behavior, 8 abusive conduct and a reward for puny damages under § 1983. See Walker at 917 F.2d 1459; Garza, 814 F.2d at 556; Stokes, 710 F.2d at 1126; See also Anderson v. United Fin. Co., 666 F.2d 1274, 1278 (9. Cir.1982) (puny compensation may be granted under the Equal Credit Opportunity Act if the creditor intentionally, maliciously or oppressively discriminates against the applicant or the creditor act with recklessness to the requirements of the law). In addition, such a distinction was made in the evaluation of puny compensation during the introduction of § 1983. See Woodworth, 54 Abd 363, 371, 13 How. 363, 14 L.Ed. 181 (1851) (keeping these exemplary damages depends on the degree of malice, immorality, oppression or anger of the defendant's conduct); Cowen, 935 at 96 F. ([T]he jury. example, can cause criminal or vindictive harm. if the defendant acted only, or oppressively, or implied mischief with such evil or criminal indifference to civil obligations.); Berry, 3 F.Cas. at 288 (To authorize the awarding of exemplary or vindictive harms, you must be involved in discussions of either evil, violence, oppression, or immoral recklessness.); Fotheringham, 36 F. at 253 (Puny damages can be granted when an unfair act is done intentionally, indecently or repressively, or recklessly.). 9 Therefore, if the plaintiff's theory of giving puny damages is based on a so-called act of oppression and there is a basis in the evidence for an instruction on that theory, the district court must give such an instruction. Jones, 297 F.3d at 934. [F]ailure to give an instruction on a party's theory of the case is 'a reversible error if the theory is legally sound and the case makes the evidence valid.' Against Smith. Sumner, 994 F.2d 1401, 1404 (9. Cir.1993) (United States v. Scott, 789 F.2d 795, 797 (9. Cir.1986)). Here, the record of evidence provides a basis for the theory of criminal damages based on oppressive behavior. The jury could have concluded that Cross's use of force in Dang's arrest benefited Cross's authority and power and Dang's relative weakness. Indeed, when the record reflects that Dengue is positioned near the ground He struggled to fight because he was injured when he was ordered to open the safe and struggled with three officers. Therefore, we have concluded that there is sufficient evidence basis for repressive conduct instruction. Therefore, the district court did not fulfill its obligation to instruct the jury on all matters arising from the evidence and to present the plaintiff's case theory. Glover / BIC Corp., 6 F.3d 1318, 1328 (9. Cir.1993).C. Finally, we need to consider whether the error is harmless. The error of instructing a jury in a civil case requires it to be withdrawn unless the error is harmless. Caballero/ Concord City, 956 F.2d 204, 206 (9. In the case of civil litigation error and where the burden shifts to the defendant, prejudice is assumed to be appropriate to show that 'it is not possible for the jury to reach the same verdict'. Galdamez, 415 F.3d at 1025 (Obrey v. Johnson, 400 F.3d 691, 701 (9 Cir.2005)). Here, Cross argues that in light of the court's puny in damages order, it is not possible for the jury to reach the same conclusion, even if the jury's instruction involved repressive actions. This claim is not enough to disprove the presumption that oppressive behavior is necessarily beset by abusive or reckless behavior. In this recording, we can't conclude that there's no way the error is harmless. [N]othing this decision will be the same without error. Caballero, see 956 F.2d at 207. During the proceedings' stages of liability and puny damages, the jury concluded that Cross's use of force was unreasonable under the Fourth Amendment, but he did not care about abusive or Dang's rights. These determinations do not allow us to conclude that the jury concluded that Cross's conduct was not oppressive. Cf. Benigni v. Hemet City, 879 F.2d 473, 480 (9. Article.1988) (stated that it was harmless for the district court not to instruct the jury on reasonableness, because the jury found the criminal damages of the jury worse than unreasonable to the officer's conduct). Also, as discussed, in light of Cross's assert of power and authority and evidence of Dang's position when he was shot, the jury may have concluded that Cross acted repressively. See Galdamez, 415 F.3d in 1025. III. Under 42 U.S.C. § 1988, the court may, at its discretion, allow the prevailing party [a § 1983 action], outside the United States, to have a reasonable fee as part of the costs. 