

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON
Plaintiff

vs.

DEFENDANT'S SUPPLEMENT TO MOTION
FOR ATTORNEY FEES AND SUPPLEMENT
TO OPPOSITION TO AWARD OF
PLAINTIFF'S ATTORNEY FEES

PETER FREI
Defendant

The Defendant hereby supplements his previous Motion for Attorney Fees. First, the defendant reduces his original fee request by eliminating fees not related to the civil rights claim and responds to several points raised in the Plaintiff's Opposition to the Defendant's Request for Legal Fees. Second, the Defendant supplements his previous Opposition to an award of plaintiff's legal fees. A Supplemental Affidavit is filed herewith.

**DEFENDANT'S SUPPLEMENTAL ARGUMENT IN SUPPORT
OF HIS MOTION FOR LEGAL FEES**

With some exception, the defendant agrees with the plaintiff that an award of legal fees in a multi-claim case are generally limited to the cause of action that permits the fee award: the civil rights case for the defendant and the wiretap case for the plaintiff. As explained below, a revised accounting of counsel's time and expense pursuing Frei's civil rights and factually related claims is attached as **EXHIBIT 1**.

Lodestar and Hourly Rate: The initial estimate of a reasonable attorney's fee is the lodestar calculation of hours reasonably expended times a reasonable hourly rate.

Diaz v. Jiten Hotel Management, Inc., No 11-2400 (1st cir. October 12, 2012, citing

Draper v. Town Clerk of Greenfield, 384 Mass. 444, 449 (1981). The defendant submits an Affidavit from noted civil rights litigator Attorney Thomas Lesser relative to prevailing hourly rates as **EXHIBIT 2**.¹

Civil Rights and related claims: As the prevailing party the defendant is entitled to an award of reasonable legal fees and litigation costs incurred in furtherance of his civil rights claim. Unlike the federal civil rights statute, 42 U.S.C. 1983, an award under the Massachusetts Civil Rights act is mandatory rather than permissive. And while the award of fees should be for the civil rights claim, the court need not segregate out fees and costs related to other claims where the factual predicates of the civil rights claim are the same. See, *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983)(courts should consider whether unsuccessful claims were unrelated, or whether they were instead based upon a "common core of facts" or "related legal theories."); *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 431 (2005)(judge can award amounts related to developing "closely analogous facts required for 93A and misrepresentation claims); *DiMarzo v. American Mut. Ins. Co.*, 389 Mass. 85, 106 (1983) (amounts relating to counts arising from chain of events recoverable); *Stratos v. Department of Public Welfare*, 387 Mass. 312, 317 (1982)("plaintiff need not obtain a final, favorable determination of his constitutional claims in order to claim an attorney's

¹ By separate filing, another prevailing rate affidavit was submitted by past Massachusetts and Hampden County Bar Association President, Richard D. Gelinas. Affidavits of experienced counsel are used to establish prevailing rates. *Haddad v. Wal-Mart Stores*, 455 Mass. 1024, 1026 (2010)(); *T & D Video, Inc. v. Revere*, 66 Mass. App. Ct. 461, 477 (2006)(affidavits of attorneys knowledgeable with respect to local culture regarding fees charged in civil rights cases satisfied fee applicants burden to establish prevailing rate).

fee under § 1988. It is enough that the constitutional claims are substantial and arise from the same nucleus of facts on which the State law claims are based"); *Incase Inc. v. Timex Corp.*, 421 F. Supp. 2d 226, 244 (D.Mass. 2006)(fees incurred developing common facts not segregated).

Frei's counter claims are based upon common core of facts: For the most part, the "facts" needed to establish Frei's civil rights claim included the facts needed to establish Frei's other counter claims. Frei's theory was that Johnson & co. positioned themselves outside his home to intimidate him. They were there to retaliate against Frei for his public criticism and to give him a message to back off.

The jury found Johnson defamed Frei, falsely accused him of a crime and intended to cause Frei emotional distress. According to the verdict slips, the jury found Johnson's conduct "extreme and outrageous... beyond the bounds of decency and intolerable in a civilized society." This conduct is an inseparable part of the civil rights claim. Hence, time spent researching, pleading, developing and proving these causes of action should not be segregated. And although little or no time was spent researching or preparing Frei's two assault related claims, time spent researching joint venture, the adverse inference from absent available witnesses matter, defamation, emotional distress and other trial issues were an instrumental part of the civil rights case. The same evidence would have been presented as part of Frei's civil rights case if the other claims had not been made.

Nor should all time spent defending against Johnson's wire tap claim be excluded. First, a thorough review of case law was required to establish the admissibility the so-called "unlawful" tape recording into evidence. Second, Frei

argued the wiretap law suit itself was part of Johnson's intimidation strategy. Third, having been sued by Johnson, Frei was entitled to fight against the wiretap claim both on the merits and - significant to the legal fee issue - to enhance the likelihood of success of his civil rights claim. He should be entitled to a portion of these fees.

Right or wrong, Frei taped Johnson to protect himself and preserve evidence. It was the singular, most critical piece of evidence supporting the jury's civil rights verdict. It contained the best evidence of Johnson's intent. It showed the jury who Johnson really was. It proved Johnson had much to hide and would falsify and lie to the police to get at Frei. It disproved the theory of Johnson's entire case, namely, that he was just there fishing with friends when accosted by Frei whom Johnson described as the aggressor. The tape showed Johnson was there to violate Frei's civil rights.

Reduction of Legal Fee Request: As indicated on **EXHIBIT 1**, counsel has eliminated eleven (11) hours of time spent exclusively on the wiretap aspects of the case statute (i.e., 9/6/11; 2/22/12; 2/23/12/3/27/12/4/12/12/4/20/12). Counsel has further reduced the fee request by an additional thirty-four (34) hours, this representing one-half the time spent on combined wiretap and other issues (i.e. 8/18/11, 8/23/11, 8/30/11, 1/4/12/ 1/11/12, 4/25/12, 4/26/12, 4/27/12, 5/14/12, 5/15/12, 5/16/12, 6/15/12, 6/16/12, and 11/8/12). In total, counsel has reduced the original fee submission by 45 hours. At \$235/hr this is a reduction of \$10,575.

Cost of Forensic accountant: The court should award Frei the costs of his forensic tape expert. For the reasons stated above, the tape was a key part of the defendant's civil rights case. Defendant's counsel made several attempts to get plaintiff's counsel to stipulate to the authenticity of the tape before engaging the expert

and cost. For whatever reason plaintiff's counsel delayed and declined to do so until the day of trial. By that time it was too late. The forensic work had been done, the witness was standing by and the expense had been incurred.

Fees to establish fees: Frei is entitled to an award of reasonable legal fees for time reasonably spent establishing his right to fees. *Lund v. Affleck*, 587 F.2d 75 (1st Cir. 1978) ("It would be inconsistent with the purpose of the Fees Act to dilute a fees award by refusing to compensate the attorney for time reasonably spent in establishing and negotiation his rightful claim to the fee." (cases cited), *Id.* @ 77. The plaintiff filed a written opposition to the Defendant's Motion for legal Fees and a separate Motion to Strike its supporting Affidavit. Counsel's amended invoice does not contain fees for time spent eliminating or reducing wiretap fees included in the original invoice.

