

SAPIRSTEIN & SAPIRSTEIN, P. C.

ATTORNEYS AT LAW

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TANI E. SAPIRSTEIN*
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*ALSO ADMITTED IN CONNECTICUT AND NEW YORK

March 11, 2013

Henry L. Rigali, Esq.
78 Maple Street
Springfield, MA 01105-1813

**Re: Brian Johnson v. Peter Frei
Civil action No. 1143 CV 293**

Dear Mr. Rigali:

Enclosed herewith please find the following in connection with the above-referenced matter:

1. Plaintiff's Motion for Award of Attorney's Fees and Costs and Memorandum of Law in Support Thereof.
2. Affidavit of Tani E. Sapirstein.

Feel free to contact the undersigned should you have any questions or comments in this regard.

Very truly yours,



Tani E. Sapirstein

TES/kmb
Enclosures

cc: Mr. Brian Johnson (w/encl.)

K:\CASEFILE\Holland, Town of - General Rep\Johnson, Brian\Rigali Letter 3-11-13.doc

*cc sent to
Scott Cole*

*read
1/11/13
3/17/13*

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

District Court Department
Palmer Division
Civil Action No.: 1143CV293

BRIAN JOHNSON)
)
 PLAINTIFF)
)
 v.)
)
 PETER FREI)
)
 DEFENDANT)

PLAINTIFF, BRIAN JOHNSON'S, MOTION FOR AWARD
OF ATTORNEY'S FEES AND COSTS
AND MEMORANDUM OF LAW IN SUPPORT THEREOF

The Plaintiff, Brian Johnson, ("Plaintiff") respectfully moves this Honorable Court for an award of attorney's fees and costs pursuant to Mass. General Laws, c. 272, §99. As the basis for this Motion, Plaintiff states as follows:

1. Plaintiff filed a cause of action alleging violation of the Massachusetts wiretapping statute, M.G.L. c. 272, §99 against Peter Frei, ("Defendant");
2. A trial in this matter was conducted from February 26, 2013 to February 28, 2013. On February 28, 2013 the jury returned a verdict in favor of the Plaintiff and against the Defendant on Plaintiff's claim of violation of Massachusetts wiretapping statute, M.G.L. c. 272, §99. The jury awarded remuneration in the amount of \$100.00. Thus, the Plaintiff prevailed on his claim against the Defendant;
3. Judgment has not yet been entered by this Court;

4. As reflected in the accompanying Affidavit and the time records attached thereto, the undersigned counsel spent a total of 73.20 hours representing the Plaintiff in this matter with regard to the wiretapping claim. Amy J. Gilgis, an Associate at Sapirstein & Sapirstein, P.C., spent a total of 42.80 hours representing the Plaintiff in this matter;

5. Plaintiff seeks the following fees for the hours expended by counsel:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Tani E. Sapirstein	73.20	\$150.00	\$10,980.00
Amy J. Gilgis	42.80	\$150.00	<u>\$6,420.00</u>
			\$17,400.00
Minus			\$945.00 (discounted)
Total:			\$16,455.00

6. Additionally, Plaintiff seeks the costs incurred in this litigation in the amount of \$95.21.

7. Thus, Plaintiff seeks a total award of fees and costs in the amount of \$16,550.21.

8. As the Plaintiff prevailed in his claim against the Defendant, the Plaintiff is entitled to an award of attorney's fees and costs;

9. The Affidavit of counsel for the Plaintiff is submitted in support of this motion to award attorney's fees and costs at a negotiated reduced hourly rate of \$150.00 for Tani E. Sapirstein and Amy J. Gilgis; and

10. The costs of this litigation are specified in the time records attached hereto as Exhibit 1.

WHEREFORE, for the foregoing reasons, the Plaintiff, Brian Johnson, respectfully moves this Honorable Court for an award of attorney's fees and costs pursuant to M.G.L. c. 272, §99.

