 Litigation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEPHEN F. CASS, Plaintiff, vs. TOWN OF WAYLAND, WAYLAND PUBLIC SCHOOLS, WAYLAND POLICE DEPARTMENT, PAUL STEIN, BRAD CROZIER, ALLYSON MIZOGUCHI, and JAMES BERGER (MISNAMED), Defendants.	C.A. NO 1:17-cv-11441

PLAINTIFF STEPHEN F. CASS'S MOTION FOR (1) PAYMENT OF REASONABLE ATTORNEYS FEES AND COSTS, AND (2) A TRIPLING OF HIS LOST WAGES, BENEFITS AND OTHER REMUNERATION, AND INTEREST THEREON PURSUANT TO MASS. GEN. L. c. 149 § 185(d)

Pursuant to Mass. Gen. L. c. 149 § 185(d), Plaintiff Stephen F. Cass hereby moves this Honorable Court to award him the following relief: (1) payment of his reasonable attorneys fees and costs associated with this litigation and (2) tripling of his lost wages, benefits and other remuneration, and interest thereon.

This action came before the court for a trial by jury on the following claims: (1) unlawful retaliation in violation of Title IX (Count I), and (2) unlawful retaliation in violation of Mass. Gen. L. c. 149 § 185(d) (the "Massachusetts Whistleblower Protection Act" or "MWPA") (Count II).[1] After eight (8) days of trial, which included testimony from ten (10) fact witnesses, and the

[1] On the last day of trial, July 18, 2019, Mr. Cass withdrew his claim for tortious inference of contract, which had been pled in the First Amended Complaint, and which survived Defendants' Motion for Summary Judgment. The jury was not instructed regarding that claim, that claim was not the subject of the jury's deliberations, that claim was not listed on the jury verdict form, and the jury did not award Plaintiff any relief under that claim.

introduction of 82 exhibits into evidence, followed by approximately twelve (12) hours of jury deliberation (over the course of three (3) separate days), the jury returned a verdict in favor of Defendants on Count I (Title IX), and in favor of Mr. Cass on Count II (MWPA). In finding Defendants liable for unlawfully terminating Mr. Cass in violation of the MWPA, the jury awarded Mr. Cass $100,000 for his lost wages and benefits and $150,000 for his emotional distress. The mandatory 12% per annum pre-judgment interest has not yet been applied to that sum of $250,000.

I. The MWPA Provides that this Court May Implement Five Remedies in Addition to those Available Under Common Law, Including Reinstatement.

In addition to the remedies available under common law, the MWPA affords the Court the opportunity to implement the following supplemental remedies: (1) Injunctive relief; (2) Reinstatement to Mr. Cass's prior job; (3) Reinstatement of all of Mr. Cass's benefits and rights; (4) Compensation of three times Mr. Cass's lost wages, benefits and remuneration; and (5) Payment of Mr. Cass's reasonable costs and attorneys' fees. *See* Mass. Gen. L. c. 149 § 185(d).

Mr. Cass consistently has expressed that his desired relief in this case is reinstatement to his job as the Athletic Director for Wayland High School (or equivalent position), from which he was unlawfully terminated in May of 2015. Mr. Cass believes that reinstatement to his former role as the Athletic Director (or equivalent position, such as running the athletic facilities department) is the *only real way* that he may be able to overcome the career-affecting damage that he has suffered and continues to endure resulting from his unlawful termination in this case, particularly given his diligent (and repeatedly unsuccessful) efforts to secure employment, especially in his desired profession.[2] Restoration of his employment at Wayland High School

[2] Mr. Cass points out that Paul Stein and Brad Crozier (two of the school officials responsible for Mr. Cass's unlawful termination) are no longer affiliated with Wayland High School; moreover,

also would allow Mr. Cass to receive credit towards his retirement benefits, which have not been accruing following his unlawful termination. In support of his desired relief for reinstatement, Mr. Cass has personally prepared a letter to this Court. That letter is attached hereto as Exhibit 1.

This Court previously has made clear that it will not entertain such a remedy. In light of that circumstance, Mr. Cass respectfully requests fair compensation through the other enumerated remedies in the statute.

II. The MWPA Provides that this Court May Award Mr. Cass His Reasonable Attorneys Fees and Costs.

Mass. Gen. L. c. 149 § 185(d) provides that the Court may award an aggrieved employee who prevails in an action alleging violations of the MWPA, as is the case here, payment of reasonable attorneys fees and costs. The statute "confers broad power to award attorney's fees, without setting forth criteria for deciding when to award them." *Larch v. Mansfield Mun. Elec. Dept.*, 272 F.3d 63, 75 (1st Cir. 2001). The "evident purpose" of the Court's broad discretion to award payment of such fees is "to protect employees who are found to have been subject to retaliation for refusing to engage in unlawful conduct," as is the case here. *Id.* Through this Motion, having prevailed on his claim pursuant to the MWPA—the jury having found that Mr. Cass was unlawfully terminated from his employment as the Athletic Director at Wayland High School in 2015—Mr. Cass respectfully requests that this Court award such payment.

This lawsuit was filed on May 7, 2017. At that time, Mr. Cass was represented by the law firm of Torres, Scammon, Hincks & Day, LLP, located in Boston, Massachusetts ("TSH&D"). That firm undertook all of the fact discovery in this case, including conducting six

---

upon information and belief, the current Superintendent of Wayland Schools is a former college classmate of Mr. Cass at Yale University.

(6) fact depositions. On or about August 10, 2018, TSH&D moved to withdraw their appearance in this case, which motion was granted by this Court on September 14, 2018. Shortly thereafter, the undersigned attorneys (Todd White, Ali Khorsand, and Jamie Bachant) at the law firm of Adler Pollock and Sheehan, P.C. ("AP&S") began their representation of Mr. Cass, and entered their respective appearances in this Court on behalf of Mr. Cass. The AP&S attorneys then spent necessary, significant and reasonable time reviewing the pleadings, written discovery responses, the six (6) fact deposition transcripts and accompanying exhibits, and the thousands of documents produced in fact discovery, in anticipation of the impending dispositive motion deadline set forth in the electronic order of this Court, entered on September 21, 2018 (Doc. 70).