**DEFENDANT'S SUPPLEMENTAL ARGUMENT IN OPPOSITION
TO AN AWARD OF PLAINTIFF'S LEGAL FEES**

In pertinent part, G.L. c. 272 § 99Q provides an "aggrieved person" may recover "reasonable attorney's fee and other litigation disbursements reasonable incurred."

1. As stated in Frei's original opposition, it needs to be determined whether awarding Johnson's legal fees would aid and abet a violation of the Massachusetts conflict of interest law. G.L. c. 268A § 23(b)(2)(i & ii).
2. Plaintiff has not "incurred" any legal fee expense because - whether proper or not - it appears the Town of Holland is paying his legal bills. Because someone else is paying his bills, plaintiff has not "incurred" any legal fees. *Lincoln St. Realty Co. v. Green*, 374 Mass. 630 (1978)(statutorily authorized legal aid organization can be appropriate recipient of fee awards for indigent client but in contractual contest,

"incurred" means personally obligated to pay...Attorney fees are "incurred" when a party renders himself liable to pay such fees).

3. Johnson should be denied legal fees because he is not an aggrieved person. By his own testimony during the trial Johnson's voice is not on the tape made by the defendant. Plaintiff testified the voice heard by the jury belonged to his father-in-law.

4. If entitled to an award of legal fees at all, Johnson is entitled to fees reasonably incurred prosecuting and defending only the wiretap claim. He is not entitled to fees spent defending against Frei's counter claims. Time spent preparing for trial, cross examining Frei's witnesses, preparing numerous non-wire tap jury instructions and arguing those instructions, moving to dismiss Frei's obstruction of justice and Civil Rights claim, opposing Frei's motions in limine, researching missing witness and adverse inference matters, preparing motions for judgment NOV of the MCRA verdict (see Saperstein invoice @ 3/4/14), etc., had nothing to do with the wiretap claim and should be excluded.

5. The court is entitled to consider several factors in determining the reasonableness of Johnson's fee request. Proof of the wiretap case at trial was far from complex. Frei readily admitted making the tape. He provided copies of it to the Plaintiff's counsel and stipulated to both its introduction into evidence and to its authenticity. What fact issue remained? All he had to do was testify he was not aware he was being recorded. The bulk of fees identified in counsel's invoice spent preparing for trial beginning 2/14/2013 and thereafter should be reduced or denied.

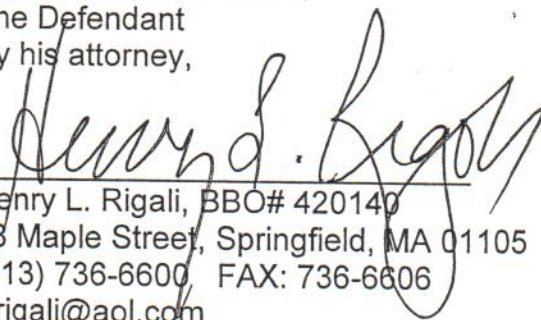
6. The court should consider Johnson's rejection of settlement offers in determining the reasonableness of his fees. Johnson rejected Frei's first settlement offer in September of 2011. See Affidavit. Frei's offer was that all claims and cross claims be dropped, the

parties be responsible for their own fees and costs and sign appropriate cross-releases.
Johnson's response is attached as **EXHIBIT 3**.

Johnson rejected Frei's second settlement proposal made shortly after the jury returned its verdict. Before even knowing the Town of Holland was paying Johnson's fees, Frei proposed the parties agree to have the verdict stand; waive collection of their respective damage awards; waive appellate rights; be responsible for their own fees and costs; and execute appropriate settlement documents. The court may consider this fact in determining the reasonableness of post verdict legal fees.

WHEREFORE, the court should award Frei reasonable counsel fees and expenses, should conduct a hearing to determine the payment source and propriety of Johnson's legal fees, and thereafter award only such fees as are permitted by law.

Respectfully Submitted,
The Defendant
By his attorney,



Henry L. Rigali, BBO# 420140
78 Maple Street, Springfield, MA 01105
(413) 736-6600 FAX: 736-6606
Hrigali@aol.com

April 10, 2013

Certificate of Service

I certify a copy of the foregoing document was served upon the Plaintiff by first class mail sent to his attorney, Tani E. Saperstein, 1350 Main Street, Springfield, MA 01103, this 10th day of April, 2013.



Henry L. Rigali, Esq.

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, MA 01105

Invoice submitted to:
Mr. Petr Frei
101 Maybrook Road
Holland MA 01521

April 10, 2013

In Reference To: Johnson vs. Frei
Palmer District Court, Civil Action # 1143 CV 0293

Invoice # 10022

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
8/18/2011 11:50 a.m. - Client contact re 2/19 incident on lake in Holland, MA.	0.50 235.00/hr	117.50
8/19/2011 [REDACTED] research cases, Com v. Hyde; Com v. Montgomery; G.L. c. 272 Sec 99, etc. 1/2	2.00 235.00/hr	470.00
8/23/2011 Research: [REDACTED] 3 pages of citations, etc. 1/2	0.75 235.00/hr	176.25
8/29/2011 Research, prep pleading 1st draft, [REDACTED]	2.25 235.00/hr	528.75
8/30/2011 Rev. Hyde, research abuse of process, obstruction of justice, perjury, subornation, civil rights, numerous phone calls, emails, finalize pleading 9 a.m. - 1 p.m. 1/2	4.00 235.00/hr	940.00
9/2/2011 email [REDACTED]; review 1st Cir GILK [REDACTED] 1/2	0.50 235.00/hr	117.50
9/6/2011 rec/rev letter and 13 pages of research cases [REDACTED]	1.25 235.00/hr	293.75
receive email [REDACTED]	0.10 235.00/hr	NO CHARGE

