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**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

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GLEN JOCHIMSEN  
*Plaintiff and Respondent,*

v.

COUNTY OF LOS ANGELES AND DAVID HERNANDEZ  
*Defendants and Appellants.*

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On Appeal from the Superior Court of Los Angeles County  
Case No. BC386266  
Honorable Richard L. Fruin, Jr.

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**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF;  
AMICI CURIAE BRIEF OF THE ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA AND THE NATIONAL POLICE ACCOUNTABILITY PROJECT**

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## APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Under California Rules of Court, rule 8.200(c), the ACLU Foundation of Southern California and the National Police Accountability Project request permission to file the attached amici curiae brief in support of plaintiff and respondent, Glen Jochimsen.

Amicus ACLU is a national organization, founded in the wake of the Palmer Raids after World War I, which is dedicated to protecting the civil rights and civil liberties guaranteed by the Bill of Rights of the United States Constitution. Throughout its history, the organization has vigorously fought to oppose misconduct by law enforcement agencies and to seek judicial remedies to violations of the Fourth Amendment. The ACLU of Southern California is one of three California affiliates of the national ACLU. The ACLU of Southern California was founded by Upton Sinclair in 1923, after Mr. Sinclair was arrested for reading the First Amendment aloud at a protest of striking dock workers. As part of its mission, the ACLU of Southern California has repeatedly participated in matters before this Court as both counsel for a party or an amicus in defense of the rights guaranteed by the federal and state constitutions. The ACLU also regularly seeks attorneys fees under 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5, and other fee shifting provisions, and has submitted amicus briefs in the California courts in cases concerning the interpretation fee shifting statutes such as *Tipton-Whittingham v. City of Los Angeles*, 34 Cal 4th 604 (2004) and *Graham v. Daimler Chrysler*, 34 Cal 4th 553 (2005).

Amicus National Police Accountability Project ("NP AP") was founded in 1999 by

members of the National Lawyers Guild to address allegations of misconduct by law enforcement and corrections officers by coordinating and assisting civil rights lawyers. The project presently has more than four hundred attorney members throughout the United States. NP AP provides training and support for attorneys and other legal workers, public education and information on issues related to misconduct and accountability, and resources for non-profit organizations and community groups involved with victims of law enforcement misconduct. NP AP also supports legislative efforts aimed at increasing accountability, and appears as *amicus curiae* in cases, such as this one, which present issues of particular importance for the clients of its lawyers, who represent victims of police misconduct who cannot otherwise afford the costs of accessing the courts for vindication of their rights.

As counsel for the ACLU of Southern California and the National Police Accountability Project, we have reviewed the briefs of Respondent and Appellants and believe that amici can be of assistance to the Court by providing additional briefing that

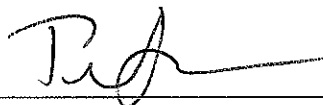
materially supplements the parties' briefs. The amicus brief addresses matters not fully addressed by the parties to this appeal, but essential to the determination of the issues.

Dated: January 31, 2011

Respectfully Submitted,

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA

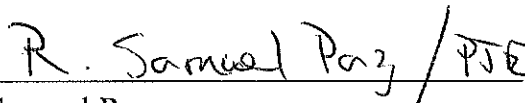
NATIONAL POLICE  
ACCOUNTABILITY PROJECT



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Peter Eliasberg

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R. Samuel Paz

National Police Accountability Project

## SUMMARY OF ARGUMENT

Amici ACLU Foundation of Southern California ("ACLU") and the National Police Accountability Project ("NP AP") submit this brief to address three arguments raised by appellants in this matter. The amicus brief addresses matters not fully addressed by the parties to this appeal, but essential to the determination of the issues.

First, it is the position of the ACLU and NP AP that the court below applied the proper analysis to arrive at a "reasonable" fee in this action. Ensuring that attorneys who bring civil rights litigation receive reasonable compensation for their time is crucial to further the legislative intent of Congress in enacting 42 U.S.C. § 1988, as well as the fundamental public policy of this State of awarding fees to encourage competent representation for individuals who would not otherwise be able to afford access to the courts to vindicate important constitutional rights. The "rule of proportionality" advanced by appellants would undermine these goals and inevitably result in limiting representation for persons challenging civil rights violations.

