

Appeal No. 09-15006

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PRISON LEGAL NEWS,
Plaintiff-Appellee,

vs.

ARNOLD SCHWARZENEGGER, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
The Honorable Claudia Wilken, Judge Presiding
(Case No. C 07-2058 CW)

**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF
COLUMBIA LEGAL SERVICES; FLORIDA JUSTICE INSTITUTE, INC.;
LEGAL AID SOCIETY; MASSACHUSETTS CORRECTIONAL LEGAL
SERVICES, INC.; NATIONAL CENTER FOR YOUTH LAW; NATIONAL
POLICE ACCOUNTABILITY PROJECT; PRISONERS' LEGAL SERVICES OF
NEW YORK; SOUTHERN POVERTY LAW CENTER; UPTOWN PEOPLE'S
LAW CENTER; AND VOLUNTEER LAWYERS' PROJECT FOR THE
SOUTHERN DISTRICT OF FLORIDA
IN SUPPORT OF PLAINTIFF-APPELLEE AND IN SUPPORT OF
AFFIRMANCE**

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Southern Poverty Law Center; Uptown People's Law Center; and
Volunteer Lawyers' Project for the Southern District of Florida

Pursuant to Federal Rule of Appellate Procedure 29, amici curiae move for leave to file the concurrently submitted amicus brief in support of Plaintiff-Appellee and in support of affirmance.

Amici curiae are nonprofit, public interest organizations that provide legal services to low-income people, including prisoners. They engage in public interest litigation that depends on court-awarded fees and that often involves ensuring compliance with settlements agreements and consent decrees. Amici are: Columbia Legal Services; Florida Justice Institute, Inc.; Legal Aid Society; Massachusetts Correctional Legal Services, Inc.; National Center for Youth Law; National Police Accountability Project; Prisoners' Legal Services of New York; Southern Poverty Law Center; Uptown People's Law Center; and Volunteer Lawyers' Project for the Southern District of Florida. A description of each is included in the accompanying brief under the heading "Interests of Amici Curiae."

Amici are familiar with the issues presented in this case. They are able to inform the Court in areas that may not otherwise be addressed adequately in the briefing: specifically, the necessity of ensuring compliance with civil rights relief obtained through settlement agreements and the impact that a restrictive interpretation of entitlement to fees under 42 U.S.C. § 1988 would have on the ability to refer civil rights cases to private counsel and to recruit private counsel

to work with amici as co-counsel in civil rights cases, and on amici's own abilities to represent low-income people.

Because of their unique perspective and their abiding interest in the issues now before the Court, amici respectfully seek permission from the Court to file the brief that accompanies this motion.

Dated: June 24, 2009

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Florida

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Executed June 24, 2009 at San Francisco, California.

/s/ George C. Harris
George C. Harris

sf-2703479

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Volunteer Lawyers' Project for the Southern District of Florida

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(c), amici curiae make the following corporate disclosure statement.

Each of Columbia Legal Services; Florida Justice Institute, Inc.; Legal Aid Society; Massachusetts Correctional Legal Services, Inc.; National Center for Youth Law; National Police Accountability Project; Prisoners' Legal Services of New York; Southern Poverty Law Center; and Uptown People's Law Center certifies that it is a nonprofit corporation, that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

Volunteer Lawyers' Project for the Southern District of Florida certifies that it is a project of the nonprofit corporation Florida Justice Institute, Inc., that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

Dated: June 24, 2009

By: /s/ George C. Harris
George C. Harris

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INTERESTS OF AMICI CURIAE

Amici curiae are nonprofit, public interest organizations that provide legal services to low-income people, including prisoners. Amici engage in public interest litigation that depends on court-awarded fees and that often involves ensuring compliance with settlement agreements and consent decrees.

In trying to bring about compliance with civil rights laws at large entities like prisons where a culture of inertia has developed, amici often must follow up on settlements that call for institutional change. For example, a formal change in regulations or policies issued from the head of a large bureaucracy does not guarantee that the change will be implemented in practice at far flung institutions within that bureaucracy. Amici must work to ensure compliance with and enforce the terms of settlements in such instances whether or not the settlements are in the form of consent decrees or provide for formal monitoring.