EXHIBIT 1

Mr. Petr Frei

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	<u>Hrs/Rate</u>	<u>Amount</u>
9/12/2011 TC w/Atty Saperstein; request written setlmt proposal; general discussion of case background	0.20 235.00/hr	47.00
9/16/2011 Rec/rev written settlement offer form Atyt Saperstein	0.10 235.00/hr	NO CHARGE
9/20/2011 TC w/ Atty Saperstein, discuss case status and settlement possibility; [REDACTED] [REDACTED] Discuss [REDACTED]; issues and strategy	0.35 235.00/hr	82.25
emails back and forth from/with Peter; Outline fee structure ; prep and send cover letter and fee agreement	0.25 235.00/hr	NO CHARGE
email [REDACTED] - declines [REDACTED] settlement offer	0.10 235.00/hr	NO CHARGE
9/21/2011 Rec/rev Answer to counter claims from Atty Saperstein; [REDACTED]	0.20 235.00/hr	47.00
9/23/2011 Rec/rev letter from Peter	0.10 235.00/hr	NO CHARGE
11/18/2011 rec/rev email from Peter	0.10 235.00/hr	NO CHARGE
12/21/2011 email - Case management CF reminder notice received for PF	0.10 235.00/hr	NO CHARGE
12/30/2011 Palmer District Court; review file and docket entiries; obtain print out of docket sheet	0.50 235.00/hr	117.50
1/3/2012 email [REDACTED] -request copies of Palmer D. Ct pleadings, etc; start prep Case Managment CF on 1/12	0.25 235.00/hr	58.75
1/4/2012 Rec/review numerous docs/pleadings from PF; Review materisl [REDACTED] regarding plaintiff's possible recovery of legal fees as part of case from 17C Mass Practice Sec 61, Crosland - old hospital case from 1987 (hosp phone not an intrecepting device) 14 pages of attachments	1.25 235.00/hr	293.75
1/11/2012 Prep for Case Mgmnt CF; [REDACTED], research "Necessity" possibility; Research MA case law re: 99Q, etc: Vieux, Barbaza, Handanian, Birliglia, Pine v. Rust, etc. 2:30 - 5 pm	2.50 235.00/hr	587.50
1/12/2012 Court - Prep for court; research privacy statute for possible relevance; Meet w/client following court; [REDACTED]	1.00 295.00/hr	295.00

TO CIVIL RIGHTS CLAIM

	<u>Hrs/Rate</u>	<u>Amount</u>
1/12/2012 Palmer - Case management Conference	0.25 295.00/hr	73.75
1/17/2012 Rec/rev docket entries for criminal harassment case; Frei vs. Brian Johnson; Case # 1143 RO 079; filed 3/15/11, dismissed by court on 8/12/11	0.50 235.00/hr	117.50
1/18/2012 [REDACTED] status of Superior Court case; CD going to steno for transcript prep; [REDACTED]	0.10 235.00/hr	23.50
1/19/2012 [REDACTED] rec/rev case docket entries and calendar of events; receive PTC Memo from Court; next hearing on 4/26 @ 2:00 pm; met w/Peter in Spfld office	0.33 235.00/hr	77.55
1/25/2012 Research: Necissity defense; Lafave Crim Law, 3rd edition	0.25 235.00/hr	58.75
2/1/2012 [REDACTED] research status inquiry	0.20 235.00/hr	47.00
2/9/2012 Receive transcript [REDACTED]	0.20 235.00/hr	NO CHARGE
2/13/2012 [REDACTED] legislative history	0.10 235.00/hr	NO CHARGE
2/14/2012 [REDACTED] Newspaper article of Amherst PD officers bringing wiretap action vs. Chief	0.10 235.00/hr	NO CHARGE
2/16/2012 Met [REDACTED] <i>WITNESS INTERVIEWS</i>	1.00 235.00/hr	235.00
2/17/2012 email [REDACTED] re 13th Amendment, rt to enforce contracts, etc - attachment re: aggrieved person w/citations	0.25 235.00/hr	58.75
2/22/2012 [REDACTED] research issues [REDACTED] 2/22 and 2/23 re: aggrieved person, Hyde, Marshall dissent, etc.	0.50 235.00/hr	117.50
2/23/2012 [REDACTED] Marshall and Cody dissenting opinions in Com v Hyde; stading vs aggrieved persons ?	0.20 235.00/hr	47.00
3/12/2012 [REDACTED] research	0.20 235.00/hr	NO CHARGE

	Hrs/Rate	Amount
3/19/2012 TC w/Peter [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	0.25 235.00/hr	58.75
3/27/2012 Rec/rev [REDACTED] legislative history	0.25 235.00/hr	58.75
4/12/2012 Extensive review [REDACTED] research [REDACTED] download documents	1.50 235.00/hr	352.50
4/20/2012 [REDACTED] research Lubanski and related wif & mal BKR cases; also do casemaker search for all superior ct cases invlving "wiretap, civil and 99Q"; find only 2 cases; TC Atty Eric Kornblum who handled Lubanski in BKR court which references superior court judgment; Lubanski not fund on casemaker; EK reports wirtap asepect handled by Atty Brad Moir of Westfield 568-1957. end 10:38 a.m.	0.75 235.00/hr	176.25
Research numerous cases on Casemaker - wiretap, privacy, etc.	1.50 235.00/hr	352.50
4/25/2012 8:00 a.m.start - Continue research in prep of meeting [REDACTED] [REDACTED] Office meeting [REDACTED] from 10 a.m.to 1:50 p.m.; discuss case status and strategy; [REDACTED] [REDACTED]	$\frac{1}{2}$ 5.00 235.00/hr	1,175.00
4/26/2012 Research all afternoon; 12:30 p.m. - 5:30 p.m.; numerous cases reviewed and printed from Casemaker; Prep and serve RFP; email and copy [REDACTED] around 5:30; sent status [REDACTED] by mail	$\frac{1}{2}$ 5.00 235.00/hr	1,175.00
4/27/2012 Organize file and research; review Glik; make calls to Attys Lesser, Newman, Sibbison, ACLU Boston, Wendy refers me to Patricia Dejunas w/whom I spoke late in the day and to whom I emailed a fact summary; she suggest ANT-SLAP may apply to the bog cits; Wendy not taking cases; David Hoose not able to help; tom Lesser finds case interesting suggest I comntact bill on his return tuesday; spent late mornng reviewieng Peter's web site, going over statemetns, etc. Esentially full day on this case 9:25 a.m - 5:25 p.m, less 2 hours for unrelaed matters.	6.00 235.00/hr $\frac{1}{2}$	1,410.00
5/1/2012 lengthy discussion with ACLU Atty Sarah Wunsch in Boston; Discuss cuases of action and constitutional issues; suggests speaking with Attys Howard Friedman and David Milton in Boston; (617) 742-4100.; discuss	1.00 235.00/hr	235.00

	<u>Hrs/Rate</u>	<u>Amount</u>
several state and federal cases; Blood, Glik, Frisbie v. Schultz, Com v. Adams;		
5/2/2012 Research; Research Frisby v. Schultz adn related cases on casemaker in office; Review civil complaint re civil rights counter claim and constitutional challenge both of which are preserved. TC with Atty. Howard Friedman who handled 1st Cir Glik case with David Milton; Had no concrete suggestions in Peter's case but will get back to me w/ideas; agreeable to review materials I may submit via email, etc. 10:50 a.m. - 12:40 p.m.	1.75 235.00/hr	411.25
5/3/2012 emails w/client	0.25 235.00/hr	58.75
5/14/2012 Monday, all day 8:30 a.m. - 10:30 p.m. - research $\frac{1}{2}$	12.00 235.00/hr	2,820.00
5/15/2012 Tuesday - all day; 8:30 a.m - 7:30 p.m; Research and draft memos - $\frac{1}{2}$	11.00 235.00/hr	2,585.00
5/16/2012 Finish draft of pleadings; file by mail, copies to Peter and Atty Saperstein 7:30 a.m. - 5:30 p..m $\frac{1}{2}$	10.00 235.00/hr	2,350.00
5/29/2012 T/C Atty Saperstein 10:40 a.m.; TC client @ 5:40 p.m.	0.20 235.00/hr	47.00
6/12/2012 Receive call from Atty Sap re [REDACTED]	0.34 235.00/hr	78.73
6/15/2012 Prep PTC memo; emails to Peter, receive/rev. Atty Saperstein Oppoposition to Motion Dism, etc $\frac{1}{2}$	2.50 235.00/hr	587.50
6/19/2012 almer District Court: Hearing Motion Dismiss; Motion SJ - Poehler $\frac{1}{2}$	1.00 235.00/hr	235.00
Court - prep for hearing on opposition to P mot SJ; Def Moti Dismiss, PTC Memo, etc - Attending hearing in front of Judge Poehler in Palmer District - end at 4:15 p.m. Prep time 3 hrs; court time 1 hr; total 4 hrs $\frac{1}{2}$	3.00 235.00/hr	705.00
9/7/2012 TC - client	0.10 235.00/hr	23.50
9/18/2012 Rec/rev Plaintiff. Motion Continue PTC from 9/26; relig holiday; assent	0.10 235.00/hr	23.50