42 U.S.C. § 1988; Hensley v. Eckerhart, 461 USA 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The parties do not dispute that Dang is the dominant party.10 Dang, however, the district court misused its discretion in determining the reasonable attorney's fee award and refused to repay Dang for expenses made to obtain and record the summary of the proceedings.11 § To determine reasonable attorney's fees under 1988, the district court must first determine the amount of lodestar by calculating the number of hours spent in litigation multiplied by a reasonable hourly rate.' Lytle, 382 F.3d at 988 (Jordan v. Multnomah County, 815 F.2d 1258, 1262 (9. Cir.1987)).12 After the district court, at its discretion, you can adjust the amount of lodestar taking into account other factors that bear reasonable amount of the fee. Id.; See also Morales v. San Rafael City, 96 F.3d 359, 363-64 (9. Cir.1996) (discusses reasonable bear Kerr factors that can be used to adjust the amount of lodestar).A. [T]he or she is a key factor in determining the appropriate amount of a reward of attorney's fees under the success of a plaintiff under 42 U.S.C. § 1988. Hensley, 461 Abd 440, 103 S.Ct. 1933. In order to determine the fees in case of partial success, such as the action in question here, [1] the court must consider whether it 'dominates claims unrelated to allegations that the plaintiff has succeeded', and (2) whether the plaintiff 'adheres to a level of success that is reasonably spent hours to receive a fee award'. Against Watson. County Riverside, 300 F.3d 1092, 1096 (9 Cir.2002) (Hensley excerpt, 461 U.S. 434, 103 S.Ct. 1933). The first step requires the district court to determine whether the successful and unsuccessful allegations are irrelevant. Webb, 330 F.3d in 1168. In 1169 (Schwarz v. Sec'y of Health & Human Serv., 73 F.3d 895, 902-03 (9. Cir.1995); however, it relates to claims that they contain a common core of the truth or are based on relevant legal theories. Id. 1168. At the bottom, the focus is on if failed and successful claims come off the same 'course of conduct'. Id. 1169. If they have not done so, hours spent on failed claims should not be included in the fee reward. Webb, 330 F.3d at 1169; Schwarz, 73 F.3d at 901.If, however, if the unsuccessful and successful claims are relevant, then the court must implement the second part of the analysis, which assesses the importance of general relief obtained by the plaintiff in the case in case of time spent on litigation. Id. at 902-03 (internal quotation marks and ations are discarded). If a plaintiff has achieved excellent results, his lawyer must fully recover the compensatory fee. Hensley, 461 Abd 435, 103 S.Ct. 1933. When a claimant achieves only partial or limited success,[however], a reasonable hourly fee can be an excessive amount of time product spent litigation as a whole. Im. 436, 103 S.Ct. 1933. Nevertheless, a claimant does not need to receive all the desired relief to show excellent results that guarantee a full compensation fee. Id. 435 n. 11, 103 S.K. 1933; Sorenson v. Mink, 239 F.3d 1140, 1147 (9.Cir.2001). Here, the district court reduced the number of hours by ten percent, because the court found that a measurable portion of the litigation activity was ultimately directed to issues related to defendants who were removed from the case through law and action practices. The question to be dealt with by the court is whether the failed allegations played an important role in the plaintiff's partial success, the district court said. concluded. Pointing to allegations that it served to include dismissed defendants and increase the inefficient time allocated to this case, the court reduced the attorney's fee award by ten percent. In making this determination, the district court was not able to assess whether the allegations against the dismissed defendants and allegations of false arrest, illegal entry and unreasonable searches and confiscation against Cross were related to the successful alleged excessive force. Therefore, we refer the fee award and the district court to determine whether the failed allegations are related to Dang's successful claim of excessive force against Cross and to determine the reasonable hours spent applying the correct standard. B.Dang is also challenging the \$400 hourly wage approved by the court. '[R]easonable fees' § will be calculated according to the prevailing market rates in the relevant community under 1988, Blum v. Stenson, 465 USA 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984), taking into account experience, skill