

Commonwealth of Massachusetts
Appeals Court

No. 2010-P-1240

MALVINA MONTEIRO,

Plaintiff-Appellee,

v.

CITY OF CAMBRIDGE,

Defendant-Appellant

Appeal from the Middlesex Superior Court
Docket No. 01-2737

**Plaintiff-Appellee Malvina Monteiro's
Petition For Appellate Fees and Costs**

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August 29, 2011

I. INTRODUCTION

Plaintiff Malvina Monteiro ("Ms. Monteiro") prevailed at trial on her claim that the City of Cambridge ("the City") retaliated against her during the course of her employment and in its termination. Ms. Monteiro brought her retaliation claim under M.G.L. c. 151B. On June 4, 2010, the trial court entered judgment in Ms. Monteiro's favor in the amount of \$6,738,814.00.

The City appealed, identifying eighteen appellate issues it intended to present for review and listing as relevant one-hundred and twenty-two trial court pleadings that spanned over a decade of proceedings. From the start of the appellate process to its conclusion, the City engaged in a broadly cast and vigorous protest.¹

¹ The City engaged, over time, the talents of nine attorneys at the large, international law firm of Ropes & Gray LLP to prosecute its appeal. The appellate legal team was led by an experienced trial attorney, Joan Lukey, the same attorney who had served as lead counsel for the City throughout the litigation. The City's counsel appears collectively to have devoted well over 1,400 hours to crafting the City's appellate arguments and drafting its appeal. The City paid approximately \$693,623.55 (representing both fees and costs) for this representation on appeal. See Affidavit of Ellen J. Zucker, dated August 29, 2011, attached hereto as Exhibit A, at ¶¶45-51; see also Zucker Affidavit at Exhibit II, various invoices from the City's counsel.

Despite the considerable efforts of the City's legal team, this Court found "no occasion to disturb the judgment," Monteiro v. City of Cambridge, 2011 WL 3557773 at *4 (Mass. App. Ct.). It further determined that Ms. Monteiro is entitled to appellate attorney's fees and costs, inviting her to submit a fee petition.

Ms. Monteiro respectfully does so here, requesting that the Court award her reasonable appellate fees in the amount of \$284,420.00 and tax costs to the Appellant in the amount of \$13,929.33, for a total of \$298,349.33.

II. BACKGROUND

A. Relevant Trial Court Proceedings

On May 23, 2008, the jury returned its verdicts in this case, finding that the City violated the Commonwealth's anti-discrimination laws by retaliating against Ms. Monteiro for having filed a charge of discrimination and pursued her legal rights associated with that charge. R1154-56; R7798-01. The jury determined that Ms. Monteiro was entitled to compensatory damages in the amount of \$1,062,000 and that the City's actions warranted the imposition of punitive damages in the amount of \$3,500,000. Id.

1. During pendency of post-trial motions, parties prepared for the City's appeal.

On April 24, 2009, the court affirmed the jury's verdicts in all respects. R1629-62. Thereafter, the parties filed various motions for reconsideration. Such motions, along with the Plaintiff's Petition for Attorney's Fees and Costs, were considered in August of 2009. R1858-1877. Thereafter, the parties focused largely on preparing for the City's appeal, with the exception of a further motion for reconsideration filed by the City in November of 2009, a supplemental fee petition and the presentation of supplemental authority for the court's review in late November and December of 2009. R1933-2205.

The final post-trial rulings were issued on May 21, 2010 and the court entered corrected amended final judgment on June 4, 2010 in the amount of \$6,738,814.00. R2240. The judgment reflected interest and the court's award of attorney's fees and costs.

2. The trial court accepted the fees and costs as proposed by Monteiro.

In determining the award of fees and costs, the trial court made certain findings relevant to the matter now before this Court. See Exhibit 1, R2226-31,

Memorandum and Order on Plaintiff's Petition For Award
of Fees and Costs, dated May 20, 2010.

The trial court specifically determined that:

(1) the rates proposed by Ms. Monteiro's counsel, reflecting the standard rates of the law firm Burns & Levinson LLP, "are consistent with the rates of similarly experienced attorneys at large law firms in the Boston area, and they are similar, even lower, than the fee awards in other cases," id. at 3;

(2) time and resources expended for which "the Plaintiff seeks payment are reasonable," id.;

(3) "the issues raised ... are matters of public interest;" and

(4) the Plaintiff obtained "an exceptional result."

Id. at 4. The trial court thus awarded payment of the fees as set out in Plaintiff's petition, without any adjustment or deduction. On appeal, the City did not challenge that decision nor any of the findings supporting it.

B. The City's Various Notices Of Appeal

The trial court issued its rulings on post-trial motions on April 23, 2009. R1629 et seq. On June 17, 2009, with matters still pending in superior court, the City identified twelve issues it intended to pursue on appeal, announcing its challenge to decisions and orders of the trial court dating 2004 through 2009. R1810-11.

The issues identified required the expenditure of resources to review materials relevant to a decision not challenged since 2005. Ms. Monteiro's counsel began such a review in earnest in August of 2009, engaging in work necessary to the presentation of a fair and accurate appellate record and to the preparation for the appeal generally. See Exhibit A, Zucker Affidavit at ¶¶20-25.

After final rulings were issued in May of 2010, the City renewed its Notice of Appeal, expanding the scope of its appeal to the identification of sixteen issues. R2235-27; see also R2242-45.

C. Appellate Court Proceedings

On July 16, 2010, the instant appeal was docketed. Pursuant to M.R.A.P. Rule 18(b), the City notified Ms. Monteiro of the issues it intended present for review. See Exhibit 2, Lukey Correspondence to Zucker (with enclosures), dated July 16, 2010. Therein, the City further extended the scope of appeal by identifying eighteen issues and one hundred and twenty-two pleadings, all deemed necessary on appeal by the City's counsel. Id.²

² In August of 2010, the City further expanded the scope to include matters before the Massachusetts Commission Against Discrimination from 1998 through 2000 relating to *another plaintiff's* complaint. See Exhibit A, Zucker Affidavit at ¶29.

The scope of the City's appeal, and the pleadings identified, required that Ms. Monteiro's counsel engage in a sweeping review of prior proceedings, dating back to filings at the Massachusetts Commission Against Discrimination in 1998 and on summary judgment in the case of Marian Hampton. See Exhibit A, Zucker Affidavit at ¶¶27-30.

On August 5, 2010, the City filed a thirty-two page application with the SJC for direct appellate review. Ms. Monteiro's counsel was obliged to file an opposition to the City's application, noting her objection to the City's characterization of the record, the City's recitation of the relevant law and the issues on appeal, and arguing that nothing in the case merited its traveling the extraordinary course proposed. See id. at ¶¶31-32.

The SJC agreed with Ms. Monteiro's assessment of the City's request and denied its application for direct appellate review. See id.

Before this Court of Appeal, the City initially filed a sixty-seven page brief in August of 2010; that brief was rejected as non-conforming. It nonetheless required careful review by Ms. Monteiro's counsel. On September 13, 2010, the City filed its principal brief,

having moved the substance of certain of its arguments in various appendices. See Exhibit A, Zucker Affidavit at ¶¶33-34.

Ms. Monteiro was obliged to respond to arguments, wherever located. Her counsel filed the Appellee's Brief in response on November 24, 2011. Id.

In December of 2010, the City filed a Reply Brief and provided the court with supplemental authority which it argued meaningfully affected the outcome of the appeal. At the start of 2011, Ms. Monteiro's counsel responded to each filing.³ See Exhibit A, Zucker Affidavit at ¶¶35-36.

Given the wide net cast by the City and the bold nature of its appellate arguments, counsel for Ms. Monteiro deemed it particularly critical to have a careful and ready understanding of the record and applicable law. Ms. Monteiro's counsel took care in preparation for oral argument, although counsel has not sought payment for all efforts expended. See id. at ¶¶36-37.

³ Ms. Monteiro has not sought payment of fees associated with the drafting of her Surreply Brief; she seeks payment only for the research done to argue against the propositions in the City's filing at oral argument, if necessary. See Exhibit A, Zucker Affidavit at ¶36.

Oral argument in this matter was heard on May 4, 2011. Thereafter, the City provided another Rule 16(1) communication to the Court relating to the SJC's decision in Psy-Ed v. Klein, 459 Mass. 697 (2011). When the decision was announced, counsel for Ms. Monteiro had considered its possible import and determined that it was unnecessary to provide it to the Court. The City apparently thought otherwise and presented the case, and certain argument, for the Court's consideration. Counsel for Ms. Monteiro confirmed that the correspondence had been docketed and accepted, notwithstanding the constraints of M.R.A.P. 16(1). Ms. Monteiro's counsel analyzed the City's submission and felt obliged to respond. See Exhibit A, Zucker Affidavit at ¶38. Counsel for Ms. Monteiro, however, has not requested payment for the drafting of the response submitted. Id.

On August 15, 2011, this Court published its decision rejecting all claims of error the City had presented for review, and affirming the trial court judgment in its entirety.

The City, despite its considerable commitment of resources, failed to prevail on a single argument.

D. Ms. Monteiro's Appellate Counsel

Throughout the course of this litigation, lead counsel representing Ms. Monteiro has been Ellen J. Zucker, Esq., who is a partner at the Boston law firm of Burns & Levinson LLP. See Exhibit A, Zucker Affidavit at ¶¶1-7, 14; see also Exhibit 3, Affidavit of Kevin Powers, Esq. (hereinafter Powers Affidavit), dated August 25, 2011, at ¶¶9-10 (noting Ms. Zucker's qualifications).

On appeal, as at trial, Ms. Zucker was joined by her colleague and the Chair of Burns & Levinson's Litigation Department, Laura R. Studen, Esq. See Exhibit A, Zucker Affidavit at ¶15. Ms. Studen is an experienced and highly regarded trial attorney with success in appellate advocacy as well. Id.; see also Exhibit 3, Powers Affidavit at ¶13.

Ms. Monteiro's counsel further relied on the expertise of Susan Stenger, Esq., a partner at Burns & Levinson with considerable expertise in state court appellate advocacy (total hours charged: 4.2), and upon Michael Samarel, a junior associate, for assistance in confirming research, editing and cite-checking (total hours charged: 15.3). See Exhibit A, Zucker Affidavit at ¶¶ 16-17. Three paralegals were involved in the

mechanics of reviewing the appendices, securing relevant transcripts and court materials and providing documents to the Court (total time charge of 4.6 hours). See id. at ¶18.⁴

III. LEGAL ARGUMENT

A. General Principles

Chapter 151B, Section 9 provides that a plaintiff who has prevailed on a claim brought under the state's anti-discrimination law is entitled to an award of reasonable attorney's fees for the securing of that result and for the work done to present her fee petition to the court. See M.G.L. c. 151B, §9; Haddad v. Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1024, 1024-25 (2010); Fontaine v. Ebtec, 415 Mass. 309, 325-26 (1993). The purpose of the fee-shifting provision in Chapter 151B is to assist private plaintiffs in enforcement of the state's anti-discrimination laws and "to protect and the public interest in allowing claims under that statute to proceed with competent counsel." Haddad (No. 2), 455 Mass. at 1025.⁵

⁴ It must be noted that several attorneys at Burns & Levinson, along with other employment attorneys in Boston, devoted generous time, without billing, to this effort. See Exhibit A, Zucker Affidavit at ¶19.

⁵ In explaining a cognate provision at federal law, Congress noted that, "[i]f private citizens are to be

Ms. Monteiro plainly has prevailed here. Accordingly, this Court has determined that she "is entitled to appellate attorney's fees and costs." Monteiro v. City of Cambridge, 2011 WL 3557773 at *4 (Mass. App. Ct.).

B. The Proposed Fees Are Reasonable.

Ms. Monteiro does not dispute that she is entitled to an award of *reasonable* appellate fees and costs. Reasonableness, in this context, may be determined by considering "the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the

able 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 ... [F]ee awards are essential if the federal [civil rights] statutes ... are to be fully enforced. We find that the effects of such fee awards are ancillary and incident to securing compliance with these laws, and that fee awards are an integral part of the remedies necessary to obtain such compliance ... If the cost of private enforcement actions becomes too great, there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases." S.Rep. No. 1011, 94th Cong., 2d Sess. 2, 5, 6 (1976), reprinted in 1976 U.S.C.C.A.N. 5908, 5910, 5913, regarding the enactment of the Civil Rights Attorney's Fees Award Act of 1976.

same area, and the amounts of awards in similar cases.'" Haddad (No. 2), 455 Mass. at 1025, citing Linthicum v. Archambault, 379 Mass. 381, 388-89 (1979).⁶

In the case before this Court, all of the Linthicum factors militate strongly in favor of allowing the fees proposed in this petition.

1. The nature of the case justifies the fees requested.

Generally cases brought under the state's anti-discrimination laws speak to the public's vital interest in ridding Massachusetts workplaces of discrimination and in protecting those who come forward with concerns from retaliation. As the SJC observed in Warfield v. Beth Israel Deaconess Medical Center, 454 Mass. 390, 398 (2009), "[t]he Commonwealth has an overriding governmental policy proscribing various types of discrimination, set forth in G.L. c. 151B." Id.

There can be little question that this policy was at play in this case. Not only was the claim brought under M.G.L. c. 151B, but the jury found that a judgment

⁶ These more detailed factors do not take away from the well established rule that the fair market rate for time reasonably spent preparing and presenting a case is the basic measure of reasonable attorney's fees under G.L. 151B, § 9. See Fontaine v. Ebttec Corp., 415 Mass. 309, 323-24 (1993). The "lodestar method" (calculating the fee by multiplying the number of hours reasonably spent on the case times a reasonable hourly rate) is used in both federal and state discrimination cases. Id.

of significant magnitude was necessary in order to punish the City and deter future violations of the state's anti-discrimination laws. The jury's award of punitive damages, now affirmed by the trial and appellate courts, stands as strong evidence that this appeal concerned matters of public significance.

The trial court so found. See Exhibit 1 at 4. There is no reason to question that judgment here.

2. The proposed rates are reasonable.

On appeal, as at trial, Ms. Monteiro's counsel proposes applying the standard historic rates charged by her counsel from 2009 - 2011.⁷ They have been applied as follows: Ms. Zucker's billable rate was \$425/hour in 2009; \$440/hour in 2010; and \$450/hour in 2011. See Exhibit A, Zucker Affidavit at ¶14. Ms. Studen's billable rate was \$525/hour in 2010 and 2011. Id. at ¶15. With respect to other counsel, Ms. Stenger billed at \$435/hour in 2010 and 2011. Id. at ¶16. Mr. Michael Samarel, Esq., the associate assisting on the case, has

⁷ Courts often use the most current billing rates for attorneys when awarding fees, to reflect the time value of money in cases in which litigation is on-going over a period of years. See Missouri v. Jenkins, 491 U.S. 274, 2830 - 84 (1989); Dixon v. International Brotherhood of Police Officers, 434 F. Supp. 2d 73, 85 (D. Mass. 2006). Ms. Monteiro, in an effort to approach such matters conservatively, applies for fees at her counsel's historic rates.

a rate of at \$210/hour; and the paralegal time was billed at \$140/hour. Id. at ¶17.

These rates are reasonable, if low, as measured against market rates for attorneys of the skill and experience of counsel involved. See Exhibit 3, Powers Affidavit, at ¶¶11-13. Reported cases make the point amply enough, verifying that counsel at comparable firms have been found reasonable in their request for rates significantly higher for counsel of similar qualifications and experience.⁸

⁸ For instance, two years ago, a federal district court in Massachusetts found reasonable an employment discrimination plaintiff's request that her counsel, partners and associates at the law firm of Brown Rudnick Berlack Israels LLP be compensated at rates of \$570 to \$695 for partners' time in prosecuting the plaintiff's claims. See Memorandum And Order Re: Attorneys Fees, Tuli v. Brigham and Women's Hospital et al., Civ. Action No. 07-cv-12338-NG dated June 8, 2009, attached hereto as Exhibit 4. Specifically, the Tuli court found that rates of \$570 - \$615 for a relatively junior partner who served as lead counsel were reasonable as were rates of \$630 - \$695 for her senior colleague who assisted at trial. Similarly, the court found reasonable associate rates of \$410 - \$495 for a mid-level associate; \$320 - \$385 for a second year associate; \$320 for a first year associate; \$255 - \$275 for career paralegals; and \$110 - \$240 for other research and administrative staff. See id. at 3-4. In so determining, the court canvassed Massachusetts state court attorney fee decisions that found rates of \$450 to \$625 per hour for partners and up to \$410 associates reasonable. Id. (and cases surveyed therein); see also Memorandum and Order re Attorneys Fees And Costs, Drumgold v. Callahan, 1:04-cv-11193-NG, #48, dated August 18, 2011 (finding attorneys' rates of \$500/hour for solo practitioners reasonable), attached hereto as Exhibit 5.

Accordingly the rates requested here are reasonable - if not modest - given the market rates of comparable firms engaged in comparable efforts.⁹

These rates also represent rates already accepted by the trial court, without challenge. The rates charged, with the exception of a \$15/per hour increase in Ms. Zucker's rates, are the same rates found reasonable by the trial court in this matter and unchallenged on appeal. They should be accepted as reasonable here.

3. The time expended was reasonable.

Ms. Zucker was primarily responsible for the work done on appeal. See Exhibit A, Zucker Affidavit at ¶14. She argued the appeal before this Court. Id. She was responsible for most of the time devoted to the task and the petition does not contain duplicative or excessive time charges, either as to Ms. Zucker's time or the time devoted to the task by other professional staff, with

⁹ It bears note that, while Ropes & Gray LLP charged rates lower than this for its senior partner, pursuant to a reduced fee agreement with the City, the firm then charged what appears to be a premium for the work of very junior attorneys, charging even first year associates' work at \$375/hour, simply \$50/hour less than the rate charged by Ms. Zucker, a partner and experienced litigator and appellate advocate, in 2009. The City presumably found Ropes' charges reasonable; they paid the invoices. In light of this, Burns & Levinson's rates surely must be viewed as reasonable and not excessive.

whom she consulted and on whom she relied. It bears note that Ms. Monteiro's counsel did the work thoroughly but relatively efficiently, without the false economy that would have been achieved through pushing down tasks to a team of associates. Id. at ¶¶14-19.

As for the hours expended, it is clear that they were - in significant measure - required in proportion to the scope of the appeal announced and the bold representations made by the City in its claims of error.

A "party cannot litigate tenaciously and then be heard to complain about the time necessarily spent overcoming its vigorous defense." City of Riverside v. Rivera, 477 U.S. 561, 580, n. 11 (1986) (citations omitted).

So it must be here. In this case, counsel for Ms. Monteiro was obliged to prepare to defend against over eighteen issues raised as possible appellate issues and against a host of assertions made in briefing that often lacked any citation to relevant law or the record. In light of these various assertions of fact and law, Ms. Monteiro's counsel was put to the task of reviewing proceedings and pleadings dating back to the late 1990s, reviewing transcripts carefully to test broad propositions asserted about the record and reviewing

case law with care to rebut legal propositions offered.

See id. at ¶¶20-37.

Moreover, it is well established that "[e]ffective preparation and presentation of a case often involve the kind of collaboration that only occurs when several attorneys are working on a single issue." Gay Officers Action League v. Commonwealth of Puerto Rico, 247 F.3d 288, 297 (1st Cir. 2001).

Here Ms. Monteiro's counsel was restrained in billing for such collaboration; lead counsel's time accounts for 84% of the billable hours on which compensation is requested; Ms. Monteiro has not sought payment for the time devoted by several attorneys in consultation and in preparation for oral argument and she has reduced substantially the hours related to conferences between the two partners responsible for the strategy and presentation of the appeal.

In determining staffing, a court may consider a certain amount of proportionality.

Ms. Monteiro's counsel faced on appeal, as they had at trial, a tenacious adversary who embarked on an aggressive, no holds-barred approach to this matter. Cf. Exhibit 3, Powers Affidavit at ¶14. On appeal, this approach translated into the City's expending the

resources necessary to devote the talents of nine attorneys and thirteen paralegals at the law firm of Ropes & Gray to the prosecution of their appeal. This professional staff spent over 1,900 hours of billed time on their efforts. Id. at ¶¶44-49.

In contrast, Ms. Monteiro seeks compensation for the work of her lead counsel with sparing use of three other attorneys at Burns & Levinson. The total hours for which compensation is requested, 650.8 hours, is about one third of the time the City's legal team devoted to its prosecution of the appeal. Cf. Rini v. United Van Lines, 903 F. Supp. 234, 238 (D. Mass. 1995) (noting that staffing at trial was "entirely appropriate and customary" where it "mirrored" the representation on the other side). Moreover, the combined fees and costs requested by Ms. Monteiro amount to less than one half the amount spent - and presumably deemed reasonable - by the City. See supra at n. 1.