Respectfully submitted,

The Plaintiff,
Brian Johnson,
By his attorney,



Tani E. Sapirstein, Esq.
BBO No. 236850
Sapirstein & Sapirstein, P.C.
1350 Main St., 12th Floor
Springfield, MA 01103
Tel. (413) 827-7500
Fax (413) 827-7797


Dated: March 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was served upon the following by mailing a copy of it, postage prepaid, to:

Henry L. Rigali, Esq.
78 Maple Street
Springfield, MA 01105-1813

Dated: March 11, 2013



Tani E. Sapirstein

Selection Criteria

Slip Classification Open
 Clie. Selection Include: Holland/Johnsonv.Fre
 Slip.Transaction Typ 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	User Activity	Units DNB	Rate Rate Info	Slip Value
Posting Status	Description	Client Reference	Time	Bill Status	
45555	TIME 6/9/2011	TANI SAPIRSTEIN PROF SERVICES	1.80 0.00	150.00 T	270.00
Billed	G:20525 Draft complaint violation of wiretapping statute.	7/12/2011 Holland/Johnsonv.Fre			
45562	TIME 7/12/2011	TANI SAPIRSTEIN PROF SERVICES	1.80 0.00	150.00 T	270.00
Billed	G:20593 Legal research regarding: motion to dismiss. Draft opposition.	8/10/2011 Holland/Johnsonv.Fre			
45573	TIME 7/12/2011	TANI SAPIRSTEIN PROF SERVICES	2.80 0.00	150.00 T	420.00
Billed	G:20593 Prepare for and attend hearing on motion to dismiss.	8/10/2011 Holland/Johnsonv.Fre			
45665	TIME 7/18/2011	Amy Gilgis PROF SERVICES	2.50 0.00	150.00 T	375.00
Billed	G:20593 Research opposition to request for sanctions	8/10/2011 Holland/Johnsonv.Fre			
45666	TIME 7/19/2011	Amy Gilgis PROF SERVICES	1.50 0.00	150.00 T	225.00
Billed	G:20593 Draft opposition to request for sanctions	8/10/2011 Holland/Johnsonv.Fre			
45649	TIME 7/26/2011	TANI SAPIRSTEIN PROF SERVICES	3.00 0.00	150.00 T	450.00
Billed	G:20593 Prepare for and attend hearing on motion for sanctions.	8/10/2011 Holland/Johnsonv.Fre			
45731	TIME 8/8/2011	TANI SAPIRSTEIN PROF SERVICES	1.80 0.00	150.00 T	270.00
Billed	G:20677 Prepare for oral argument.	9/8/2011 Holland/Johnsonv.Fre			

3/11/2013
11:17 AM

SAPIRSTEIN & SAPIRSTEIN, P.C.
Slip Listing

Slip ID	Dates and Time	Posting Status	Description	User	Activity	Client	Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
45741	8/9/2011	Billed	Attend hearing.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	9/8/2011	3.00 0.00	150.00 T	450.00
45780	8/17/2011	Billed	Prepare for and attend hearing on sanctions.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	9/8/2011	2.80 0.00	150.00 T	420.00
45942	9/7/2011	Billed	Meeting with client regarding: settlement and strategy.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	10/12/2011	1.20 0.00	150.00 T	180.00
45992	9/16/2011	Billed	Draft answer to counterclaims.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	10/12/2011	1.20 0.00	150.00 T	180.00
47572	4/30/2012	Billed	Review discovery requests and draft responses.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	5/9/2012	2.20 0.00	150.00 T	330.00
47600	5/2/2012	Billed	Review file	Amy Gilgis	PROF SERVICES	Holland/Johnsonv.Fre	6/8/2012	0.50 0.00	175.00 T@1	87.50
47605	5/4/2012	Billed	Draft motion for summary judgment	Amy Gilgis	PROF SERVICES	Holland/Johnsonv.Fre	6/8/2012	3.90 0.00	175.00 T@1	682.50
47627	5/8/2012	Billed	Draft and redraft motion for summary judgment.	TANI SAPIRSTEIN	PROF SERVICES	Holland/Johnsonv.Fre	6/8/2012	2.80 0.00	150.00 T	420.00
47677	5/9/2012	Billed	Draft statement of material facts	Amy Gilgis	PROF SERVICES	Holland/Johnsonv.Fre	6/8/2012	0.30 0.00	175.00 T@1	52.50
47964	6/11/2012	Billed	Draft pretrial memorandum	Amy Gilgis	PROF SERVICES	Holland/Johnsonv.Fre	7/10/2012	2.30 0.00	175.00 T@1	402.50

