

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
DANIEL BRADLEY,	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION NO. 3:18-CV-30039
	)	
CHRISTIAN CICERO, JOSEPH DUNN,	)	
and DANIEL MOYNAHAN,	)	
Defendants	)	
_____	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION FOR  
ATTORNEYS’ FEES, COSTS, EXPENSES, AND PREJUDGMENT INTEREST**

**PROCEDURAL HISTORY**

The Plaintiff, through his counsel, Peter Alexander Slepchuk, Esq., filed his Complaint on March 15, 2018. The Defendants, Joseph Dunn and Daniel Moynahan, filed their answer to the Complaint through their attorneys, Lisa deSousa and Kathleen Sheehan, on April 18, 2018. Pursuant to Local Rule 16.1(C), Attorney Slepchuk sent a formal demand letter to Attorneys deSousa and Sheehan on May 22, 2018 demanding \$100,000.00 to settle the Plaintiff’s claim.<sup>1</sup>

From June 2018 through January 2019, the parties conducted pre-trial discovery. On April 29, 2019, the Parties mediated the case before the Honorable Kenneth P. Neiman, but were unable to reach a settlement.

On May 29, 2019, Attorney Peter Alexander Slepchuk sent an e-mail to Attorney deSousa reducing the Plaintiff’s demand to \$40,000.00.<sup>2</sup> As the trial date approached, both attorneys for the Plaintiff, Peter Alexander Slepchuk and Peter Slepchuk Jr., began diligently preparing for trial. During a telephone call on January 30, 2020, Attorney Peter Alexander

<sup>1</sup> A copy of said letter is attached hereto as Exhibit A.

<sup>2</sup> A copy of said e-mail is attached hereto as Exhibit B.

Slepchuk informed Attorney Jeremy Saint Laurent, counsel for the Defendant, Joseph Dunn, that the Plaintiff would be willing to settle his claims in the \$30,000.00 range. The Defendants never made a counter offer to either of the Plaintiff's May 29, 2019 or January 30, 2020 demands.

The case was tried before a jury from February 18, 2020 through February 21, 2020. The jury returned a unanimous verdict in favor of the Plaintiff against the Defendant, Joseph Dunn, on the following counts of the Plaintiff's Complaint: Count I (unlawful arrest under 42 U.S.C. § 1983), Count II (unlawful seizure and arrest under G.L. c. 12, § 11H), Count III (false imprisonment under common law), Count IV (false arrest under common law), Count V (excessive force under 42 U.S.C. § 1983), Count VI (excessive force under G.L. c. 12, § 11H), Count VII (assault and battery under common law), Count VIII (malicious prosecution under 42 U.S.C. § 1983), and Count IX (malicious prosecution under common law). The jury also returned a unanimous verdict in favor of the Plaintiff against the Defendant, Daniel Moynahan, on the following counts of the Plaintiff's Complaint: Count I (unlawful seizure and arrest under 42 U.S.C. § 1983), Count II (unlawful seizure and arrest under G.L. c. 12, § 11H), Count III (false imprisonment under common law), and Count IV (false arrest under common law). The jury assessed damages against the Defendant, Joseph Dunn, as follows: \$60,000.00 in compensatory damages and \$120,000.00 in punitive damages. The jury assessed damages against the Defendant, Daniel Moynahan, as follows: \$15,000.00 in compensatory damages and \$30,000.00 in punitive damages.

### ARGUMENT

#### I. THE COURT SHOULD AWARD THE PLAINTIFF REASONABLE ATTORNEYS' FEES.

A plaintiff who prevails in an action brought pursuant to 42 U.S.C. § 1983 ("§ 1983") may, in the discretion of the Court, be awarded reasonable attorneys' fees as part of his costs. 42

U.S.C. § 1988(b). Similarly, a plaintiff who prevails in an action brought pursuant to the Massachusetts Civil Rights Act (“MCRA”) is entitled to an award of attorneys’ fees. **Mass. Gen. Laws** ch. 12, § 11I (“Any aggrieved person or persons who prevail in an action authorized by this section *shall be entitled* to an award of the costs of the litigation and reasonable attorneys’ fees in an amount to be fixed by the court.”) (emphasis added).