In sum, the legal and factual work done preparing for the appeal and defending the judgment in the course of the appeal required substantial effort and Ms. Monteiro's appellate counsel appropriately expended the resources reasonably necessary to secure a successful result.

4. The degree of success - affirming an "extraordinary result" favors awarding the fees requested.

And there can be no doubt that such a result was achieved here. Despite the vast resources committed by the City to its appeal, this Court rejected each argument made by the City and disposed of the matter in a per curiam decision issued under Rule 1:28.

C. Ms. Monteiro's Proposed Costs Are Reasonable.

Chapter 151B requires the taxing of a defendant for a prevailing plaintiff's reasonable costs associated with her claim. M.G.L. c. 151B, § 9.

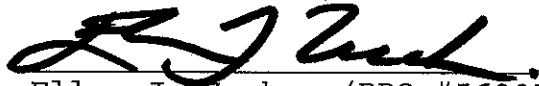
Ms. Monteiro seeks reimbursement of reasonable costs totaling \$13,929.33, as set out the Verified Bill of Costs filed herewith.

The costs requested reflect the same conservative approach taken with fees. See Exhibit A, Zucker Affidavit at ¶¶40-43; ¶50.

IV . CONCLUSION

For the reasons set forth above, Ms. Monteiro respectfully requests the Court award reasonable appellate attorney's fees in the amount of \$284,420.00 and costs in the amount of \$13,929.33, for a total amount of \$298,349.33.

Respectfully Submitted,
MALVINA MONTEIRO,
By her attorneys,



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Certificate of Service

The undersigned hereby certifies that two copies of Plaintiff-Appellee Malvina Monteiro's Petition For Appellate Fees And Costs, with accompanying materials, were served on Counsel for Appellant:

Joan A. Lukey, Esq.
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600

by electronic and first class mail, this 29th day of August, 2011.


Ellen J. Zucker

Certificate of Compliance With Mass. R. App. P.

16(k)

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, the undersigned counsel for Appellee, Malvina Monteiro, hereby certifies that the foregoing Petition for Appellate Fees And Costs, with accompanying materials, complies with all applicable appellate rules.


Ellen J. Zucker

EXHIBIT 1

106710-0001
revid 5/24/10

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

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SUPERIOR COURT
CIVIL ACTION
NO. MICV2001-02737

MALVINA MONTEIRO,
Plaintiff

vs.

CITY OF CAMBRIDGE,
Defendant

**MEMORANDUM AND ORDER ON PLAINTIFF'S
PETITION FOR AWARD OF FEES AND COSTS**

On May 23, 2008, a jury returned a verdict in favor of the Plaintiff Malvina Monteiro ("Plaintiff" or "Ms. Monteiro") against the Defendant City of Cambridge ("Defendant" or "the City"). The jury found that the City had retaliated against Ms. Monteiro because she had pursued a claim of discrimination, and that the retaliation took place both during her employment and in the termination of that employment. The jury found that the City's conduct warranted the imposition of punitive damages in addition to the award of compensatory damages. The total amount the jury awarded to the plaintiff was \$4,562,000.

The Plaintiff has filed a petition for an award of reasonable fees and costs associated with the successful prosecution of her retaliation claim. G.L. c.151B, §9 provides that a prevailing plaintiff shall recover reasonable attorneys' fees and costs "unless special circumstances would render such an award unjust." As no such circumstances exist in this case, the Plaintiff is entitled to an award of her reasonable attorneys' fees and costs.

The amount of reasonable attorneys' fees, awarded under statutory authority, "is largely discretionary with the judge, who is in the best position to determine how much time was reasonably spent on [the] case, and the fair value of the attorney's services." *Fontaine v. Ebec Corp.*, 415 Mass. 309, 324 (1993). The Court must arrive at a "lodestar" figures, that is, "an amount * * * calculated by multiplying the number of hours reasonably spent on the case by a reasonable hourly rate." *Id.* This "lodestar method" is utilized in both state and federal discrimination cases. In making this lodestar determination, the Judge should consider

the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases. (Emphasis added.)

Linthicum v. Archambault, 379 Mass. 381, 388-89 (1979).

Reasonableness of the Hourly Rates

The fee petition sets out the following rates: Ms. Zucker's billable rate was \$225 per hour from 1998 through 2001; \$265 per hour from 2002 to 2003; \$300 per hour from 2004-2006; \$350 per hour from January through July of 2007 and \$425 per hour from August of 2007 to date. Ms. Studen's billable rate was \$525 throughout her involvement in the case.

Up to and including July 2007, the fee petition requested fees relating only to the work of lead counsel, Ms. Zucker. Thereafter, in preparation for trial and at trial, counsel occasionally received assistance from others in the firm; an associate's time was billed out at \$235 per hour; two partners billed out at \$425 and \$395 per hour respectively; and a paralegal was billed out at \$140 per hour. (The total assistance provided by the attorneys for pre-trial, trial, and post-trial work was 26.75 hours.)

This Court finds that the rates are reasonable. They are consistent with the rates of similarly experienced attorneys at large law firms in the Boston area, and they are similar, even lower, than the fee awards in other cases. Compare *Frank v. Fowler*, 22 Mass. L. Rptr. 366 (Mass. Super. Ct. 2007) (WilmerHale's hourly rates of \$450 - \$575 for partners, \$195 - \$360 for associates, and \$110 - \$196 for paralegals over four years of litigation were reasonable). See also *Brooks Automation, Inc. v. Blueshift Techs, Inc.*, 21 Mass. L. Rptr. 53 (Mass. Super. Ct. 2006) (Goodwin Proctor's rates of \$500 - \$625 for partners and \$410 for fifth year associates were reasonable).

Reasonableness of the Time Expended

To begin, this Court observes that while there was some necessary overlap between work performed by Ms. Zucker in connection with the preparation and trial of this case in 2005 and the post-2005 trial work in preparing and trying the case in 2008, that "overlap" is not a significant factor in this Court's assessment. (Indeed, the fee petition has made significant allowances to address this issue.) In this case, successful claims and claims not pursued were factually interwoven and it is simply not necessary (and not possible) for the Court to parse the work expended as to each individual claim. This Court may award fees based on the entirety of the effort expended. *Hanover Ins. Co. v. Sutton*, 46 Mass. App. Ct. 153, 176-77 (1999), rev. denied, 429 Mass. 1105 (1999); see also *Office One, Inc. v. Lopez*, 437 Mass. 113, 126 n.17 (200) (observing that where the claims arise from a single chain of events, apportioning the legal effort among different claims is neither necessary nor appropriate); *Batischev v. Cote*, 23 Mass. L. Rptr. 541 (Mass. Super. 2008) ("apportionment is not required where statutory claims against all defendants were intertwined factually").

In sum, the hours spent on this case and for which the Plaintiff seeks payment are reasonable.

Other Lodestar Factors

In addition, it is important to note that the issues raised in employment discrimination cases are matters of public interest. Thus, in the lodestar analysis, courts "should not only consider the plaintiff's financial interests at stake but also the plaintiff's other interests sought to be protected by the statute in question and the public interest in having persons with valid claims represented by competent legal counsel." *Stowe v. Bologna*, 471 Mass. 199, 203 (1994); *Hart v. City of Peabody*, 5 Mass. L. Rptr. 221 (Mass. Super. 1996). As the Supreme Judicial Court stated in *Warfield v. Beth Israel Deaconess Medical Center*, 454 Mass. 390, 398 (2009), "[t]he Commonwealth has an overriding governmental policy proscribing various types of discrimination, set forth in G.L. c.151B." *Id.*

Further, the Plaintiff obtained an exceptional result on her retaliation claim as evidenced by the substantial compensatory and punitive damages. (See *Twin Fires Inc., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 430-431 (2005)).

Post-Trial Fees

The City argues that the plaintiff may not receive attorneys' fees incurred in connection with various post-trial motions. Specifically, the City opposes fees the Plaintiff incurred for filing a motion for award of fees and costs, for performing "work related to the appeal of this matter," and for filing a motion to clarify. While the City correctly notes that, unless the appellate court directs otherwise, attorneys' fees awarded by the trial court must be limited to the trial proceedings, *Patry v. Liberty MobilehomeSales, Inc.*, 394 Mass. 270, 272 (1985), those fees the City opposes are *not* appellate fees. These fees relate to matters which were heard by the trial judge, not the appellate court and are therefore related to trial proceedings. The plaintiff is therefore entitled to fees incurred

post-trial.

Appropriateness of a Multiplier

The plaintiff advances three main arguments for why a multiplier of 1.5 is warranted: (1) the extensive work performed by the attorneys, including complex discovery, and extensive investigation and fact development; (2) the exceptionally meritorious results achieved by the attorneys, as evidenced by the substantial compensatory and punitive damages; and (3) the public interest nature of the case involving deliberate discrimination by a public official.

In Massachusetts, the basic lodestar calculation should be used unless there are special reasons to depart from it. *Siegel v. Berkshire Life Ins. Co.*, 64 Mass. App. Ct. 698, 706 (2005). The United States Supreme Court has held that upward adjustments of the lodestar figure "are proper only in certain 'rare' and 'exceptional' cases" *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986), citations omitted. In particular, complexity of the issues, quality of the legal representation, and the meritorious results are **not** grounds for enhancing the fee award because those factors are already reflected in the lodestar figure. *Id.* ("the 'novelty [and] complexity of the issues,' 'the special skills and experience of counsel,' 'the quality of representation,' and the 'results obtained' from the litigation are presumably fully reflected in the lodestar amount, and thus cannot serve as independent bases for increasing the basic fee award"), citations omitted; see also *Blum v. Stenson*, 465 U.S. 886, 900 (1984) (acknowledgment of the results obtained in litigation is generally subsumed within the other factors to determine a reasonable fee and should not ordinarily provide an independent basis for enhancing the fee award). Therefore, the complexity of issues and the meritorious results do not justify a fee enhancement.

The plaintiff also argues that a 1.5 multiplier is appropriate because the case involved

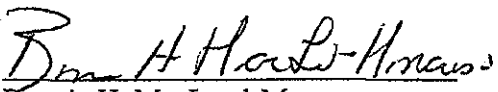
deliberate discrimination by a public official and cites *Clifton v. Massachusetts Bay Transp. Auth.*, 11 Mass. L. Rptr. 316 (Mass. Super. 2000), *rev'd on other grounds* 445 Mass. 611 (2005) for support. In *Clifton*, the court acknowledged that an enhancement might be appropriate in a complex case which involves important civil rights but generates only modest damages. *Id.* at *50 (reasoning that in such a case, "the incentive for an attorney to take the case may be too meager without some enhancement"). The court held that although discrimination is an important public issue, the damages of \$1.5 million were not modest and therefore, a multiplier was inappropriate. *Id.* Likewise, the present case involved an important civil rights issue, but the damages awarded were not modest. In fact, they were nearly three times that awarded in *Clifton*. Therefore, the public interest nature of the case does not justify an enhanced fee award. See *Fontaine*, 415 Mass. at 326 (award of attorney's fees in c.151B case is not designed to provide a windfall recovery of fees).

The Plaintiff's Costs

Plaintiff incurred a total of \$23,697, as evidenced by the petition and supplemental petition. This Court has reviewed those costs and is allowing the amount in full.

ORDER

For the forgoing reasons. It is ORDERED that the Plaintiff recover \$545,842 in attorneys' fees and \$23,697 in costs.


Bonnie H. MacLeod-Mancuso
Justice of the Superior Court

Date: *May 20, 2010*

EXHIBIT 2



ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624
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July 26, 2010

Joan A. Lukey
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BY EMAIL AND FIRST CLASS MAIL

Ellen J. Zucker
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110-1624

Re: Content of Record Appendix in *Monteiro v. City of Cambridge* (App. Ct. No. 2010-P-1240)

Dear Ellen:

Pursuant to Mass. R.A.P. 18(b), please find attached a designation of the parts of the record that appellant City of Cambridge ("City") intends to include on appeal, along with a statement of the issues that the City intends to present for review. If there are other parts of the record that you wish to designate for inclusion in the Record Appendix, please let us know as set forth in that Rule.

Sincerely,

Joan A. Lukey

Enclosure

cc: Dan Krockmalnic, Esq.

CITY'S STATEMENT OF ISSUES

1. Whether the Superior Court Judge who presided over the first trial erred in allowing Plaintiff to amend on the eve of that trial to assert a claim that did not relate back to the Complaint filed in the Massachusetts Commission Against Discrimination, and therefore was not then, and has never been, within the Superior Court's jurisdiction.
2. Whether the Superior Court Judge who presided over the second trial (hereafter "the Court") abused her discretion by refusing to allow into evidence the fact that the jury in the first trial had exonerated the City with regard to the discrimination claims.
3. Whether the Court (a) abused her discretion in admitting Plaintiff's evidence of alleged "comparators," (b) erred in denying the City's Motion for a Mistrial relating to the admission of such evidence, and (c) erred in denying the City's Motion for Judgment Notwithstanding the Verdict ("JNOV") or a new trial, where such alleged "comparators" were not substantially similarly situated in all relevant respects to Plaintiff as a matter of law.
4. Whether the Court erred in charging the jury, and in denying the City's Motions for JNOV") or a New Trial, in reliance on *Burlington N. & Santa Fe Ry. Co. v. White* rather than *McCormack v. Boston Edison Co.* – thereby applying an erroneous definition of a "materially adverse employment action."
5. Whether the Court erred in refusing to enter JNOV for the City where (a) the jury expressly found that Plaintiff suffered no intra-employment damages, and therefore no materially adverse employment action pre-termination, and (b) the five-year hiatus between the protected activity (filing the MCAD Complaint) and the alleged retaliatory act (termination) was too long as a matter of law to support a finding of retaliation.
6. Whether the Court erred in ordering that post-judgment interest should commence before the entry of a separate judgment under Mass. R. Civ. P. 54(b) in this multiple-party case in which the claims of two other plaintiffs remain pending.
7. Whether an effective R. 54(b) separate judgment was not entered, such that post-judgment interest could not commence to run, because the Court did not make the requisite findings to support entry of such a judgment.
8. Whether as a matter of public policy, post-judgment interest must, at very least, be suspended for the period between Plaintiff's filing of her R. 59 Motion for Clarification of the judgment and the entry of final judgment following the Order ruling upon that Motion, given that such filing prevented the City from pursuing its already-filed notice of appeal.

9. Whether the Court erred in refusing to remit the compensatory damage awards, or to order a new trial, where the damages awarded for front pay, back pay, consequential damages, and emotional distress were greatly disproportionate to the injury proven, and therefore excessive.
10. Whether the Court erred in refusing to remit the damage award for front pay, back pay, and consequential damages, or to order a new trial, where the amount awarded clearly demonstrated that the jury had either been misled and confused by the erroneous statements of Plaintiff's counsel in her closing argument regarding Plaintiff's pension and benefits, and/or that their passions, prejudices, and biases had been inflamed by Plaintiff.
11. Whether the impact of inappropriate comments by Plaintiff's counsel, particularly during her closing argument, was inadvertently but prejudicially magnified by the Court's earlier comments in the presence of the jury that she had taught Plaintiff's counsel ethics, such that the Court erred in not granting a new trial when the jury returned excessive verdicts.
12. Whether the Court erred in allowing the issue of punitive damages to go to the jury at all, where there was insufficient evidence as a matter of law to meet the legal standard for imposition of same.
13. Whether the Court erred in denying the City's motion for a remittitur or a new trial with regard to the punitive damage award, because, *inter alia*, the Court erroneously applied a heightened standard of review to the City and held that reprehensibility could be found from the City Manager's knowledge of the law and awareness of the need to proceed in careful compliance with the law.
14. Whether the Court erred in denying the City's Motion for a remittitur or a new trial with regard to the punitive damage award where that award was clearly excessive and unreasonable under all three factors enunciated in *BMW of N. Am., Inc. v. Gore*.
15. Whether the Court erred in denying the City's Motion for Reconsideration of the Court's post-trial rulings regarding punitive damages in the wake of *Haddad v. Wal-Mart Stores, Inc.*, which was issued while Plaintiff's R. 59 Motion was pending and before final judgment entered.
16. Whether the Court erred in denying the City's Motions for JNOV, a new trial, or a remittitur with regard to punitive damages, in light of her knowledge of the results of the first trial, where the jury had been unable to reach a verdict as to whether retaliation had even occurred.
17. Whether the Court erred in denying the City's Motion for a New Trial or a Remittitur where allowing the verdict to stand would constitute a miscarriage of justice, in light of (a) the five-year hiatus between the protected activity and the alleged retaliatory discharge, with no intervening materially adverse employment actions; (b) the absence of direct evidence or circumstantial evidence from which the jury could properly infer a retaliatory motive; (c) the Court's reliance on multiple "curative" instructions to address the City's objections in the course of the trial; (d) the excessive compensatory verdict entirely without support in the record, and apparently premised on incorrect statements in

Plaintiff's closing regarding the effect of termination on Plaintiff's pension and benefits;
(e) the second jury's determination that punitive damages were warranted (particularly
where the first jury could not reach a verdict as to whether retaliation had occurred at all;
and (f) the excessive damage awards.

18. Whether the computation of Plaintiff's attorneys fees and the allocation of costs as
between the parties were erroneous.

DESIGNATION OF CONTENTS OF RECORD APPENDIX

A. Pleadings

- 1998.09.17 – MCAD Complaint of Monteiro
- 2000.09.21 – Complaint and Jury Demand
- 2001.01.18 – Motion of Defendant to Sever Plaintiff's Claims
- 2001.05.14 – Answer of City of Cambridge
- 2002.05.03 – Defendant's Motion for Summary Judgment with Regard to the Claims of Marian Hampton
- 2002.05.03 – Concise Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment with Regard to the Claims of Marian Hampton
- 2002.05.03 – Memorandum in Support of Defendant's Motion for Summary Judgment with Regard to Claims of Marian Hampton
- 2002.05.03 – Defendant's Motion for Summary Judgment with Regard to the Claims of Malvina Monteiro
- 2002.05.03 – Concise Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment with Regard to the Malvina Monteiro
- 2002.05.03 – Memorandum in Support of Defendant's Motion for Summary Judgment with Regard to Claims of Malvina Monteiro
- 2002.08.27 – Motion of Defendant City of Cambridge to Sever Plaintiffs' Cases and to Preclude Plaintiffs From Testifying in Each Other's Cases Regarding Their Individual Claims of Discrimination
- 2002.09.04 – Plaintiff's Consolidated Opposition to Motions for Summary Judgment
- 2002.09.04 – Plaintiff's Consolidated Opposition to Motions for Summary Judgment - Facts
- 2002.09.04 – Plaintiff's Consolidated Opposition to Motions for Summary Judgment - Memo in Support
- 2003.02.18 – Memorandum of Decision and Order on Defendant's Motion for Summary Judgment
- 2004.04.13 – Order on Motion to Sever

- 2004.09.17 – Plaintiff’s Motion to Consolidate in Accordance with
Massachusetts Rule of Civil Procedure 42(a)
- 2004.09.?? – City’s Opposition to Plaintiff’s Motion to Consolidate
- 2004.11.01 – Memorandum of Decision and Order on Plaintiff’s Motion to
Consolidate
- 2004.11.23 – Joint Pre-Trial Memorandum
- 2004.12.10 – Defendant’s Motion in Limine to exclude testimony re city’s
atmosphere and policies outside of plaintiff’s dept and reporting structure
- 2004.12.15 – Defendant’s Motion in Limine to Preclude Performance Issues of
Comparators
- 2004.12.15 – Plaintiff Monteiro’s Motion in Limine to Exclude Documents
Relating to City’s ‘Investigative’ Reports Regarding Plaintiff’s Work
Performance
- 2004.12.15 – Plaintiff Monteiro’s Motion in Limine to Exclude Evidence of
Plaintiff’s Application to Harvard University’s JFK School of Government
- 2004.12.15 – Plaintiff Monteiro’s Motion to Amend her complaint
- 2004.12.17 – Amended Motion in Limine to Preclude Plaintiff from Asserting a
Claim of Retaliatory Termination
- 2004.12.17 – Plaintiff Monteiro’s Opposition to Motion in Limine to Exclude
Testimony Regarding City’s Atmosphere and Policies Outside of
Plaintiff’s Department and Reporting Structure
- 2004.12.21 – Plaintiff Monteiro’s Opposition to Motion in Limine to Preclude
Claim of Retaliatory Termination
- 2004.12.28 – Opposition to Motion to Amend Complaint
- 2005.01.04 – Opposition to Plaintiff’s Motion in Limine to Exclude Documents
Relating to City’s Investigative Report(s) Regarding Plaintiff’s Work
Performance
- 2005.01.04 – Opposition to Plaintiff’s Motion to Exclude Evidence of Plaintiff’s
Application to Harvard University’s JFK School of Government
- 2005.01.04 – Opposition to Defendant’s Motion in Limine to Preclude Reference
to Alleged Performance Issues of Comparators
- 2005.01.10 – Order on Defendant’s Motion in Limine to Exclude Atmospheric
Evidence