Second, the plaintiff's attorneys submitted ample and competent evidence of the type the courts have repeatedly approved to establish market rates for plaintiff's counsel, including declarations of other attorneys who can attest to the skill, experience and reputation of the prevailing party's counsel, fee awards to attorneys of like accomplishment, evidence of fee awards in similarly complex litigation, and surveys of rates in the relevant legal community.

Third, Appellants' argument that reversal is required because the trial court did not articulate specific rates for each of plaintiff's attorneys in calculating the fee award is

wrong on the facts and law. It is clear from the order that the court approved the requested rates of \$750 and \$500 an hour for plaintiff's lead counsel. Moreover, the order is sufficient because California does not require a statement of decision on an order on a motion for attorney fees.

## ARGUMENT

### I. THE AWARD OF FEES IN THIS CASE SERVES BOTH CONGRESSIONAL INTENT AND CALIFORNIA PUBLIC POLICY TO ENCOURAGE COMPETENT ATTORNEYS TO LITIGATE CIVIL RIGHTS CASES, AS A DETERRENT TO FUTURE VIOLATIONS OF THE LAW ESPECIALLY WHEN THE DAMAGES ARE SMALL.

Defendant argues on appeal that the amount of fees awarded to plaintiff's counsel is excessive in light of the amount of damages awarded by the jury. Contrary to defendant's assertion, no "rule of proportionality" between fees and damages limits the award in this instance. Any such rule would contravene established Supreme Court precedent and pose a serious impediment to the vindication of fundamental civil rights by the majority of people who are unable to afford the costs of access to the courts.

#### A. There is No "Rule of Proportionality" Limiting Fees Under § 1983

##### 1. Reasonable fees are necessary to attract competent counsel

In *City of Riverside v. Rivera*, 477 U.S. 561 (1986), the United States Supreme Court rejected the argument that attorney fees in a civil rights case should be proportional to the amount of damages awarded the plaintiff.<sup>1</sup> *Id.* at 577. The Court began from the

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<sup>1</sup> The federal circuits have consistently rejected attempts to limit *Rivera* and create a rule of proportionality between damages obtained and fees sought in civil rights cases. See, e.g., *United Automobile Workers Local 259 Social Security Dept. v. Metro Auto Center*, 501 F.3d 283, 293 (3d. Cir. 2007) ("we have rejected a rule of proportionality in civil rights cases"); *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 328 n.20 (4th Cir. 2006) ("[a]wards of attorney's fees substantially exceeding damages are not

indisputable premise that “a civil rights action for damages” may not be dismissed as “a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms.” *Id.* at 574.

*Rivera* was brought by eight plaintiffs who sued the City of Riverside, its police chief, and several dozen individual officers. *Id.* at 564. Nearly half the individual defendants prevailed on summary judgment. *Id.* At trial, the jury awarded plaintiffs a collective total of approximately \$33,300 in damages on their federal and state law claims. *Id.* at 564-65. The district court awarded plaintiffs’ attorneys nearly \$250,000 in fees, which was affirmed by the Supreme Court. *Id.* at 565. In so doing, the Court explicitly rejected proportionality as a measure of the reasonableness of attorneys fees under 42 U.S.C. § 1988.<sup>2</sup>

The Supreme Court’s decision in *Rivera* was rooted in the legislative intent expressed at the time of enactment of the bill that became the federal fee shifting statute, 42 U.S.C. § 1988. A rule of proportionality would be “totally inconsistent with Congress’ purpose in enacting § 1988. Congress recognized that private-sector fee arrangements

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unusual in civil rights litigation”); *Simpson v. Merchants & Planters Bank*, 441 F.3d 572, 581 (8th Cir. 2006) (rejecting proportionality rule because of barrier it would pose to civil rights litigants pursuing claims); *Kassim v. City of Schenectady*, 415 F.3d 246, 252 (2d Cir. 2005) (“we have repeatedly rejected the notion that a fee may be reduced merely because the fee would be disproportionate to the financial interest at stake in the litigation”); *Morales v. City of San Jose*, 96 F.3d 359, 364-65 n.11 (9th Cir. 1996) (citing Circuit cases rejecting “rule of proportionality.”); *Cobb v. Miller*, 818 F.2d 1227, 1234 (5th Cir. 1987) (rejecting “rule of proportionality”).