On November 21, 2018, Defendants filed their Motion for Summary Judgment as to all seven claims pled in the First Amended Complaint. That motion totaled 50 pages in length and also included a Statement of Undisputed Facts which contained 192 separate paragraphs, and 81 exhibits. (Docs. 76-82). Following receipt of Defendants' summary judgment submission, AP&S worked diligently to prepare an objection thereto, including conducting appropriate legal research relating to the arguments addressed in the Motion for Summary Judgment, responding to each of the 192 paragraphs contained in the Statement of Undisputed Facts, preparing a separate Statement of Material Facts, and preparing an appendix of exhibits, comprising 37 additional exhibits. On January 11, 2019, AP&S filed with this Court a 50-page Objection to the Motion for Summary Judgment (as well as a response to the Statement of Undisputed Facts, a separate Statement of Material Facts, and the appendix of 37 exhibits). (Docs. 90-92).

This Court then set a hearing date on the summary judgment briefing for March 26, 2019. (Doc. 94). In anticipation of that hearing, AP&S spent necessary and reasonable time preparing for the oral argument. At the March 26, 2019 hearing, this Court indicated that, at minimum,

some of Mr. Cass's claims in the seven-count First Amended Complaint would survive summary judgment, and that, therefore, a trial date should be set so that the parties could commence their trial preparation. That same day, this Court entered an "Order for Pretrial Conference" which set a trial date of July 8, 2019, and a pretrial conference date of June 20, 2019. (Doc. 100). That order provided deadlines for the pretrial submissions, including a joint pretrial memorandum, exhibit lists, witness lists, motions in limine, proposed jury instructions, a proposed jury verdict form, and proposed voir dire questions. *Id.* AP&S worked diligently to prepare for the upcoming trial, including preparing trial examinations for witnesses, deciding on and preparing exhibits for trial, and strategizing regarding key issues for trial, including what evidence was necessary to introduce at trial to prove each of Mr. Cass's claims, and anticipating Defendants' arguments and presentation of evidence at trial.

On May 30, 2019, this Court entered an Order denying in part and granting in part the Motion for Summary Judgment, which confirmed that three of Mr. Cass's claims, as pled in the First Amended Complaint, would be tried before the jury: (1) unlawful retaliation in violation of Title IX; (2) unlawful retaliation in violation of the MWPA; and (3) tortious interference with contractual relations. (Doc. 104). AP&S's significant and diligent trial preparation continued, which included, *inter alia*, contacting potential witnesses, preparing the opening statement for trial, preparing several motions in limine and objections thereto, preparing proposed jury instructions, preparing a proposed jury verdict form, preparing trial examinations (both direct examinations and cross examinations) for witnesses appearing on the respective witness lists, meeting and conferring with opposing counsel with respect to the universe of exhibits for trial, and determining, in that regard, which exhibits could be authenticated, and which exhibits were objectionable and on what grounds.

The trial of this matter then commenced on July 8, 2019. Mr. White and Ms. Bachant served as trial counsel. The trial lasted eight (8) days, which included testimony from ten (10) fact witnesses, and the introduction of 82 exhibits into evidence, followed by approximately twelve (12) hours of jury deliberation (over the course of three (3) separate days). The jury returned its verdict on July 19, 2019, finding in favor of Mr. Cass on his claim under the MWPA, and awarding Mr. Cass damages for his lost wages and benefits in the amount of $100,000 and damages for his emotional distress in the amount of $150,000.

Pursuant to Mass. Gen. L. c. 149 § 185(d), which provides that the Court may, *inter alia*, "order payment by the employer of reasonable costs, and attorneys' fees," Mr. Cass respectfully requests that this Court award payment of his reasonable attorneys fees and costs in this matter, associated with the legal work performed by TSH&D and AP&S, as itemized below.

1. According to the Affidavit of Todd D. White Esq. in Connection with Plaintiff Stephen F. Cass's Motion for (1) Payment of Reasonable Attorneys Fees and Costs, and (2) A Tripling of his Lost Wages, Benefits and Other Remuneration, and Interest Thereon (the "White Affidavit"), the reasonable value of the attorneys fees provides by AP&S total **$347,076.50**. White Affidavit at ¶ 10.
2. According to the White Affidavit, the costs incurred for the four (4) trial subpoenas in this case total **$759.00**. *Id.* at ¶ 12.
3. According to the White Affidavit, the costs incurred for the travel associated with the hearing on the Motion for Summary Judgment and for the two weeks of trial total **$768.80**. *Id.*
4. According to the White Affidavit, the costs incurred for Westlaw Legal Research total **$316.96**. *Id.*

5. According to the White Affidavit, the invoices for the hosting of electronic discovery, as paid by Mr. Cass, total **$6401.29**. *Id.* at ¶ 14.
6. According to the Affidavit of Benjamin L. Hincks Esq. in Connection with Plaintiff Stephen F. Cass's Motion for (1) Payment of Reasonable Attorneys Fees and Costs, and (2) A Tripling of his Lost Wages, Benefits and Other Remuneration, and Interest Thereon (the "Hincks Affidavit"), the reasonable value of the attorneys fees provided by TSH&D are not less than **$286,311.00**. Hincks Affidavit at ¶ 14.
7. According to the Hincks Affidavit, the costs of the six (6) depositions in this case totaled **$5,897.50**, which amount was initially paid by TSH&D; Mr. Cass has reimbursed TSH&D for those costs. *Id.* at ¶ 16.
8. According to the Hincks Affidavit, the "expenses reasonably incurred in connection with this matter and not yet reimbursed to [TSH&D]" total **$485.95**. *Id.*

In sum, Mr. Cass respectfully requests that this Court award him payment of his reasonable attorneys fees in the total amount of **$633,387.50**, and total costs in the amount of **$14,629.50**.