2005.01.18 – Supplemental Answer of City to Plaintiffs Amended Complaint

2005.01.19 – Plaintiff's Anticipated Comparative Evidence

2005.02.24 – Special Verdict Form

2005.02.01 – Defendant's Motion for Directed Verdict

2005.02.08 – Plaintiffs Proposed Jury Instructions

2005.02.08 – Requests for Jury Instructions of Defendant

2005.02.13 – Defendant's Proposed Special Verdict Form

2005.02.13 – Plaintiff's Proposed Jury Verdict Form

2005.02.16 – Defendant's Renewed Motion for Directed Verdict

2005.03.21 – Defendant's Motion for Judgment as a Matter of Law Based on Plaintiff's Failure to Meet Her Burden of Proof, or, in the Alternative, For a Rule 64 Report

2005.04.01 – Plaintiff Monteiro's Opposition to Defendant's Motion for Directed Verdict Regarding Retaliatory Termination and "Timing"

2005.06.02 – Notice: Order on Defendant's Motion for Directed Verdict and the Reconsideration of the Denial of Motion for Directed Verdict

2005.06.08 – Defendant's Letter Requesting that Judgment Enter in its Favor on Counts 8 and 9

2005.06.13 – Plaintiff Monteiro's Opposition to Defendant's Motion for Judgment on Full Claims of Discrimination

2005.07.12 – Plaintiff Monteiro's Opposition to Defendant's Motion for Entry of Partial Judgment

2005.07.14 – Motion for Entry of Partial Judgment

2005.08.11 – Notice: Motion of Defendant for Entry of Partial Judgment; Plaintiff Monteiro's Opposition to Motion (Denied)

2005.08.22 – Plaintiff Monteiro's Motion for Reconsideration of Ruling Regarding Scope of Retrial

2005.08.31 – Opposition of Defendant to Plaintiff Monteiro's Motion for Reconsideration of Ruling Regarding Scope of Retrial

2006.02.13 – Notice: Plaintiff Monteiro's Motion for Reconsideration (Denied)

2007.05.00 – Defendant’s Motion for Pre-Charge to Jury

2007.05.05 – Defendant’s Opposition to Plaintiff’s Proposed Pre-Charge Instructions

2007.05.15 – Plaintiff’s Motion in Limine to Exclude Application to JFK School of Government

2007.05.15 – Defendant’s Motion in Limine to Require Both Parties to Abide by the Stipulation to Which the Parties Entered at the First Trial in this Action

2007.05.15 – Defendant’s Motion in Limine Requiring Both Parties to Abide by Pre-Charge, or, in the Alternative to Preclude the Plaintiff from Raising Improper Inference

2007.05.15 – Plaintiff Monteiro’s Motion in Limine to Exclude Documents Relating to City’s Investigation and Memoranda Related to Plaintiff’s Termination

2007.05.15 – Plaintiff Monteiro’s Motion in Limine to Exclude Evidence of Carl Nelson’s Employment with Defendant

2007.05.29 – Opposition of City of Cambridge to Plaintiff’s Motion in Limine to Exclude Evidence of Carl Nelson’s Employment with Defendant

2007.05.29 – Plaintiff’s Opposition to Defendant’s Motion for Jury Pre-Charge

2007.05.29 – Plaintiff’s Limited Opposition to Defendant’s Motion in Limine to Require Parties to Abide by Stipulation into Which the Parties Entered During 2005 Trial

2007.05.29 – Plaintiff’s Opposition to Defendant’s Motion in Limine Requiring Pre-Charge or to Preclude Plaintiff from Raising “Improper Inference”

2008.04.08 – Motion of City of Cambridge Pursuant to Rule 54(b) for Final Judgment Against Plaintiffs LaChance and Hampton

2008.05.02 – Joint Pre-trial Memorandum

2008.05.02 – Plaintiff Monteiro’s Proposed Pre-Charge Jury Instructions Regarding Retaliation

2008.05.02 – Proposed Voir Dire Questions of Defendant

2008.05.05 – Defendant’s Motion for a Mistrial

2008.05.05 – Separate and Final Judgment

2008.05.06 – Notice: Motion of City of Cambridge Pursuant to Rule 54(b) for Final Judgment Against Plaintiffs LaChance and Hampton (allowed)

2008.05.19 – Defendant’s Request for Jury Instructions

2008.05.19 – Defendant’s Motion for a Directed Verdict

2008.05.19 – Plaintiffs Proposed Jury Verdict Form

2008.05.21 – Defendant’s Supplemental Request for Jury Instruction

2008.05.23 – Special Verdict Questions

2008.05.26 – Plaintiff Monteiro’s Proposed Order for Final Judgment and Supporting Memorandum of Law

2008.05.27 – Motion of Plaintiff Monteiro Pursuant to Rule 54(b) for Entry of Final Judgment Against Defendant City of Cambridge

2008.05.28 – Defendant’s Motion for a New Trial, or, in the Alternative, for a Remittitur

2008.05.28 – Defendant’s Motion for Judgment Notwithstanding the Verdict

2008.06.10 – Defendant’s Opposition to Motion of Plaintiff Monteiro Pursuant to Rule 54(b) for Entry of Final Judgment

2008.06.10 – Plaintiff Monteiro’s Opposition to Defendant’s Motion for Judgment Notwithstanding the Verdict

2008.06.10 – Plaintiff’s Opposition to Defendant’s Motion for a New Trial or, in the Alternative, Remittitur

2008.06.10 – Plaintiff’s Response to Defendant’s “Emergency Motion” for Prompt Hearing on Post-Trial Motions

2008.06.25 – Plaintiff Monteiro’s Memorandum in Response to Post-Trial Supplemental Submission of Defendant City of Cambridge

2008.07.01 – Motion of City of Cambridge to Supplement Record on Appeal

2008.07.03 – Defendant’s Supplemental Post-Trial Submission

2008.07.03 – Letter from Zucker to Sullivan, Clerk of Courts

2008.07.11 – Plaintiff Monteiro’s Opposition to the Motion of the City of Cambridge to Supplement Record on Appeal

- 2008.08.01 – Motion of City to Strike Plaintiff Monteiro’s Memorandum in Response to Defendant’s Supplemental Post-Trial Submission
- 2008.08.01 – Plaintiff Monteiro’s Opposition to Motion of City of Cambridge to Strike her memorandum in Response to Defendant’s Supplemental Post-Trial Submission
- 2008.11.10 – Letter from Studen and Zucker to Judge MacLeod
- 2008.11.19 – Letter from Lukey to Judge MacLeod
- 2009.04.22 – Defendant’s Submission Supplemental Authority
- 2009.04.24 – Order on JNOV, New Trial, Remittitur, Motion to Strike 9A filing, and to Supplement the Record
- 2009.05.04 – Defendant’s Motion for Reconsideration of Decision and Order on Post-Trial Motions
- 2009.05.18 – Plaintiff’s Monteiro’s Opposition to Defendant’s Motion for Reconsideration
- 2009.05.18 – Notice: Order on Plaintiff’s Motion for Entry of Final Judgment Against Defendant City of Cambridge; and Defendant’s opposition (Allowed)
- 2009.05.21 – Notice: Order on Defendant’s Motion for Reconsideration, and Plaintiff’s Opposition to Defendant’s Motion (denied)
- 2009.05.26 – Defendant’s Proposed Form of Final Judgment
- 2009.06.02 – Judgment on Jury Verdicts
- 2009.06.12 – Plaintiff Monteiro’s Motion to Clarify, Alter, and Amend the Court’s Judgment on Jury Verdict’s Dated June 2, 2009 and Request for Hearing
- 2009.06.17 – Defendant’s Notice of Appeal
- 2009.06.23 – Letter from Lukey to Sullivan, Clerk of Courts
- 2009.08.12 – Plaintiff Monteiro’s Petition for Award of Fees and Costs
- 2009.10.20 – Defendant’s Motion for Reconsideration of Decision and Order on Post Trial Motions Regarding Punitive Damages
- 2009.10.30 – Plaintiff’s Opposition to Defendant’s Motion for Reconsideration of the Denial of Defendant’s Post Trial Motions on Punitive Damages

2009.11.04 – Plaintiff Monteiro’s Supplemental Petition for Award of Fees and Costs

2009.11.06 – Defendant’s Opposition, in Part, to Plaintiff Monteiro’s Supplemental Petition for Award of Fees and Costs

2009.12.28 – Plaintiff Monteiro’s Submission of Supplemental Authority

2010.01.05 – Defendant’s Opposition to Plaintiff’s So-Called Submission of Supplemental Authority Filed December 28, 2009pdf

2010.04.20 – Letter to Court

2010.05.20 – Amended Order of Judgment

2010.05.20 – Order on Defendants Motion for Reconsideration

2010.05.20 – Order on Plaintiffs Motion to Clarify Alter and Amend Court’s Judgment on Jury Verdicts

2010.05.20 – Order on Plaintiffs Petition for Award of Fees and Costs

2010.05.25 – Amended Final Judgment on Jury Verdict

2010.05.25 – Defendants Renewed Notice of Appeal

2010.06.04 – Corrected Amended Final Judgment on Jury Verdict

2010.06.11 – Defendants Second Renewed Notice of Appeal

2010.07.13 – Notice of Assembly of Record on Appeal

2010.07.14.Motion #52 Regarding Record and Motion to Amend

B. Transcripts [All transcripts requested by either party from first trial and all transcripts from second trial]

2004.09.13 – Hearing on Motions

2005.01.10-11 – Hearing re Motion to Amend, Motion to Preclude

All Transcripts requested by either party from First Trial

2008.04.30 – Pre-Trial

All Transcripts of Second Trial

2008.06.19 – Post-Trial

C. Exhibits [All exhibits from second trial in 2008 [1-65]]

Ex. 1

Ex. 2

Ex. 3

Ex. 4

Ex. 5

Ex. 6

Ex. 7

Ex. 8

Ex. 9

Ex. 10

Ex. 11

Ex. 12

Ex. 13

Ex. 14

Ex. 15

Ex. 16

Ex. 17

Ex. 18

Ex. 19

Ex. 20

Ex. 21

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- Ex. 49

Ex. 50

Ex. 51

Ex. 52

Ex. 53

Ex. 54

Ex. 55

Ex. 56

Ex. 57

Ex. 58

Ex. 59

Ex. 60

Ex. 61

Ex. 62

Ex. 63

Ex. 64

Ex. 65

EXHIBIT 3

_____)	
MALVINA MONTEIRO,)	
Plaintiff-Appellee,)	
)	
v.)	Appeals Court Dock.
)	No.2010-P-1240
THE CITY OF CAMBRIDGE.)	
Defendant-Appellant.)	
_____)	

AFFIDAVIT OF ATTORNEY KEVIN G. POWERS
IN SUPPORT OF APPELLEE MALVINA MONTEIRO'S
APPLICATION FOR ATTORNEY'S FEES

Now Comes Kevin G. Powers and states:

1. I am licensed to practice law in the State of Massachusetts, The Federal District Court, District of Massachusetts, the U.S. Court of Appeals, First Circuit and the U.S. Supreme Court.

2. I have been practicing law in Massachusetts since 1978. During the entire time I have concentrated in the areas of labor and employment law, chiefly as a principal in a small firm setting. Since 1999, I have practice with a group of employment lawyers in the law firm of Rodgers, Powers & Schwartz. My law practice focuses exclusively on labor and employment issues.

3. In the year 2000, I was inducted into the College of Labor and Employment Lawyers.

4. I have tried approximately one hundred cases. Of those, approximately forty have been jury trials.

5. I have argued employment cases before the Massachusetts Appeals Court, the Massachusetts Supreme Judicial Court and the Federal Court of Appeals.

6. I am a member of the Massachusetts and American Bar Associations. I am a member of the Labor Law Committee of the Massachusetts Bar Association and I served as Chair for two years the Vice Chair, for two years, of the MBA Individual Rights and Responsibilities Council.

7. From 1996 to 1998, I was the President of the National Employment Lawyers Association, Massachusetts chapter and for two years prior to that I served as Vice President. I

am currently the chair of the Massachusetts NELA Legislative Committee.

8. I have given numerous lectures on employment law topics at the Massachusetts Bar Association and at Continuing Legal Education Seminars, for the Massachusetts Continuing Legal Education Foundation and for the American Bar Association, the Massachusetts Academy of Trial Attorneys and for the National Employment Lawyers Association. I have also served as a guest lecturer at Harvard Law School.

9. I have known Ellen Zucker for approximately 15 years; I have worked with her on MELE committees and have served on MBA and MCLE panels with her. I have also had an opportunity to observe Attorney Zucker at work. I have read her briefing in this matter and some of the trial court pleadings; and I have observed her appellate advocacy and admired it over many years.

10. Attorney Zucker has always impressed me with her extensive knowledge of case law and legal strategy. I consider her to be one of the finest employment attorneys in the country.

11. I am very familiar with the prevailing market rate for employment attorneys in the Boston area and with fee awards to prevailing attorneys.

12. I understand that Attorney Zucker is requesting that she be compensated at the rates of \$425 and \$450 per hour (historically, her standard rate). I will confess that I was surprised to learn of her rates, as I find them reasonable to low for an attorney of her caliber, situated in a private firm setting. I believe that Attorney Zucker could well command \$550.00 per hour for her work. I believe this amount would be consistent with the prevailing market rate for attorneys of her skill and experience.

13. I also understand that Laura R. Studen, Esq. has participated in crafting this appeal, as she did at trial. I have known Attorney Studen for many years as well. I had the pleasure of being on a team of faculty members, with Attorney Studen. We taught a two day seminar on the trial of a gender discrimination case, in Washington D.C., for the American Bar Association. I believe Attorney Studen to be one of the most impressive trial lawyers in our field. I am sure that Ms. Monteiro benefited enormously from Ms. Studen's participation. Given her experience, skills and reputation, I believe that Ms. Studen could well command

fees in the range of \$575 - \$700 per hour and I believe that her rates, as well, are reasonable (indeed modest) when compared against other attorneys of similar experience and skill.

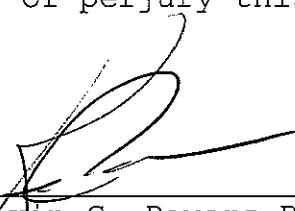
14. I must add that I have experience litigating opposite the lead counsel for the City, Joan Lukey, and her various law firms. She litigates aggressively and, as is evident in the City's appellate briefing, she is often bold in her arguments. I have found, in my own experience, that Attorney Lukey's style requires her opponent to offer careful and studious responses to the positions she stakes out. In short, it takes hours of work. In light of my own experiences and having reviewed the appellate briefing in this case and developed a sense of the record, I find that the time expended by Ms. Monteiro's counsel is certainly reasonable. I am of the opinion that the time charges reflected in the fee petition reflect efficient and thorough preparation and careful execution of Ms. Monteiro's strategy on appeal.

15. In sum, I find the fees requested by Ms. Monteiro's counsel for their successful defense of the judgment entered in their client's favor reasonable to modest.

16. I form this opinion informed by my own experience and knowledge of what is necessary for success in such an effort, as well as my knowledge of the quality and style of the City's counsel, the breadth of the record and the skills of the attorneys representing Ms. Monteiro.

17. I note that in a case such as this, where important statutory rights are at stake and the jury and court have found that those rights were ignored in a fashion that invited a substantial award of punitive damages, the appeal thus was important not only to Ms. Monteiro but also to society generally, and the fees have been well earned.

Signed under the penalties of perjury this 35 day of
August
2011.



Kevin G. Powers BBO #405020
Rodgers Powers & Schwartz LLP
18 Tremont St.
Boston, MA 02108
(617) 742-7010

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

SAGUN TULI, M.D., Plaintiff,)	
)	
v.)	Civil Action No. 07cv12338-NG
)	
BRIGHAM & WOMEN'S HOSPITAL, Inc., and ARTHUR DAY, M.D.,)	
Defendants.)	
GERTNER, D.J.:		

MEMORANDUM AND ORDER RE: ATTORNEY'S FEES

June 8, 2009

I. INTRODUCTION

The plaintiff, Sagun Tuli ("Tuli"), moves for attorneys' fees after a successful trial of her claims of hostile work environment (an award against Brigham & Women's Hospital, Inc. ("BWH") of \$1,000,000.00), retaliation for her discrimination claims (against BWH for \$600,000.00), retaliation under the Health Care Whistleblower Act (against BWH for \$1.00), intentional interference with advantageous relations (against Dr. Arthur Day ("Dr. Day") for \$20,001.00), and slander (against Dr. Day for \$1.00). Plaintiff was represented by Margaret M. Pinkham with assistance from Paul Shaw, Camille V. Gerwin, Rachel Lipton, and others at Brown Rudnick Berlack Israels LLP. Plaintiff has submitted a fee application under Title VII, 42 U.S.C. § 2000e-5(k), Mass. Gen. Laws ch. 161B, § 9, and Mass. Gen. Laws, ch. 149, § 187(d)(5).¹

¹ Title VII provides that "[i]n any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee (including expert fees) as part of the costs." The analogous Chapter 151B provision provides that a prevailing plaintiff shall be awarded "reasonable attorney's fees and costs unless special circumstances would render such an award unjust." Mass. Gen. Laws ch. 151B, § 9. Under the Health Care Whistleblower Act, the prevailing plaintiff may recover "reasonable litigation costs, reasonable expert witness fees, and reasonable attorneys' fees." *Id.* ch. 149.

II. LEGAL ANALYSIS

A. Appropriateness of Fee Award

The Civil Rights Attorneys Fees Awards Act of 1976 authorizes the district court to allow the prevailing party in any Civil Rights Act suit “a reasonable attorney’s fee as part of the costs.” 42 U.S.C. § 1988. A plaintiff prevails if she has succeeded on “any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing the suit.” Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist., 489 U.S. 782, 791-92 (1989) (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)). There is simply no question – none whatsoever – that the plaintiff was the prevailing party and that counsel are entitled to attorneys’ fees. Any suggestion that an over \$1.6 million award in a discrimination action does not represent substantial success is – in a word – absurd.

Indeed, it must be said, the litigation surrounding this application for attorney’s fees underscores the legitimacy of plaintiff’s fee application in general. *Everything* was litigated to the nth degree; *everything* was a cause célèbre. Perhaps the fees would have been lower if counsel for both sides had approached the case with a scalpel rather than a bludgeon.²

B. Framework for Analysis

Essentially, the amount for attorney’s fees is determined by a two-pronged test. The first is the calculation of the “lodestar figure,” which is the number of hours reasonably expended

² Defendants imply without saying so directly that I should reduce this award because settlement efforts failed, laying the blame at the feet of the plaintiff. There may well be instances in which the fee award should reflect the fact that one side or the other was so intransigent and so unreasonable, that it made a simple case needlessly complex. See LaPlante v. Pepe, 307 F. Supp. 2d 219 (D. Mass. 2004) (citing defendants’ litigation tactics in a case involving the straightforward violation of a consent decree as part of the reason for plaintiff’s counsel’s substantial investment of time). But mediation is confidential. In the context of this very complex, high-stakes case, it would be a troubling precedent for the judge whom the parties invited to mediate to turn around and penalize one party or the other for not settling on terms that the judge deemed appropriate.

multiplied by the applicable hourly market rate for legal services. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The second is an upward or downward adjustment "to account for exceptional circumstances." Rogers v. Motta, 655 F. Supp. 39, 43 (D. Mass. 1986).

1. The Lodestar Figure

a. Reasonable Rate

A reasonable rate is measured by comparing counsel's regular rates with those of the marketplace.³ Brown Rudnick requests rates of \$570 to \$615 per hour for Pinkham (partner); \$630 to \$695 for Shaw (senior partner); \$685 to \$735 for Elizabeth Ritvo (partner); \$410 to \$495 for Lipton (fourth-year associate); \$320 to \$385 for Gerwin (second-year associate); \$320 for Jennifer Paradee (first-year associate); \$250 to \$335 for Monica Cafaro (first-year associate); \$225 for five different summer associates; \$275 for Susan Oldham (career paralegal); \$255 to \$275 for Laura Rappaport (career paralegal); \$240 for Holly Matteson (librarian); \$240 to \$250

³ As the Supreme Court noted,

We recognize, of course, that determining an appropriate "market rate" for the services of a lawyer is inherently difficult. Market prices of commodities and most services are determined by supply and demand. In this traditional sense there is no such thing as a prevailing market rate for the service of lawyers in a particular community. The type of services rendered by lawyers, as well as their experience, skill and reputation, varies extensively -- even within a law firm. Accordingly, the hourly rates of lawyers in private practice also vary widely. The fees charged often are based on the product of hours devoted to the representation multiplied by the lawyer's customary rate. But the fee usually is discussed with the client, may be negotiated, and it is the client who pays whether he wins or loses. The § 1988 fee determination is made by the court in an entirely different setting: there is no negotiation or even discussion with the prevailing client, as the fee -- found to be reasonable by the court -- is paid by the losing party. Nevertheless, as shown in the text above, the critical inquiry in determining reasonableness is now generally recognized as the appropriate hourly rate. And the rates charged in private representations may afford relevant comparisons.

Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984).

for library staff; and \$110 to \$240 for administrative staff. (Increases in the hourly rates during the course of the litigation accounts for the range.)

I find that the rates are reasonable. These are the rates of large law firms, and they are consistent with the fee awards in other cases. See Fronk v. Fowler, 22 Mass. L. Rptr. 366 (Mass. Super. May 21, 2007) (finding that WilmerHale hourly rates of \$450-575 for partners, \$195-360 for associates, and \$110-195 for paralegals over four years of litigation, while high, were reasonable in the context of the litigation); Brooks Automation, Inc. V. Blueshift Techs., Inc., 21 Mass. L. Rptr 53 (Mass. Super. Apr. 6, 2006) (awarding hourly rates of \$500, \$600, and \$625 per hour for partners with twelve, nineteen, and twenty-three years of experience, respectively, and awarding hourly rates of \$410 for fifth-year associate, \$300 for second-year associate, and \$260 for first-year associate). It does not matter that plaintiff provided a chart of hourly rates charged by local large firms, rather than an expert to opine that the rates were reasonable. These data were helpful, and in any event, what is a reasonable rate for a discrimination case is a matter well within the court's expertise. As the legislative history to § 1988 suggests, the purpose of fixing a reasonable hourly rate is to arrive at amounts that are "adequate to attract competent counsel, but which do not produce windfalls to attorneys." S. Rep. No. 94-1011, at 6 (1976). Plainly, these fees are not windfalls.

2. Number of Hours

With certain exceptions noted below, I find that the hours expended were reasonable. The case was tenaciously defended on all fronts. For example, while this was not remotely a case in which summary judgment was appropriate, defendants moved for summary judgment on all counts. Plaintiff was obliged to respond and appropriately assigned the most junior lawyers

on the team to the task. The trial took twenty-one days, beginning on January 12, 2009, with closing arguments on February 18, 2009. I invited the parties to file written motions in limine and was greeted with more such motions than have ever before been filed in this session. The legal issues were complex; the instructions required multiple drafts and took several days to prepare. The jury deliberated for three and a half days before returning a verdict.

I reject defendants' argument that the case was "overstaffed." Plaintiff's principal trial team consisted of two attorneys, Pinkham (a litigation partner) and Lipton (a fourth-year associate), and two paralegals, with additional research and drafting support from junior associates at the firm.⁴ The size of team was reasonable: They were confronting a defense team of four lawyers, two partners for Dr. Day and a partner and a senior associate for BWH, not to mention in-house counsel and counsel for the insurer. I also reject defendants' argument that the invoices reflected "excessive time with respect to communications with Dr. Tuli."⁵

Nevertheless, a lawyer is supposed to exercise billing judgment in applying for fees. The Court is to exclude from the fee calculation hours that were not reasonably expended, including hours that were "excessive, redundant or otherwise unnecessary." Hensley, 461 U.S. at 434. A lawyer is to provide detailed and contemporaneous time records. I will consider the following challenges:

⁴ The fee application did not include the time that attorneys Gerwin and Cafaro spent attending the trial – only their legal work on the case. In addition, the work of paralegal Oldham was reduced by two hours for every trial day.

⁵ Again, this is a way of saying that Dr. Tuli was a demanding client. Whether that is or is not the case, her lawyer had to be responsive to her queries. In any event, the notion of spending "excessive time" with one's client is incoherent.

a. Core and Non-Core Work

It is reasonable to distinguish between "core" and "non-core" work. Ciulla v. Rigny, 89 F. Supp. 2d 97, 104-05 (D. Mass. 2000). Core work involves legal research, etc.; non-core work encompasses less demanding tasks, such as letter-writing and telephone calls.

Core hours will be compensated at the reasonable rate I have found for a total of \$929,797.00 through February 2009, \$5,842.50 for the preparation of the fee application in March 2009, and \$29,511.00 for post-trial motions in March 2009. Non-core hours will be compensated at a 30% reduction for a total of \$173,541.90 through February 2009, \$1,334.55 for preparation of the fee application in March 2009, and \$830.55 for post-trial motions in March 2009.⁶ See Charts A, B, F.⁷ Fees of \$114,331.00 for the work of paralegals and \$2,594.50 for the work of library and administrative staff will be awarded in full, except for a small number of hours deducted as explained below at Part II.B.2.b. See Charts D, E.

b. Degree of Success

Defendants argue that any award must be "significantly reduced" because plaintiff lost or had marginal success on five of her seven claims, or that the fees somehow should be apportioned between the successful and the unsuccessful claims. I disagree. The core of plaintiff's case was, from the outset, a hostile working environment claim involving events between 2002 and 2007. It involved a central set of facts and allegations, which, for the most part, the jury credited. To be sure, some claims were lost, and on some the damage award was

⁶ The non-core reduction also takes into account defendants' argument that "plaintiff's lead trial counsel routinely performed work that should have been assigned to associates and paralegals."

⁷ These hours do not include the hours excised below.

nominal (slander per se, Massachusetts Health Care Whistleblower Act) or not as high as others (\$20,001.00 for Intentional Interference). But evidence on the winning claims and the less successful claims was interwoven, the prototype of a "common core of facts." Hanover Ins. Co. v. Sutton, 46 Mass. App. Ct. 153, 176-77 (1999), rev. denied, 429 Mass. 1105 (1999). It is neither possible nor appropriate given the purposes of attorney's fee awards to parse the effort expended on overlapping claims. The successful hostile work environment and retaliation claims necessarily comprised not just the comments made by the various protagonists, but also issues about salary, promotion, and research, which were the subject of the losing claims for disparate treatment and unequal pay. The defamation and intentional interference claims on which plaintiff received nominal damages were likewise part and parcel of the retaliation and hostile work environment claim. In effect, the plaintiff's case comprised a single narrative of retaliation and a hostile workplace over the relevant period of time. Except for the examples described below, disaggregating the work done on different portions of that narrative would be both difficult and unfair.

c. Expert Reduction

Certain hours were eliminated because they involved work on experts whose testimony was disallowed – specifically Dr. Hoffman (\$11,688), Dr. Huntoon (\$11,236.50), and Ms. Roberts (\$7,412.50), see document # 186. I also excluded attorney hours spent on the testimony of Dr. Barocci of Tab Associates, which related only to plaintiff's unsuccessful Equal Pay Act claims (\$28,746). Finally, several hours were excised for work done in advance of depositions that were never taken, including subpoenas for the Wall Street Journal, University of Florida, Dr. Soni, and Dr. Rhoton of Florida (\$7,804.50). See Chart I.

I will also remove the fees paid to the excluded experts (\$55,843.06) and to Dr. Barocci (\$70,946.50). I have allowed fees in connection with Dr. Glick, Donoghue and Associates,⁸ and plaintiff's successful opposition to Dr. Britt (\$18,961.40). It is not the case, as defendants represent, that Dr. Glick testified solely in support of claims that the plaintiff lost. His testimony bore on the question of hostile work environment as well as disparate impact. See Chart C.

d. Other Reductions

I have also deducted the hours of paralegals for "war room cleanup" or for "excluded experts and depositions" (\$3,220.00); time spent checking ECF for court opinions (\$96.00); and time spent by junior attorneys at the trial that was not already redacted (\$2,607.50). See Charts D, I. I will not exclude time of counsel waiting for the jury's verdict. Both sides were nearby in the event of questions from the jury. It was a convenience to the court and the jury that they did so. I have also allowed fees for the time spent preparing the fee application, which, given the length of the case, was no easy task.⁹

3. Costs

Plaintiff incurred \$62,906.00 in litigation costs through February 2009, which I have allowed in full. She incurred an additional \$6,258.00 in March 2009, from which I have deducted \$292.00 in hotel charges for Ms. Roberts. See Chart H.

⁸ Dennis Donoghue was a jury consultant. Defendants apparently used such an expert as well. I strongly endorse the use of such consultants, particularly in a case of this complexity and length. See Gertner and Mizner, Law of Juries, § 3:24 (2009).

⁹ I will not reduce the award for the time necessary in the preparation and prosecution of the preliminary injunction because plaintiff did not submit a fee application within fourteen days after entry of this Court's Order on the preliminary injunction. While the Rules may be read to permit such an application for fees, they certainly do not require it.

4. Dr. Tuli's Separate Costs

Using the framework described above, I have excluded Dr. Tuli's costs in connection with experts that were excluded, Dr. Tator (a fact witness whose testimony was excluded), and Dr. Tuli's attendance at trial. I have allowed costs associated with litigation in Canada and the deposition of Dr. Schwartz, totaling \$6,909.54. See Chart G.

III. CONCLUSION

Accordingly, I AWARD One Million, Three Hundred Fifty-Two Thousand, Five Hundred Twenty-Five and 94/100 (\$1,352,525.94) Dollars, in toto, for attorneys' fees and costs to the plaintiff. See Chart H.

SO ORDERED.

Date: June 8, 2009

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.C.

Chart A: Core Hours by Attorney through February 2009

Attorney	Rate	Core Hours	Amount
Pinkham	\$ 570.00	308.6	\$ 175,902.00
Lipton	\$ 615.00	475	\$ 292,125.00
Cafaro	\$ 410.00	19.8	\$ 8,118.00
Gerwin	\$ 495.00	347.8	\$ 172,161.00
Ritvo	\$ 250.00	273.9	\$ 68,475.00
Shaw	\$ 320.00	69.9	\$ 22,368.00
Paradee	\$ 385.00	329	\$ 126,665.00
Bair	\$ 685.00	5.7	\$ 3,904.50
Condon	\$ 735.00	3	\$ 2,205.00
Hackett	\$ 630.00	0.5	\$ 315.00
List	\$ 695.00	44.3	\$ 30,788.50
Vigliotti	\$ 320.00	6.3	\$ 2,016.00
TOTAL CORE HOURS		1993.4	\$ 929,797.00

Chart B: Non-Core Hours by Attorney through February 2009

Attorney	Rate	Non-Core Hours	Amount	Rate discounted 30%	Amount
Pinkham	\$ 570.00	159.6	\$ 90,972.00	\$ 399.00	\$ 63,680.40
	\$ 615.00	158.4	\$ 97,416.00	\$ 430.50	\$ 68,191.20
Lipton	\$ 410.00	8.1	\$ 3,321.00	\$ 287.00	\$ 2,324.70
	\$ 495.00	33.1	\$ 16,384.50	\$ 346.50	\$ 11,469.15
Cafaro	\$ 250.00	42.4	\$ 10,600.00	\$ 175.00	\$ 7,420.00
Gerwin	\$ 320.00	2	\$ 640.00	\$ 224.00	\$ 448.00
	\$ 385.00	35.9	\$ 13,821.50	\$ 269.50	\$ 9,675.05
Ritvo	\$ 685.00	2.4	\$ 1,644.00	\$ 479.50	\$ 1,150.80
	\$ 735.00	10.3	\$ 7,570.50	\$ 514.50	\$ 5,299.35
Shaw	\$ 630.00	0.7	\$ 441.00	\$ 441.00	\$ 308.70
	\$ 695.00	6.7	\$ 4,656.50	\$ 486.50	\$ 3,259.55
Paradee	\$ 320.00	0	\$ -	\$ 224.00	\$ -
Bair	\$ 225.00	0.6	\$ -	\$ 157.50	\$ 94.50
Condon	\$ 225.00	.0	\$ -	\$ 157.50	\$ -
Hackett	\$ 225.00	0.8	\$ 180.00	\$ 157.50	\$ 126.00
List	\$ 235.00	0	\$ -	\$ 164.50	\$ -
Vigliotti	\$ 225.00	0.6	\$ 141.00	\$ 157.50	\$ 94.50
TOTAL NON-CORE HOURS		461.6	\$ 247,788.00		\$ 173,541.90

Chart C: Expert Witnesses

Experts Allowed*	Amount Charged
Peter S. Glick, PhD	\$ 13,598.90
Donoghue & Associates	\$ 3,412.50
Opposition to Dr. Britt**	\$ 1,950.00
Total Allowed Expert Fees	\$ 18,961.40

* Expert costs disallowed: Dr. Huntoon, Dr. Hoffman, Dr. Roberts, Dr. Barocci of Tab Consulting

** Costs for deposition transcripts for an expert successfully excluded from defendants' case

Chart D: Paralegals

Paralegal Hours	Rate	Hours - Hours Deducted*	Amount
Oldham ¹	\$ 275.00	312.3	\$ 85,882.50
Rappaport ²	\$ 255.00	83.2	\$ 21,216.00
	\$ 275.00	26.3	\$ 7,232.50
Total Paralegal Fees after Reduction			\$ 114,331.00

*Removed 7.5 hours for Oldham and 4.5 hours (4 at \$255 and 0.5 at \$275) for Rappaport

1. Removed "Warroom Cleanup"
2. Removed charges for excluded experts and depositions

Chart E: Library & Administrative Staff

Paralegal Hours	Rate	Hours	Amount
Matteson (library)	\$ 240.00	1.7	\$ 408.00
Vlachos (library)	\$ 250.00	0.8	\$ 200.00
Carpiniello (admin)	\$ 110.00	0.4	\$ 44.00
Federico (admin)	\$ 110.00	0.3	\$ 33.00
Glazier (admin)	\$ 125.00	3.9	\$ 487.50
	\$ 130.00	0.5	\$ 65.00
Klock (admin)	\$ 200.00	0.7	\$ 140.00
Knott (admin)	\$ 100.00	0.1	\$ 10.00
	\$ 125.00	0.2	\$ 25.00
Matthews (admin)	\$ 130.00	0.2	\$ 26.00
	\$ 200.00	2.3	\$ 460.00
Winship (admin)	\$ 240.00	2.9	\$ 696.00
Total Library & Admin Staff			\$ 2,594.50

Chart F: Core and Non-Core Hours for March of 2009

Preparation of Fees through			
Attorney	Rate	Non-Core Hours	Core Hours
Pinkham	\$ 615.00	3.1	9.5
Total Fee Amounts*	\$	1,334.55	\$ 5,842.50

Total Fees for March 2009		
Type	Amount	
Preparation of fees through Feb. 2009	\$	7,177.05
Post-trial motions	\$	30,341.55

Post Trial Motions in March 2009			
Attorney	Rate	Non-Core Hours	Core Hours
Pinkham	\$ 615.00	1.5	6.6
Lipton	\$ 495.00	0.3	22.0
Cafaro	\$ 335.00	0	20.3
Gerwin	\$ 385.00	0.3	19.9
Admin Staff	\$ 200.00	0	0.5
Total Fee Amounts*	\$	830.55	\$ 29,511.00

* Hourly rate for non-core hours are the same as on Chart B

Chart G: Dr. Tull's Separate Costs

Canada (In Canadian Dollars) in August 2008

Type	Rate (\$C)	Total (\$C)
Attorney Fees and Costs, David Shiller*		
Core Hours (12.7 hours) @ full rate	\$ 350.00	\$ 4,445.00
Non-Core Hours (9.6 hours) @ 30% discounted rate	\$ 245.00	\$ 2,352.00
Costs		\$ 1,215.20
GST (Canadian Taxes)		\$ 451.01
Amount awarded by Toronto Court	\$ 1,500.00	\$ (1,500.00)
Tull's Travel within Toronto (Airfare, Taxi, parking, and photocopying costs)**		\$ 271.91
Total Costs in Canadian Dollars		\$ 7,235.12
Exchange to U.S. Dollars for Aug. 22, 2008***	0.955	\$ 6,909.54

* Costs associated with litigation in Canada and deposition of Dr. Schwartz

** Dr. Tull asks for \$280.51 USD

*** Exchange rate according to www.xe.com

Costs Not Allowed

Travel Costs for Lora Roberts	\$ 1,163.40
Parking costs for depositions and meetings with counsel	\$ 1,351.00
Travel Costs for Dr. Charles Tator	\$ 1,637.90
Parking costs for attending trial	\$ 775.00
Total Costs not allowed	\$ 4,927.30

Chart H: Total Attorney Fees and Costs

Award Sought by plaintiff

Type	Amount
Fees through Feb 2009*	\$ 1,367,704.50
Costs through Feb 2009	\$ 62,906.00
Experts' fees	\$ 145,750.96
March 2009 application for fees through Feb	\$ 7,749.00
March 2009 post-trial motions	\$ 30,697.50
March 2009 costs	\$ 6,258.00
Costs to Sagun Tuli	\$ 13,728.00
Total Requested	\$ 1,634,793.96

Total Amount Awarded By the Court after Reductions

Type	Amount
Fees through Feb 2009*	\$ 1,220,264.40
Costs through Feb 2009	\$ 62,906.00
Experts' fees	\$ 18,961.40
March 2009 application for fees through Feb	\$ 7,177.05
March 2009 post-trial motions	\$ 30,341.55
March 2009 costs	\$ 5,966.00
Costs to Sagun Tuli	\$ 6,909.54
Total Allowed	\$ 1,352,525.94

* For attorneys, paralegals, library staff, and administrative staff

Chart I: Hours reduced for various reasons through February 2009

Attorney	At Rate	Total hours disallowed
Pinkham	\$ 570.00	16.4
	\$ 615.00	48.1
Lipton	\$ 410.00	4.5
	\$ 495.00	7.1
Cafaro	\$ 250.00	6.8
Gerwin	\$ 320.00	0.3
	\$ 385.00	8.5
Ritvo	\$ 685.00	0
	\$ 735.00	0
Shaw	\$ 630.00	0
	\$ 695.00	30.3
Paradee	\$ 320.00	0
Summers Law Student		
Bair	\$ 225.00	0
Condon	\$ 225.00	0
Hackett	\$ 225.00	0
List	\$ 235.00	0
Vigliotti	\$ 225.00	0
Total Hours disallowed		122

Hours eliminated include:

1. Work on experts not allowed at trial: Hoffman (\$11,688), Huntoon (\$11,236.50), Roberts (\$7,412.50)
2. Work done for depositions that were never taken (WSJ, University of Florida, Dr. Soni, Dr. Rhoton - \$7,804.50)
3. Hours spent on the testimony of Dr. Barocci of Tab Associates (\$28,746)
4. Attorney checking ECF for court opinions (\$96.00)
5. Junior Attorneys at trial that were not redacted (\$2,607.50)

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

SHAWN DRUMGOLD,
Plaintiff,

v.

TIMOTHY CALLAHAN, et al.,
Defendant.

Civil Action No. 04-11193-NG

GERTNER, D.J.:

MEMORANDUM AND ORDER RE: ATTORNEYS' FEES AND COSTS

August 18, 2011

I. INTRODUCTION

The plaintiff, Shawn Drumgold ("Drumgold"), moves for an award of attorney's fees and costs against defendant Timothy Callahan ("Callahan") after a successful trial in which the jury concluded that Callahan, through his conduct during criminal proceedings against Drumgold in 1989, violated the plaintiff's right to a fair trial. After serving fourteen years in prison for murder, Drumgold's Motion for a New Trial was granted, and the government nolle prossed his case. In the instant case, brought pursuant to 42 U.S.C. § 1983, the jury determined that Callahan intentionally or recklessly withheld exculpatory evidence, that this evidence was material, and that its withholding was the legal cause of Drumgold's conviction. It awarded \$14,000,000.00 in damages to the plaintiff. On February 24, 2011, the Court entered a Separate and Final Judgment as to Defendant Callahan. The entry of Judgment was then followed by a series of post trial motions and a notice of appeal by Defendant Callahan, which motions have been denied in a Memorandum and Order Re: Post-Trial Motions (document # 457), issued this day.

As the prevailing party in his claim against Callahan, the plaintiff now seeks attorneys' fees and costs, pursuant to 42 U.S.C. § 1988(b) (the Civil Rights Attorney's Fees Award Act of 1976), 42 U.S.C. § 1983, and Fed. R. Civ. P. 54(d).

II. BACKGROUND¹

On August 29, 1988, Drumgold was charged with the murder of Tiffany Moore, a 12 year old girl killed ten days earlier in the midst of gang warfare in Boston. Callahan, a detective for the Boston Police Department, was assigned to investigate the case. Prior to Drumgold's trial, which began in September of 1989, Callahan worked to secure the testimony of Ricky Evans ("Evans"), a young homeless man who had been the victim of another shooting also under investigation by Callahan. During this time, Callahan provided Evans with meals, cash, and a room at a local Howard Johnson's hotel, which according to Evans included an open expense account. Evans, in turn, offered crucial testimony that implicated Drumgold in Moore's murder; an account of the events of August 29th that placed Drumgold and his codefendant, Terrance Taylor ("Taylor"), carrying guns, near the scene of the crime. After he was found guilty of first-degree murder by a jury on October 13, 1989, Drumgold received a sentence of life in prison without parole.