The demand for amici's services, like the demand for legal services from all nonprofit organizations that represent low-income people, far exceeds their capacity to meet that demand. One way in which amici have been successful in expanding available resources for low-income people is through recruiting private lawyers and law firms to assist in civil rights cases. The potential availability of attorneys' fees under the civil rights statutes is an important incentive for these lawyers to become involved with amici as co-counsel.

In addition, because amici's resources are severely limited, they refer some meritorious civil rights cases to private lawyers or firms who are willing and able to prosecute those cases on their own. In those cases as well, the potential availability of attorneys' fees and costs is a crucial incentive. The ability to refer civil rights cases to private counsel and to recruit private counsel to work with amici as co-counsel in civil rights cases, and amici's own abilities to represent low-income people, would be seriously diminished if this Court were to place a restrictive interpretation on entitlement to fees under 42 U.S.C. § 1988 ("Section 1988").

Columbia Legal Services ("CLS") is a nonprofit law firm that protects and defends the legal and human rights of low-income people. CLS represents individuals and organizations in Washington State who have critical legal and have no other legal assistance available to them. CLS regularly undertakes civil rights litigation on behalf of indigent prisoners and other low-income persons and requests attorney fees under Section 1988 where such fees are available.

Florida Justice Institute, Inc. ("FJI") is a private, not-for-profit public interest law firm founded in 1978 by leaders of the private bar to, in part, represent institutionalized persons in prisons and jails to improve conditions of confinement. It is primarily funded by The Florida Bar Foundation and attorneys' fees recovered in meritorious cases. FJI administers the Volunteer

Lawyers' Project for the Southern District of Florida pursuant to an administrative order.

The Legal Aid Society ("Society") is a private, nonprofit organization that has provided free legal assistance to indigent persons in New York City for over 125 years. Through its Prisoners' Rights Project, the Society seeks to ensure that prisoners' legal rights are protected. The Society advocates on behalf of prisoners in New York state prisons and New York City jails, and where necessary, conducts class action litigation addressing prison conditions and mistreatment and violence against prisoners. It seeks court-awarded attorneys' fees in appropriate cases.

Massachusetts Correctional Legal Services, Inc. ("MCLS") is a private nonprofit organization founded in 1973 to provide civil legal services to Massachusetts prisoners in state and county facilities. It concentrates on conditions of confinement, staff brutality, improving medical and mental health care, and the overuse of segregation. MCLS is funded by a contract with the Massachusetts Supreme Judicial Court, and by grants, private donations, and court-awarded attorneys' fees.

The National Center for Youth Law ("NCYL") is a private, nonprofit organization based in Oakland, California. It is devoted to using the law to improve the lives of poor children nationwide. For more than thirty years, NCYL has engaged in litigation and other advocacy to improve governmental

systems that affect the lives of poor children. NCYL has participated in litigation, often with private co-counsel, that has improved conditions in juvenile prisons, expanded access to health and mental health care, and improved the quality of foster care systems in numerous states. Much of NCYL's litigation is resolved through settlements that require changes in agency policy and regulations, and diligent monitoring and enforcement are required to ensure corresponding changes in agency practices.

The National Police Accountability Project ("NPAP") was founded in 1999 by members of the National Lawyers Guild to address law enforcement misconduct, and presently has 400 members throughout the country. NPAP provides training and support for attorneys and other legal workers, public education and information on issues relating to police misconduct for the general public, and information and resources for nonprofit organizations and community groups involved with victims of police misconduct. NPAP also supports legislative reform efforts aimed at increasing police accountability, and appears as amicus curiae in cases that present issues of particular importance for lawyers who represent plaintiffs in police misconduct actions. This case is of particular interest to NPAP because its members frequently litigate prison and jail cases and rely on attorneys' fee awards.

Prisoners' Legal Services of New York ("PLS"), a not-for-profit organization providing civil legal services to indigent inmates in New York

State prisons, has been providing legal assistance to inmates for thirty-two years. There are approximately 62,000 individuals in New York State prisons, and PLS's mission is to ensure that those prisoners receive fair, just, lawful, and humane treatment while incarcerated. PLS receives over 14,000 requests for assistance annually and serves as legal counsel to prisoners on a variety of claims in both state and federal courts, including claims of excessive force, deliberate indifference, and violation of due process. PLS seeks attorney fees in appropriate cases, and for over thirty years PLS has used those fees to maintain operations when other funding sources have decreased or remained stagnant.