<sup>2</sup> Even though comparing fees sought to the amount of damages recovered is not a relevant measure of the appropriate attorneys fees award, the ratio of damages to fees in this case is little more than the ratio of damages to attorneys fees in *Rivera*, in which the Supreme Court affirmed the fee award. 477 U.S. at 565.

were inadequate to ensure sufficiently vigorous enforcement of civil rights.” *Rivera*, 477 U.S. at 576. “[D]amage awards do not reflect fully the public benefit advanced by civil rights litigation[.]” *Id.* at 575. For this reason, “Congress did not intend for fees in civil rights cases, unlike most private law cases, to depend on obtaining substantial monetary relief.” *Id.*

To the contrary, as the Supreme Court noted, Congress “intended in civil rights cases ‘that the amount of fees awarded under (section 1988) be governed by the same standard which prevail in other types of equally complex federal litigation, such as antitrust cases ...’ S.Rep. 94-1011, 94th Cong., 2d Sess. 6, reprinted in (1976) U.S. Code Cong. & Admin. News, pp. 5908, 5913.” *Rivera*, 477 U.S. at 575-78. “Counsel ‘for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, ‘for all time reasonably expended on a matter.’” *Id.* at 576 (quoting Senate Report at p. 6).

Congress understood that legal services were simply out of the financial reach of many individuals with valid civil rights claims. “In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer[.]” *Id.* (quoting Senate Report at p. 2). “Plaintiffs who suffer discrimination and other infringements of their civil rights are usually not wealthy people.” 122 Cong. Rec. 35127 (1976) (remarks of Rep. Elizabeth Holtzman). The simple fact is that “[m]ost Americans ... cannot afford to hire a lawyer if their constitutional rights are violated or if they are the victims of illegal discrimination.” *Id.* at 35128 (remarks of Rep. Seiberling) (edits supplied). In short, before the enactment of § 1988, “the

vindication of important congressional policies in the vital area of civil rights ... depend[ed] upon the financial resources of those least able to promote them." *Id.* at 31832 (remarks of Sen. Hathaway) (edits supplied).

Congress recognized that even the availability of contingent fee arrangements common in personal injury cases was inadequate to provide an incentive for competent counsel to take on civil rights cases and invest substantial expenditures of time for what may ultimately only result in small damage awards.<sup>3</sup> The insufficiency of contingent fees was only one factor motivating Congress to enact 42 U.S.C. § 1988.

[While] damages are theoretically available under the statutes covered by [§1988], it should be observed that, in some cases, immunity doctrines and special defenses, available only to public officials, preclude or severely limit the damage remedy. Consequently, awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected.

Rivera, 477 U.S. at 568 (quoting House Report, at 9) (emphasis supplied, footnote omitted).

As this case well illustrates, “[civil] rights cases -- unlike tort or antitrust cases -- do not provide the prevailing plaintiff with a large recovery from which he can pay his lawyer.” 122 Cong. Rec. at 33314 (remarks of Sen. Kennedy). For this reason, “[fee] awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain.”