III. The MWPA Provides that this Court May Award Mr. Cass a Tripling of His Lost Wages, Benefits and Interest Thereon.

Additionally, the MWPA also provides that the Court may award a prevailing plaintiff a tripling of lost wages, benefits and other remuneration. Mass. Gen. L. c. 149 § 185(d)(4). Here, the jury returned a verdict in favor of Mr. Cass on his MWPA claim, awarding him lost wages and benefits in the amount of $100,000. Mr. Cass respectfully requests that this Court award a tripling of those damages, as provided in the statute. Mr. Cass has suffered tremendous

economic hardship resulting from the fact that he was unlawfully terminated from his position as the Athletic Director at Wayland High School. Not one person who testified at trial—indeed, *none* of the three individuals responsible for the termination of Mr. Cass—had had any negative impression of Mr. Cass's work ethic and commitment to the Wayland High School athletic teams and students during his time serving at the Athletic Director. At the conclusion of eight (8) days of trial, which included the testimony of ten (10) witnesses and the introduction of 82 exhibits into evidence, the jury deliberated for approximately twelve (12) hours over the course of three (3) separate days, and concluded—*unanimously*—that Mr. Cass was unlawfully terminated for voicing his reasonable concerns about violations of Massachusetts state law (mandatory concussion protocol and CORI checks), Massachusetts Ethics violations (business conflicts of interests with selects coaches) and violation of the Massachusetts Interscholastic Athletic Association (MIAA) rules, in addition to mandatory fundraising policies. Mr. Cass stood up against what he perceived as unlawful conduct that negatively impacted the safety of the students, as well as the fairness and equity among the various sports teams—particularly exposing to his superiors that certain entrenched sports teams (such as football) had far greater access to fundraising, and funds, to the disadvantage of the other teams, and in violation of school policy promulgated pursuant to law. Rather than address the violations and concerns that Mr. Cass exposed, the School terminated Mr. Cass.

Significantly, Allyson Mizoguchi—Mr. Cass's direct supervisor—and one of the three school officials responsible for making the decision to terminate Mr. Cass, specifically wrote in her day planner that Mr. Cass was a "whistleblower," the day immediately *after* he wrote a letter outlining various violations of law that were occurring at the School. Immediately on the heels of receiving Mr. Cass's detailed letter, followed by her specific reference to Mr. Cass as a

"whistleblower," Ms. Mizoguchi then sought legal advice to draft a performance evaluation of Mr. Cass, which indicated that she was unsure whether to renew his contract as the Athletic Director. Shortly thereafter, Mr. Cass wrote a second letter, addressed to Paul Stein (the Superintendent) more specifically outlining the various legal violations that he had perceived during his time serving as the Athletic Director. *Three days later*, Mr. Cass received a formal letter, signed by Paul Stein, informing him that his contract would not be renewed for the following school year. These facts are significant and demonstrate that the school officials were cognizant of Mr. Cass's status as a whistleblower, yet, chose to terminate him, rather than address the issues, violations and problems that Mr. Cass had exposed.

The unlawful termination of Mr. Cass has proven to be career-ending. Indeed, Mr. Cass he has been unable to secure employment in his desired profession—working as an athletic director for a school system. Mr. Cass testified at trial about the hundreds of job applications he personally sent out, and the dearth of interviews resulting from that labored process. Mr. Cass testified about how this has weighed on him personally, especially given that he was forced to sell his home in Wayland for not only his inability to afford it without an income stream, but also because he felt as though he had been painted as a pariah.[3] Mr. Cass believes that it is patently unfair that he not only was unlawfully terminated for doing what he believed was right—

[3] Mr. Cass further points out that months after his unlawful termination, Dr. Stein and Mr. Crozier reported to the Wayland Police that Mr. Cass remained in possession of a school-issued laptop. Rather than call Mr. Cass to return it, the Wayland Police showed up at Mr. Cass's door, placed Mr. Cass in handcuffs, arrested him, and then posted his mugshot on the Wayland Police Facebook page. Although Mr. Cass's claims of malicious prosecution and defamation did not proceed to trial, the Court has expressed significant doubt as to reasonableness of the school officials' request for police intervention, which resulted in an arrest of Mr. Cass, for what otherwise could have resolved by making a simple phone call, or even a *civil action* for replevin, if that phone request failed. There is no question that the criminal investigation sought by Dr. Stein and Mr. Crozier, followed by an arrest is nothing but disdainful and invidious, especially in light of the fact that they had unlawfully terminated him months earlier.

exposing violations of law that jeopardized student safety and/or ran afoul of requirements for equity and fairness—but that, on top of that tremendous insult to losing his esteemed job, he has suffered a resulting economic hardship. In order to move forward and past the economic hardship and emotional distress resulting from his inability to find work, especially in his desired profession, Mr. Cass respectfully asks this Court to exercise its discretion and award Mr. Cass a tripling of the $100,000 the jury awarded for his lost wages and benefits, and interest thereon.

CONCLUSION

For all of the foregoing reasons, Mr. Cass respectfully requests that the Court grant this Motion and award Mr. Cass his reasonable costs and attorneys fees, and award a tripling of his lost wages and benefits and interest thereon.

Respectfully submitted,

Plaintiff,
STEPHEN F. CASS,
By his Attorneys,

/s/ Todd D. White
Todd D. White, BBO #565924
Jamie J. Bachant, BBO #684244
Ali Khorsand, BBO #675060
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
twhite@apslaw.com
jbachant@apslaw.com
akhorsand@apslaw.com

Dated: August 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2019, I filed the within through the ECF system and that notice will be sent electronically to the below listed counsel who are registered participants identified on the mailing information for Case No. 17-11441.

Adam Simms, Esq.
John M. Wilusz, Esq.
John J. Davis, Esq.
Pierce Davis & Perritano LLP
10 Post Office Square, Suite 1100
Boston, MA 02109
(617) 350-0950
asimms@piercedavis.com
jwilusz@piercedavis.com
jdavis@piercedavis.com

/s/ Todd D. White

August 21, 2019

Dear Judge Saris,

I am writing to appeal for reinstatement to my job (or an equivalent position) in Wayland.

When I arrived in Wayland in June 2013, I had a good life and impeccable reputation. That is all gone now. It is gone because I did what I was asked to do by the leadership of the Wayland schools, our governments, and society.

The problems I inherited were substantial - fiscal fraud and gender inequity which stretched back decades. This was not trivial stuff about school policies being violated or fundraising issues, this was about massive financial fraud. It was also about girls being marginalized in every way – athletic opportunities, physical well-being, feeling 2nd class and scared to speak up. There were far too many examples of all this in the years leading up to my arrival and during my tenure.

Many Wayland administrators avoided the issues which mostly emanated from a 'legendary' football coach (as Mr. Simms called him). Always better not to stand up to a powerful coach because you are probably not going to win. In fact, you are more likely to lose BIG. Most athletic scandals in this world are similar – a coach with way too much power and people afraid to challenge him.