Founded in 1971, the Southern Poverty Law Center ("Center") has litigated numerous civil rights cases on behalf of women, people of color, prisoners, and other victims of discrimination. Although the Center's work is concentrated in the South, its attorneys appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law.

Uptown People's Law Center ("UPLC") is a not-for-profit legal service center serving poor and working people in Chicago, Illinois. In addition to its legal work for community residents, UPLC represents prisoners in challenges to prison conditions, the parole system, and a variety of other matters, in both federal and state courts. UPLC receives over 5,000 requests for representation

every year, and has one of the largest dockets of prison cases in Illinois. UPLC files cases, provides advice to prisoners litigating their own cases, and provides assistance to attorneys who are handling cases on a pro bono basis. UPLC therefore has a vital interest in ensuring that reasonable attorneys' fees are awarded in meritorious cases.

The Volunteer Lawyers' Project for the Southern District of Florida ("VLP") was established by administrative order of the United States District Court for the Southern District of Florida. The district court sitting *en banc* concluded in 1992 that *pro bono* representation of meritorious *pro se* cases, the great majority of which are prisoner petitions, could significantly reduce court delay. The VLP was identified in 1998 by the Federal Judicial Center as a model program for district courts that provide for appointment of counsel for indigent litigants in civil cases. Since Congress has not appropriated any revenues to underwrite its administrative expenses, the VLP must operate in part from attorneys' fees recovered in meritorious cases handled by its volunteer attorney members.

Amici have concurrently filed a motion for leave to file this amicus brief pursuant to Federal Rule of Appellate Procedure 29.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises two issues that are crucial to the effectiveness of statutes providing for attorneys' fees in civil rights cases: the discretion of district courts to award fees (1) for ensuring compliance with settlement agreements vindicating civil rights, (2) at rates prevailing in the general legal community for lawyers of comparable skill and experience doing work of similar complexity. Unless lawyers can obtain reasonable compensation for all phases of work necessary to bring about enforcement of civil rights, Congress's purpose in providing for attorneys' fees — "effective enforcement of Federal civil rights statutes" through "the efforts of private citizens," H.R. Rep. No. 94-1558, at 1 (1976) — will be frustrated.

As was true in this case, ensuring compliance with relief obtained through court order or settlement is often a critical phase in effective enforcement of constitutional or statutory rights; and the services of suitably skilled lawyers will be available for enforcement of those rights only if lawyers are compensated at rates comparable to what they can obtain in their community for similarly demanding work. Under established law in this Circuit, the district court in this case was well within its discretion in awarding fees for work to ensure compliance with the settlement agreement and in doing so at market rates prevailing generally for lawyers in the Northern District of California, not just those doing civil rights work.

ARGUMENT

I. THE AVAILABILITY OF ATTORNEYS' FEES FOR ENSURING COMPLIANCE WITH SETTLEMENT TERMS IS CRUCIAL TO ENFORCEMENT OF CIVIL RIGHTS.

“Section 1988 was enacted to insure that private citizens have a meaningful opportunity to vindicate their rights protected by the Civil Rights Acts.” *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 559 (1986). A consent decree or settlement agreement prohibiting further infringement of civil rights is not enough by itself to protect those rights. The parties must adhere to the agreement. Ensuring compliance with a consent decree or settlement agreement is thus often a critical phase of civil rights enforcement, *see id.* at 561, and “necessary to the attainment of adequate relief,” *id.* at 558.

For example, in *Delaware Valley Citizens’ Council for Clean Air*, Delaware Valley filed suit to force the Commonwealth of Pennsylvania to comply with its obligations under the Clean Air Act¹ to develop and implement an emissions inspection and maintenance program covering ten counties surrounding two major metropolitan areas. *Id.* The resulting consent decree provided detailed instructions as to how the program was to be developed and the specific dates by which these tasks were to be accomplished. *Id.* Affirming

¹ The Court found that the “purposes behind both § 304(d) [Clean Air Act entitlement to attorneys’ fees] and § 1988 are nearly identical.” *Id.* at 559.