Rivera, 477 U.S. at 567 (quoting Senate Report at p. 2). “If private citizens are to be able

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<sup>3</sup> Both the plurality decision and the dissent in *Rivera* noted that neither the statutory language nor the legislative history support applying the contingent fee model to § 1988. *Rivera*, 477 U.S. at 574 (plurality); *id.* at 595 (Rehnquist, C.J., dissenting).

to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court." *Id.*

A rule that limits attorney's fees in civil rights cases to a proportion of the damages awarded would seriously undermine Congress' purpose in enacting § 1988. Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process. See H. Rep. [No.1558, 94th Cong. 2d Sess.] 3 (1976). These victims ordinarily cannot afford to purchase legal services at the rates set by the private market. ... A rule of proportionality would make it difficult, if not impossible, for individuals with meritorious civil rights claims but relatively small potential damages to obtain redress from the courts.

*Rivera*, 477 U.S. at 576-578.<sup>4</sup>

## **2. Substantial fee awards are a deterrent to future unlawful conduct**

As the recovery of damages by a civil rights plaintiff "contributes significantly to the deterrence of civil rights violations in the future," *id.* at 575, substantial fee awards that are based on the prevailing party's lodestar similarly advance the congressional intent to attract competent counsel who will vigorously pursue these cases as a means to discourage future unconstitutional conduct by government officials. Even before *Rivera*, the Supreme Court recognized that the deterrent effect of fee awards against civil rights violators is "by no means inconsequential." *Carey v. Piphus*, 435 U.S. 247, 257 n.11

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<sup>4</sup> A rule of proportionality would punish the attorney who steps forward to represent individuals whose rights have been violated, but whose damages may, ultimately, be relatively small. The plaintiff's lawyer is often required to expend considerable hours responding to the litigation tactics of the defense. Frequently, "an attorney is in part reacting to forces beyond the attorney's control, particularly the conduct of opposing counsel and the court." *Kassim v. City of Schenectady*, 415 F.3d 246, 252 (2d. Cir. 2005). In such circumstances, "the hours required to litigate even a simple matter can expand enormously." *Id.* Amici note that the trial court expressly considered this factor. AA: 1074-75.

(1978). Together with damages, an award of fees to the plaintiff ensures “that agents of the State will not deliberately ignore [constitutional] rights.” *Id.*; see also *Maine v. Thiboutot*, 448 U.S. 1, 11 (1980) (“Congress viewed the fees authorized by § 1988 as ‘an integral part of the remedies necessary to obtain’ compliance with § 1983,” quoting S. Rep. No. 94-1011, 94th Cong., 2d Sess. 5 (1976)). The potential deterrent effect of § 1988 fees in civil rights case was most recently noted by Justice Scalia in *Hudson v. Michigan*, 547 U.S. 586, 597-98 (2006).<sup>5</sup>

### **B. California Has Expressly Rejected Proportionality in Fee Awards**

The California Supreme Court has noted that “[e]ven a small award of compensatory damages in a federal civil rights lawsuit can justify a substantial amount of fees.” *County of Los Angeles v. Superior Court (Schoenert)*, 21 Cal.4th 292, 304 n.2 (1999) (citing *Rivera*, 477 U.S. at 565). Two years later, in *Ketchum v. Moses*, 24 Cal.4th 1122 (2001), in declining to adopt federal Supreme Court limits on fee enhancements, the court noted that “[t]he experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk.” *Id.* at 1136-37 (citation omitted).

Nothing in the law of § 1988 “mandate[s] ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case.” *Harman v. City and County of San Francisco*, 158 Cal.App.4th 407, 419 (2007) (edits supplied). In

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<sup>5</sup> “Since some civil-rights violations would yield damages too small to justify the expense of litigation, Congress has authorized attorney’s fees for civil-rights plaintiffs.” *Hudson*, 547 U.S. at 597. “[B]ut now ‘much has changed. Citizens and lawyers are much more willing to seek relief in the courts for police misconduct.’” M. Avery, D. Rudovsky, & K. Blum, *Police Misconduct: Law and Litigation*, p v (3d ed. 2005); see generally N. Aron, *Liberty and Justice for All: Public Interest Law in the 1980s and Beyond* (1989) (describing the growth of public-interest law).” *Id.* at 597-598.