I am not someone who will brush things 'under the rug' so that others can later deal with bigger problems. However, I have paid a tremendous price for trying to do right by the students of Wayland. Every administrator who covered things up has benefitted with better jobs, long-term contracts or comfortable retirement packages. I am the only one who tried to make things better, fairer and safer and I alone have suffered

I have seen all kinds of academic and athletic scandals reported in our media. Scandals at places like Penn State, USA Gymnastics, New England prep schools, and at both my alma maters are always accompanied by public outrage as to why administrators didn't do the right thing, stick their neck out or hold powerful coaches accountable. There's a clear reason why – there's no reward for you personally, only incredible pain and suffering.

I'd like to think we live in a society where people are rewarded for their hard work and willingness to confront important problems. Unfortunately, I do not believe that is the case. There's absolutely no reward for being the one person with the courage to make the world a better place. From the time I came forward to the Wayland School Committee until today, I have suffered more than you could ever imagine.

Why would anyone ever bring important issues of safety and equity to light if the end result is having one's life destroyed? I worked incredibly hard for 49 years to build a nice life for myself. Sure, there were a few ups and downs, but I've always tried to rise above them. The Wayland situation is very different. Despite all my efforts, I cannot find a job, I cannot rebuild my life, I cannot escape the pain and despair that comes from Wayland's adverse employment action and subsequent retaliation.

I am asking the court, BEGGING the court, to reinstate me to my job in Wayland. Without this action, I will continue to pay for the illegal actions of others forever. I want to restart my life, I want to work again and have tried everything in my power dating back to the Spring of 2015.

Sincerely,

Stephen Cass

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN F. CASS, Plaintiff, v. TOWN OF WAYLAND and WAYLAND PUBLIC SCHOOLS Defendants.	C.A. NO. 1:17-cv-11441

DEFENDANTS' MOTION FOR REMITTITUR

The Town of Wayland and Wayland Public Schools (collectively, "the Town") hereby move, pursuant to Fed. R. Civ. P. 59, to (1) request a remittitur of the jury's excessive award of emotional distress damages to the plaintiff, and (2) alter or amend the judgment with respect to the jury's award for past lost wages in accordance with the defendants' Trial Brief (Doc. No. 151) and the parties' discussion in Court on July 8, 2019. As grounds therefor, the defendants state as follows:

I. BACKGROUND AND INTRODUCTION

Trial in this matter began on July 8, 2019. On July 19, 2019, a jury returned a verdict in favor of the plaintiff on Count II of plaintiff's Complaint (Violation of the Massachusetts Whistleblower Protection Act) in the amount of $250,000. Specifically, the jury awarded plaintiff $100,000 in past lost wages and benefits, and $150,000 in emotional distress damages. The jury found in the defendants' favor on Count I (retaliation in violation of Title IX). A remittitur of the jury's award is warranted given that the jury's award was excessive, substantially beyond any reasonable amount of compensation, and well beyond the damages proven by Plaintiff or the evidence presented at trial.

II. ARGUMENT

1. Standard of Review for Granting of Remittitur Based on Excessiveness of a Jury's Verdict.

It is "uniformly accepted" that the District Court has the power to set a remittitur. *See, e.g.*, Charles Alan Wright et al., *Federal Practice and Procedure,* Vol. 11 § 2815, Remittitur (3d ed.). The Court may grant a motion for new trial or remittitur if the award "exceeds any rational appraisal or estimate of the damages that could be based on the evidence before the jury" and is "grossly excessive, inordinate, shocking to the conscience of the court, or so high that it would be a denial of justice to permit it to stand." *Davignon v. Clemmey,* 322 F.3d 1, 12 (1st Cir.2003) (quotation marks and citations omitted); *see also Franceschi v. Hospital General San Carlos, Inc.*, 420 F.3d 1, 5 (1st Cir. 2005) (district court's reduction of jury award for emotional distress from $200,000 to $10,000 for two plaintiffs was proper where plaintiffs "presented little evidence supporting the claim" they had "suffered extreme mental anguish").

The decision to grant remittitur is discretionary. *Trainor v. HEI Hospitality, LLC,* 699 F.3d 19, 29 (1st Cir. 2012). The First Circuit has held that, "[i]n exercising this discretion, the court is obliged to impose a remittitur 'only when the award exceeds any rational appraisal or estimate of the damages that could be based upon the evidence before it.'" *Id.* (quoting *Kelley v. Airborne Freight Corp.,* 140 F.3d 335, 355 (1st Cir.1998)). The First Circuit follows the "maximum recovery rule" which holds that any remittitur must represent the "highest reasonable total of damages for which there is adequate evidentiary support." *Marchant v. Dayton Tire & Rubber Co.,* 836 F.2d 695, 704 (1st Cir.1988).

2. The Jury's Award of $150,000 in Emotional Distress Damages is Grossly Excessive and Unsupported by the Evidence.

The jury's award of $150,000 for emotional distress damages should be reduced substantially, as there is no evidence that plaintiff's alleged emotional distress exceeds that of a "garden variety" claim, and the award can only be characterized as punitive. In *Stonehill College v. M.C.A.D.*, 441 Mass. 549 (2004), the SJC outlined a framework by which emotional distress damages awards should be reviewed. The Court stated an emotional distress award should "be fair and reasonable, and proportionate to the distress suffered," and any award must rest on "substantial evidence." *Id.* at 576. The SJC delineated the following four factors that "should be considered" in evaluating such an award: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm (e.g. by counseling or by taking medication). *Id.* (citing Restatement (Second) of Torts § 905, comment i and §912).

Thus, in order to justify such a large award, there must be considerably more evidence than what Mr. Cass offered here (typically in the form of expert medical evidence, medical records, or evidence of even seeking any medical attention, a medical diagnosis, or having been medicated as a result of the alleged bad acts). Here, there is no such evidence. Rather, Mr. Cass testified in a general sense that he had loved his job, he had hoped to continue working for the Town, and his inability to obtain full-time work after his non-renewal had impacted his self-confidence. There was no evidence or testimony of any physical manifestation of emotional harm. Nor was there any evidence that Mr. Cass sought or received any medical treatment, counseling, therapy, or was prescribed medication for any emotional harm he allegedly suffered as a result of his non-renewal.[1]

[1] Illustrating the jury's apparent confusion over its award of emotional distress damages, one note the jury submitted to the Court on July 19, 2019 stated, in part, "When considering mitigation, do we only apply that to future as defined in #1 above? ~~Or all? What about emotional distress~~?" (strike-through in original). Apparently, the jury questioned whether Mr. Cass should have made efforts to mitigate his emotional distress.