Mr. Petr Frei

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	<u>Hrs/Rate</u>	<u>Amount</u>
9/27/2012 FAX Palmer D. Ct.	0.10 235.00/hr	23.50
10/25/2012 Pre Trial Conference in Palmer D. Ct.; following CF [REDACTED] re trial prep; 1:50 - 2:50 p.m., plus travel back and forth to Springfield	1.00 295.00/hr	295.00
10/30/2012 rec/rev timeline from client; DEP matter; rev photos; etc.	1.25 235.00/hr	293.75
11/8/2012 Research/prep/file motion to reschedule trial date; sere couonsel for plaintiff, obtain assent; file motion in court via fax; emailos [REDACTED]; Motions approved by court; New trial dates [REDACTED]. 1/2	1.42 235.00/hr	332.92
11/21/2012 Research: Article 16, MA Dec Rights; rec/rev motion	1.25 235.00/hr	293.75
1/14/2013 Office; research, trial prep;	6.00 235.00/hr	1,410.00
1/23/2013 Several calls to court re availability of internet in district court; HC Law Lib; calls re jurisdiction; Clerk Mag Samelli, Barb Burton, Kevin Claffey, etc;	1.00 235.00/hr	235.00
1/29/2013 TC court Spfld D. Ct re Internet access.	0.20 235.00/hr	47.00
1/30/2013 Prep for Trial, prep forms for trial subpoenas, sheriff letter, motions in limine, directed verdict, Judgment NOV and for Involuntary dismissal per MA Rules of Civ. Pro. ; Prep witness llist; review witness statemetns and testimony; review jurisdictional issues, pendent jurisdiction, etc. 4:00 - 7:00 p.m.	3.00 235.00/hr	705.00
2/1/2013 Prep and send trial subpoena to Sheriff for Holland Police Dept. witnesses	0.50 235.00/hr	117.50
2/5/2013 Office - continue trial prep; [REDACTED] re tape expert; tc expert; harrassment transcript; identify constitutional/statutory "right" for civ rits cc; research jury instructions; motions in limine, sequester, etc. 10 am - 3 pm	5.00 235.00/hr	1,175.00
2/6/2013 9:30 a.m. - Trial prep; tc M. Sankiewicz, audio expert; subpoena Dana; emails w/client; etc	4.00 235.00/hr	940.00
2/7/2013 Receive/rev. Constitutional Rights document from client	0.20 235.00/hr	47.00

	Hrs/Rate	Amount
2/13/2013 Prep for trial; research and drafting; phone to Southbridge PD; prep and send new subpoena to Southbridge PD; Hampden County Law Library	1.75 235.00/hr	411.25
2/18/2013 Trial Prep - elements; Jury Instructions;	5.00 235.00/hr	1,175.00
2/19/2013 Client meeting 7:30 a.m. - 11:30 a.m., trial prep, 2 p.m. Meeting w/Atty Saperstein at her office	6.00 235.00/hr	1,410.00
2/20/2013 Trial prep at office: start reading transcripts of harassment case; draft motion dir. verdict and 1st draft of memo; research recusal cases: email worcester sheriff re correction on Beane subpoena 3:00 p.m. - 7:30 p.m.	4.83 235.00/hr	1,135.83
2/21/2013 Office - TC Mike Stankiewicz - 12:37 p.m. received/review rept and CV via email; download and copy; tml for Atty Sapersetein at 1:36 p.m. ; received [REDACTED] DEP action vs. Town; start rev and prep exhibits @ 1:38 p.m.; finalize recusal; [REDACTED] tc with Atty Saperstein; will met Monday; discuss witnesses, exhibits and tape authentication; all to be done Monday afternoon; informed Atty re intended use of TV and blog; work on revised dire verd memo	2.50 235.00/hr	587.50
start 6 a.m. - review recusal cases; harassment transcript; [REDACTED] [REDACTED] 7:00 a.m. - 9:00 a.m. Law library at 10:45 a.m. - 12:25 p.m. - research, jury instructions, privacy, clerk's office (Diane) re available flatscreen; she called alter and ha ok from Chief security ken O'Connor; chekc with security at court entrance; check with Michelle in Bar Association; park across sdreet (\$4.50 - no charge); return to office 12:30	5.25 235.00/hr	1,233.75
2/22/2013 Continue Transcript review; [REDACTED] print [REDACTED] memo in support of dir verdict; review wiretap cases, Pine v Rust, etc. end at 6:33 p.m.	3.00 235.00/hr	705.00
2/23/2013 Saturday - 8 a.m. - 10:15, review and highlight final harassment transcript; [REDACTED] 11 a.m. - 1 p.m. [REDACTED]; discuss varius issues; [REDACTED]; (4 hours) 2:00 p.m. @ office, start jury insturctions - end at 8:00 p.m.	11.00 235.00/hr	2,585.00
2/24/2013 Trial prep, Sunday from 10:15 a.m - 5:30 p.m. Primarily worked on jury instructions.	7.25 235.00/hr	1,703.75
2/25/2013 Trial prep all day; 8:30 a.m. to 10:30 p.m.	14.00 235.00/hr	3,290.00
2/26/2013 trial prep	8.00 235.00/hr	1,880.00