*Harman*, the Court affirmed a fee award of more than \$1 million where the damages were only \$30,300. The court rejected the City's argument that fees should be capped at three times the damages obtained, noting that "[t]he [U.S.] Supreme Court has disapproved on more than one occasion of such pretensions to mathematical precision. [Citation.]" *Id.* at 421 (edits supplied).

*Harman* emphasized that "[t]here is 'no mathematical rule requiring proportionality between compensatory damages and attorney's fees awards[.]'" *Id.* (citation omitted). Any other result would "seriously undermine Congress' purpose in enacting [section 1988]" to "provide many victims of civil rights violations with effective access to the judicial process" and to "encourage lawyers to accept civil rights cases." *Id.* at 420 (citing *Rivera*, 477 U.S. at 576-78, and *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 164 (2006)) (internal citation in *Graciano* omitted). Moreover, such a fixed formulaic approach as the one appellants advance would also strip the courts of the discretion to set reasonable fees based on all of the factors to be weighed. *Harman*, 158 Cal.App.4th at 420 (citing *Cunningham v. City of Los Angeles*, 879 F.2d 481, 486 (9th Cir. 1988)).

Applying these principles, *Vo v. Las Virgenes Municipal Water District*, 79 Cal.App.4th 440, 446 (2000), upheld a fee award of \$470,000 on damages of \$37,500 awarded to the plaintiff. Similarly, in *Weeks v. Baker & McKenzie*, 63 Cal.App.4th 1128, 1137, 1169 (1990), the court upheld an award of \$921,565 in fees to plaintiff's counsel on damages of \$50,000. In both of these cases, as in *Harman*, the ratio between damages and fees was far greater than in this case. Yet, the courts had no hesitation in affirming those awards to further the fundamental public policy of this state – and Congress in enacting 42

U.S.C. § 1988 -- to provide substantial fees as an incentive to counsel to litigate civil rights case.

**II. PLAINTIFF SUBMITTED EVIDENCE FULLY CONSISTENT WITH THE DIRECTIVES OF THE COURTS TO SHOW THE REASONABLENESS OF THE RATES SOUGHT.**

**A. The Declaration and Exhibits of Carol Sobel**

Defendants assert that plaintiff has not met his evidentiary burden to establish the reasonableness of the rates sought for his counsel. “In any action or proceeding to enforce a provision of section ... 1983 ... of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a *reasonable* attorney's fee ...” 42 U.S.C. § 1988 (emphasis added). “To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence - in addition to the attorney's own affidavits - that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 65 U.S. 886, 895 n.11 (1984). As the Ninth Circuit has noted, “[a]ffidavits of the plaintiffs’ attorney[s] and other attorneys regarding prevailing fees in the community, and rate determinations in other cases . . . are satisfactory evidence of the prevailing market rate.” *Camacho v. Bridgeport Financial Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (citations omitted).

In this instance, plaintiff has filed a declaration, with extensive supporting exhibits, from attorney Carol Sobel. Appellant argues that this submission is of no evidentiary value in large part because appellant contends Ms. Sobel is not an “expert.” Although submitting the declaration of a fee expert is one way to establish market rates, there is no

requirement that a prevailing party introduce “expert” testimony to support a fee application. All that is required is that the declarant state the evidentiary basis for the conclusion that the rates sought are reasonable. Ms. Sobel’s declaration does that, attaching as exhibits the decisions and declarations upon which she relied in forming her opinions.

Notwithstanding the fact that Ms. Sobel need not be qualified as an expert to provide a supporting declaration, by any measure, she would qualify as an expert on attorney fees. “A person is qualified to testify as an expert witness if he or she has special knowledge, skill, experience, training or education sufficient for the court to deem the person qualified to testify on a subject about which he or she is asked to express an opinion.” Jefferson, California Evidence Benchbook, 3d Edition, § 29.18; California Evidence Code § 720. “A witness by his or her own testimony may establish his or her qualification as an expert by testifying to special knowledge, skill, experience, training, or education.” Calif. Evidence Benchbook, § 29.20; Evidence Code § 720(b). The information to which Ms. Sobel testified here—the reasonableness of the market rates sought—is beyond the common knowledge of most attorneys.