Fourteen years after Drumgold began his sentence, his attorneys interviewed several witnesses who recanted their testimony, including Evans. During a contested 2003 hearing on Drumgold's Motion for a New Trial, Evans testified that Callahan gave him information about the crime and about Drumgold, including descriptions of Drumgold's clothing and car, information which he could not have otherwise known. He also disclosed that Callahan had

¹ For a more full account of the facts of this case, the procedural background and the trial testimony, see Memorandum and Order: Re Post Trial Motions, August 18, 2011 (docket # 457).

provided him with meals and lodging in the months preceding the trial. None of this information had been provided to Drumgold's defense counsel. Based on all of the evidence (including the disclosures about Evans), the Court granted Drumgold's motion for a new trial; Drumgold was released and shortly thereafter, the government nolle prossed the charges.

Drumgold filed the present suit against Callahan, as well as Police Commissioner Micky Roach ("Roach"), officers Paul Murphy ("Murphy") and Richard Walsh ("Walsh"), and the City of Boston (the "City") on June 3, 2004, for violations of his state and federal constitutional rights pursuant to 42 U.S.C. § 1983 and Mass. Gen. Laws ch.12, § 11I. He claimed that Callahan and Walsh deliberately withheld exculpatory evidence and manipulated witnesses, and that the City and the Boston Police Department facilitated the officers' misconduct through their failure to adequately investigate and discipline such behavior.

During fall of 2008, the case against the individual defendants was tried for the first time. The jury ruled in favor of the defendants on all claims except one, the allegation that Callahan had given Evans a "substantial amount" of money without disclosing this fact to the prosecution. In the second phase of the trial which aimed to assess damages against Callahan, the jury was unable to reach a verdict. The case was re-tried in October of 2009, but only against Callahan and only with respect to the Evans' issues, resulting in a verdict in favor of the plaintiff. The jury ultimately found Callahan liable for recklessly or deliberately withholding evidence that he had provided Evans with housing and meals prior to Drumgold's trial, and determined that his failure to reveal this evidence was the legal cause of Drumgold's conviction. As the prevailing party in his claim against Callahan, the plaintiff now seeks an award of attorneys' fees and costs to compensate members of his counsel for their work during both trials.

III. DISCUSSION

The Court has discretion to award reasonable attorney's fees in a civil rights case. Lewis v. Kendrick, 944 F.2d 949, 954 (1st Cir. 1991). "The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). Here, the plaintiff requests a sum of \$2,305,585.00 for legal fees, plus \$100,399.18 for costs and expenses paid out-of-pocket by members of counsel over the course of both trials. Pl. Mot. Attorney Fees and Costs (document #441). The defendant challenges the fees on the grounds that they are untimely, excessive, based on time records lacking the required degree of specificity and details, and include more than the single successful claim. As described below, I award \$1,613,846.50 in reasonable attorneys' fees and \$51,631.93 in costs.

A. Hourly Rates

1. The Lodestar Figure

The First Circuit uses the lodestar method to evaluate whether the requested fee is reasonable. Grendel's Den, Inc. v. Larkin, 749 F.2d 945, 950 (1st Cir. 1984). The Court calculates fees by multiplying the number of hours productively spent on litigation by a reasonable hourly rate, as determined by prevailing market rates in light of an attorney's skill and experience. Torres-Rivera v. O'Neill-Cancel, 524 F.3d 331, 336 (1st Cir. 2008).

Once the lodestar is calculated, the fee may be adjusted in consideration of a number of factors, including "(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the

fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.” Doran v. Corte Madera Inn Best Western, 360 F. Supp. 2d. 1057, 1061 (N.D. Cal. 2005).

a. Reasonable Rate

The reasonableness of attorney fees is determined by the rates “prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984). The plaintiff has calculated the sum of \$2,305,585.00 based on the following rates for his attorneys: \$500 per hour for Rosemary Curran Scapicchio (“Scapicchio”), a trial attorney with more than twenty years of experience who has represented Drumgold since 1991; \$500 per hour for Michael W. Reilly (“Reilly”), a partner attorney with more than thirty-two years of experience in litigation; and \$90 per hour for work completed by Amy Codagone while she worked for Scapicchio as a third-year law student, and \$190 per hour for work completed after she was admitted to the bar in Massachusetts in November of 2010. See Scapicchio Aff. (document #445); Codagone Aff. (document #446); and Reilly Aff. (document #447).

The rates requested are consistent with both the rates of trial lawyers in the greater Boston area who have comparable experience and expertise, see Pichette Aff. 5, 7 (document #442-1), Feinberg Aff. 4-6 (document #442-2), and Sinsheimer Decl. (document #442-3), and the fees awarded in other recent cases. In Mr. Sinsheimer's declaration, for example, he describes in great detail, not only his knowledge of the prevailing rates for civil rights work in

Boston, but his unique knowledge of Scapicchio's skill and experience.² His office was located in the same building; they used each other as "sounding boards" for "serious and complex litigation matters." In addition, Sinsheimer indicates that he was generally familiar with the Drumgold case, which he believes -- and I agree -- was an extraordinarily difficult one. See Fronk v. Fowler, 22 Mass. L. Rptr. 366, 2007 WL 1130381, at *5 (Mass. Super. May 21, 2007) (finding that Wilmer Hale hourly rates of \$450-575 for partners, \$195-360 for associates, and \$110-195 for paralegals over four years of litigation, while high, were reasonable in the context of the litigation).

In addition, I find that although plaintiff's counsel Rosemary Scapicchio is not a § 1983 expert, she has unquestionably brought unique skill and experience to this case. She has represented Drumgold since 1991, including the Motion for a New Trial in Drumgold's criminal case, which resulted in his release and was based, in part, on the same factual and legal issues as the instant case. She represented him on his direct appeals and his federal habeas corpus claim. She is also a skilled trial lawyer, trying over 100 state court felony criminal cases, including murder, armed robbery, trafficking, rape, and conspiracy trials. And she has litigated complex civil cases, including a wrongful death case with a settlement of over \$1,700,000.00 and a § 1983 claim (with Mr. Reilly) with a jury verdict of \$1,565, 618. To suggest that this hourly rate is not appropriate for her expertise and her work in this case is simply absurd.

Reilly is likewise a skilled litigator, in state and federal criminal cases, as well as state and federal civil cases. In addition, he has briefed and argued over thirty appellate cases in federal and state appellate courts. I find that he is fully entitled to the hourly rate he claims.

² Compare Sinsheimer's affidavit in this case with the one that was submitted in Chao v. Ballista, no. 07-10934 (document #182-3).

Finally, with respect Codagnone, I find that the rates are also reasonable, distinguishing between her rates when she was a law student (\$90) and when she passed the bar (\$190). To the extent that the defendant has provided the Court with affidavits suggesting a lower hourly figure, I do not credit them. They are inconsistent with the cases in this session and with cases in this District.

B. Number of Hours

Plaintiff claims that his attorneys devoted time to the present case in the following hourly amounts: 2,535.95 hours for Scapicchio; 2,052.6 hours for Reilly; and 99 hours in total for Codagone, 75 of which she worked before becoming a lawyer (at a \$90 hourly rate), and 24 of which she completed afterward (at a \$190 hourly rate). In assessing the number of hours for which counsel is owed compensation, I will adjust the requested number of hours mentioned above downward by 30% to reflect the unsuccessful claims.

1. The Nature of the Underlying Documents

Callahan claims that the fee application should be stricken in its entirety because it is not supported by contemporaneous time records. The principle case on point is Grendel's Den, 749 F. 2d 945, in which counsel had absolutely no contemporaneous records. They reconstructed their time on the basis of their usual practices, the documents they had filed, and the amount of time such documents take to draft. The Court found that "the absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance." Id. at 952. In the instant case, there is absolutely nothing to indicate that they were *not* contemporaneous. Counsel have represented that they kept contemporaneous records and that their submissions reflected a

summary of their claims. The issues with which the court was concerned in Grendel's Den do not apply. I will not strike this petition.

2. Degree of Success

The Court in Hensley found that the "important factor of the results obtained" may warrant an upward or downward adjustment of the lodestar figure. Hensley, 461 U.S. at 430 (internal quotation marks and citation omitted). In Riverside, the Court noted that a judge should consider "whether or not the plaintiff's unsuccessful claims were related to the claims on which he succeeded, and whether the plaintiff achieved a level of success that makes it appropriate to award attorney's fees for hours reasonably expended on unsuccessful claims." Riverside v. Rivera, 477 U.S. 561, 568 (1986) (citing Hensley, 461 U.S. at 435). In the present case, plaintiff requests attorneys' fees for time devoted to unsuccessful claims against defendants Callahan, Walsh, and the City.

In his memorandum in support of his motion, Drumgold counters that the \$14,000,000 award in damages resulting from the case -- the largest jury award for a wrongful conviction in the history of the District of Massachusetts -- attests to counsel's "extraordinary level of success." Pl.'s Mem. In Support of His Motion for Costs and Attorneys' Fees (document #442). The plaintiff argues that his unsuccessful claims against Walsh arose from the exact same legal arguments -- a denial of his right to a fair trial under 18 U.S.C. § 1983 -- and the exact same incident -- Drumgold's 1989 prosecution -- as his successful claim against Callahan. Hensley, 461 U.S. at 434.

I disagree. The Walsh case focused on different evidence, different witnesses, and a different theory of liability. The claim was that Walsh had manipulated certain witnesses and

failed to disclose information pertaining to them. The jury rejected the claim. In calculating the lodestar amount, the Court "can segregate time spent on certain unsuccessful claims, eliminate excessive or unproductive hours, and assign more realistic rates to time spent." Coutin v. Young & Rubicam Puerto Rico, Inc., 124 F.3d 331, 337 (1st Cir. 1997) (internal citations omitted).

In assessing a reasonable number of hours, I will reduce the amount requested by the plaintiff by thirty percent to avoid compensating counsel for time devoted to preparing for and litigating the failed claims against Walsh. The plaintiff's successful claim against Callahan derived from the former police officer's contact with Evans. The witnesses and evidence necessary to prove this claim were different than those used by counsel in litigating the plaintiff's claims against Walsh and the City. The thirty percent reduction in hours reflects the necessity for a skilled attorney to examine the case as a whole but recognizes the failed claims.

I will go no further than a thirty percent reduction. Given the complexity of § 1983 law, as evidenced by the huge docket in this case, given the passion with which the claim was defended (approaching intemperance on both sides, myriad motions to strike, motions to disqualify counsel, etc.), and given the nature of the victory, a greater reduction would be unfair.

3. Compensation for Two Trials

I will award fees to plaintiff's attorneys for their work in both the first trial of 2008 and the subsequent trial in 2009. A prevailing party involved in a case where there are two trials is entitled to legal fees from the first trial, unless the conduct of plaintiff's counsel was responsible for the necessity of two trials. O'Rourke v. City of Providence, 235 F.3d 713, 737 (1st Cir. 2001). The jury in the first trial was unable to reach a verdict in assessing damages against

Callahan, necessitating a re-trial. Plaintiff's counsel was not responsible for the mistrial in any way.

4. Timeliness of the Petition

The defendant claims that this attorneys' fees petition is untimely filed and should be stricken in its entirety. A motion for attorneys' fees must be filed within 14 days of the entry of judgment. Fed. R. Civ. P. 54(d)(2)(B)(I). Prior to recent amendments to the Federal Rules of Civil Procedure, the deadline for filing post-trial motions (Fed. R. Civ. P. 50(b), 52(b), and 59) would ordinarily coincide with the 14-day deadline for a motion for attorneys' fees. Because timely-filed post-trial motions suspend the finality of judgment, the deadline for a motion for attorneys' fees would generally be tolled until the resolution of the post-trial motions. The finality of judgment is automatically affected by post-trial motions because these motions seek to amend or alter final judgment. Osterneck v. Ernst & Whinney, 489 U.S. 169, 174 (1989); Weyant v. Okst, 198 F.3d 311, 314 (2d Cir. 1999) (citing Fed. R. Civ. P. 59 Advisory Committee Note (1995)). See also Roque-Rodriguez v. Lema Moya, 926 F.2d 103, 106 (1st Cir. 1991). While this Circuit has not explicitly addressed the issue of whether the motion for attorneys' fees time limit is tolled pending the resolution post-trial motions, other circuits toll the motion for attorneys' fees because post-trial motions "operate to suspend the finality of the district court's judgment." Bailey v. Riverside, 414 F.3d 1023, 1025 (9th Cir. 2005). See also Weyant, 198 F.3d at 315 ("And because the finality of judgment is negated by the timely filing of a motion under Rule 50(b), 52(b), or 59, we conclude that a Rule 54(d)(2)(B) motion is timely if filed no later than 14 days after the resolution of such a Rule 50(b), (52(b), or 59 motion."); Members First Fed. Credit Union v. Members First Credit Union of Fla., 244 F.3d 806, 807 (11th Cir.

2001) (holding that "because the finality of judgment is effectively postponed by the timely filing of a motion under Rule 59," the deadline for filing a motion for attorneys' fees is tolled until the post-judgment motion is resolved).

However, while the general rule is that timely-filed post-trial motions extend the deadline for a motion for attorneys' fees, this case is unique because of the 2009 amendments to the Federal Rules. In 2009, the deadline for filing post-trial motions was extended from 10 to 28 days. As a result, the 14-day deadline for filing a motion for attorneys' fees will now almost always expire prior to filing of any post-trial motions. This change in the Federal Rules creates uncertainty about the deadline for filing a motion for attorneys' fees when post-trial motions are filed after that initial 14-day deadline. While attorneys' fees were due March 10, the post trial motions did not have to be filed until March 24.

Here, Drumgold's motion for attorneys' fees was filed after the initial 14-day deadline, but prior to the resolution of Callahan's post-trial motions (which were finally resolved on August 18, 2011). There are three ways in which this issue can be resolved:

(1) I can deny Drumgold's motion for attorneys' fees and find that such motions must be filed within 14 days of judgment unless post-trial motions are filed by the 14-day deadline. That would pivot Drumgold's rights on whether the defendant uses the full 28 day period now allowed by the rules or choose to file earlier.

(2) I can allow Drumgold's motion for attorneys' fees and find that such motions can be filed within 14 days after the resolution of timely-filed post-trial motions, even if the post-trial motions were filed after the initial 14-day deadline for filing a motion for attorneys' fees.

(3) I can allow Drumgold's motion for attorneys' fees and find that even though the 14-day deadline passed, it is excusable because of the uncertainty created by the recent changes in the Federal Rules, an approach that also makes sense.

I choose options (2) and (3). I find that Drumgold's motion for attorneys' fees was timely-filed because Callahan's post-trial motions suspended the finality of judgment, thereby negating the initial 14-day deadline.³ This holding is thus in line with the original purpose of the 14-day limitation to "minimize the need for piecemeal appeals." Weyant, 198 F.3d at 314 (citing Fed. R. Civ. P. 54 Advisory Committee Note (1993)).

While there is some merit to Option 1 (Callahan's preferred ruling), I decline to apply it. The overarching rule is that a motion for attorneys' fees "is timely filed if filed no later than 14 days after the resolution of [post-trial motions]." Weyant, 198 F.3d at 315. See also Miltimore Sales, Inc. v. Int'l Rectifier, Int., 412 F.3d 685, 692 (6th Cir. 2005). In fact, in Miltimore, the court recognizes that "the absent-minded or negligent prevailing attorney might fail to file the [attorneys' fee] application, but will receive a reprieve by virtue of his opponents filing a [post-trial] motion." Id. While Drumgold's attorney may have been "absent-minded or negligent" in allowing the initial 14-day deadline of March 10, 2011 to pass, once Callahan's post-trial motions suspended the finality of judgment, the initial deadline was no longer relevant and Drumgold's fee application was not untimely.

This approach also promotes judicial efficiency because it minimizes the likelihood that the prevailing party will need to file multiple motions for attorneys' fees, first within 14 days of

³ While it is most efficient for the prevailing party to wait to file a motion for attorneys' fees until after the resolution of post-trial motions, this will generally be impossible because the prevailing party will not know prior to the initial 14-day deadline whether any post-trial motions will be filed.

judgment and again after post-trial motions. The plaintiffs' fee petition would look very different if I were to allow post-trial motions in whole or in part. The defendant's arguments about failed claims, and whether counsel should be compensated for them, depends entirely upon the ultimate resolution of the post trial motions. And were I to set aside the verdict, as the defendant requested, there would not be an attorneys' fees petition; the plaintiff would not be a "prevailing party." This holding is thus in line with the original purpose of the 14-day limitation to "minimize the need for piecemeal appeals." Weyant, 198 F.3d at 314 (citing Fed. R. Civ. P. 54 Advisory Committee Note (1993))

As an alternative, I also adopt option (3). Even if Drumgold's motion for attorneys' fees was indeed untimely under the rule, I can extend the deadline after it has expired if I find that Drumgold failed to act because of "excusable neglect." Fed. R. Civ. P. 6(b). Excusable neglect could be attributed to the uncertainty of the law created by the recent changes in the Federal Rules. In addition, during a May 17, 2011, status conference, after final judgment had entered (on February 24, 2011) and before the defendant had filed post trial motions (on May 24, 2011), I expressly instructed Drumgold to file a motion for attorneys' fees by May 24, 2011. I understood that as of the time of that status conference, the 14 day period for the motion had passed, but I concluded that it made no sense for plaintiff's to file a fee petition unless they understood what they were facing. Accordingly, I find the filing of this petition to be timely.

C. Costs

The plaintiff requests a sum of \$100,399.18 for costs and expenses paid out of pocket by members of counsel in preparing for and litigating both trials. This amount includes depositions, court reporter payments, travel expenses, fees for the use of online services such as Westlaw and

Pacer, and payments for both expert witnesses and private investigators. Of this sum, plaintiff requests \$72,602.81 for work associated with Scapicchio, and \$27,796.37 for work associated with Reilly.

The defendant argues that the plaintiff should not be awarded costs for their experts and private investigators. Fees and costs are recoverable only if authorized by contract or statute. See Ashker v. Sayre, 2011 WL 825713, *4 (N.D. Cal. 2011). While the Civil Rights Attorney's Fees Award Act as amended specifically allows the award of expert fees for actions under 42 U.S.C. § 1981 or 1981(a), it does not include § 1983. Id.; 42 U.S.C. § 1988(c) ("In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee."). I must therefore conclude that courts are not authorized to award expert fees for actions brought under § 1983. I will subtract the fees of \$34,138.00 to Dr. Michael Lyman; \$1,500.00 to Dr. Michael Li; and \$1,650.00 to Professor Feldman.

Similarly, monies paid to private investigators are not set forth as compensable costs under 28 U.S.C. § 1920 and are thus not recoverable in a § 1983 suit. See Tinch v. City of Dayton, 199 F. Supp. 2d 758, 770 (S.D. Ohio 2002). I will subtract \$9,974.25 for the fees of two private investigators (Jay Groob/American Investigative Services (\$7,047) and Keller Investigations (\$2,927.25)).

IV. CONCLUSION

Plaintiff's Motion for Attorney Fees and Costs (document #441) is **GRANTED IN PART** and **DENIED IN PART**. Accordingly, I hereby **AWARD** \$1,613,846.50 in reasonable attorney fees and \$51,631.93 in costs, for a total of **ONE MILLION, SIX HUNDRED SIXTY-**

FIVE THOUSAND, FOUR HUNDRED SEVENTY-EIGHT AND 43/100 (\$1,665,478.43)

DOLLARS to the plaintiff.

The fees and costs shall be disbursed as follows:

Rosemary Curran Scapicchio:

Attorney's Fees:	\$887,582.50
Costs:	\$26,890.56

Amy Codagone:

Attorney's Fees:	\$7,854.00
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Michael W. Reilly:

Attorney's Fees:	\$718,410.00
Costs:	\$24,741.37

SO ORDERED.

Date: August 18, 2011

1s/ Nancy Gertner

NANCY GERTNER, U.S.D.J.

EXHIBIT A

AFFIDAVIT OF ELLEN J. ZUCKER, ESQ.

Now comes the Affiant and swears to the truth of the following:

1. My name is Ellen J. Zucker. I have been a member of the bar of the Commonwealth since 1994. I am also a member of the bars of the United States District Court for the District of Massachusetts and of the First Circuit Court of Appeals.

2. I am a partner at the law firm of Burns & Levinson LLP and serve as adjunct faculty at Suffolk University Law School.

3. I have been actively engaged in trial practice for sixteen years and have represented parties before appellate courts in the Commonwealth on multiple occasions. E.g., Warfield v. Beth Israel Deaconess Medical Center, 454 Mass. 390 (2009) (argued on behalf of the prevailing party, Dr. Carol Warfield).

4. I have served as faculty for continuing legal education programs in Massachusetts and on regional and national panels addressing issues of employment law. I have authored over a dozen articles in professional journals and as part of educational programs on employment law issues.

5. At the start of my legal career, I had the honor of clerking for Judge Nancy Gertner of the United States District Court for the District of Massachusetts.