	Hrs/Rate	Amount
2/26/2013 6 a.m. review case file, testimony, etc. [REDACTED] [REDACTED] prep testimony; leave for ct @ 8 a.m.; 8:45 a.m arrive Spfld D. Ct. hand pre-trial matters through most of morning; impanel jury; pre Forcier testimony during lunch; 2 pm openings, Forcier, Johnson testimony; Peter on stand for direct by Atty Saperstein; start x-exam at 4:20 p.m. or som, introduce two exhibits; following court, meet with P and Dana; review events of day through 5:15 p.m.; return to office; prepare special verdict slips; research and prepare jury instrucion re advfse inference from missing witness. 6 am - 9:30 pm = 15 hours : Court 7 hours; Out of court 8 hours	7.00 295.00/hr	2,065.00
2/27/2013 6 a.m. trial prep; re-organize [REDACTED] testimony, etc; jury instructions; [REDACTED] leave early for office; make changes to dir. verd memo; type instructions; court for 9 am, break at 1, [REDACTED] 2 pm - 4:30 pm finish trial, jury instrucion; verdict slips; defend against moti dir verdict; after curt; [REDACTED]; return to office, email proposed verdict slips to Asst Clerk-Mag John Stocks; prune file for take home materials needed for closing argument and other docs needed for court tomorrow at 8:30 a.m. leave office at 6:52 p.m. 7 hrs court; 5 hrs out of court: 12 hours thourgh 6:52 pm	7.00 295.00/hr	2,065.00
Out of court hours on trial day # 2	5.00 235.00/hr	1,175.00
2/28/2013 6 a.m. - 7:30 a.m. prep closing, final motions; 8:30 - 2:30 court; finalize jury instrucion, closings, post trial motion n.o.v.; brief cf [REDACTED] after court; 3.5 hours w/client and/or prep for trial finish; 5 hours in court	5.00 295.00/hr	1,475.00
out of court hours on last day of trial	3.50 235.00/hr	822.50
3/1/2013 lengthy email to Peter	0.50 235.00/hr	117.50
3/7/2013 TC with Counsel for Plaintiff re atty fees; judgment not filed by clerk as of today; research atty fee, conflict issue, research 268A; tc investigator Steven Cole, prep opposition to award of pl fees;	2.50 235.00/hr	587.50
3/9/2013 Research: Atty fees, computer prob.	2.00 235.00/hr	NO CHARGE
3/11/2013 Mond, still prob w/computer; H Cty law lib; Opposition Motion to Strike	1.00 235.00/hr	235.00

Mr. Petr Frei

Page 9

	<u>Hrs/Rate</u>	<u>Amount</u>
3/12/2013 Finalize atty fee motion, affidavit, opposition, opp affd, file in district court, work on ethics commission letter 10 a.m. - 8: 15 p.m.; 10 hrs, bill for 8 hrs	8.00 235.00/hr	1,880.00
3/25/2013 Two lengthy days Monday, 3/25/13 and Tuesday 3/26/2013 researching atty fee cases, sufficiency of supporting affidavit, common core claims argument; etc.. Mond/Tues 3/25 & 26	8.00 235.00/hr	1,880.00
4/4/2013 Finalize and file Def Opp Plaintiffs Mot Strike; Affd. in Support of Def. Opposition to Plaintiffs Motion to Award Counsel Fees, Affidavit of Atty Gelinas	3.00 235.00/hr	705.00
4/9/2013 Research Defendant supplemental Motion for Fees and supplemental Opposition to Award of Fees to Plaintiff	4.00 235.00/hr	940.00
4/10/2013 Finish research and finalize Def Supplemental Motion for Atty Fees and Supplemental Opposition to Award of PI Atty Fees.	5.00 235.00/hr	1,175.00
Prep subpoenas for service on Town Clerk, Town Treasurer and Selectman Kennedy; deliver to Sheriff. Order trial tapes.	1.00 235.00/hr	235.00
For professional services rendered	242.02	\$57,337.78
Additional Charges :		
2/3/2012 Catuogon Reporting - Transcript		85.00
2/26/2013 Tape authentication/Audio expert M. Stankiewicz		2,500.00
Staples - Trial Exhibit Enlargements		331.67
2/28/2013 Hampden County Sheriff service of process fees.		105.34
Worcester County Sheriff fee		70.78
Total costs		\$3,092.79
Total amount of this bill		\$60,430.57

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Petr Frei

Page 10

10/25/2012 Payment - Thank You
2/14/2013 Payment - Thank You
4/10/2013 Credit

Amount

[REDACTED]
[REDACTED]
(\$10,575.00)

[REDACTED]

Balance due

[REDACTED]
[REDACTED]
#49,855.57

HVR

4/10/2013

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 cv 0293

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

AFFIDAVIT OF THOMAS LESSER

I, Thomas Lesser, swear under the pains and penalties of perjury that the following is true to the best of my knowledge and belief:

1. I have been an attorney licensed to practice law in the Commonwealth of Massachusetts since 1973.
2. I am a partner in the law firm of Lesser, Newman and Nasser, located at 39 Main Street, Northampton, Massachusetts 01060.
3. For the past forty years I have been a trial lawyer in both state and federal courts in Massachusetts. That includes both District and Superior court litigation in Hampshire County, Hampden County and Franklin County.
4. During that time, I have been involved in a variety of litigation, including a significant amount of representation of plaintiffs in civil rights litigation.
5. I am familiar with the prevailing hourly rates charged by trial attorneys in Hampden County.
6. I am personally familiar with attorney Henry Rigali's work and reputation in the community. I have known attorney Rigali for approximately thirty years. He has an excellent reputation as a trial attorney. During these years, I have consulted with and requested his advice on legal issues and he, in turn, has consulted me with legal questions.

7. Based on my experience and knowledge, it is my professional opinion that an attorney with Mr. Rigali's experience and skills generally would receive significantly more than \$300 per hour for their services in Hampden County. My personal rate is well in excess of \$300 per hour and I have been awarded \$300 an hour as a prevailing party in civil rights litigation by the United States District Court.
6. In other words, for an attorney of Mr. Rigali's experience, reputation and expertise, his in-court rate of \$295 per hour, and his out-of-court rate of \$235 per hour is significantly lower than that customarily charged by other attorneys of his skill.

Date: April 5, 2013



Thomas Lesser

SAPIRSTEIN & SAPIRSTEIN, P. C.

ATTORNEYS AT LAW

1350 MAIN STREET, 12TH FLOOR
SPRINGFIELD, MASSACHUSETTS 01103
TELEPHONE (413) 827-7500

TANI E. SAPIRSTEIN*
TANI@SANDSLAW.COM

TELECOPIER (413) 827-7797
WWW.SANDSLAW.COM

*ALSO ADMITTED IN CONNECTICUT AND NEW YORK

September 15, 2011

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

FOR SETTLEMENT PURPOSES ONLY

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

Dear Mr. Rigali:

This letter shall respond to your correspondence dated August 31, 2011 regarding the above-referenced matter. As a preliminary matter, based in part on the testimony of Peter Frei during several days of hearing in the matter of Frei v. Johnson, Docket No. 1143 RO 79, it is our position that the counterclaims asserted by your client against my client are baseless and without merit.

Despite the fact that there is no merit to the counterclaims, Mr. Johnson is willing to settle all claims and counterclaims asserted in this matter in order to avoid the expense of litigation.

In addition to a dismissal of the complaint and counterclaims, Mr. Johnson is seeking the following:

- payment of all legal fees incurred to date by Mr. Johnson in the above-referenced matter and the matter of Frei v. Johnson, Docket No. 1143 RO 79;
- a restraining order issued by a court of competent jurisdiction restraining Mr. Frei from having any contact with Mr. or Mrs. Johnson and their respective families, including but not limited to the filing of any new complaints;
- emotional distress damages in the amount of \$5,000.00; and

EXHIBIT 3

Henry L. Rigali, Esq.
September 15, 2011
Re: Johnson v. Frei
Page 2 of 2

- the withdrawal of any charges/complaints by Mr. Frei against Mr. Alex Haney.