As her declaration demonstrates, Ms. Sobel was responsible for establishing market rates for the attorneys at the ACLU of Southern California for nearly two decades. She has set forth in detail the methodology she employed to determine appropriate rates. In the fourteen years since she entered private practice, she has continued to collect and review fee declarations and awards in the Los Angeles market annually to establish the reasonableness of her own rate and those of her co-counsel when she files fee motions.

This includes rates for counsel at the ACLU in several cases she co-counseled with the ACLU, as well as rates for Mr. Hoffman and Mr. Raphling in cases she co-counseled with them. AA: 127 - 131. In 32 years, Ms. Sobel has collected extensive documentation of rates sought and awarded in the Los Angeles legal market, and her declarations have been cited favorably by a number of courts, as discussed in the next section.

**B. Plaintiff Submitted Substantial Evidence of Market Rates By the Methods Approved By Our Courts**

There are several accepted evidentiary means to show market rates approved by our courts, all of which Ms. Sobel incorporated in her declaration and exhibits. The most common method of demonstrating the reasonableness of the rates sought is by submitting declarations from local attorneys. Richard M. Pearl, California Attorney Fee Awards (3d ed. Cal CEB 2010), §9.121, “Methods of Demonstrating Market Rates.” The critical factor is a showing that the “claimed rates are consistent with the declarant’s rates or that the declarant has specific knowledge of community rates.” Pearl, California Attorney Fee Awards (3d ed. Cal CEB 2010) §9.104 (citing, *inter alia*, *Children's Hosp. & Med. Ctr. v Bontá*, 97 Cal.App.4th 740, 783 (2002)).

Significantly, included among the cases cited in this section of California Attorney Fee Awards is *Nadarajah v. Holder*, 569 F.3d 906, 912 (9th Cir. 2009). In *Nadarajah*, the Ninth Circuit expressly relied on the declaration of Ms. Sobel as the *sole* fee declarant to find that the rates sought by the ACLU counsel in that case were reasonable based on the

Ms. Sobel's testimony about the prevailing rates in the relevant Los Angeles legal market.<sup>6</sup>

Federal courts have interpreted 42 U.S.C. §1988 in the same way as the California courts; holding that attorney declarations about the rates charged by lawyers with similar skill and experience in the same community as the lawyers for the prevailing party are sufficient to establish the market rates. *See Nadarajah, supra*, 569 F.3d at 916-17; *Guam Society of Obstetricians and Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996) (“In setting the hourly rates, the district court properly considered declarations from Guam attorneys regarding the prevailing market rates.”); *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1547 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993) (“We recently pronounced that declarations of the ‘prevailing market rate in the relevant community ... [are] sufficient to establish the appropriate [billing] rate for lodestar purposes.’”) (edits in original) (quoting *Bouman v. Block*, 940 F.2d 1231, 1235 (9th Cir. 1991); *United Steel Workers of America v. Phelps Dodge Corporation*, 896 F.2d 403, 407 (9th Cir. 1990) (“Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.”). These cases are relevant to this Court’s

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<sup>6</sup> Amici note that, in addition to *Nadarajah*, several courts have cited the declarations and supporting evidence submitted by Ms. Sobel in approving the reasonable rates sought by the prevailing party was reasonable. *See, e.g., Orantes-Hernandez v. Holder*, 713 F. Supp. 2d 929, 963-64 (C.D. Cal. 2010); *Torrance Unified School Dist. v. Magee*, No. CV 07-2164 CAS, 2008 U.S. Dist. LEXIS 95074 (C.D. Cal. Nov. 08).

determination of whether the superior court properly applied 42 U.S.C. § 1988 in its attorneys fees award to plaintiff's counsel. *See Margolin v. Regional Planning Com.*, 134 Cal.App.3d 999, 1003-04 (1982) (The "reasoning" of federal court cases "is both persuasive and appropriate for consideration" in analyzing how to determine what constitutes a reasonable hourly rate.).