The SJC has repeatedly explained the importance of appropriate evidence of causation when evaluating emotional distress damages. *See, e.g., DeRoche v. M.C.A.D.*, 447 Mass. 1, 6 (2006) ("A critical point expressed in our *Stonehill* decision was that a finding . . . of . . . retaliation[] is insufficient by itself, as matter of law, to permit an inference of emotional harm. We emphasized that emotional distress, to be compensable, must be proved by substantial evidence . . . , as well as substantial evidence of a causal connection between the complainant's emotional distress and the respondent's unlawful act."). Thus, the Court should substantially reduce the emotional distress award here, as awards that are not adequately supported "should be set aside or may be remitted to a sum deemed by the judge to be sufficient compensation in keeping with the evidence before the [court] and the applicable burden of proof." *Stonehill College*, 441 Mass. at 577.

In this case, there was no evidence of permanency, debilitation, or physical manifestations of emotional distress. There was no evidence of plaintiff's emotional distress offered by any third party. The entirety of the jury's $150,000 award, therefore, was premised on plaintiff's own self-interested testimony which, by a generous estimate, totaled approximately five minutes on the topic of Mr. Cass's alleged damages[2]. In this regard, plaintiff presented a garden-variety emotional distress claim to the jury. *See* Prerequisites to Examination —"In controversy," 49A Mass. Prac., Discovery § 9:8 (June, 2019).

Remittitur of a $150,000 jury award for a garden-variety emotional distress claim in an employment discrimination setting is proper:

---

[2] Indeed, at one of the side-bar conferences, this Court observed that Mr. Cass's claim for emotional distress-related damages was of a "garden variety" nature. Plaintiff's counsel did not dispute the Court's observation in this regard.

> "In the employment discrimination context, ... [t]he spectrum of damage awards ranges from $5,000 to more than $100,000, representing "garden-variety," "significant," and "egregious" emotional distress claims. "At the low end of the continuum are ... 'garden-variety' distress claims ... ranging from $5,000 to $35,000. 'Garden-variety' remitted awards have typically been rendered in cases where the evidence of harm was presented primarily through the testimony of the plaintiff, who describes his or her distress in vague or conclusory terms and fails to describe the severity or consequences of the injury.... The middle of the spectrum consists of 'significant' ($50,000 up to $100,000) and 'substantial' emotional distress claims ($100,000). These claims differ from the garden-variety claims in that they are based on more substantial harm or more offensive conduct, are sometimes supported by medical testimony or evidence, evidence of treatment by a healthcare professional and/or medication, and testimony from other, corroborating witnesses. Finally, on the high end of the spectrum are 'egregious' emotional distress claims, where the courts have upheld or remitted awards for distress to a sum in excess of $100,000. These awards have only been warranted where the discriminatory conduct was outrageous and shocking or where the physical health of plaintiff was significantly affected."

Rainone v. Potter, 388 F. Supp. 2d 120, 122 (E.D.N.Y. 2005) (quoting Michelle Cucuzza, *Evaluating Emotional Distress Damage Awards to Promote Settlement of Employment Discrimination Claims in the Second Circuit,* 65 Brook. L. Rev. 393, 427–28, 429 (1999)); *see also Kinneary v. City of New York,* 536 F.Supp.2d 326, 331–32 (S.D.N.Y. 2008) (noting that garden-variety emotional distress claims "hover in the range of $5,000 to $30,000" and stating that the evidence supporting such claims "usually is limited to the testimony of the plaintiff, who describes the emotional distress in vague or conclusory terms, presents minimal or no evidence of medical treatment, and offers little detail of the duration, severity, or consequences of the condition." (internal quotation marks omitted)).

Mr. Cass's emotional distress claim fails squarely on the "low end of the continuum." He presented evidence of the alleged harm through his own testimony in brief, general terms. The jury's $150,000 award is more appropriate for an "egregious" emotional distress claim with "outrageous and shocking" discriminatory conduct, or evidence that Mr. Cass's health was

"significantly affected." None of that evidence was present at Trial. Indeed, Mr. Cass withdrew his claim for intentional interference with contractual relations prior to submitting the case to the jury because there was no evidence that any of the School Officials acted with actual malice. Mr. Cass's non-renewal was far from "outrageous and shocking" discriminatory conduct; he held a series of civil meetings with his supervisors and was advised his one-year contract would not be renewed for the next (2015-2016) school year. He was not "fired," or removed from the premises. The facts in this case are no different than those in numerous similar cases where remittitur or a new trial was ordered and, in fact, the "evidence" of emotional distress here is *far less significant* than in many of these cases.[3] In addition, where no medical records are entered into evidence and

[3] *Travers v. Flight Servs. & Sys., Inc.*, 808 F.3d 525 (1st Cir. 2015) (no abuse of discretion in remittitur of jury award for emotional distress damages in employment retaliation claim from $400,000 to $50,000, but further reduction to $10,000 not appropriate where plaintiff and his girlfriend offered testimony about severe depression due to termination and the impact his emotional distress had on plaintiff's family life); *Franceschi v. Hosp. Gen. San Carlos, Inc.*, 420 F.3d 1, 5 (1st Cir. 2005) (affirming remittitur of emotional distress from $200,000 to $10,000 in breach of contract case because plaintiffs presented little evidence supporting the claim they had suffered extreme mental anguish); *Labonte v. Hutchins & Wheeler*, 424 Mass. 813, 824 (1997) (finding $550,000 emotional distress excessive and remanding where plaintiff's "confidence was shattered," he suffered from clinically diagnosed depression but was not hospitalized, took no antidepressant medication, and depression not permanent); *Harvard Vanguard Med. Assocs., Inc. v. M.C.A.D.*, 76 Mass. App. Ct. 1126, at *2 (2010) (remittitur of $350,000 emotional distress award to $100,000 as original award "not supported by substantial evidence" and "shocks the sense of justice" under *Stonehill College*, where medical evidence presented that plaintiff suffered "severe insomnia, anorexia with a 13 pound weight loss, loss of self-esteem and self-confidence, withdrawal, and prolonged periods of crying with failure to respond to medicine for at least six months"); *Boston Public Health Comm'n v. M.C.A.D.*, 67 Mass. App. Ct. 404, 413 (2006) (vacating and remanding $100,000 emotional distress award because, unlike in cases where larger awards corroborated testimony with correspondence or medical records, complainant did not do so, did not seek counseling or mental health treatment, and did not suffer from physical manifestations of emotional distress); *School Comm. of Norton v. M.C.A.D.*, 63 Mass. App. Ct. 839, 847-848 (Mass. App. Ct. 2005) (award limited to $50,000 despite finding termination was "devastating and humiliating," caused plaintiff "to suffer panic attacks and lose her appetite, her hair, and twenty percent of her body weight (from 103 to 83 pounds)," and saw a psychologist until her medical insurance benefits ran out); *Gargano and Assocs. v. M.C.A.D.*, No. 20044550, 2005 WL 3605388, at *5-6 (Mass. Super. Oct. 28, 2005) (reducing $50,000 emotional distress damages to $10,000, "where there was no expert medical testimony, [complainant] was 'angry,