This settlement offer will be rescinded if not accepted by September 23, 2011, time being of the essence.

Very truly yours,



Tani E. Sapirstein

cc: Brian Johnson

TES:cdh

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON
Plaintiff

vs.

PETER FREI
Defendant

ATTORNEY'S SUPPLEMENTAL AFFIDAVIT
IN SUPPORT OF MOTION FOR ATTORNEY
FEES

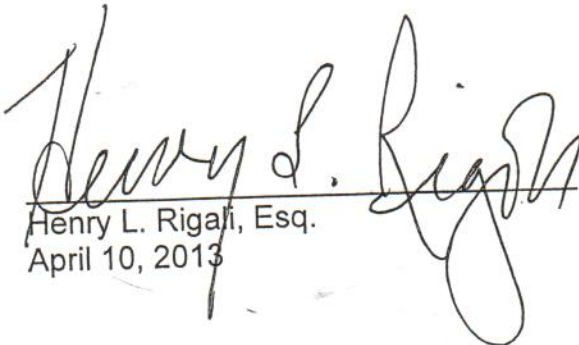
Being duly sworn and upon my oath I hereby depose and say:

1. I am Henry L. Rigali, attorney for Peter Frei. This affidavit addresses factual issues raised in the Defendant's Revised Motion for Attorney Fees and Revised Opposition to Plaintiff's Motion for Attorney Fees.
2. Following a thorough review of the first invoice submitted in support of the Defendant's Motion for Legal Fees, I have identified time spent working on the wiretap aspects of the case as much as possible.
3. I did this because I am in agreement with plaintiff's counsel that as the prevailing party, Frei is entitled to reasonable legal fees incurred only in his civil rights action and other claims that are an integral part of the civil rights claim.
4. As in my view the admissibility and use of Frei's tape recording was instrumental to the development and ultimate proof of the civil rights claim, it would be inappropriate to exclude all such time.
5. Secondly, as I research multiple issues at the same time, it is difficult to surgically remove "only" that time spent on strictly wiretap issues. Little or no time is invoiced for time spent on the assault related claims.
6. As an example, I researched, read and analyzed many civil rights cases involving wiretap law - *Glik*, *Alvarez*, *Jean*, *Bartnicki* and others being examples. I also spoke with ACLU and known civil rights counsel regarding wiretaps in the context of civil rights law.
7. In an effort to comply with the law, I have eliminated time I can identify as having been spent exclusively on non-civil rights issues (i.e., wiretap research) and have reduced by half, blocks of time in which my records indicate I worked on civil rights and other aspects of the case at the same time.

8. Those reductions have been identified in the revised invoice I have submitted to the court. The revised invoice does NOT include time eliminating or reducing hours that arguably should not have been included in the first invoice.
9. Cost of Forensic Tape Expert: For reasons stated in Frei's revised motion, the tape was a crucial piece of evidence necessary to prove Frei's civil rights claim. I contacted Attorney Saperstein 2 or so weeks before trial to ask if she would stipulate to the authenticity of the tape so as to avoid the need and expense to have it authenticated. The original had been in Frei's possession since the day of the incident. She indicated she and her client would have to listen to it before doing so. I went to her office with the tape on 2/19/13 for that purpose. Her client was not there and her computers were down so the tape could not be played. We agreed to meet at another time. I spoke with her again on 2/21 (a week before trial). She was still unwilling to stipulate. We agreed to meet Monday, 2/25/13, the day before trial. By then it was too late. The work had been done and the witness was advised to stand by. On the 25th Attorney Saperstein told me she had her own copy of the tape. On the 26th, the day trial started, she stipulated to the authenticity of the tape.
10. Time spent to establish Frei's legal fees: Time spent putting together my original and revised invoices has not been billed for. Time spent researching case law, drafting the motion and incorporated memo for fees and opposing plaintiff's bogus motion to strike the affidavit submitted in support of the original motion for fees is included. I believe Frei is entitled to an award for these costs.
11. Settlement discussions, Conflict of Interest and Johnson's Legal Fees: In an effort to settle all claims in September of 2011, I proposed to Attorney Saperstein that Johnson and Frei drop their respective claims, execute appropriate releases and move on. I told Attorney Saperstein I thought Johnson had civil exposure for defamation and a civil rights violation, that when all was said and done neither party was likely to walk away with anything other than bills.
12. In her counter-offer, Attorney Saperstein minimized Frei's chances of success; demanded Frei pay legal fees incurred in the defense of Frei's harassment case; stipulate to a restraining order against himself; agree not to file any more complaints; pay \$5,000 in emotional distress damages; and withdraw a pending complaint against a fellow named Haney, a highway department employee accused of assaulting Frei. Attorney's Saperstein's counter-offer is attached to the Revised Motion for Fees as Exhibit 3.
13. Following the jury verdict, I again proposed a settlement whereby the verdicts would stand, the parties would waive payment and receipt of damages, waive appellate rights, pay their own legal fees and execute releases. Attorney Saperstein told me that after consulting with "her people" the offer was rejected.

14. Johnson has the right to reject a settlement proposal and to have his day in court. However, determining the reasonableness of fees, the court should the facts and circumstances behind the rejection of a settlement offers that would have saved tens of thousands of dollars in legal fees on both sides.
15. I did not pick up on it at the time but based on subsequent events I am now satisfied the refusal to settle came from the Town of Holland not Brian Johnson.
16. Further, it is now my belief that the Selectmen of the Town of Holland have authorized public funds to pay for Johnson's legal fees (at least for both the harassment and wiretap cases) and have been calling the shots all along.
17. It is my belief the Town of Holland hired Attorney Saperstein to defend Johnson in the harassment case and authorized her to pursue - and to pay for - the wiretap claim against Frei. Frei appeared *pro se*. The evidence begs the question whether the true purpose of the wiretap suit was to put Frei in his place or to recoup illegally expended public funds.
18. As this matter involves the potential of wrongdoing I have notified the State Ethics Commission and have asked this Court to conduct a hearing to determine the facts.
19. As with Johnson's behavior on 2/19/2011, Frei has maintained the wiretap suit was filed in retaliation for Frei's outspoken criticism of Town officials. If it turns out Johnson, as an elected town official, and the Selectmen colluded to violate the conflict of interest law and/or initiated the wiretap suit to hide or offset the misuse of public funds, additional litigation will certainly follow. In the meantime, Frei should be awarded reasonable legal fees incurred in the investigation and resolution of the source of Johnson's legal fees.
20. The above facts are based upon my personal knowledge and belief and are true.

Signed by me under penalty of perjury.