an award of fees for post-consent decree litigation necessary to enforce compliance, the Supreme Court held that “[p]rotection of the full scope of relief afforded by the consent decree was thus crucial to safeguard the interests asserted by Delaware Valley; and enforcement of the decree.” *Id.* Where claims do not involve a single tortious act resulting in a discrete injury and the alleged harm cannot be remedied by a mere award of damages or declaratory relief, post-judgment work to ensure compliance may be an important component of obtaining relief. *See id.*

Compensation for investigative activities is “entirely proper” to effect the purposes of Section 1988. *See id.* at 561. “It is settled law in this circuit that a district court has discretion to award fees to a prevailing party in consent decree litigation for work reasonably spent to monitor and enforce compliance with the decree, even as to matters in which it did not prevail.” *S.F. NAACP v. S.F. Unified Sch. Dist.*, 284 F.3d 1163, 1166 (9th Cir. 2002); *see also Webb v. Ada County*, 285 F.3d 829, 835 (9th Cir. 2002) (holding that district court did not err in awarding attorneys’ fees for work done to enforce and monitor court’s judgment and consent decree); *Diaz v. Romer*, 961 F.2d 1508, 1511 (10th Cir. 1992) (“Case law and the plain language of 42 U.S.C. [§] 1988 clearly state that attorney’s fees can be awarded for post-judgment monitoring and other efforts to ensure compliance with court orders in a civil rights case.”).

An award of fees under Section 1988 for post-judgment work to effectuate the terms of a consent decree is appropriate because such work is a necessary aspect of plaintiffs' prevailing in a case and obtaining vindication of their civil rights. *Keith v. Volpe*, 833 F.2d 850, 857 (9th Cir. 1987). The same principle supports fee awards for work done to ensure compliance with a settlement agreement that serves the same purpose of protecting against further infringement of civil rights. *See, e.g., Lucas v. White*, 63 F. Supp. 2d 1046, 1059 (N.D. Cal. 1999) (awarding attorneys' fees for communications with inmates affected by a private settlement agreement because the communications were related to ensuring defendants' compliance with their settlement obligations); *Bellows v. NCO Fin. Sys., Inc.*, No. 07-CV-1413 W (AJB), 2009 WL 35468, at *2, *8 (S.D. Cal. Jan. 5, 2009) (awarding attorneys' fees for anticipated time spent reviewing compliance with a stipulated injunction and monitoring claims payments provided for in settlement agreement).

The importance of efforts to ensure compliance is evident in this case. As in *Delaware Valley Citizens' Council for Clean Air, supra*, defendants' infringement of plaintiff's rights did not involve a single tortious act resulting in a discrete injury or harm that could be completely remedied by a mere award of damages or declaratory relief. *See Del. Valley Citizens' Council for Clean Air*, 478 U.S. at 558. To prevent continued infringement, Prison Legal News

(“PLN”) entered into a settlement agreement in which California defendants agreed, *inter alia*, to “develop a centralized list of disapproved magazines or publications” and to notify inmates and publishers when publications are disallowed. (ER 46-47.) To vindicate its First Amendment and Fourteenth Amendment rights and obtain the agreed-upon relief, it was essential that PLN be able to ensure compliance by the California Department of Corrections and Rehabilitation (“CDCR”) with the terms of the settlement agreement.

For example, while CDCR has developed a centralized list of disapproved publications as required by the settlement agreement, that list does not by itself remedy violation of PLN’s First Amendment rights. The use of that list in individual prisons and compliance with the settlement agreement’s notification requirement must be enforced to vindicate those rights.

A prevailing plaintiff should not have to trust that a defendant who has violated the plaintiff’s civil rights is no longer doing so based only on the defendant’s partial compliance with a settlement agreement or consent decree. Verifying compliance with an agreement is appropriate and necessary where, as here, the parties have agreed to policies that require further implementation.

“The effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens,’ and unless reasonable attorney’s fees could be awarded for bringing these actions, Congress found that many legitimate claims would not be redressed.” *Del. Valley Citizens’ Council for*

Clean Air, 478 U.S. at 560 (quoting H.R. Rep. No. 94-1558, at 1 (1976)).

Congress's purpose in providing for attorneys' fee awards in civil rights cases requires that fees be available for *all* phases of litigation necessary to bring about effective enforcement of civil rights, including the often critical phase of ensuring compliance with consent decrees and settlement agreements.