there is no expert testimony of any significant or long-term psychological or physiological harm – as is the case here – a $150,000 award for emotional distress damages should not be permitted to stand. As the First Circuit has detailed:

> Although testimony from a mental health expert is not required to sustain an award for emotional distress, **the absence of such evidence is useful in comparing the injury to the award of damages**. For example, in *Sanchez [v. Puerto Rico Oil Co.*, 37 F.3d 712 (1st Cir.1994)], a jury awarded $150,000 in emotional distress damages to a plaintiff in an age discrimination case. 37 F.3d at 723. The district court reduced the award to $37,500, and we affirmed. *Id.* at 723, 726. The plaintiff in Sanchez testified about the humiliation he suffered from losing his job and filing for bankruptcy. We indicated that although emotional damages are warranted even without medical or psychiatric evidence, the lack of such evidence is relevant to the amount of award. *Id.* at 724 n.13.
>
> *Koster v. Trans World Air., Inc.*, 181 F.3d 24, 35 (1st Cir. 1999) (emphasis added).

Numerous other cases have relied upon this same absence of evidence when ordering remittitur or a new trial.[4] In light of the evidence presented at Trial, the jury's award of emotional

---

distressed and demoralized' as a result of being terminated, . . . saw a social worker and attended a stress management course," "felt anxious about having lost her health insurance, and was overwhelmed at the prospect of looking for work").

[4] *Trainor v. HEI Hospitality, LLC*, 699 F.3d 19, 23, 32-33 (1st Cir. 2012) (remittitur of $1,000,000 to $500,000 "*remains* grossly excessive" and "order[ing] a further remittitur" where plaintiff did not introduce evidence he received medical treatment, counseling, or other similar attention, and holding the "absence of such evidence is relevant in assessing the amount of such an award" and "plaintiff proffered no evidence that he suffered any physical infirmity as a result of his ouster") (emphasis added); *Koster*, 181 F.3d at 35 (reducing judgment and granting alternative new trial as "award [was] grossly disproportionate [since t]here was no evidence that [plaintiff] ever sought medical treatment or suffered any long-term depression or incapacitation"); *Sanchez v. P.R. Oil Co.*, 37 F.3d 712, 724 n.13 (1st Cir. 1994) (approving of remittitur to $37,500 "for pain, mental suffering, and humiliation" where "psychological and psychiatric evidence was not presented"); *Gardner v. Simpson Fin. Ltd. P'ship*, No. 09-11806- FDS, 2013 WL 4059317, at *12-13 (D. Mass. Aug. 9, 2013) (ordering a new trial as to emotional distress damages unless plaintiffs agreed to accept remittitur to $100,000, as they presented "no psychiatric, psychological, or other expert testimony as to the extent of any of the emotional distress," the evidence was limited to "plaintiff's own, often emotionally charged, testimony," plaintiff did not claim permanent physical injury, and nobody was hospitalized, which is "at least some indication that the damages were not grounded in the evidence, but rather excessive and perhaps punitive"); and *Harvard Vanguard Med. Assocs. V. M.C.A.D.*, 67 Mass. App. Ct. 404, 413 (2006) (reducing $350,000 award to $100,000 after

distress damages was grossly excessive and speculative. The jury heard only plaintiff's testimony that he was upset at having lost his job at WPS, and lost his self-confidence due to his inability to obtain full-time employment.[5] There was no evidence of physical symptomatology, medical treatment, or counseling, or any evidence of resulting physical or mental infirmity or any inability to work. Rather, plaintiff testified he had not been able to obtain a job as an athletic director—despite applying to many positions he was not qualified for. On this thin evidence an emotional distress award of $150,000 is "vastly out of proportion" and more likely represents punitive damages. *See Trainor v. HEI Hospitality, LLC*, 699 F.3d 19, 32 (1st Cir. 2012). The Court should reduce Mr. Cass's $150,000 award to an amount "for which there is adequate evidentiary support." *Marchant v. Dayton Tire & Rubber Co.*, 836 F.2d 695, 704 (1st Cir.1988). Given the multitude of cases cited above, and in light of the evidence presented at Trial, the Town suggests an appropriate award for emotional distress damages is between $5,000 and $35,000.

3. The Jury's Award of $100,000 in Past Lost Wages and Benefits Should be Reduced in Accordance with Plaintiff's Employment Contract and Pursuant to This Court's Ruling on July 8, 2019.

As referenced above, the jury awarded Mr. Cass $100,000 for past lost wages and benefits. This amount roughly corresponds to what Mr. Cass testified he earned in one year working for the Wayland Public Schools ($92,000 plus benefits of approximately 10%). However, Mr. Cass's contract specified he was to be compensated $92,866, with $77,473 as Director of Athletics (.8

---

finding that "complainant only treated her condition with medication for a little over one year; and only incurred $175.00 in mental health treatment expenses," suggesting "condition has improved or that she has failed to mitigate her damages").

[5] Given plaintiff's prior lawsuit against the Episcopal School of Jacksonville and the fact that plaintiff applied to dozens, if not hundreds, of positions for which he was not qualified, this alleged inability to obtain full-time employment was no fault of the defendants. This is evidenced by the jury's award of $0 for future lost wages.