Henry L. Rigali, Esq.
April 10, 2013



Office of the Sheriff Hampden County

1170 Main Street
P.O. Box 5005
Springfield, MA 01101-5005



Michael J. Ashe Jr.
Sheriff

(413) 732-5772
www.hampdencountysheriff.com

Process Division
Fax (413) 733-6933
(800) 423-5005

ATTY. HENRY RIGALI
78 MAPLE ST.
SPRINGFIELD MA 01105-

413-736-6600

Statement of Account through 03/29/2013. PLEASE RETURN THIS STATEMENT WITH YOUR PAYMENT.

Please identify which invoices you are paying by marking them where indicated.

Sheriff #	Case Caption	Reference #	Contact	Age	Balance
13004069	BRIAN JOHNSON vs PETER FREI			46	30.54
13004072	BRIAN JOHNSON vs PETER FREI			46	37.40
13004074	BRIAN JOHNSON vs PETER FREI			46	37.40
					105.34

Current	31 - 60	61 - 90	Over 90
0.00	105.34	0.00	0.00

HENRY L. RIGALI
ATTORNEY AT LAW
78 MAPLE ST.
SPRINGFIELD, MA 01105

7110

DATE

4/10/13

53-13/110 MA
60001

PAY
TO THE
ORDER OF

Hampden County Sheriff Process Div
one hundred five and 34/100
\$ 105.34
DOLLARS



Bank of America

ACH R/T 011000138

FOR

FREI

Henry Rigali

MP

⑈007110⑈ ⑆011000138⑆ 000560565975⑈

Serving the Cities and Towns of: Agawam, Blandford, Brimfield, Chester, Chicopee, East Longmeadow, Granville, Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery, Palmer, Russell, Southwick, Springfield, Tolland, Wales, Westfield, West Springfield, Wilbraham



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HENRY L. RIGALI
ATTORNEY AT LAW
78 MAPLE ST.
SPRINGFIELD, MA 01105

7110

DATE 4/10/13

53-13/110 MA
60001

PAY
TO THE
ORDER OF

Hampden County Sheriff Process Div \$105³⁴
one hundred five and 34/100 DOLLARS

Bank of America

ACH R/T 011000138

FOR FREI

Henry Rigali

⑈007110⑈ ⑆011000138⑆ 000560565975⑈

Serving the Cities and Towns of: Agawam, Blandford, Brimfield, Chester, Chicopee, East Longmeadow, Granville, Hampden, Holliston, Holyoke, Longmeadow, Ludlow, Monson, Montgomery, Palmer, Russell, Southwick, Springfield, Tolland, Wales, Westfield, West Springfield, Wilbraham

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Hampden County Sheriffs Department
1170 Main Street
P. O. BOX 5005
Springfield, MA 01101-5005
(413) 732-5772 FAX: 733-6933

RE: Brian Johnson vs. Peter Frei
Palmer District Court Civil Action #: 1143 CV 0293

Dear Deputy Sheriff:

Enclosed for immediate service, please find three (3) **Trial Witness Subpoenas** and three (3) copies thereof to be served upon:

1. Kristen La Plante, Clerk, Town of Holland, Keeper fo Records
2. Linda Blodgett, Treasurer, Town of Holland, Keeper of Records
3. Michael Kennedy, 208 Mashapaug Road, Holland, MA 01521

Please provide this office with your completed return of service and invoice to cover service, mileage and the cost of one (1) day of witness fees. Please bill me in the usual course.

Please contact me immediately if you anticipate any difficulty or delay in effecting service and thank you for your prompt assistance.

Sincerely,


Henry L. Rigali, Esquire

ccy-hlr
Enclosures

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Hampden County Sheriffs Department
1170 Main Street
P. O. BOX 5005
Springfield, MA 01101-5005
(413) 732-5772 FAX: 733-6933

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ccy-hlr
Enclosures

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Mr. Michael Kennedy
208 Mashapaug Road
Holland, MA 01521

Re: Brian Johnson vs. Peter Frei
Palmer District Court, Civil Action #: 1143CV293

Dear Mr. Kennedy:

Regarding the subpoena served upon you by the Sheriff and requiring your appearance and testimony in the Springfield District Court on April 18th, 2013 @ 9:00 a.m., please feel free to contact me if you would like to discuss this proceeding.

Thank you for your attention.

Sincerely,


Henry L. Rigali, Esq.

Enclosure

cc:
P. Frei

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON,
Plaintiff

vs.

PETER FREI,
Defendant

SUBPOENA DUCES TECUM
Rule 45, Dist./Mun. Cts. R. Civ. Pro.

TO: Michael Kennedy
208 Mashapaug Road
Holland, MA 01521

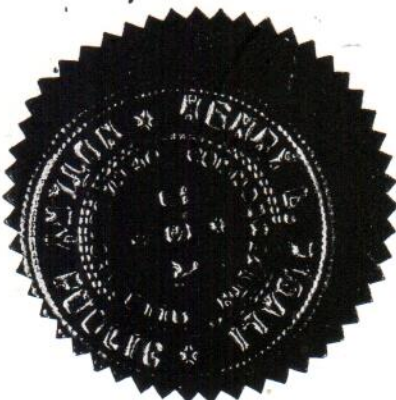
YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts to attend and give testimony before the **Springfield District Court**, Hall of Justice, 50 State Street, Springfield, MA 01103, within and for the County of Hampden on **April 18, 2013 at 9:00 AM**, and from day to day thereafter until the above-named action is heard by said court.

YOU ARE FURTHER REQUIRED TO BRING WITH YOU THE FOLLOWING DOCUMENTS AND ITEMS:

Personal notes or records pertaining to the records described in attached Schedule A.

FAILURE BY AN PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON HIM MAY BE DEEMED A CONTEMPT OF COURT IN WHICH THE ACTION IS PENDING.


Henry L. Rigali, Esq. BBO #41040
Attorney for the Defendant
78 Maple Street, Springfield, MA 01105-1813
(413) 736-6600 FAX: 736-6600
NOTARY PUBLIC
MY COMMISSION EXPIRES: 10/29/2015



Schedule A

Starting on January 1, 2011 through the present, all records in any form, electronic or otherwise, pertaining to the following:

1. Selectmen meeting agendas and minutes in which any matter pertaining to town resident Peter Frei was discussed.
2. Selectmen meeting agendas and minutes in which any matter pertaining to town resident and highway surveyor Brian Johnson was discussed.
3. Selectmen meeting agendas and minutes in which any matter pertaining to legal services provided by Attorney Tani Saperstein of Springfield, MA was discussed.
4. Selectmen meeting agendas and minutes in which any matter pertaining to disputes, litigation or the possibility of litigation involving either the said Peter Frei, Brian Johnson or Attorney Tani Saperstein was discussed.
5. Copies of all records, including but not limited to ledgers, stubs, invoices, vouchers, canceled checks and the like, pertaining to the payment of legal fees by the Town of Holland to Attorney Tani Saperstein in any matter involving the said Brian Johnson or Peter Frei.
6. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to the said Peter Frei was discussed.
7. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to the said Brian Johnson was discussed.
8. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to Attorney Tani Saperstein was discussed.
9. Whether a posted or chance meeting, records of any "meeting" of a "governmental body" of the Town of Holland as those terms are defined in G.L. c. 39 § 23A, in which any matter pertaining to the said Peter Frei; Brian Johnson; Attorney Tani Saperstein; litigation or the possibility of litigation involving them or the payment of legal fees was discussed.