and reputation of the lawyer. Schwarz, 73 F.3d at 906 (Chalmers v. City Los Angeles, 796 F.2d 1205, 1210 (9. Cir.1986), modified, 808 F.2d 1373 (9. Cir.1987)) quote. In order to inform and assist the court in its use of its discretion, it is the responsibility of the fee applicant to produce satisfactory evidence in addition to the lawyer's own statements that the rates requested are in the same respect as those applicable in the community for similar services by lawyers with reasonably comparable skills, experience and reputation. Blum, 465 Abd 896 n. 11, 104 S.Ct. 1541. The district court accepted evidence of withdrawal from the parties, including the recharge rates of other lawyers in similar practices, awards in comparable cases, the lawyer's experience and reputation level and market rates, as well as two additional Kerr factors: innovation/problems and the obstacle of other studies. See Morales, 96 F.3d at 364. In light of the reasonable bear factors in the evidence record and a fee award, the district court concluded that \$400 per hour was reasonable, rather than the demand fee of \$550 per hour. This determination was not an abuse of discretion.13 C. Dang further challenges the district court's request for a reimbursement of the cost of obtaining a judgment summary for \$7.50 and registering a judicial summary with the County Recorder's Office for \$11.00. Dang did not request a summary of the costs of the proceedings as part of the Costs Bill, pursuant to Federal Civil Procedure Act 54(b)(1) and Rule 54-3 of the California Central District Court Rules. Instead, after filing the Costs Bill, including these expenses as part of his wage claim under Dang § 1988. Under § 1988, the judge party attorney can recover fees as part of these out-of-pocket expenses 'which would normally be charged to a fee-paying customer.' Harris's v. Marhoefer, 24 F.3d 16, 19 (9. Cir.1994) (Chalmers quote, 796 F.2d at 1216 n. 7). Such out-of-pocket expenses can be recovered when reasonable. See id. at 20; United Steelworkers v. Phelps Dodge Corp., 896 F.2d 403, 407 (9 Cir.1990). Here, Cross does not claim that the judgment expense abstract is not someone who would normally be charged a fee to the paying customer. Nor his reasonable challenge. Cross doesn't offer an explanation as to why Dang's spending is necessary. Nevertheless, abstract registration of a jurisdiction is a reasonable step in the implementation of a judgment. Indeed, California law explicitly sanctions an abstract record of jurisdiction. See Cal. C.C. P. § 697.310(a); also see <a0><a1>< Fed.R.Civ.P. 69(a) (The procedure for executing an edict to enforce a decision to pay money will be in accordance with the application and procedure of the state in which the district court is located) is also an expense to be charged for the customer who normally pays a fee. Under these circumstances, Dang had the right to withdraw the cost of taking the verdict and recording it.IV. We believe he was biased because the District Court refused to instruct the jury that punal damages could be given if Cross found that his actions that caused Dang's injury were done in a repressive way. Therefore, the provision for the continuation of the punitive trial and § Dengue's request for fees and costs under § 1988 also to vacate the attorney's fee award and consider further consistent with this view. Emptied and Restricated. FOOTNOTES1. When Dang was told he was under arrest, he asked officers if he would call his girlfriend. The officers refused. Dang also opened the camera to film the events. Dang testified that Officer Cross turned off the camera and took it off after Dang was handcuffed.2. Dang testified that he reached into the safe to place the rings he was wearing in the safe to hide them. Cross and Harris testified that Harris withtagged Dang because he took the ring that Dang allegedly took hostage, and they feared we'd destroy the ring-bound plug.3. Cross testified that he hit Dang because Officer Lewis reached for Dang's gun. However, Dang testified that he could not reach Lewis' gun. Dang's Fed.R.Civ.P. in accordance with the court's punitive in damages order. 