3/11/2013
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Slip ID	Dates and Time	Posting Status	Description	User Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
47967	6/12/2012	TIME	Billed	Amy Gilgis PROF SERVICES Holland/Johnsonv.Fre	6.10 0.00	175.00 T@1	1067.50
			G:21698 7/10/2012	Research and draft opposition to Motion to Dismiss			
47973	6/14/2012	TIME	Billed	Amy Gilgis PROF SERVICES Holland/Johnsonv.Fre	1.90 0.00	175.00 T@1	332.50
			G:21698 7/10/2012	Revise opposition to motion to dismiss			
47904	6/19/2012	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	4.00 0.00	150.00 T	600.00
			G:21698 7/10/2012	Prepare for and attend hearing.			
48785	10/25/2012	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	2.00 0.00	150.00 T	300.00
			G:22057 11/8/2012	Attend pretrial conference.			
49485	2/14/2013	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	2.20 0.00	150.00 T	330.00
			G:22414 3/8/2013	Start to prepare for trial.			
49526	2/19/2013	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	3.60 0.00	150.00 T	540.00
			G:22414 3/8/2013	Trial preparation. Meetings with client and Henry Rigali. Review documents.			
49559	2/19/2013	TIME	Billed	Amy Gilgis PROF SERVICES Holland/Johnsonv.Fre	3.50 0.00	150.00 T	525.00
			G:22414 3/8/2013	Research and draft jury instructions			
49527	2/20/2013	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	5.00 0.00	150.00 T	750.00
			G:22414 3/8/2013	Trial preparation. Review transcripts of hearing. Draft direct and cross of witnesses.			
49561	2/20/2013	TIME	Billed	Amy Gilgis PROF SERVICES Holland/Johnsonv.Fre	5.40 0.00	150.00 T	810.00
			G:22414 3/8/2013	Research and draft jury instructions			
49529	2/21/2013	TIME	Billed	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	4.00 0.00	150.00 T	600.00
			G:22414 3/8/2013	Continue trial preparation. Redraft jury instructions. Continue to draft direct and cross.			

3/11/2013
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Slip ID	Dates and Time	User Activity	Units DNB	Rate Rate Info	Slip Value
	Posting Status	Client	Time	Bill Status	
	Description	Reference			
49563	TIME	Amy Gilgis	5.40	150.00	840.00- NIC
	2/21/2013	PROF SERVICES	5.40	T	
	Billed	G:22414		No Charge	
		3/8/2013			
	Research and revise jury instructions				
49566	TIME	Amy Gilgis	4.90	150.00	735.00
	2/22/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Research and draft motions to dismiss regarding obstruction of justice and MCRA section 11H				
49580	TIME	Amy Gilgis	1.90	150.00	285.00
	2/25/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Draft jury verdict form				
49581	TIME	Amy Gilgis	1.40	150.00	210.00
	2/25/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Draft opposition to motion in limine				
49592	TIME	TANI SAPIRSTEIN	7.00	150.00	1050.00
	2/26/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Attend trial				
49584	TIME	Amy Gilgis	0.90	150.00	135.00
	2/26/2013	PROF SERVICES	0.90	T	
	Billed	G:22414		No Charge	
		3/8/2013			
	Bring opposition to motion in limine to court and research issue preclusion				
49589	TIME	Amy Gilgis	1.50	150.00	225.00
	2/27/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Draft jury instruction regarding missing witness; research cases regarding same				
49593	TIME	TANI SAPIRSTEIN	7.00	150.00	1050.00
	2/27/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Attend trial				
49595	TIME	TANI SAPIRSTEIN	2.00	150.00	300.00
	2/27/2013	PROF SERVICES	0.00	T	
	Billed	G:22414			
		3/8/2013			
	Review verdict forms. Legal research regarding: adverse inference.				

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Slip Listing

Slip ID	Dates and Time	Posting Status	Description	User Activity	Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
49591	2/28/2013	TIME	Billed Research regarding MCRA	G:22414	3/8/2013	Amy Gilgis PROF SERVICES Holland/Johnsonv.Fre	0.30 150.00 T	45.00
49594	2/28/2013	TIME	Billed Attend trial.	G:22414	3/8/2013	TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	5.00 150.00 T	750.00
49617	3/4/2013	TIME	WIP Draft motion for judgment notwithstanding the verdict regarding: civil rights action.			TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	4.00 150.00 T	600.00
49650	3/5/2013	TIME	WIP Draft motion for judgment notwithstanding the verdict.			TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	3.00 150.00 T	450.00
49652	3/6/2013	TIME	WIP Continue to draft motion for judgment notwithstanding the verdict.			TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	3.00 150.00 T	450.00
49656	3/7/2013	TIME	WIP [No description]			TANI SAPIRSTEIN PROF SERVICES Holland/Johnsonv.Fre	0.00 150.00 T	0.00
Grand Total								
						Billable	114.10	17490.00
						Unbillable	6.30	945.00
						Total	120.40	18435.00