6. By way of academic background, I am a graduate of Wesleyan University in Connecticut, and I have a Masters in Social Theory from the London School of Economics and Political Science. I was graduated from Boston College Law School in 1994.

7. I have served as lead counsel for Malvina Monteiro since 1998 and am lead appellate counsel in this matter.

8. I am familiar with the work that has been performed and have personal knowledge of all the facts set forth herein.

9. This Court having determined that Ms. Monteiro prevailed on appeal and is entitled to the payment of appellate fees and costs, I submit this affidavit to support and document such fees and costs.

10. I have attached to this affidavit at Exhibit I a document reflecting the time charges that form the basis of Ms. Monteiro's request for an award of attorney's fees in the amount of \$284,420.00.

11. The time charges contained in Exhibit I were contemporaneously recorded as is the standard practice at Burn & Levinson LLP.

12. I have reviewed all such charges and adjusted them where called for, taking a conservative approach to this petition and balancing three key principles: First, where a party litigates a matter aggressively, it is reasonable for a party in opposition to spend the time necessary to overcome that approach. See City of Riverside v. Rivera, 477 U.S. 561, 580, n. 11 (1986) (citations omitted). Second, effective representation of a client's interests often involves collaboration. See Gay Officers Action League v. Commonwealth of Puerto Rico, 247 F.3d 288, 297 (1st Cir. 2001). Third, however, prevailing parties are entitled to the payment of reasonable fees and costs but not those that are unreasonably duplicative or excessive.

13. With these principles in mind, I have adjusted and reduced time entries and removed entirely certain duplicative charges, to present to this Court a petition that conservatively reflects charges that were reasonably related to securing the successful result achieved here.

14. Regarding staffing on the appeal, my hours represent 84% of the attorney time charges for which Ms. Monteiro seeks compensation. Although it is common for

partners to push down to associates certain aspects of a project, in light of the nature of the case, its long history and my own knowledge of the record, I determined that this approach offered a false efficiency. I have used my standard rates in this petition and not asked for payment solely at my current rate, although courts permit such a request. During the course of preparation and presentation of the appeal, my rates have been as follows: \$425/hour in 2009; \$440/hour in 2010; and \$450/hour this year. I note that the trial court determined that my rates, including the rate of \$425/hour, was reasonable.

15. In addition to my own time, Laura R. Studen, Esq., my colleague at trial and the co-chair of Burns & Levinson's Litigation Department, served as counsel on appeal. She provided invaluable consultation throughout the process, and she took the lead on modeling damages to rebut the City's assertions in its Principal Brief regarding compensatory damages. The fee petition requests only 31 hours for Ms. Studen's time. Ms. Studen's time is billed at her standard rate of \$525/hour (her rate throughout the process). As the trial court found, this rate is modest to reasonable for an attorney of Ms. Studen's skill and experience.

16. Susan S. Stenger, a partner at Burns & Levinson with considerable experience before the state's appellate courts, offered strategic consultation as well. Her time charges amount to 4.2 hours in total. Ms. Stenger's standard rate, reflected in the time charges attached, is \$435/hour.

17. Michael Samarel, an associate, edited and cite-checked the submissions to the court (15.3 hours). His historic rates are reflected in this petition: \$210/hour in 2010 and \$225/hour in 2011.

18. In addition to these attorneys, three paralegals assisted in the mechanics of the appeal: William Monagle, whose rate was \$140/hour (1.4 hours); Michelle Sproul, billed at \$130/hour (.8 hours); and Hollie Capuano, a senior, career paralegal who assisted in locating key records, as bills out at \$200/hour (2.4 hours).

19. The hours charged in this fee petition do not capture the full time devoted to the effort: I have not included time charges of several of my colleagues at Burns & Levinson, with whom I consulted, including the hours spent by one of our most senior tax attorney in modeling damages and hours spent by four other colleagues preparing for and participating in a moot court session. I have not included, in an effort to avoid what could even arguably be

viewed as duplicative charges, the full time charges for various strategic conferences.

20. The work necessary on appeal was considerably affected by the breadth of the City's claims of error.

21. The review began in June of 2009, when the City filed its first Notice of Appeal, identifying eleven rulings of the trial court it intended to present for review, including a ruling from January of 2005.

22. The work performed prior to June of 2010 focused largely on transcript review and initial notes regarding certain aspects of the City's promised appeal, an examination of the record for waiver, and an initial review of trial transcripts and pleadings dating back to 2004-2005, as well as preparation in the event that the City secured direct appellate review of the matter.

23. The time charges also reflect that, during this time, Monteiro's counsel considered decisions published by the SJC that could inform an appeal in this matter: Haddad v. Wal-Mart Stores, Inc. (No. 1), 455 Mass. 91 (2009) (addressing, among other things, standards for the award of punitive damages); Haddad v. Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1020 (2009) (regarding attorney's fees for a prevailing plaintiff); and Dahms v. Cognex Corp., 455

Mass. 190 (2009) (addressing standards for reversal of trial court's jury instructions).

24. I have adjusted time entries during this period for inefficiencies that even arguably were caused by conducting such a review prior to the City's more telescoped identification of issues in its M.R.A.P. Rule 18(b) communication or that were the result of engaging in repeated communications about more ministerial aspects of assembling the record.

25. In total, I have deducted approximately 25% of the time spent for work done between August of 2009 and May of 2010.

26. Corrected Amended Final judgment entered on June 4, 2010 and the City's Notice of Appeal, filed in the superior court, identified sixteen orders and rulings that the Defendant intended to appeal. Time charges reflect consideration of these events and of work done in response to the City's identification of issues.

27. The appeal was docketed on July 16, 2010.

28. Pursuant to Rule 18(b) of the Mass. Rules of Appellate Procedure, the City then identified eighteen issues and one hundred and twenty-two pleadings that it deemed necessary and relevant to its appeal. See

Monteiro's Fee Petition at Exhibit 2, Lukey Correspondence to Zucker, dated July 16, 2010.

29. In mid-August, the City notified Ms. Monteiro's counsel that it wished to expand the record appendix yet further, including various pleadings before the Massachusetts Commission Against Discrimination ("MCAD") all relating to the claims of Marion Hampton, an African-American former employee of the City who also had claimed discrimination and retaliation.

30. The sweep of the City's appeal required that hours be spent reviewing pleadings and proceedings from 1998 forward and involving not only Ms. Monteiro but Ms. Hampton as well.

31. Also during August of 2010, the City filed an application for direct appellate review by the SJC.

32. Counsel for Ms. Monteiro was obliged to file a limited opposition to the City's application to present her position that there was no basis in law or in the record to justify the appeal's traveling an extraordinary course. The application was rejected.

33. In August of 2010, the City filed a sixty-seven page brief that was rejected by the Appeals Court, and it filed another principal brief on September 13, 2011, with

substantive characterizations of evidence moved to various appendices.

34. Time charges for Ms. Monteiro's counsel from August of 2010 through November of 2010 reflect a detailed transcript review of two trials and various pre-trial and post-trial hearings. They reflect work done reviewing and seeking correction or supplementation of the City's record appendix, and the significant effort necessary to rebut the bold legal and factual assertions in the City's principal brief. Ms. Monteiro's brief in response was filed in late November of 2010.

35. Thereafter, the City filed a twenty-page Reply Brief and a submission pursuant to M.R.A.P. Rule 16(1) about the SJC's decision in Pelletier v. Town of Somerset, 458 Mass. 504 (2010).

36. In late December and January of 2011, time charges reflect the effort devoted to Ms. Monteiro's response to the City's submission and its arguments contained in its M.R.A.P. Rule 16(1) communication, after confirmation that the Court had accepted it. Time charges also reflect counsel's consideration of the City's arguments in its Reply Brief and how best to address statements regarding matters not in the record or citation

of flatly inapposite authority. I have included no time charges associated with the drafting of a surreply.

37. From February into May of 2011, time charges relate to preparing for oral argument, updating research and further transcript review as part of preparation. Time charges do not include unnecessarily duplicative charges for mooted of the oral argument.

38. After oral argument, the SJC issued its decision in Psy-Ed v. Klein, 459 Mass. 697 (2011). Time charges reflect consideration of its possible impact on the appeal. Ms. Monteiro's counsel determined that a Rule 16(1) communication was unnecessary. The City, however, submitted a Rule 16(1) communication regarding Psy-Ed. After confirmation that the communication had been accepted, Ms. Monteiro was obliged to respond. I have adjusted the time charges associated with considering the City's actions and analyzing its claims and have deleted all time devoted to drafting and finalizing Ms. Monteiro's response submitted to this Court.

39. Finally, the petition contains, as is permitted, reasonable time charges associated with the filing of this petition. In total, Ms. Monteiro requests payment for 650.80 hours of time spent by her counsel in defending her interests on appeal and analyzing and responding to three

briefs and two submissions filed by the City pursuant to M.R.A.P. Rule 16(1).

40. Chapter 151B requires the taxing of a defendant for a prevailing plaintiff's reasonable costs associated with her claim. M.G.L. c. 151B, §9.

41. Ms. Monteiro requests taxing costs associated with the ordering and production of various trial transcripts from the trial in this matter in 2008 but also the costs associated with the ordering of certain further transcripts from pre-trial proceedings in 2004 and 2005, required to respond to the City's arguments.

42. Regarding other costs, they involve copying, delivery charges and certain taxis and parking associated with the mechanics of working on or delivering submissions of the appeal.

43. Ms. Monteiro requests taxing the City \$9,500.00 for reasonable electronic legal research charges.

44. One measure of the reasonableness of Ms. Monteiro's appellate attorney's fees and costs request is surely its comparison to the actual appellate attorneys fees and costs paid (and presumably considered reasonable) by the City to prosecute this appeal.

45. I submit hereto copies of the City's response to a public records request in June of 2011 for the fee

invoices from the City's outside counsel, the law firm of Ropes & Gray LLP, in this matter.

46. I have reviewed these invoices. In order to capture the full scope of work done on the appeal, I calculated the time and fees associated with the appeal after final judgment entered at the trial court level, and I also made certain fair, I believe, estimates about work done for purposes of preparing for appeal while the case was pending at the trial court.¹

47. A review of the invoices paid reveals that the City engaged the talents of nine attorneys, over time, to pursue its appeal. From the fall of 2008 to present, they devoted approximately 1368.80 hours to the appeal's prosecution.

48. As for paralegal support, the City was charged for the time of thirteen paralegals devoting about 565.2 hours to the project.

¹ I reviewed the trial court docket as well as my own electronic and hard copy correspondence files. Based on when the parties were actively engaged in trial court matters, I took the following invoices as reflective of work for the appeal: 10/13/08; 11/17/08; 12/11/08; 1/20/09; 3/10/09; 3/30/09; 5/8/09 (work through 3/31); 8/19/09 (50% appeal); 10/9/09; 10/21/09; 5/13/10; 6/14/10; 6/30/10; 8/4/10; 8/24/10; 10/8/10; 10/29/10; 11/23/10; 12/9/10; 2/11/11; 2/14/11; 3/30/11; 4/28/11; 6/3/11; 6/16/11. Other invoices provided appeared related, at least substantially, to matters before the trial court and no fees or costs from those invoices were considered. Excepting the final invoices, it appears that invoices, as presented by Ropes & Gray, were approved by the City Solicitor and paid in full. See Exhibit III, Summary Invoice (indicating that \$2,012,626.11 had been paid by the City to WilmerHale LLP and Ropes & Gray LLP in this matter through 4/25/11).

49. The invoices reflect the participation of two junior associates, who, upon passing the bar, were billed at \$330/hour and other associates in their early years of practice who were billed at \$375/hour, as were all other attorneys devoting time to the matter, based on the fee agreement between the City and its counsel. Paralegals billed time at rates ranging from \$140/hour to \$270/hour.

50. Regarding costs, the City paid, it appears, \$36,293.08 for research relating to the appeal. The City's counsel invoiced and the City paid sundry meal and certain rail travel charges.

51. In total, it appears that the City paid legal services and costs, from its counsel's preparation of the appeal starting in September of 2008 to the final bill reflecting work in May of 2011, of approximately \$574,154.03 for its professional services and \$119,469.52 for various disbursements, for a total of \$693,623.55.

52. Ms. Monteiro asks for fees and costs totaling \$298,349.33.

53. As set forth above and in Exhibit I, I believe that the fees included in Ms. Monteiro's petition were reasonably incurred in defending the judgment entered in Ms. Monteiro's favor on appeal before this Court.

Signed this ^{29th} day of August, 2011 under pains and penalties of perjury.

A handwritten signature in black ink, appearing to read "E. J. Zucker", written over a horizontal line.

Ellen J. Zucker, Esq.

EXHIBIT I

BURNS & LEVINSON LLP

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Malvina Monteiro
Cambridge, MA

Invoice Number 765082
Invoice Date 08/29/11
Client Number 41019
Matter Number 00001

RE: Appeal

For Services through August 29, 2011:

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
08/17/09	EJZ	Various telephone conferences regarding research of appellate issues; prepare outline of work needed to respond to City's issues on appeal.	1.50
08/19/09	EJZ	Appeal research regarding Everett issue; review of MCAD filings and early court filings.	4.50
08/28/09	EJZ	Review Clifton and progeny regarding appellate issues.	0.60
09/11/09	EJZ	Review hearing transcripts.	1.50
09/14/09	EJZ	Various communications regarding appeal status and status of record.	0.10
09/15/09	EJZ	Further communications regarding record review and status of same.	0.30
09/17/09	EJZ	Review of record; further telephone conferences with opposing counsel regarding same.	0.20
09/21/09	EJZ	Review transcripts of hearings/trial (2004-2005); various communication with opposing counsel regarding same; draft notes regarding same.	1.50
09/22/09	EJZ	Transcript review; various telephone conferences regarding scope of record and 2004-2005 issues raised.	1.40
09/24/09	EJZ	Review communication from opposing counsel regarding transcripts and state of the record.	0.10
09/25/09	EJZ	Review various transcripts and status of file; review documents and correspondence for early communications regarding ongoing retaliation.	1.60

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
09/29/09	EJZ	Transcript review; review status of record.	1.00
10/05/09	EJZ	Review Haddad decision in terms of possible appellate issues; review transcripts; review proposed and provided jury instructions; jury verdict form.	1.20
10/06/09	EJZ	Outline facts/search for citations; consider questions regarding transcripts' accuracy.	2.20
10/07/09	EJZ	Review transcripts and pleadings and consider appellate arguments.	1.70
10/10/09	EJZ	Review 2005 trial transcripts; outline further research needs for appeal; outline arguments and key citations to the record.	2.50
10/12/09	EJZ	Consider updating of research necessary; review transcripts.	1.30
10/13/09	EJZ	Review trial transcripts from 2005 trial.	3.20
10/14/09	EJZ	Review 2005 trial transcripts.	1.50
10/15/09	EJZ	Review Dahms v. Cognex; consider implications regarding appeal; review pre-trial 2005 hearing transcript and Day 2 transcript.	1.80
10/16/09	EJZ	Review 2005 transcripts; consider implication for Everett argument; draft notes regarding same.	0.40
10/17/09	EJZ	Review transcripts from 2005 trial; draft notes.	2.50
10/18/09	EJZ	Further transcript review (2008); notes to file.	3.20
10/19/09	EJZ	Transcript review; check accuracy of City's reply regarding transcripts fully on file; communication with opposing counsel regarding missing trial transcript wrongly asserted to be on file (May 7).	4.80
10/20/09	EJZ	Transcript review; follow up regarding May 7 transcript; review complaint and answer regarding admission that there were "flex time requests" in 1997; consider strategy regarding judicial admission and presentation of the issue.	5.30
10/21/09	EJZ	Transcript review (2008 trial); notes to file regarding same.	2.70
10/22/09	EJZ	Transcript review (2008 trial).	3.20
10/24/09	EJZ	Review transcript from Motion to Compel hearing; review trial transcripts and closings (2005 trial); notes to file regarding same.	5.20
10/27/09	EJZ	Review trial transcripts and prior pleadings (2004-2005).	3.50
10/29/09	EJZ	Review prior pleadings regarding notice of discharge in 2003/2004 and counsel's communications.	1.20
10/31/09	EJZ	On-going transcript review; begin list of waived issues.	2.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
11/05/09	EJZ	Review issues in JNOV and Motion for New Trial/Remittitur; consider waiver arguments regarding comparative evidence; outline including transcript cites.	1.70
11/07/09	EJZ	Further outlining of waiver argument regarding comparative evidence.	2.30
11/09/09	EJZ	Consider arguments regarding "inflamed passions."	0.80
11/13/09	EJZ	Communication with opposing counsel regarding status of the record.	0.10
11/30/09	EJZ	Review appellate issues for possible amicus support in event of DAR.	1.00
12/02/09	EJZ	Preparation for and conduct meeting with potential amici; review of issues and discussion; consider posture regarding DAR.	0.50
12/15/09	EJZ	Review appellate issues and possible DAR application process; review and record status; communication with counsel.	0.80
12/16/09	EJZ	Review status; consider strategy regarding DAR.	1.50
12/17/09	EJZ	Review complete trial court docket and need for supplementation.	2.00
12/18/09	EJZ	Consider structure of DAR application; review docket and consider posture regarding appeal; review communication from opposing counsel.	0.80
12/18/09	WJM	Traveled to the Supreme Judicial Court to obtain copies of documents requested by E. Zucker (Ayash case pleadings).	1.40
12/20/09	EJZ	Review communication from opposing counsel.	0.10
12/23/09	EJZ	Review Haddad decision; telephone conference with L. Studen regarding strategy.	1.00
12/23/09	LRS	Review of Haddad decision; telephone conference with E. Zucker regarding strategy.	0.50
03/08/10	EJZ	Review concerns regarding assembly of record and email from opposing counsel.	1.40
03/09/10	EJZ	Review communication from opposing counsel regarding status of the record; consider scope and position.	0.20
04/15/10	EJZ	Communications with opposing counsel regarding record.	0.10
04/21/10	EJZ	Communications with opposing counsel regarding preparation of record for appeal; consider position regarding docket and RA.	0.20
04/23/10	EJZ	Conduct review of pleadings and docket for appeal.	2.30
05/20/10	EJZ	Communications with opposing counsel regarding same; review docket and pleadings.	0.80

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
05/21/10	EJZ	Review decisions of trial court and consider implications regarding appeal.	0.70
05/22/10	EJZ	Further review of decisions; consider appellate strategy regarding same.	1.00
05/25/10	EJZ	Review City's renewed Notice of Appeal; consider implication for research.	0.70
05/27/10	EJZ	Receive and begin review of transcripts.	0.20
06/04/10	EJZ	Review of ordered transcripts; communication with opposing counsel regarding purpose of their inclusion and possibility of joint DAR.	0.80
06/09/10	EJZ	Review communication from opposing counsel.	0.10
06/10/10	EJZ	Review letter from opposing counsel regarding assembly of record and amendment of judgment; note concerns regarding record.	1.50
06/11/10	EJZ	Review renewed notice of appeal.	0.20
06/13/10	EJZ	Review docket regarding issues raised in renewed notice of appeal.	0.80
06/15/10	EJZ	Continue docket/pleadings review.	0.60
06/25/10	EJZ	Consider Everett implications and Zipes; discussion with potential amicus support regarding same and DAR.	0.40
07/16/10	EJZ	Receive notice of appeal; consider approach to same.	0.20
07/26/10	EJZ	Review opposing counsel's Rule 18(b) communication; review record on appeal and designation of transcripts.	1.80
07/29/10	EJZ	Review facts; possible DAR opposition in light of issues raised.	2.00
07/30/10	EJZ	Consider issues regarding first trial/motion to strike; review case law on possible motion to strike misrepresentation/representation of facts properly in the record.	1.20
08/02/10	EJZ	Consider issues regarding appendix and issues.	1.00
08/03/10	EJZ	Consider issues regarding appendix; meeting with S. Stenger regarding appeal generally and appendix designation; review designations of appellant.	0.80
08/03/10	SES	Meet with E. Zucker regarding appellant's statement of issues and designation of appendix on appeal; question of treatment of facts properly in record.	0.30
08/04/10	EJZ	Review pleadings; consider designations; consider materials regarding 2005 trial and document production evidence.	4.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
08/05/10	EJZ	Review DAR application; review records and finalize counter-designation correspondence pursuant to RAP 18; review strategy with S. Stenger and L. Studen regarding response to DAR application.	2.30
08/05/10	SES	E-mail from E. Zucker; review and comment on counter-designation of joint appendix on appeal; review application for direct appellate review; draft e-mail to E. Zucker regarding same.	0.60
08/06/10	EJZ	Review document production from 2004 regarding appeal issues; review timeline regarding erroneous representations in DAR application; consider strategy for response; meeting with L. Studen regarding same and ethics of representations of opposing counsel regarding jurors' deliberations; research case law and Mass Rules of Professional Conduct regarding the use of discussions with jurors regarding their deliberations.	5.50
08/06/10	LRS	Review DAR application; meeting with E. Zucker.	0.80
08/09/10	EJZ	Further review of issues in DAR application.	0.60
08/10/10	EJZ	Review prior pleadings regarding DAR representations for admissions regarding scope and nature of claim of retaliation; begin transcript review in light of claims asserted.	3.80
08/11/10	EJZ	Further review of case law and prior court rulings for DAR application and appeal.	4.70
08/12/10	EJZ	Draft motion in opposition to DAR application.	7.30
08/13/10	EJZ	Finalize initial draft of opposition to DAR application.	3.20
08/14/10	EJZ	Edit draft DAR opposition; review 2008 pretrial hearings regarding arguments made; draft memo regarding transcript citations for appeal.	6.30
08/15/10	EJZ	Continue drafting transcript citation memo; further revise DAR opposition; research regarding judicial estoppel and judicial admissions.	2.70
08/16/10	EJZ	Revise and finalize DAR opposition; research case law regarding Clockedile and Clifton line of cases.	7.80
08/16/10	LRS	Follow up with E. Zucker regarding DAR opposition.	0.50
08/17/10	EJZ	Ongoing research regarding Clifton progeny; judicial admission and estoppel.	1.80
08/18/10	EJZ	Review status and archived documents regarding Appellant's notice that City intends to include matters outside of the record; further consider potential motion to strike; communication with opposing counsel regarding status of the record appendix.	2.20