51(c).5. The court also rejected the defendant's argument that the penalty compensation threshold should always be higher than the compensation standard. Smith, 461 USA 53, 103 S.Ct. 1625.6. In addition to these circuits, which clearly hold that such an instruction is appropriate, some other circuits have indirectly accepted that oppressive behavior is an appropriate prey for puny damages. Look, for example, Caban-Wheeler v. Elsea, 71 F.3d 837, 842 (11. Cir.1996) (confirming that criminal damages were granted in a 1983 case because there was sufficient evidence that the defendants acted maliciously, willingly or repressively); Beardsley / Webb, 30 F.3d 524, 531 (4. Cir.1994) (confirming that criminal damages were granted in a case filed in 1983 based on evidence that the defendant's actions were malicious or immoral or oppressive or intentional); Wren v. Spurlock, 798 F.2d 1313, 1322 (10. Cir.1986) (to confirm that criminal damages were granted based on the jury's determination in 1983 that the defendants' actions were done maliciously or willingly or repressively); Ibrahim / Pekarski, 728 F.2d 167, 173 (3d Cir.1984) (holding this evidence supported criminal retalyiming in a 1983 case because the jury could find that the defendants acted malice and oppressive).7. We agree that this is the legal definition of oppressive. It is also consistent with the common definition of printing or oppressive. See Webster's Third New Int'l Dictionary Unabridged 1584 (1993) (identifying the oppressive as unreatably burdensome; unjustly violent, meticulous or harsh; and defines oppression as an unfair or cruel use of authority or power. use illegal, excessive or corrupt authority to harm their rights, person or property, while claiming that any public official acted under the color of state authority, except to be usurped by any public official); Black's Legal Dictionary 1127 (8th ed.2004) (print 1. An example of action or unfair authority or use of force. 2. A crime that consists of the abuse of voluntary authority by a public official with an inappropriate justification as a result of injury to a person.) 8. Wanton misconduct coupled with the knowledge that an act or negligence would possibly result in reckless negligence of someone else's rights, injury. Black Law Dictionary 1020 (8. ed.2004); See also McKinley, 732 F.2d at 1326 (An action or non-action is made only if reckless negligence or callous negligence or indifference to the rights of one or more persons, including the injured person.). 9. See also Orban, 119 Pa. 37, 12 A. 816, 821 (1888) (holding appropriate sample compensation if the defendant's behavior is intentional and immoral, reckless or oppressive); Jockers' v. Borgman, 29 Blood, 109, 1883 WL 714, at *8 (1883) ([E]xemplary damages. Evans against St. Louis, 11 Mo.App. 463, 1882 WL 9697, at *7 (Mo.Ct.App.1882) ([I]f[jury] under these circumstances, the plaintiff must find that the conductive act of putting off the train, immoral, reckless, or oppressive, they may damage the sample.); Palmer's v. Charlotte, 3 S.C. 580, 1872 WL 4908, at *12 (1872) ([I]f there were no cases in the case describing the conduct of the conductor as abusive, oppressive or reckless of the plaintiff's rights, then the introduction of the sample compensation rule was erroneous.); Dorsey v. Manlove, 14 Cal. 553, 556 (1860) ([W] herein for trespassing, immoral or malicious reasons, or reckless negligence of the rights of others, or under the circumstances of great distress and repression, the compensation rule is not respected and the amount and amount of compensation is only matters for the jury.). 10. Although we are under arrest for a new case related to puny damages, we see fit to address Dang's objections to the district court's rulings on attorney's fees. Dang is a dominant party under Dang § 1988, even if he dened it did not follow the criminal request. Dang prevailed in the liability phase of the case and Cross is not contesting the compensation award. After all, Dang is entitled to a reward of reasonable attorney's fees.11. Review of an award of attorney's fees 42 U.S.C. § 1988. Webb v. Sloan, 330 F.3d 1158, 1167 n. 6 (9. Cir.2003), cert. rejected, 540 U.S. 1141, 124 S.Ct. 1042, 157 L.Ed.2d 952 (2004). If a district court enforces a false statement of the law or explicitly based its decision on an erroneous finding, it abuses its faith in discretion. Lytle v. Carl, 382 F.3d 978, 982 (9. The district court may exclude hours that are not reasonably spent on the amount of lodestar. Hensley, 461 Abd 433, 103 S.Ct. 1933. Here, the district court initially reduced lodestar by fifteen percent because the clocks appeared to be excessive, unnecessary or unnecessary, and under-documented. Dengue clock.13 does not challenge this initial reduction. Since U.S. inflation rates do not need to be reported forensically, we reject Dang's request. PAEZ, Circuit Judge: Judge:

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