A second approved means of establishing market rates is by the introduction of survey data of rates in the relevant market. *See, e.g., Maughan v Google Technology, Inc.*, 143 Cal.App.4th 1242, 1256 (2006) (Vogel, J., dissenting); *see also Petroleum Sales, Inc. v. Valero Refining Co.*, 304 Fed.Appx. 615 at \* 2 (9th Cir. 2008) ("The district court did not abuse its discretion in determining attorneys' fees because it determined a reasonable award based on a 2006 survey of legal rates charged by thirty-three large law firms in San Francisco and copies of bills actually paid by Valero."). So long as the survey data relied upon is specific to the local legal market, the information may be considered by the court as evidence of market rates. This was one type of evidence provided by Ms. Sobel's declaration.

A third basis for proving relevant market rates is to submit evidence of rates awarded plaintiff's counsel in other cases. Ms. Sobel has done this, pointing to cases in which she was co-counsel with each of plaintiff's counsel in this case. California Attorney Fee Awards, *supra*, § 9.12.2 (Methods of Demonstrating Market Rates). *See, e.g., Davis*, 106 Cal.App.4th 904; *Margolin, supra*, 134 Cal.App.3d 1005. Appellants argue that rates awarded to plaintiff's counsel in prior cases are not relevant because those cases are different from this one. This argument was expressly rejected in *Margolin*, where the

appellant “argue[d] that no evidence was presented to the court to explain the basis on which those hourly rates were awarded to counsel in other cases, the nature of other litigation, its difficulty and other factors which might have affected the award.” *Id.* Describing this argument as “fallacious,” the court held that “[t]he hourly rates sought by and awarded to counsel in these other cases were the basic rates charged by the lawyers, law clerks, and paralegals in that firm, part of the touchstone, the starting point of the fee award.” *Id.*

Finally, through the Sobel declaration and supporting exhibits, plaintiff submitted evidence of rates awarded to attorneys of comparable experience in other matters in the same legal market. This, too, is an approved means of proof. California Attorney Fee Awards, *supra*; see, e.g., *Children's Hospital*, 97 Cal.App.4th at 738; *Margolin*, 134 Cal.App.3d at 1003. Ms. Sobel submitted multiple fee awards entered by courts in the Los Angeles legal market. She averred that the attorneys in these other cases were of comparable skill, experience and reputation to Mr. Hoffman and Mr. Raphling based on her personal knowledge of each counsel. This was more than sufficient to meet plaintiff’s burden. In sum, plaintiff’s counsel employed multiple forms of evidence approved by our courts to establish the reasonable market rate for counsel.<sup>7</sup>

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<sup>7</sup> Appellants also argue that the Sobel declaration is fatally insufficient because she does not provide her own rate. In fact, Ms. Sobel’s rate is set out in paragraph 10 of her declaration and also in several of the fee awards attached in which she was counsel, including the decision in which Mr. Hoffman was awarded fees at \$750 an hour. AA: 127-131. Appellants also assert in their Reply at page 24 that Ms. Sobel did not discuss the rates for the other attorneys who assisted in plaintiff’s representation. That assertion is also incorrect. Ms. Sobel discussed the rates for Do Kim (AA: 1027-28), and the two other attorneys who worked on the case, AA: 883 (¶), and opines that the rates are “far below the market rate for attorneys of similar experience.” As just one more example of the factually incorrect arguments Appellants made, they assert that Mr. Raphling’s declaration “does not discuss or establish \$750 as a reasonable hourly rate.”