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
08/19/10	EJZ	Review proposed RA; examine files for archived documents and exhibits missing; review standards for what constitutes appellate record; telephone conference with MCAD and appellate court clerk regarding same; various communications with opposing counsel regarding record; further research.	7.30
08/20/10	LRS	Review emails and draft of documents relating to direct appellate review; notes to file for follow up	1.30
08/25/10	EJZ	Brief review of City's filing.	0.20
08/26/10	EJZ	Review City's 67 page brief; telephone conferences with Appeals Court regarding status and posture of case in light of non-conforming filing; further strategize and how to respond to matters inserted but not on the record.	3.50
08/27/10	EJZ	Review cases cited by Defendant; consider direction of brief; review status of filing and consider motion to strike portions of brief.	3.00
08/27/10	LRS	Review City's brief; notes to file; telephone conference with E. Zucker regarding brief in response.	1.20
08/28/10	EJZ	Review 2003-2005 transcripts and pleadings regarding on-going retaliation; continue review of caselaw regarding retaliation claims filing requirements from 1995 - present and review caselaw cited by City.	8.30
08/29/10	EJZ	Further review of caselaw; gather and review Everett & Ayash appellate pleadings.	3.20
08/30/10	EJZ	Telephone conference with L. Studen regarding issues in appeal; timing; retaliation claim issues; further research and transcript review.	2.70
08/30/10	LRS	Telephone conference with E. Zucker.	0.30
08/31/10	EJZ	Review case law and consider structure of brief.	1.80
09/03/10	EJZ	Ongoing transcript review regarding appeal.	2.30
09/04/10	EJZ	Ongoing transcript review (2005 trial) regarding assertion (without citation) about evidence excluded.	3.50
09/05/10	EJZ	Ongoing transcript review (2008 trial).	4.30
09/06/10	EJZ	Ongoing transcript review (2008 trial).	4.80
09/07/10	EJZ	Review status and consider strategy regarding consequential damages; research regarding same.	2.70
09/07/10	LRS	Office conference with E. Zucker regarding factual issues raised by City's Brief.	0.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
09/09/10	HAC	Reviewing court documents in preparation of assisting with brief appendix.	0.70
09/10/10	EJZ	Continue transcript review (2008 trial); review existing facts section for inclusion; review Principal Brief filed with Appeals Court.	6.50
09/13/10	EJZ	Outline further appellate issues.	1.40
09/14/10	EJZ	Appeal research.	2.50
09/15/10	EJZ	Ongoing transcript review (2008 trial; post-trial pleadings).	1.50
09/16/10	EJZ	Transcript review regarding motion to amend hearing (2004-2005); draft section regarding Everett issue.	2.80
09/17/10	EJZ	Transcript review (2005 post-trial motions) for failure to preserve issues.	1.30
09/19/10	EJZ	Transcript review (2008 pre-trial hearing); draft Everett section.	5.70
09/20/10	EJZ	Review transcripts; draft and revise section regarding Everett argument.	7.00
09/21/10	EJZ	Draft facts section.	4.50
09/24/10	EJZ	Review Exhibit 26 and damages projections; meeting with L. Studen regarding compensatory damages section and legal analysis.	3.50
09/24/10	LRS	Review City's Brief; telephone conference with B&L tax attorney regarding various calculations on damages; draft damages outline/language for reply brief.	5.60
09/25/10	EJZ	Review transcripts regarding comparator evidence and issues of waiver; review 2005 trial regarding comparator evidence.	7.50
09/25/10	EJZ	Meeting with L. Studen to review damages calculations and analysis; research regarding statutory provision of flex time.	0.70
09/25/10	LRS	Meeting with E. Zucker regarding compensatory damages calculations and advise of tax attorney; review damages calculation section based on conservative assumptions.	2.80
09/26/10	EJZ	Transcript review regarding flex time; consider use of false statements and issues of judicial estoppel/admission; ethical issues and unclean hands arguments.	7.30
09/27/10	EJZ	Transcript review regarding flex time and drafting appeal.	2.00
09/28/10	EJZ	Research regarding adverse action argument; continue drafting; communication with opposing counsel regarding exhibits and appendices excluded from RA.	3.20
09/29/10	EJZ	Draft appeal; continue research and transcript review.	6.00

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
09/30/10	EJZ	Continued research regarding damages analysis; continued drafting.	7.80
09/30/10	HAC	Attention to emails regarding the City's record appendix; Telephone calls with Jacob Scott, Esq., attorney for the City regarding faulty disk; assist in searching through testimony.	1.10
10/01/10	EJZ	Draft procedural history section; consider implications of "flexitime" agreements and 1997 "flexitime schedule"; consider handling of ethical issues regarding representation regarding flexitime.	6.70
10/02/10	EJZ	Continued research; draft facts section and review first trial pleadings regarding representations (without citation) in the brief.	7.50
10/03/10	EJZ	Research; consider presentation of false statements regarding flexitime.	5.50
10/04/10	EJZ	Edit procedural history; review Hampton MCAD and Summary Judgment filings and appendices not included in records and Monteiro appendix regarding summary judgment; consider impact of false statements on appeal and posture.	7.30
10/04/10	HAC	Conduct multiple searches; submit memorandum to E. Zucker regarding same.	0.60
10/05/10	EJZ	Appeal outlining; consider implications of SJ materials and false statements of Healy.	3.20
10/06/10	EJZ	Legal research regarding judicial admissions; perjurious statements; consider options regarding use; other research continued.	6.00
10/07/10	EJZ	Review SJ documents; consider strategy; review ongoing research.	3.50
10/08/10	EJZ	Revisions and drafting; follow up regarding City's motion.	5.00
10/12/10	EJZ	Continued research.	3.50
10/13/10	EJZ	Drafting appeal.	4.00
10/14/10	EJZ	Consider current cases on appeal regarding Monteiro appellate issues; meeting with L. Studen regarding same.	1.40
10/16/10	EJZ	Review case law; appellate briefing of pending cases; continue drafting.	3.50
10/17/10	EJZ	Legal research regarding admissions and "state of mind" evidence.	1.80
10/19/10	EJZ	Research review.	3.00

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
10/21/10	EJZ	Research.	2.50
10/22/10	EJZ	Review research regarding general standards on appeal.	1.50
10/27/10	EJZ	Review Joule issues regarding exhaustion; consider strategy.	0.80
11/02/10	EJZ	Edit brief.	1.30
11/03/10	EJZ	Review transcripts and consider structure of arguments.	3.50
11/04/10	EJZ	Continued research.	2.40
11/05/10	EJZ	Research and drafting agreement.	5.30
11/06/10	EJZ	Various continued research.	1.80
11/07/10	EJZ	Various research and drafting.	8.50
11/10/10	EJZ	On-going research and redrafting of brief.	5.50
11/11/10	EJZ	On-going redraft of brief.	12.20
11/12/10	EJZ	Review research and transcripts regarding comparative evidence; review City's brief regarding same; review missing pleadings and errors with appendix.	9.50
11/12/10	LRS	Review and drafting of brief on appeal; office conference with E. Zucker regarding legal issues and analysis	4.00
11/13/10	EJZ	Review draft comparative evidence section; adverse action section.	9.50
11/14/10	EJZ	Continue drafting and editing legal sections.	4.50
11/15/10	EJZ	Draft facts section; edit legal sections; various communications regarding missing portions.	3.20
11/15/10	LRS	Finalize draft section of damages for brief, review draft sections; office conference with E. Zucker regarding drafting issues.	4.20
11/15/10	MVS	Review and verify all case citation in SJC brief; review brief for grammar and form.	4.40
11/16/10	EJZ	Continue drafting and editing facts.	6.50
11/16/10	MVS	Verify additional case law citations in SJC brief; conduct additional review of brief.	3.80
11/17/10	EJZ	Continue drafting and editing facts; review transcript digest and appellant's brief regarding citations.	4.50
11/17/10	MVS	Conference with E. Zucker regarding reviewing brief, additional sections and facts.	0.30
11/18/10	EJZ	Draft brief; various research and editing; review transcripts regarding citations in Appellant's brief.	7.20
11/18/10	MVS	Review additional section of SJC brief.	0.80

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
11/19/10	EJZ	Draft and edit brief.	2.50
11/19/10	LRS	Review brief; edit and revise; telephone conference with E. Zucker regarding legal issues and analysis	1.50
11/19/10	MVS	Conduct additional review of case citations and content of SJC brief.	2.20
11/20/10	EJZ	Draft and edit brief.	7.00
11/21/10	EJZ	Draft and edit brief.	6.50
11/22/10	EJZ	Draft and edit brief; review same.	4.20
11/22/10	LRS	Telephone conference with E. Zucker regarding finalization of brief.	2.80
11/23/10	EJZ	Finalize brief and various communications with opposing counsel and court.	4.20
11/23/10	MCS	Review and revise table of authorities.	0.80
11/23/10	MVS	Continue review of appellate brief; multiple conferences with E. Zucker regarding same.	3.40
11/24/10	EJZ	Follow-up regarding brief and appendix; review case law and consider arguments for oral argument from cut sections.	1.30
12/10/10	EJZ	Review Pelletier decision consider possible 16(1) communication.	1.30
12/13/10	EJZ	Review reply brief; consider filing of surreply in light of misrepresentation of record and case law.	2.00
12/15/10	SES	E-mails from/to E. Zucker regarding appellate procedure issue.	0.20
12/16/10	EJZ	Consider approach regarding surreply/motion to strike.	0.50
12/20/10	EJZ	Outline issues in reply for argument.	0.50
12/22/10	EJZ	Review City's Rule 16(1) submission regarding Pelletier and argument made.	4.00
12/23/10	EJZ	Review status of City's submission (accepted); begin record review for response.	2.30
12/29/10	EJZ	Draft 16(1) correspondence.	1.70
12/31/10	EJZ	Further drafting of 16(1) correspondence.	2.00
01/04/11	EJZ	Review past pleadings regarding various representations made by City; review transcripts regarding same.	1.50
01/05/11	EJZ	Review case law and strategy for oral argument on points made in reply.	1.20
01/07/11	EJZ	Consider strategies regarding responses to Reply and Rule 16(1) communication.	1.30
01/10/11	EJZ	Revise Rule 16(1) communication; review case law.	5.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
01/11/11	EJZ	Revise and finalize Rule 16(1) communication; review transcripts for oral argument.	2.50
01/11/11	MVS	Proofread Rule 16(1) submission.	0.40
01/12/11	EJZ	Review transcripts for oral argument; focus on arguments in reply.	7.00
01/18/11	EJZ	Review record regarding representation of City; outline response; preparation for argument.	3.20
01/21/11	EJZ	Research regarding oral arguments; review record.	2.20
01/22/11	EJZ	Research for oral arguments based on reply brief.	2.80
02/07/11	EJZ	Review matters regarding appeal and reply; consider other methods to bring matters to the attention of the court; review matters relating to arguments of "public status" of municipality.	3.50
02/08/11	EJZ	Communications with client regarding status.	0.20
02/09/11	EJZ	Consider 16(1) communication/motion to strike possibilities; review transcript for key issues for oral argument.	0.80
02/14/11	EJZ	Review status; communications with client regarding same.	0.30
02/18/11	EJZ	Review status and consider next steps regarding appeal and oral argument.	0.50
03/08/11	EJZ	Consider structure of appellate argument and abuse of discretion issues particularly; review rulings of trial court with this division in mind.	1.50
03/10/11	EJZ	Communications with client regarding status of appeal; consider framing of oral argument.	0.50
03/11/11	EJZ	Meeting with L. Studen regarding status and strategy.	1.00
03/11/11	LRS	Meeting with E. Zucker regarding status and strategy.	1.00
03/14/11	EJZ	Update research regarding punitive damages analysis; do national search.	2.30
03/16/11	EJZ	Consider arguments regarding punitive damages and jury role; consequential damages.	1.50
04/07/11	SES	Draft email to E. Zucker.	0.10
04/12/11	SES	Review briefing in preparation for meeting with E. Zucker in preparation for oral argument.	1.30
04/13/11	EJZ	Outline issues; review approach after consultation with S. Stenger and others.	2.50
04/13/11	SES	Prepare for and attend meeting regarding oral argument; meeting with E. Zucker.	1.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
04/14/11	EJZ	Outline oral argument points.	0.80
04/15/11	EJZ	Various communications regarding approach and issues on appeal; prepare in consultation with other employment attorneys; begin review of record for argument, focusing on impeachment issues and false reasons.	2.40
04/15/11	LRS	Meeting with E. Zucker regarding argument.	1.00
04/16/11	EJZ	Consider feedback from S. Stenger regarding post-judgment accrual of interest issue; review case law and argument.	1.20
04/16/11	SES	Draft email to E. Zucker with additional issues for oral argument.	0.20
04/19/11	EJZ	Prepare for argument.	1.30
04/21/11	EJZ	Review case law regarding jurisdictional argument; prepare talking points and rebuttal.	3.20
04/22/11	EJZ	Prepare for oral argument; review recent caselaw.	1.50
04/23/11	EJZ	Preparation for oral argument.	2.00
04/25/11	EJZ	Review SJC case on closings; review damages cases; squib facts.	2.30
04/26/11	EJZ	Preparation for oral argument; outlining.	4.30
04/27/11	EJZ	Review key transcript portions and prepare citation squibs.	1.30
04/29/11	EJZ	Review and update research.	2.70
04/30/11	EJZ	Preparation for oral argument; focus on prejudgment interest and updating research.	4.80
05/01/11	EJZ	Transcript review; outline key cites for argument.	6.90
05/02/11	EJZ	Review all pleadings and review transcript; preparation for oral argument; outline key cites for argument.	5.00
05/03/11	EJZ	Prepare for oral argument.	7.50
05/04/11	EJZ	Preparation for and conduct oral argument; debrief; consider filing follow up correspondence.	5.20
05/04/11	LRS	Conference with E. Zucker regarding oral argument timing and structure; attend Appeals Court hearing; follow up with client.	3.00
05/11/11	EJZ	Draft public records request; consider reasons, scope and use.	0.30
05/12/11	EJZ	Review Psy. Ed v. Klein decision from SJC; read parties' briefs; consider 16(1) communication; review Psy. Ed amicus and briefs of parties; determine Rule 16 (1) communication unnecessary.	2.70
05/16/11	EJZ	Receive and review City's 16(l) communication; review rule and case law; consider response to City's apparent argument.	1.70
05/23/11	EJZ	Confirm acceptance of City's Rule 16(l) communication; consider arguments made by City.	0.80

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
05/27/11	EJZ	Review communication from A. Goldberg regarding public records request; respond to same.	0.10
06/02/11	EJZ	Various communications regarding fees paid by City.	0.10
06/13/11	EJZ	Review response to public records request.	0.40
06/14/11	EJZ	Review documents from City regarding fees paid to its counsel; consider implications for petition.	1.30
08/15/11	EJZ	Review Appeals Court decision; consider issues regarding further appellate review; communications with client regarding same.	0.70
08/16/11	EJZ	Review time charges and costs; adjust same; review City's time charges; review timeline on appeal; review relevant rulings and pleadings.	2.30
08/17/11	EJZ	Attempt telephone call with counsel regarding affidavit; further review of time charges and procedural history; consider approach; further telephone conferences with client regarding status and assessment of further appellate potential.	1.30
08/19/11	EJZ	Learn of City's decision not to seek further appellate review; telephone conferences with client regarding same; work on fee petition; calculate City hours devoted to appeal; costs; begin drafting; further work regarding fee petition; consider implications of prior fee ruling and City's invoiced fees.	2.20
08/21/11	EJZ	Draft fee petition; begin affidavit; various telephone conferences regarding possible affidavit.	4.30
08/22/11	EJZ	On-going drafting of fee petition; strategy meeting with L. Studen regarding same.	2.80
08/23/11	EJZ	Further review of time charges; various telephone conferences regarding affiant on rates; review case law (Haddad No. 2; Fontaine); draft affidavit.	3.50
08/24/11	EJZ	Review Drumgold decision; potential exhibits; review communications to establish appeals timeline and work for estimates of City's time; continue drafting.	2.80
08/25/11	EJZ	Review draft affidavit of Kevin Powers; review case law and draft memorandum; telephone conference with L. Studen regarding approach to petition.	1.70
08/26/11	EJZ	Further review of time charges; comparison to City fees; draft memorandum and affidavit; draft and revise bill of costs.	4.60
08/27/11	EJZ	Ongoing drafting of affidavit and memorandum; review of bill of costs.	4.00
08/28/11	EJZ	Revise filings.	2.50

<u>Date</u>	<u>Tkpr</u>	<u>Narrative</u>	<u>Hours</u>
08/29/11	EJZ	Edit; review and finalize filings.	2.00
Total Hours			650.80

Timekeeper Time Summary:

<u>Name</u>	<u>Status</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
Hollie A. Capuano	PL	2.40	200.00	480.00
William J. Monagle	PL	1.40	140.00	196.00
Michael V. Samarel	A	15.30	225.00	3,219.00
Michelle C. Sproul	PL	0.80	130.00	104.00
Susan E. Stenger	P	4.20	435.00	1,827.00
Laura R. Studen	P	31.00	525.00	16,275.00
Ellen J. Zucker	P	595.70	450.00	262,319.00

Current Fees: \$284,420.00

Total Balance Due This Invoice: \$284,420.00

REMITTANCE COPY

BURNS & LEVINSON LLP

125 SUMMER STREET BOSTON, MA 02110

T 617.345.3000 F 617.345.3299

WWW.BURNSLEV.COM

FEDERAL ID # 04.2265163

Malvina Monteiro
Cambridge, MA

Invoice Number	765082
Invoice Date	08/29/11
Client Number	41019
Matter Number	00001

Amount Due This Invoice:

\$284,420.00

To accommodate you, we also accept Visa, MasterCard, Discover and American Express. For those clients who have requested it, a confidential authorization form is enclosed. Please fill in all information, including the VV2 value (*CVV2 Security Identification Number).

* (For MC/Visa/Discover cards this is the last 3 digits of the account number in the signature strip on the back of the card. For Amex cards, it is the 4 digit code (not embossed) on the front of the card).