II. AWARD OF FEES AT RATES PREVAILING GENERALLY IN THE RELEVANT LEGAL COMMUNITY IS ESSENTIAL TO EFFECT THE PURPOSES OF SECTION 1988.

This Court reviews an award of attorneys' fees for abuse of discretion. *Gates v. Deukmejian*, 987 F.2d 1392, 1396 (9th Cir. 1992). The district court here did not abuse its discretion when it awarded attorneys' fees based on extensive documentation of market rates prevailing generally in the Northern District of California legal community. Indeed, consideration of rates charged by lawyers of comparable skill and experience doing similarly complicated work in the same community is necessary to fulfill the purposes of Section 1988.

A. It Is Not an Abuse of Discretion To Award Civil Rights Attorneys' Fees at Market Rates Prevailing Generally in the Legal Community.

Reasonable hourly fees are "calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The relevant community in this case is the Northern District of

California. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (“[W]hen determining a reasonable hourly rate, the relevant community is the forum in which the district court sits.”).

Congress “intended that the amount of fees awarded [in civil rights litigation] be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases[,] and not be reduced because the rights involved may be nonpecuniary in nature.” *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.4 (1983) (quoting S. Rep. No. 94-1011, at 6 (1976), reprinted in 1976 U.S.C.C.A.N. 5908, 5913) (alterations in original). Litigation involving practices of prison systems is a highly specialized field that requires knowledge of the prison system, mastery of complex constitutional and statutory doctrines (*e.g.*, First Amendment free speech, Fourteenth Amendment due process, and detailed prison regulations governing censorship), and experience trying complex civil cases in federal courts. The relevant legal community, therefore, consists of lawyers doing equally specialized complex litigation — including, for example, antitrust, securities regulation, and accounting fraud cases — that involves a similar combination of specialized factual knowledge, familiarity with complex legal doctrines, and trial skills.

Defendants’ proposed relevant community of “civil rights attorney[s] practicing within the prison system,” (*see* Defs.’-Appellant’s Opening Br. at

21), is too narrow to effect Congress's purpose in enacting Section 1988.

Exclusive reliance on fees in contemporaneous civil rights cases "is contrary to the rationale behind fee-shifting statutes in general." *Van Skike v. Dir., Office of Workers' Comp. Programs*, 557 F.3d 1041, 1047 (9th Cir. 2009). This is because "[i]n order to encourage able counsel to undertake [such fee-shifting cases], as Congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases." *Camacho*, 523 F.3d at 981 (quoting *Tolentino v. Friedman*, 46 F.3d 645, 652 (7th Cir. 1995)) (Fair Debt Collection Practices Act); *see also Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053-54 (9th Cir. 2009) (Longshore and Harbor Workers' Compensation Act); *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (case law construing what is a "reasonable" fee applies uniformly to all federal fee-shifting statutes).

Unless district courts have discretion to award fees at rates that are competitive in the relevant legal community, Section 1988 will not provide the incentive for representation of civil rights plaintiffs with meritorious claims that Congress intended. As the Third Circuit has explained, "Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will

be vindicated.” *Student Pub. Interest Research Group v. AT&T Bell Labs.*, 842 F.2d 1436, 1449 (3d Cir. 1988).

B. Determining the Prevailing Market Rate for the Northern District of California Does Not Require Application of the Washington, D.C. *Laffey* Matrix.

An award of attorneys’ fees that does not track the *Laffey* matrix established in the District of Columbia is not an abuse of discretion. Indeed, adherence to the *Laffey* matrix for cases in the Northern District of California would be inappropriate and contrary to the purposes of Section 1988.

The term “*Laffey* matrix” refers to a schedule of hourly rates for attorneys in Washington, D.C. with various years of experience. *Laffey v. Nw. Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *rev’d on other grounds*, 746 F.2d 4 (D.C. Cir. 1984). The original matrix set forth reasonable rates for attorneys practicing in Washington, D.C. between June 1, 1981 and May 31, 1982. In the District of Columbia, there are two competing versions of the *Laffey* matrix in use: (1) the United States Attorney’s Office matrix, which accounts for inflation by adjusting the hourly rates according to the Washington, D.C. Consumer Price Index for “other goods and services”; and (2) a matrix that accounts for inflation by adjusting the hourly rates according to the national Consumer Price Index for legal services. *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000).