### III. THE TRIAL COURT'S ORDER IS SUFFICIENT TO SUPPORT THE FEE AWARD AND PERMIT APPELLATE REVIEW.

Appellants' Reply argues extensively that the trial court must be reversed in this instance because it failed to articulate the specific rates approved which is a fatal error. Appellants' argument is wrong for two reasons. First, the decision of the trial court is clear that the court is using the requested rates of \$750 for Mr. Hoffman and \$500 for Mr. Raphling. AA: 1075 [¶8]. The trial court noted that the rates were on the high end of the market but that they were acceptable in this instance given the skill and efficiency of plaintiff's two attorneys. AA: 1075 [¶¶ 7-8] (ruling on submitted matter). The ruling on the fee motion set out the correct law and sufficiently explained the court's reasoning and conclusion that the requested fees should be reduced by an additional 3.5% above the voluntary 20% reduction taken by plaintiff's counsel in response to the court's initial indication that the lodestar was somewhat high. AA:1075 [¶9]. As the California Supreme Court held more than three decades ago, "[t]he 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" *Serrano v. Priest*, 20 Cal.3d 25, 49 (1977).

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AOB at p. 33 n.6. Since Mr. Raphling was only seeking a rate of \$500 an hour, there is no reason why he would need to establish the reasonableness of \$750 an hour.

If the attorney fee award is capable of being “rationalized” under the abuse of discretion standard, it must be affirmed. *See Donahue v. Donahue*, 182 Cal.App.4th 259, 269 (2010), quoting *Gorman v. Tassajara Development Corp.*, 178 Cal.App.4th 44, 101 (2009) (“A trial court's award of attorney fees must be able to be rationalized to be affirmed on appeal.”) (internal quotation marks in *Gorman* omitted). California does not require that a court issue a more detailed statement of decision with respect to a fee award. *See Ketchum*, 24 Cal.4th at 1140, citing *Maria P. v. Riles*, 43 Cal.3d 1281, 1294 (1987). In short, the trial court's judgment must be upheld if it is supported by substantial evidence, as is the case here. *Citizens Against Rent Control v. City of Berkeley*, 181 Cal.App.3d 213, 233 (1986).

### CONCLUSION

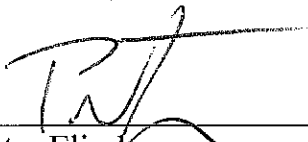
For the foregoing reasons, as well as those set forth in the briefs filed by Respondent, amici request that the Court affirm the Superior Court’s order awarding fees to Plaintiff/Respondent’s attorneys.

Dated: January 31, 2011

Respectfully Submitted,

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA

NATIONAL POLICE  
ACCOUNTABILITY PROJECT



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Peter Eliasberg  
ACLU Foundation of Southern California


R. Samuel Paz / PJK  
R. Samuel Paz  
National Police Accountability Project

**CERTIFICATE OF WORD COUNT**

Pursuant to 8.204(c) of the California Rules of Court, I hereby certify that the brief contains words 4,791, including footnotes. I making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: January 31, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'PE', written over a horizontal line.

Peter J. Eliasberg  
ACLU Foundation of Southern California

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1313 West Eight Street, Los Angeles, California 90017. I am employed in the office of a member of the bar of this court at whose direction the service was made.

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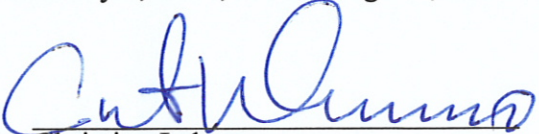
- 1. **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF THE ACLU FOUNDATION OF SOUTHERN CALIFORNIA AND THE NATIONAL POLICE ACCOUNTABILITY PROJECT**
- 2. **APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF AMICI CURIAE BRIEF OF THE ACLU FOUNDATION OF SOUTHERN CALIFORNIA AND THE NATIONAL POLICE ACCOUNTABILITY PROJECT**

on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

Thomas C. Hurrell	Hon. Richard J. Fruin, Jr. Dept. 15
Jamie L. Webb	Stanley Mosk Courthouse
HURRELL CANTRALL LLP	111 North Hill Street
660 South Figueroa Street, 21st Floor	Los Angeles, CA 90012
Los Angeles, CA 90017-2000	
Supreme Court of California (4 copies)	
Office of the Clerk	
350 McAllister Street	
San Francisco, CA 94102-4797	

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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on February 1, 2011, at Los Angeles, California.

  
Christian Lebano