Selection Criteria

User.Selection Include: TANI SAPIRSTEIN
 Slip.Classification Open
 Clie.Selection Include: Holland/Johnsonv.Fre
 Slip.Transaction Typ 2 - 2

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	User Activity	Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
45315	6/14/2011	EXP	Billed Hampden County Sheriffs, Inc. - invoice #11019649	TANI SAPIRSTEIN	HCS Holland/Johnsonv.Fre	1	54.78	54.78
45613	7/18/2011	EXP	Billed Postage - first class mail	TANI SAPIRSTEIN	Postage Holland/Johnsonv.Fre	1	1.68	1.68
47960	6/15/2012	EXP	Billed Photocopies	TANI SAPIRSTEIN	Photocopies Holland/Johnsonv.Fre	60	0.25	15.00
49618	2/25/2013	EXP	WIP Photocopies	TANI SAPIRSTEIN	Photocopies Holland/Johnsonv.Fre	95	0.25	23.75
Grand Total								
				Billable		0.00		95.21
				Unbillable		0.00		0.00
				Total		0.00		95.21

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

District Court Department
Palmer Division
Civil Action No.: 1143CV293

BRIAN JOHNSON)
)
 Plaintiff)
)
 v.)
)
 PETER FREI)
)
 Defendant)
)

AFFIDAVIT OF TANI E. SAPIRSTEIN

I, Tani E. Sapirstein, being over the age of eighteen (18) hereby state:

1. I am an attorney licensed in the Commonwealth of Massachusetts and in good standing.
2. I graduated from Case Western Reserve University School of Law in 1982 and was admitted to practice law in Massachusetts in 1982.
3. I am presently an attorney and shareholder in the law firm of Sapirstein & Sapirstein, P.C., the successor to a professional corporation organized by me and another attorney in 1990.
4. Prior to organizing the predecessor to Sapirstein & Sapirstein, P.C., I was in house counsel at Massachusetts Mutual Life Insurance Company from 1982 to 1984. From 1984 to 1988, I was in house counsel for First National Supermarkets, Inc., and from 1988 to 1989, I was in house counsel for Friendly Ice Cream Corporation.

5. Since 1990, I have concentrated my practice in civil litigation with an emphasis on employment law and civil rights. I have tried cases to conclusion in federal and state courts. My reported cases include *Bain v. City of Springfield*, 424 Mass. 758 (1997) and *Bennett v. City of Holyoke*, 362 F.3d 1 (1st Cir. 2004).

6. Amy J. Gilgis was a full time Associate with Sapirstein & Sapirstein, P.C., from August, 2010 to the present. Ms. Gilgis received her law degree from the University of Connecticut in 2010 and was admitted to the Massachusetts Bar in 2010.

7. I have expended 73.2 hours on this matter to date and Ms. Gilgis has expended a total of 42.8 hours on this matter to date. The hours expended by the Affiant and Ms. Gilgis are reflected in the time records, a copy of which is attached to the Motion for Attorney Fees. These time records were maintained contemporaneously with the tasks performed.

8. I believe that an hourly rate of \$150.00 for an attorney with twenty-five years experience is reasonable.

9. I believe that an hourly rate of \$150.00 for an attorney with two (2) years experience is reasonable.

10. I have recently been rewarded attorney's fees in Hampshire County Superior Court at an hourly rate of \$300.00.

11. Ms. Gilgis was recently awarded attorney's fees in Hampshire County Superior Court at an hourly rate of \$175.00.

12. The hourly rates of the undersigned and Ms. Gilgis have been discounted per an agreement with the client.

13. The facts set forth herein are based on my own personal knowledge or belief, and so far as upon belief, I believe those facts to be true.

Signed under the pains and penalties of perjury this 11th day of March, 2013.

The Plaintiff,
Brian Johnson,
By his attorney,



Tani E. Sapirstein, Esq.
BBO No.: 236850
SAPIRSTEIN & SAPIRSTEIN, P.C.
1350 Main St., 12th Floor
Springfield, MA 01103
Tel. (413) 827-7500
Fax (413) 827-7797

Dated: March 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was served upon the following by mailing a copy of it, postage prepaid, to:

Henry L. Rigali, Esq.
78 Maple Street
Springfield, MA 01105-1813

Dated: March 11, 2013



Tani E. Sapirstein