Even in the District of Columbia, it is not an abuse of discretion not to follow one of these *Laffey* matrices. Plaintiffs “may point to such evidence as an updated version of the *Laffey* matrix or the U.S. Attorney’s Office matrix, *or their own survey of prevailing market rates in the community.*” *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995) (emphasis added). Other evidence, such as surveys, “affidavits reciting the precise fees that attorneys with similar qualifications have received from fee-paying clients in comparable cases[,] and evidence of recent fees awarded by the courts or through settlement to attorneys with comparable qualifications handling similar cases,” is also relevant to a district court’s determination of reasonable market rates. *Id.*

Adhering solely to the *Laffey* matrices in this case would be inappropriate. Those matrices are compiled for the Washington, D.C. market and do not reflect prevailing market rates in the Northern District of California. *See Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 245 (4th Cir. 2009) (holding that the *Laffey* matrix is not a reliable indicator of prevailing rates in the Washington, D.C. suburb of Alexandria, Virginia); *Grissom v. The Mills Corp.*, 549 F.3d 313, 323 (4th Cir. 2008) (same for the Washington, D.C. suburb of Reston, Virginia).

Moreover, the *Laffey* matrices do not take into consideration crucial factors such as the specific skill, experience, and reputation of the attorneys.

See Chalmers v. City of Los Angeles, 796 F.2d 1205, 1211 (9th Cir. 1986); *see also id.* at 1212 (“[T]he special skill and experience of counsel as well as the quality of representation are factors ordinarily reflected in the reasonable hourly rate.” (citing *Blum*, 465 U.S. at 898-99)); *Covington*, 57 F.3d at 1109 (matrix that “lumps attorneys with four to seven years of experience in the same category” as attorneys with eleven to nineteen years of experience, is “somewhat crude”). Reliance on general years of experience alone does not differentiate the different skill sets attorneys develop in particular areas of practice, such as complex federal litigation. And, as the Third Circuit has recognized, “any index that is updated based on a statistical measure of inflation — rather than regular recalibration in light of prevailing rates — will tend to diminish in accuracy over time.” *Interfaith Cmty. Org. v. Honeywell Int’l, Inc.*, 426 F.3d 694, 710 n.14 (3d Cir. 2005). District courts should, therefore, “be assiduous in evaluating fee requests in light of *all* the evidence.” *Id.* (emphasis added.)

Therefore, the district court here did not abuse its discretion when it considered extensive evidence of prevailing market rates in the Northern District of California, including rates in non-civil rights cases. Its award of fees at “competitive rates” in the Northern District is completely consistent with Congress’s purposes in providing fee shifting in civil rights cases and “increase[s] the likelihood that the congressional policy of redressing public

interest claims will be vindicated.” *Student Pub. Interest Research Group*,
842 F.2d at 1449.

CONCLUSION

For the foregoing reasons, amici urge this Court to affirm the district court’s order awarding reasonable attorneys’ fees for work to ensure compliance with the parties’ settlement agreement. The principles reflected in that order — including recognition of the importance of ensuring compliance with civil rights relief obtained through a settlement agreement and awarding fees at competitive rates sufficient to provide appropriate incentive to qualified counsel — advance the congressional purpose of providing for attorneys’ fees to prevailing parties in civil rights cases and are of great significance to organizations like amici that do civil rights enforcement work.

Dated: June 24, 2009

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 29(c)(5) and 32(a)(7) and Ninth Circuit Rule 32-1, the foregoing Amicus Brief of Columbia Legal Services; Florida Justice Institute, Inc.; Legal Aid Society; Massachusetts Correctional Legal Services, Inc.; National Center for Youth Law; National Police Accountability Project; Prisoners' Legal Services of New York; Southern Poverty Law Center; Uptown People's Law Center; and Volunteer Lawyers' Project for the Southern District of Florida in Support of Plaintiff-Appellee and in Support of Affirmance is proportionately spaced, has a typeface of 14 points, and contains 4,056 words.

Dated: June 24, 2009

By: /s/ George C. Harris
George C. Harris

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Executed June 24, 2009, at San Francisco, California.

 /s/ George C. Harris
George C. Harris

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