If you have any questions, please email us at paymentinfo@burnslev.com

EXHIBIT II



ROPES & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 547622
 October 13, 2008
 Client Matter No.: 106710-0001

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

Total Services	\$	4,529.50
Total Disbursements and Charges	\$	266.34
Total Due This Invoice	\$	4,795.84

REMITTANCE

Payment Instructions		
Mail-checks to: Ropes & Gray LLP P.O. Box 414265 Boston, MA 02241-4265	ACH Fund Transfers: Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 011000390	Federal Wire Transfers: Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 0260-0959-3 (Domestic) Swift Code: BOFAUS3N (Foreign)



Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	1.00	375	\$	375.00
Brown, Tracy E.	0.30	375	\$	112.50
Tannenwald, Alan	16.70	235	\$	3,924.50
Sweet, Kimberly L.	0.50	235	\$	117.50
Total Fees	18.50		\$	4,529.50



ROPE & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 553970
 November 17, 2008
 Client Matter No.: 106710-0001

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

Total Services	\$ 15,138.50
Total Disbursements and Charges	\$ 58.65
Total Due This Invoice	\$ 15,197.15

Payment Instructions		
Mail-checks to: Ropes & Gray LLP P.O. Box 414265 Boston, MA 02241-4265	ACH Fund Transfers: Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 011000390	Federal Wire Transfers: Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 0260-0959-3 (Domestic) Swift Code: BOFAUS3N (Foreign)

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	6.50	375	\$	2,437.50
Brown, Tracy E.	3.10	375	\$	1,162.50
Tannenwald, Alan	47.30	235	\$	11,115.50
Sweet, Kimberly L.	1.80	235	\$	423.00
Total Fees	58.70		\$	15,138.50



ROPE & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 559245
 December 11, 2008
 Client Matter No.: 106710-0001

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

Total Services	\$	5,059.00
Total Disbursements and Charges	\$	613.81
Total Due This Invoice	\$	5,672.81

Payment Instructions		
Mail checks to:	ACH Fund Transfers:	Federal Wire Transfers:
Ropes & Gray LLP P.O. Box 414265 Boston, MA 02241-4265	Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 011000390	Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 0260-0959-3 (Domestic) Swift Code: BOFAUS3N (Foreign)

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	2.90	375	\$	1,087.50
Brown, Tracy E.	2.20	375	\$	825.00
Tannenwald, Alan	9.70	235	\$	2,279.50
Ballard, Lisa L.	3.00	195	\$	585.00
Hermes, Lisa R.	1.00	235	\$	235.00
Sweet, Kimberly L.	0.20	235	\$	47.00
Total Fees	19.00		\$	5,059.00



ROPES & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050 →
 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 562751
 January 20, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through December 31, 2008

Services \$ 1,653.00

Disbursements and Charges

Photocopy 54.30
 Courier Service 8.75
 Total Disbursements and Charges \$ 63.05

TOTAL \$ 1,716.05

Please refer to invoice number 562751 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000390, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

APPROVED

CITY SOLICITOR

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	0.60	375	\$	225.00
Brown, Tracy E.	0.50	375	\$	187.50
Tannenwald, Alan	0.30	235	\$	70.50
Ballard, Lisa L.	4.00	195	\$	780.00
Burdette, Steven.	3.00	130	\$	390.00
Total Fees	8.40		\$	1,653.00



ROPE & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 569283
 March 10, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through January 31, 2009

Services \$ 742.00

Disbursements and Charges

Photocopy	3.40	
Litigation Copying	1,307.76	
Courier Service	25.29	
Miscellaneous	45.40	
Total Disbursements and Charges		\$ 1,381.85

TOTAL \$ 2,123.85

Please refer to invoice number 569283 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000390, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	0.40	375	\$	150.00
Tannenwald, Alan	0.60	330	\$	198.00
Ballard, Lisa L.	1.00	205	\$	205.00
Burdette, Steven	1.00	140	\$	140.00
Sweet, Kimberly L.	0.20	245	\$	49.00
Total Fees	3.20		\$	742.00



ROPES & GRAY LLP
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 BOSTON CHICAGO NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC www.ropesgray.com

Invoice No.: 571819
 March 30, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through February 28, 2009

Services \$ 8,074.50

Disbursements and Charges

Tabs and Binding	9.00	
Photocopy	192.60	
Courier Service	12.93	
Computer Assisted Research	763.41	
Total Disbursements and Charges		\$ 977.94

TOTAL		\$ <u>9,052.44</u>
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Please refer to invoice number 571819 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000390, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
Lukey, Joan A.	6.10	375	\$ 2,287.50
Brown, Tracy E.	1.00	375	\$ 375.00
Tannenwald, Alan	16.40	330	\$ 5,412.00
Total Fees	23.50		\$ 8,074.50



ROPE & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO HONG KONG NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 576907
 May 8, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through March 31, 2009

Services \$ 10,563.00

Disbursements and Charges

Photocopy	3.50	
Courier Service	68.88	
Transcript of Testimony	1,000.00	
Computer Assisted Research	4,757.39	
Total Disbursements and Charges		\$ 5,829.77

TOTAL \$ 16,392.77

Please refer to invoice number 576907 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000390, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	2.40	375	\$	900.00
Brown, Tracy E.	0.20	375	\$	75.00
Tannenwald, Alan	20.30	330	\$	6,699.00
Ballard, Lisa L.	9.00	205	\$	1,845.00
Sirenskaya, Alisa	2.50	145	\$	362.50
Vieira, Estefania D	4.70	145	\$	681.50
Total Fees	39.10		\$	10,563.00



ROPES & GRAY LLP
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 BOSTON CHICAGO HONG KONG NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 593755
 August 19, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro-v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through July 31, 2009

Services	\$ 86,181.50
Less 10% Courtesy Discount	\$ -8,618.15
Total Services	\$ 77,563.35

Disbursements and Charges

Tabs and Binding	18.72	
Photocopy	1,132.40	
Outside/Offsite Photocopying	97.65	
Courier Service	142.37	
Court Fees	250.00	
Transcript of Testimony	668.00	
Taxi	25.40	
Computer Assisted Research	-10,402.31	
Total Disbursements and Charges		\$ 12,736.85
TOTAL		\$ 90,300.20

Please refer to invoice number 593755 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	17.70	375	\$	6,637.50
Basil, Kriss	50.70	330	\$	16,731.00
Brown, Tracy E.	38.50	375	\$	14,437.50
Krockmalnic, Dan	102.50	375	\$	38,437.50
Ballard, Lisa L.	27.50	205	\$	5,637.50
Lee, Jooyoung	9.50	155	\$	1,472.50
Kutcher, Marlee	20.20	140	\$	2,828.00
Total Fees	266.60		\$	86,181.50



ROPE & GRAY LLP
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO HONG KONG NEW YORK PALO.ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 601850
 October 9, 2009
 Client Matter No.: 106710-0001

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge
 Middlesex Superior CA No. 01-2737

Total Services	\$=	54,570.50
Total Disbursements and Charges	\$	5,810.11
Total Due This Invoice	\$	60,380.61

Payment Instructions		
Mail checks to:	ACH Fund Transfers:	Federal Wire Transfers:
Ropes & Gray LLP P.O. Box 414265 Boston, MA 02241-4265	Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 011000138	Ropes & Gray LLP Account No. 479-19002 c/o Bank of America 100 Federal Street Boston, MA 02110-2624 ABA No.: 0260-0959-3 (Domestic) Swift Code: BOFAUS3N (Foreign)

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	11.30	375	\$-	4,237.50
Basil, Kriss	29.60	330	\$	9,768.00
Brown, Tracy E.	10.70	375	\$	4,012.50
Caldwell, Holly J.	3.50	375	\$	1,312.50
Krockmalnic, Dan	70.70	375	\$	26,512.50
Ballard, Lisa L.	39.50	205	\$	8,097.50
Kutcher, Marlee	4.50	140	\$	630.00
Total Fees	169.80		\$-	54,570.50



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 BOSTON CHICAGO HONG KONG NEWYORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 604700
 October 21, 2009

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through September 30, 2009

Services \$ 11,493.00

Disbursements and Charges

Trial Transcripts	1,820.00	
Tabs and Binding	0.24	
Photocopy	73.30	
Courier Service	161.50	
Transcript of Testimony	1,008.00	
Taxi	51.60	
Computer Assisted Research	165.00	
Total Disbursements and Charges		\$ 3,279.64
TOTAL		\$ 14,772.64

Please refer to invoice number 604700 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>		<u>Fees</u>
Lukey, Joan A.	5.40	375	\$	2,025.00
Brown, Tracy E.	14.80	375	\$	5,550.00
Krockmalnic, Dan	7.20	375	\$	2,700.00
Clement, Melissa A	8.40	145	\$	1,218.00
Total Fees	35.80		\$	11,493.00



ROPES & GRAY LLP www.ropesgray.com

ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050

BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 631865
May 13, 2010

City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Representation of City of Cambridge in
Action Entitled Monteiro v. City of Cambridge:
Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through March 31, 2010

Services	\$ 7,665.00
TOTAL	\$ <u>7,665.00</u>

Please refer to invoice number 631865 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	3.70	375	\$	1,387.50
Krockmalnic, Dan	12.20	375	\$	4,575.00
Clement, Melissa A	10.50	155	\$	1,627.50
Tassone, Brandon	0.50	150	\$	75.00
Total Fees	26.90		\$	7,665.00



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 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2824 617-951-7000 F.617-951-7050
 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 635499
 June 14, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through April 30, 2010.

Services		\$ 25,678.00
	<u>Disbursements and Charges</u>	
Trial Transcripts	642.00	
Photocopy	518.00	
Courier Service	204.72	
Subpoena	52.94	
Transcript of Testimony	679.00	
Taxi	96.80	
Computer Assisted Research	492.14	
Total Disbursements and Charges		\$ 2,685.60
TOTAL		\$ <u>28,363.60</u>

Please refer to invoice number 635499 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	11.30	375	\$	4,237.50
Brown, Tracy E.	1.00	375	\$	375.00
Krockmalnic, Dan	11.20	375	\$	4,200.00
Scott, Jacob	17.20	375	\$	6,450.00
Clement, Melissa A	27.60	155	\$	4,278.00
Surenskaya, Alisa	0.50	155	\$	77.50
Kutcher, Marlee	5.00	150	\$	750.00
Tassone, Brandon	35.40	150	\$	5,310.00
Total Fees	109.20		\$-	25,678.00



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 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 639852
 June 30, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through May 31, 2010

Services		\$	28,427.50
<u>Disbursements and Charges</u>			
Photocopy	1.50		
Litigation Copying	578.85		
Computer Assisted Research	647.56		
Total Disbursements and Charges		\$	1,227.91
TOTAL		\$	<u>29,655.41</u>

Please refer to invoice number 639852 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	5.60	375	\$	2,100.00
Krockmalnic, Dan	32.80	375	\$	12,300.00
Scott, Jacob	33.30	375	\$	12,487.50
Clement, Melissa A	5.00	155	\$	775.00
Tassone, Brandon	5.10	150	\$	765.00
Total Fees	81.80		\$	28,427.50



ROPES & GRAY LLP www.ropesgray.com
 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO HONG KONG LONDON NEWYORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 643540
 August 4, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through June 30, 2010

Services	\$ 64,003.50
Less Courtesy Discount	\$ -6,400.35
Total Services	\$ 57,603.15

Disbursements and Charges

Library Fees	133.30	
Photocopy	0.10	
Litigation Copying	960.63	
Document Retrieval	36.25	
Courier Service	16.50	
Computer Assisted Research	1,959.68	
Total Disbursements and Charges		\$ 3,106.46
TOTAL		\$ 60,709.61

Please refer to invoice number 643540 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	2.00	375	\$	750.00
Krockmalnic, Dan.	54.70	375	\$	20,512.50
Scott, Jacob.	99.50	375	\$	37,312.50
Abbas-Abidi, Fayiza	6.40	165	\$	1,056.00
Clement, Melissa A	1.60	155	\$	248.00
Piarulli, Vincent J	0.50	215	\$	107.50
Stevens, Brian A	2.00	190	\$	380.00
Tassone, Brandon	23.90	150	\$	3,585.00
Sweet, Kimberly L.	0.20	260	\$	52.00
Total Fees	190.80		\$-	64,003.50



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 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 646138
 August 24, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through July 31, 2010

Services \$ 38,495.50-

Disbursements and Charges

Photocopy	22.20	
Courier Service	10.34	
Filing Fee	300.00	
Parking	34.00	
Computer Assisted Research	134.94	
Total Disbursements and Charges		\$ 501.48

TOTAL \$ 38,996.98

Please refer to invoice number 646138 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

APPROVED

CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lakey, Joan A.	5.90	375	\$	2,212.50
Krockmalnic, Dan	28.80	375	\$	10,800.00
Scott, Jacob	54.10	375	\$	20,287.50
Abbas-Abidi, Fayiza	24.50	165	\$	4,042.50
Brustman, Charles R.	0.40	250	\$	100.00
Albertelli, Derrick V	0.20	65	\$	13.00
Sarkodie-Mensah, Elizabeth A.	4.00	260	\$	1,040.00
Total Fees	117.90		\$	38,495.50



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 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 651863
 October 8, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through August 31, 2010

Services	\$ 118,741.00
Total Disbursements and Charges	\$ 14,238.71
TOTAL	\$ <u>132,979.71</u>

Please refer to invoice number 651863 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	31.20	375.00	\$	11,700.00
Krockmalnic, Dan	69.30	375.00	\$	25,987.50
Scott, Jacob	161.30	375.00	\$	60,487.50
Abbas-Abidi, Fayiza	113.50	165.00	\$	18,727.50
Lang, Paul G.	0.20	250.00	\$	50.00
Piarulli, Vincent J	0.30	215.00	\$	64.50
Stevens, Brian A	1.00	190.00	\$	190.00
Hermes, Lisa R.	1.00	260.00	\$	260.00
Hoffman, Carol	0.50	260.00	\$	130.00
Sweet, Kimberly L.	4.40	260.00	\$	1,144.00
Total Fees	382.70		\$	118,741.00



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 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 656509
 October 29, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through September 30, 2010

Services \$ 16,059.00

Disbursements and Charges

Tabs and Binding	447.00	
Photocopy	1,137.30	
Courier Service	95.50	
Taxi	167.25	
Air / Rail Travel	26.66	
Parking	17.00	
Computer Assisted Research	305.58	
Total Disbursements and Charges		\$ 2,196.29
TOTAL		\$ <u>18,255.29</u>

Please refer to invoice number 656509 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fees Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	2.80	375.00	\$	1,050.00
Krockmalnic, Dan	23.90	375.00	\$	8,962.50
Scott, Jacob	13.00	375.00	\$	4,875.00
Abbas-Abidi, Fayiza	6.60	165.00	\$	1,089.00
Munro, Ryan D.	0.50	165.00	\$	82.50
Total Fees	46.80		\$	16,059.00



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 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO-ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 659872
 November 23, 2010

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through October 31, 2010

Services		\$	3,934.50
<u>Disbursements and Charges</u>			
Tabs and Binding	17.16		
Photocopy	331.22		
Total Disbursements and Charges		\$	348.38
TOTAL		\$	<u>4,282.88</u>

Please refer to invoice number 659872 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	1.60	375.00	\$	600.00
Krockmalnic, Dan	1.90	375.00	\$	712.50
Scott, Jacob	5.10	375.00	\$	1,912.50
Abbas-Abidi, Fayiza	4.30	165.00	\$	709.50
Total Fees	12.90		\$	3,934.50



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BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 662612
December 9, 2010

City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Representation of City of Cambridge in
Action Entitled Monteiro v. City of Cambridge:
Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through November 30, 2010

Services: \$ 29,217.00

Disbursements and Charges

Photocopy	14.40	
Taxi	50.85	
Computer Assisted Research	429.52	
Total Disbursements and Charges		\$ 494.77
TOTAL		\$ <u>29,711.77</u>

Please refer to invoice number 662612 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	7.60	375.00	\$	2,850.00
Krockmalnic, Dan	28.30	375.00	\$	10,612.50
Scott, Jacob	31.10	375.00	\$	11,662.50
Abbas-Abidi, Fayiza	24.80	165.00	\$	4,092.00
Total Fees	91.80		\$	29,217.00



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 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 670321
 February 11, 2011

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through December 31, 2010

Services	\$ 41,437.50
Less 10% Courtesy Discount	\$ -4,143.75
Total Services	\$ 37,293.75

Disbursements and Charges

Tabs and Binding	99.00	
Photocopy	552.50	
Courier Service	12.50	
Meals	7.26	
Taxi	195.55	
Air / Rail Travel	13.50	
Parking	37.50	
Computer Assisted Research	1,116.23	
Total Disbursements and Charges		\$ 2,034.04
TOTAL		\$ 39,327.79

Please refer to invoice number 670321 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	8.90	375.00	\$	3,337.50
Krockmahnic, Dan	17.60	375.00	\$	6,600.00
Scott, Jacob	80.70	375.00	\$	30,262.50
Abbas-Abidi, Fayiza	7.50	165.00	\$	1,237.50
Total Fees	114.70		\$	41,437.50



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 BOSTON, CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 670894
 February 14, 2011

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through January 31, 2011

Services \$ 6,093.50

Disbursements and Charges

Tabs and Binding	99.78	
Photocopy	0.10	
Taxi	73.50	
Computer Assisted Research	253.12	
Total Disbursements and Charges		\$ 426.50

TOTAL \$ 6,520.00

Please refer to invoice number 670894 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	1.60	375.00	\$	600.00
Krockmalnic, Dan	3.30	375.00	\$	1,237.50
Scott, Jacob	8.20	375.00	\$	3,075.00
Abbas-Abidi, Fayiza	5.80	185.00	\$	1,073.00
Sweet, Kimberly L.	0.40	270.00	\$	108.00
Total Fees	19.30		\$	6,093.50



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 BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 678270
 March 30, 2011

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through February 28, 2011

Services \$ 3,065.00

Disbursements and Charges

Photocopy	4.90	
Courier Service	82.50	
Computer Assisted Research	24.84	
Total Disbursements and Charges		\$ 112.24

TOTAL \$ 3,177.24

Please refer to invoice number 678270 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

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CITY SOLICITOR

**ROPPES
& GRAY**

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	2.20	375.00	\$	825.00
Krockmalnic, Dan	0.90	375.00	\$	337.50
Scott, Jacob	3.10	375.00	\$	1,162.50
Abbas-Abidi, Fayiza	4.00	185.00	\$	740.00
Total Fees	10.20		\$	3,065.00



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BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 682172
April 28, 2011

City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Representation of City of Cambridge in
Action Entitled Monteiro v. City of Cambridge:
Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through April 15, 2011

Services \$ 32,473.50

Disbursements and Charges

Tabs and Binding	1.68	
Photocopy	93.60	
Taxi	19.00	
Computer Assisted Research	1,890.93	
Total Disbursements and Charges		\$ 2,005.21
TOTAL		\$ <u>34,478.71</u>

Please refer to invoice number 682172 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

ROPES
& GRAY

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	1.30	375.00	\$	487.50
Krockmalnic, Dan	38.00	375.00	\$	14,250.00
Lieberman, David	26.70	375.00	\$	10,012.50
Scott, Jacob	3.60	375.00	\$	1,350.00
Abbas-Abidi, Fayiza	31.20	195.00	\$	6,084.00
Berglez, Cynthia	0.30	245.00	\$	73.50
Hermes, Lisa R.	0.80	270.00	\$	216.00
Total Fees	101.90		\$	32,473.50



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 BOSTON CHICAGO HONG KONG LONDON NEWYORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 687139
 June 3, 2011

City of Cambridge
 795 Massachusetts Avenue
 Cambridge, MA 02139

Re: Representation of City of Cambridge in
 Action Entitled Monteiro v. City of Cambridge:
 Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through April 30, 2011

Services \$- 15,048.00

Disbursements and Charges

Tabs and Binding	5.40	
Photocopy	19.60	
Color Photocopying	510.00	
Air / Rail Travel	25.25	
Parking	35.00	
Computer Assisted Research	1,293.39	
Late Meals	77.47	
Total Disbursements and Charges		\$ 1,966.11
TOTAL		\$ <u>17,014.11</u>

Please refer to invoice number 687139 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 011000138, Account No. 47919002. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Luky, Jean A.	7.40	375.00	\$	2,775.00
Krockmalnic, Dan	4.20	375.00	\$	1,575.00
Lieberman, David	5.10	375.00	\$	1,912.50
Scott, Jacob	20.10	375.00	\$	7,537.50
Abbas-Abidi, Fayiza	6.40	195.00	\$	1,248.00
Total Fees	43.20		\$	15,048.00



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BOSTON CHICAGO HONG KONG LONDON NEW YORK PALO ALTO SAN FRANCISCO TOKYO WASHINGTON, DC

Invoice No.: 688592
June 16, 2011

City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Representation of City of Cambridge in
Action Entitled Monteiro v. City of Cambridge:
Middlesex Superior CA No. 01-2737

FOR PROFESSIONAL SERVICES rendered through May 31, 2011

Services		\$ 26,170.50
<u>Disbursements and Charges</u>		
Photocopy	3.10	
Taxi	38.20	
Computer Assisted Research	128.34	
Total Disbursements and Charges		\$ 169.64
TOTAL		<u>\$ 26,340.14</u>

Please refer to invoice number 688592 with your payment. Checks should be mailed to Ropes & Gray LLP, P.O. Box 414265, Boston, MA, 02241-4265. ACH (Automated Clearinghouse) Fund transfers should be made to Bank of America, 100 Federal Street, Boston, MA; ABA No. 011000138, Account No. 47919602. Federal wire transfers should be made to Bank of America, 100 Federal Street, Boston, MA, ABA No. 0260-0959-3, Account No. 47919002.

Timekeeper Fee Summary

Timekeeper	Hours	Rate		Fees
Lukey, Joan A.	13.80	375.00	\$	5,175.00
Krockmalnic, Dan	19.30	375.00	\$	7,237.50
Scott, Jacob	33.30	375.00	\$	12,487.50
Abbas-Abidi, Fayiza	6.10	195.00	\$	1,189.50
Sweet, Kimberly L.	0.30	270.00	\$	81.00
Total Fees	72.80		\$	26,170.50

EXHIBIT III