“A plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” Norris v. Murphy, 287 F. Supp. 2d 111, 114 (D. Mass. 2003) quoting Farrar v. Hobby, 506 U.S. 103, 111-112 (1992). Under both § 1983 and the MCRA, even a plaintiff who is awarded only nominal damages is considered to be a prevailing party. Id. at 116 citing Batchelder v. Allied Stores, 374 N.E.2d 1128, 1120 (Mass. 1985); Farrar, 506 U.S. at 112.

“‘[R]easonable attorneys’ fees are determined via the lodestar method,’ meaning that ‘the total number of hours reasonably spent in litigating the case is multiplied by a reasonable hourly rate.’” Norris, 287 F. Supp. 2d at 117 citing Hensley v. Eckerhart, 461 U.S. 424, 433 n.7 (1983); Grendel’s Den, Inc. v. Larkin, 749 F.2d 945, 951 (1st Cir. 1984); Connolly, 44 F. Supp. 2d at 95. “‘Fair market rate’ is the ‘reasonable hourly rate of compensation prevailing in the relevant community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’” Id. at 117 quoting Connolly, 44 F. Supp. 2d at 95. When all of the plaintiff’s claims are “premised on the same nucleus of facts, . . . no reduction need be taken for [the plaintiff’s] failure to succeed on all counts.” Id. at 118 n.4 citing Krewson v. Finn, 107 F.3d 84, 85 (1st Cir. 1997). Additionally, unlike federal law, under the MCRA no distinction is made

between “core and non-core” work performed by an attorney. Id. at 117 n.1 citing Connolly, 44 F. Supp. 2d at 96.

Under federal law, the general rule is that “the degree of the plaintiff’s overall success goes to the reasonableness” of an award of attorney’s fees. Norris, 287 F. Supp. 2d at 115 quoting Farrar, 506 U.S. at 114. “Where recovery of private damages is the purpose of . . . civil rights litigation, a district court, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought.” Farrar v. Hobby, 506 U.S. 103, 114 (1992) quoting Riverside v. Rivera, 477 U.S. 561, 568 (1986) (Powell, J., concurring).

In the case at bar, the hourly rates proposed by Plaintiff’s counsel are reasonable. Attorney Peter Slepchuk Jr. is an accomplished litigator with over 40 years of experience. As such, an hourly rate of \$350.00 per hour is more than fair for an attorney with his expertise and reputation.<sup>3</sup> Attorney Peter Alexander Slepchuk is also an accomplished litigator. Since being admitted to the Bar in 2011, he has conducted 27 trials as lead counsel and has second-chaired numerous other criminal and civil trials. Attorney Peter Alexander Slepchuk was also a Note Editor of the Suffolk University Law Review, and is a current member of the Hampden County Lawyers for Justice, accepting court-appointed criminal cases in the Springfield District Court since 2013 and in the Hampden County Superior Court since 2015. An hourly rate of \$300.00 per hour is reasonable for an attorney with such experience.<sup>4</sup> The rates charged by Plaintiff’s counsel are well within the fair market rate of attorneys practicing civil rights litigation in the Springfield area.<sup>5</sup>

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<sup>3</sup> An Affidavit from Attorney Peter Slepchuk Jr. describing his qualifications is attached hereto as Exhibit C.

<sup>4</sup> An Affidavit from Attorney Peter Alexander Slepchuk describing his qualifications is attached hereto as Exhibit D.

<sup>5</sup> See Affidavit of Attorney David Hoose attached hereto as Exhibit E.

Moreover, civil rights litigation is a niche field that few attorneys in the Springfield area practice. Therefore, the rates charged by Plaintiff's counsel are more than reasonable considering the particularly important service counsel has rendered to the Plaintiff in helping him not only achieve compensation for the injuries he suffered at the hands of the Defendants, but also, in deterring the Defendants from violating the civil rights of others in the future. See Norris, 287 F. Supp. 2d at 117 quoting Krewston v. City of Quincy, 74 F.3d 15, 18 (1st Cir. 1996) ("a plaintiff who obtains relief in a civil rights lawsuit, *especially 'in the area of individual police misconduct,'* acts as a private attorney general deterring future violations") (emphasis added).

The hours expended by both attorneys were also reasonable for a case of this nature.<sup>6</sup> It should be noted that the more senior and higher-compensated attorney, Peter Slepchuk Jr., played a very minor role in the litigation until the commencement of trial.