Full Time Equivalent) and $15,393 as Health/Wellness Teacher (.2 Full Time Equivalent). Mr. Cass's testimony established that he never filed a grievance with the Wayland Teachers' Union, nor was one ever filed on his behalf. Pursuant to M.G.L. c. 150E, § 8, Mr. Cass is foreclosed from recovering any amount of lost wages he would have been compensated under his contract as a Health/Wellness teacher. The Town refers to and incorporates its arguments previously made in its Trial Brief (Doc. No. 151) and the parties' discussion in Court on July 8, 2019. Accordingly, and as the Court previously agreed on July 8, 2019, any amount awarded to the plaintiff for lost wages should be reduced by 20% as a matter of law.

III. CONCLUSION

For the foregoing reasons, the Town of Wayland and Wayland Public Schools, respectfully request that this Honorable Court grant their Motion to Remit the jury's award of damages to plaintiff, together with such other relief as this Court deems just and proper.

Respectfully submitted,
The Defendants,
TOWN OF WAYLAND AND WAYLAND PUBLIC SCHOOLS,
By their attorneys,
PIERCE DAVIS & PERRITANO LLP

/s/ John M. Wilusz
Adam Simms, BBO #632617
John M. Wilusz, BBO #684950
John J. Davis, BBO #115890
10 Post Office Square, Suite 1100N
Boston, MA 02109
(617) 350-0950
asimms@piercedavis.com
jwilusz@piercedavis.com
jdavis@piercedavis.com

Dated: August 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on August 22, 2019.

/s/ John M. Wilusz
John M. Wilusz

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN F. CASS, Plaintiff, v. TOWN OF WAYLAND and the WAYLAND PUBLIC SCHOOLS, Defendants.	C.A. NO. 1:17-cv-11441

DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER RULE 50(b)

The Town of Wayland and the Wayland Public Schools (collectively "the Town") hereby move, pursuant to Fed. R. Civ. P. 50(b), that the Court grant judgment for the Town as a matter of law on Count II of plaintiff's Amended Complaint. As grounds therefor, the Town states as follows:

I. LEGAL STANDARD

"The standard for granting a renewed motion for judgment as a matter of law under Rule 50(b) is precisely the same as the standard for granting the pre-submission motion [under 50(a)]." Charles Alan Wright et al., *Federal Practice and Procedure*, Vol. 9A § 2537 (2d ed. 1995). As the Town previously argued in its Motion for Judgment as a Matter of Law under Rule 50(a), the trial court may grant a Rule 50 motion if, after the party "has been fully heard on an issue," the court "finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a)(1). The court should consider "'[a]ll of the evidence and reasonable inferences drawn from the evidence ... in the light most favorable to the non-moving party,' and may not evaluate the credibility of the witnesses or the weight of the evidence. However, 'the plaintiff is not entitled to inferences based on speculation

and conjecture.'" *Cham v. Station Operators, Inc.*, 685 F.3d 87, 93 (1st Cir. 2012) (citations omitted); *Ferrer v. Zayas*, 914 F.2d 309, 311 (1st Cir. 1990). Moreover, a non-moving party who bears the burden of proof, as Mr. Cass does here, must have presented "more than a mere scintilla of evidence in [his] favor" to withstand a Rule 50 motion. *Peguero-Moronta v. Santiago*, 464 F.3d 29, 45 (1st Cir. 2006), *citing Invest Almaz v. Temple-Inland Forest Prods. Corp.*, 243 F.3d57, 76 (1st Cir. 2001). Additionally, evidence proffered by the non-moving party must make existence of the fact to be inferred more probable than its non-existence. *Katz v. City Metal Co., Inc.*, 87 F.3d 26, 28 (1st Cir. 1996). "A directed verdict is proper when the evidence leads to but one conclusion." *Jordan-Milton Mach., Inc. v. F/V Teresa Marie, II*, 978 F.2d 32, 34 (1st Cir. 1992) (citations omitted).

II. ARGUMENT

Based on all evidence presented at Trial, under Rule 50(a)(1), "a reasonable jury would not have a legally sufficient evidentiary basis to find for" Stephen Cass on Count II of Mr. Cass's Amended Complaint, an alleged violation of the Massachusetts Whistleblower Act ("MWA").

Though the jury found in Mr. Cass's favor on the MWA claim, this claim should fail because Mr. Cass simply did not establish that his participation in a protected activity played a "substantial or motivating part" in the retaliatory action. *Pierce v. Cotuit Fire Dist.*, 741 F.3d 295, 303 (1st Cir. 2014). The Court enumerated seven "issues" Mr. Cass disclosed to his supervisors during the course of employment which the jury could consider as being covered by the MWA: (1) alleged violations of Title IX; (2) alleged violations of the Massachusetts concussion protocol; (3) alleged violations of the Massachusetts criminal background check (CORI) requirements; (4) alleged violations of the Massachusetts conflict of interest laws; (5) alleged violations of the federal and state tax laws; (6) alleged violations of Massachusetts

Interscholastic Athletic Association ("MIAA") Rules; and (7) alleged violations of the Wayland School Committee's gifts and fundraising policies.

The Town offered several independent, legitimate motives for its non-renewal of Mr. Cass's contract, including his poor leadership, his volatility, abrasive communication style, interpersonal difficulties, and lack of licensure (in the two years since his initial hire), among others. Mr. Cass's MWA claim fails because overwhelming evidence of these independent, legitimate motives for his non-renewal was offered at Trial. *Id.* Moreover, Mr. Cass did not produce any "significantly probative evidence showing both that the proffered reason is pretextual and that a retaliatory animus sparked his dismissal." *Id.* (quoting *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 262 (1st Cir.1999)).

Mr. Cass did not demonstrate at Trial that he had a "reasonable" belief of any violations of Title IX or other rules, policies or procedures of the Wayland School Department or any other organization to support his claim under the MWA. Accordingly, the jury found in the Town's favor with respect to the Title IX retaliation claim. Alleged Title IX compliance issues aside, Mr. Cass's testimony largely focused on one fundraising policy of the Wayland School Committee (Policy KCD) which made certain references to fundraising procedures which Mr. Cass claimed were not being followed. The testimony at Trial established, however, that another Wayland School Committee policy (Policy JJIBB) permitted the fundraising that Mr. Cass had previously complained about. Susan Bottan testified that Policy KCD allowed for individual team fundraising such as the football team's trip to Camp Caribou. Brad Crozier, too, testified he met with Mr. Cass and explained Policy JJIBB to him, as well as its interplay with Policy KCD. Mr. Cass could not have had a reasonable belief that violations of Wayland School Committee fundraising policies were occurring where the evidence at Trial establishes he was

informed the acts of which he complained *did not violate* WSC policy. In short, Mr. Cass's own interpretation of the policies was unreasonable and conflicts with their plain language. This set of facts cannot support the MWA claim.

To the extent Mr. Cass premised his MWA claim on coaches' alleged ethics violations, and specifically WHS Boys' Football Coach Scott Parseghian's use of a printing company[1] owned by Mr. Parseghian's father, Mr. Cass testified he never followed up to examine whether the company had actually billed the WPS or collected on company invoices to WPS that he (Mr. Cass) reviewed. Mr. Cass could not have had an objectively reasonable belief that an ethics violation existed where he performed no follow-up on the issue and did not know what, if anything, the School Department later did to investigate. The Town pauses here to note that Mr. Cass's counsel's closing argument made a significant misrepresentation to the jury concerning the evidence of this alleged ethics violation. Counsel argued that A&S Printing made "hundreds of thousands of dollars" off the Wayland Public Schools; Mr. Cass reported the conflict of interest; and he was non-renewed because of Mr. Parseghian's connections, status as an administrator at WHS, and position as football coach. There was no evidence introduced at Trial, however, demonstrating what A&S Printing charged the Town of Wayland, nor any evidence of what it collected for the work that was performed. No testimony addressed the issue, either. Whether the statement in plaintiff's closing argument was hyperbole or an honest slip of the tongue, the effect is the same. Mr. Cass's counsel improperly inflated the value of what this company allegedly charged the Town, thereby adding unfounded weight and import to Mr. Cass's alleged whistleblowing activities.

[1] A&S Printing.

To the extent Mr. Cass premises this claim on alleged violations of federal or state tax law which he brought to the attention of the School Officials, Dr. Stein testified he requested information from Mr. Cass about coaches being paid "under the table," and Mr. Cass replied that the issue was "in the past." Susan Bottan, too, testified that Mr. Cass admitted he had "overstated his concerns," and that he told her in reality, there was nothing unethical or criminal going on; he was merely frustrated with the way in which the Athletic Department was working. Dr. Stein testified that the various "concerns" lists made vague reference to a number of complained-of practices and policies, with no specific practices or policies referenced. In addition, Mr. Cass alleges he raised issues of "charity fraud," which he contended a Boys' Soccer Coach had engaged in. Mr. Cass wrote "charity fraud" on a coach evaluation form with a list of positive and negative attributes, yet recommended the Coach be re-hired. *See* Ex. 116, "Fall 2014 Coaching Evaluations." Insufficiently defined allegations such as these are too vague to constitute protected activity under the MWA. *See Trychon v. Mass. Bay Transp. Auth.*, 90 Mass. App. Ct. 250, 258 (2016).

Next, there was no evidence that Mr. Cass's vague complaints about a coach not receiving a CORI check (where Mr. Cass *himself* was responsible for ensuring compliance) played any role in the Allyson Mizoguchi's decision not to renew his contract.[2]

To the extent Mr. Cass premises his MWA claim on alleged violations of the Wayland Teachers' Association Collective Bargaining Agreement through the long-standing practice of splitting stipends, the Court properly instructed the jury that violations of the CBA did not rise to

[2] While plaintiff alleged that Mr. Cass also complained that volunteer coaches were not fulfilling their obligations to undergo concussion training pursuant to the Massachusetts concussion protocol law, 105 C.M.R. 201.00, Allyson Mizoguchi testified she did not recall Mr. Cass bringing up any specific allegations in this regard.

the level of conduct protected by the MWA, because they are not activities, policies or practices in violation of a law, rule, or regulation promulgated pursuant to law.

To be protected under the MWA, a disclosure must raise allegations of serious governmental misconduct sufficient (once again, in the view of a reasonable employee) to rise to the level of illegality or a threat to the public health, safety or environment. M.G.L. c. 149, § 185(b)(1). "A risk to public health, safety of the environment" has been interpreted to mean "a risk to public health, *public* safety, or the environment," not just a risk to plaintiff's safety. *Trychon, supra,* 90 Mass. App. Ct. at 257 (emphasis in original). If the disclosure is of a trivial nature and/or raises issues of compliance solely with internal policies or guidelines, it may not be protected from retaliatory action. In *Service v. Newburyport Housing Authority*, 63 Mass. App. Ct. 278 (2005), the plaintiff claimed she was terminated from her position as defendant's rental assistance and systems administrator because she complained to a supervisor about the executive director's use of profane language. The Appeals Court affirmed summary judgment in favor of the defendant on the grounds that plaintiff's disclosure was not one of illegal activity or conduct harmful to the public. The defendant's personnel policy manual governed conduct at issue in the case, but violations of the manual could not be construed as a "rule or regulation promulgated pursuant to law." *Id.,* 63 Mass. App. Ct. at 283. To the extent Mr. Cass premises his MWA claim on his disclosure of purported MIAA violations or alleged violations of Wayland School Committee fundraising policies, the MWA claim fails as a matter of law because these disclosures do not concern governmental misconduct sufficient to rise to the level of illegality or a threat to the public health, safety or environment. As such, Mr. Cass cannot recover under Count II as a matter of law.

III. CONCLUSION

WHEREFORE, pursuant to Fed. R. Civ. P. 50(b), the Town of Wayland and Wayland Public Schools hereby move that the Court enter Judgment as a matter of law against the Mr. Cass on Count II of the Amended Complaint, with prejudice, and costs, and such other relief as this Court deems just and proper.

Respectfully submitted,
The Defendants,
TOWN OF WAYLAND AND
THE WAYLAND PUBLIC SCHOOLS,
By their attorneys,
PIERCE DAVIS & PERRITANO LLP

/s/ John M. Wilusz
Adam Simms, BBO #632617
John M. Wilusz, BBO #684950
John J. Davis, BBO #115890
10 Post Office Square, Suite 1100N
Boston, MA 02109
(617) 350-0950
asimms@piercedavis.com
jwilusz@piercedavis.com
jdavis@piercedavis.com

Dated: August 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on August 22, 2019.

/s/ John M. Wilusz
John M. Wilusz