Finally, the degree of success achieved by the Plaintiff cannot be overstated. The jury awarded the Plaintiff \$225,000.00, a total of \$125,000.00 more than the Plaintiff's initial demand and \$195,000.00 more than the Plaintiff's last demand before trial. The fees requested by counsel are more than reasonable when viewed in light of the success achieved for the Plaintiff.

Therefore, this Honorable Court should award the Plaintiff reasonable attorneys' fees in the amount of \$68,920.00 (Attorney's fee for the work of Attorney Peter Alexander Slepchuk: 188.2 hours at \$300.00 per hour = \$56,460.00 + Attorney's fee for the work of Attorney Peter Slepchuk Jr.: 35.6 hours at \$350.00 per hour = \$12,460.00).

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<sup>6</sup> Itemized time records of Plaintiff's counsel are attached hereto as Exhibit F.

II. THE COURT SHOULD AWARD THE PLAINTIFF COSTS AND EXPENSES.

In addition to attorneys' fees, a prevailing party is also entitled to an award of costs, as well as reasonable out-of-pocket expenses. See Fed. R. Civ. P. 54(d)(1); 28 U.S.C. § 1920 (outlining costs to be awarded to prevailing party including filing fees, transcription fees, service of process fees, and printing fees); Palmigiano v. Garrahy, 707 F.2d 636, 636 (1st Cir. 1983) (Per Curiam) (upholding award of attorneys' reasonable out-of-pocket expenses in § 1983 action).

In the case at bar, the Plaintiff incurred reasonable and foreseeable costs and out-of-pocket expenses, which were all absolutely necessary to the litigation of the Plaintiff's case.<sup>7</sup> The only expenses not specifically covered by 42 U.S.C. § 1920 are \$23.58 in postage and \$112.50 in paralegal fees. The postage expenses were reasonably necessary to mailing Defense counsel documents during the discovery process. The paralegal fee represents 1.5 hours of time spent by Plaintiff's paralegal reviewing the prior testimony of Daeshavanna Robinson and Savon Tucker and reading said testimony at trial, a service that was absolutely necessary to the Plaintiff's case. Therefore, this Honorable Court should award the Plaintiff costs and expenses in the amount of \$1,746.96.

III. THE COURT SHOULD AWARD THE PLAINTIFF PREJUDGMENT INTEREST AT THE RATE OF 12% PER YEAR.

"[I]n cases where parallel claims are brought under both federal and state laws, and the damages recovered are duplicative, i.e., not segregated into separate federal and state components, a prevailing plaintiff is entitled to select the body of law under which the damages will be paid." Foley v. City of Lowell, 948 F.2d 10, 17 (1st Cir. 1991) (holding plaintiff who prevailed on both federal and state civil rights claims was entitled to prejudgment interest, to be added ministerially after the verdict, pursuant to G.L. c. 231, § 6B).

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<sup>7</sup> An itemization of the costs and expenses of litigation is attached hereto as Exhibit G.

In the case at bar, the Plaintiff ultimately prevailed under both § 1983 and the MCRA. Consequently, the Plaintiff is free to elect to be awarded prejudgment interest on the Court's award of damages at the Massachusetts statutory rate of 12% per year. See Mass. Gen. Laws ch. 231, § 6B. Therefore, the Court should award pre-judgment interest on the \$75,000.00 of compensatory damages awarded by the jury at the statutory rate of 12% dating back to the filing of the Complaint on March 15, 2018. Id.; see also Bennett v. City of Holyoke, 362 F.3d 1, 11 (1st Cir. 2004) (noting that in tort cases "Massachusetts mandates prejudgment interest on compensatory damages but prohibits prejudgment interest on punitive damages").

#### CONCLUSION

For the reasons stated herein, the Plaintiff prays that this Honorable Court grant the Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Prejudgment Interest.

Respectfully Submitted,

Dated: March 6, 2020

By: /s/ Peter Alexander Slepchuk  
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Dated: March 6, 2020

By: /s/ Peter Slepchuk Jr.  
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CERTIFICATE OF SERVICE

I, Peter Alexander Slepchuk, hereby certify that on this 6th day of March, 2020, I served this document upon counsel for the Defendants and all registered parties via the ECF Notice of Electronic Filing (NEF) system.

Dated: March 6, 2020

/s/ Peter Alexander Slepchuk  
Peter Alexander Slepchuk