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Ms. Kristin LaPlante, Clerk
Town of Holland
27 Sturbridge Road
Holland, MA 01521

RE: Brian Johnson vs. Peter Frei
Palmer District Court Civil Action #: 1143 CV 0293

Dear Ms. Laplante:

Regarding the subpoena duces tecum being served upon you as record keeper and Clerk, you may avoid the necessity of appearing in the Springfield District Court at 9:00 a.m. on April 18, 2013 by providing the records to the Court ahead of time along with an Affidavit certifying their authenticity and completeness.

If you choose to submit the records in lieu of appearance, please sign and staple the enclosed Record Keeper Affidavit to the subpoena along with the records being provided. Please send the original subpoena, affidavit and records to the Civil Clerk, Springfield District Court, 50 State Street, Springfield, MA 01103 with a cover letter addressed to the Clerk bearing the above case name and docket number. **PLEASE DO SO IMMEDIATELY as all records of this case must be available at the time of the hearing presently scheduled for 9:00 a.m., April 18, 2013.**

In addition, please send a complete copy of the above to my office at the above address. Please contact me immediately with any questions and thank you for your prompt assistance.

Sincerely,


Henry L. Rigali, Esquire

ccy-hlr
Enclosures

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON,
Plaintiff

vs.

PETER FREI,
Defendant

SUBPOENA DUCES TECUM
Rule 45, Dist./Mun. Cts. R. Civ. Pro.

TO: Kristen LaPlante, Town Clerk
Town of Holland, 27 Sturbridge Road
Holland, MA 01521

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YOU ARE FURTHER REQUIRED TO BRING WITH YOU THE FOLLOWING DOCUMENTS AND ITEMS :

See attached Schedule A.

FAILURE BY AN PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON HIM MAY BE DEEMED A CONTEMPT OF COURT IN WHICH THE ACTION IS PENDING.



4/10/2013

A handwritten signature in black ink, appearing to read "Henry L. Rigali", written over a horizontal line.

Henry L. Rigali, Esq. BBO # 41040
Attorney for the Defendant
78 Maple Street, Springfield, MA 01105-1813
(413) 736-6600 FAX: 736-6600
NOTARY PUBLIC
MY COMMISSION EXPIRES: 10/29/2015

Schedule A

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**AFFIDAVIT OF RECORD CUSTODIAN
FILED PURSUANT TO 233 MGL 79E and J**

My name is KRISTIN LAPLANTE. I am the TOWN CLERK and record custodian for the Town of Holland, Massachusetts.

Pursuant to the attached subpoena seeking records described in

Schedule A attached,

Upon my oath, I hereby state and certify under penalty of perjury that the records sought and being provided are kept and maintained by the Treasurer's Office for the Town of Holland in the ordinary and regular course of business and that the attached records are the true, accurate and complete such records in the possession of the Treasurer's Office, relative thereto.

Signed under penalty of perjury:

KRISTIN LAPLANTE, CLERK
Town of Holland, MA

Date on which records are provided: April _____, 2013

Total number of pages being provide including this Affidavit _____ pages.

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Ms. Linda Blodgett
Treasurer, Town of Holland
27 Sturbridge Road
Holland, MA 01521

RE: Brian Johnson vs. Peter Frei
Palmer District Court Civil Action #: 1143 CV 0293

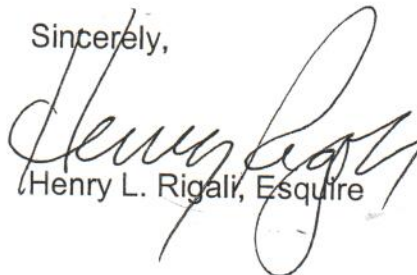
Dear Ms. Blodgett:

Regarding the subpoena duces tecum being served upon you as record keeper and Treasurer, you may avoid the necessity of appearing in the Springfield District Court at 9:00 a.m. on April 18, 2013 by providing the records to the Court ahead of time along with an Affidavit certifying their authenticity and completeness.

If you choose to submit the records in lieu of appearance, please sign and staple the enclosed Record Keeper Affidavit to the subpoena along with the records being provided. Please send the original subpoena, affidavit and records to the Civil Clerk, Springfield District Court, 50 State Street, Springfield, MA 01103 with a cover letter addressed to the Clerk bearing the above case name and docket number. **PLEASE DO SO IMMEDIATELY as all records of this case must be available at the time of the hearing presently scheduled for 9:00 a.m., April 18, 2013.**

In addition, please send a complete copy of the above to my office at the above address. Please contact me immediately with any questions and thank you for your prompt assistance.

Sincerely,


Henry L. Rigali, Esquire

ccy-hlr
Enclosures

Henry L. Rigali
Attorney at Law
78 Maple Street
Springfield, Massachusetts 01105-1813
hrigali@aol.com

Telephone: (413) 736-6600

Tele-facsimile: (413) 736-6606

April 10, 2013

Ms. Linda Blodgett
Treasurer, Town of Holland
27 Sturbridge Road
Holland, MA 01521

RE: Brian Johnson vs. Peter Frei
Palmer District Court Civil Action #: 1143 CV 0293

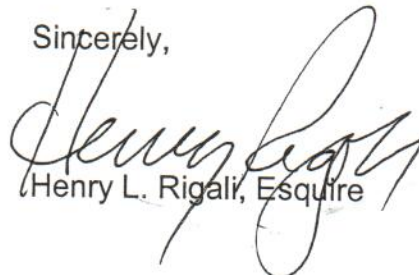
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON,
Plaintiff

vs.

PETER FREI,
Defendant

SUBPOENA DUCES TECUM
Rule 45, Dist./Mun. Cts. R. Civ. Pro.

TO: Linda Blodgett, Treasurer
Town of Holland, 27 Sturbridge Road
Holland, MA 01521

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts to attend and give testimony before the **Springfield District Court**, Hall of Justice, 50 State Street, Springfield, MA 01103, within and for the County of Hampden on **April 18, 2013 at 9:00 AM**, and from day to day thereafter until the above-named action is heard by said court.

YOU ARE FURTHER REQUIRED TO BRING WITH YOU THE FOLLOWING DOCUMENTS AND ITEMS :

Item 5 on attached Schedule A.

FAILURE BY AN PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON HIM MAY BE DEEMED A CONTEMPT OF COURT IN WHICH THE ACTION IS PENDING.




Henry L. Rigali, Esq. BBO #41040
Attorney for the Defendant
78 Maple Street, Springfield, MA 01105-1813
(413) 736-6600 FAX: 736-6600
NOTARY PUBLIC
MY COMMISSION EXPIRES: 10/29/2015

Schedule A

Starting on January 1, 2011 through the present, all records in any form, electronic or otherwise, pertaining to the following:

1. Selectmen meeting agendas and minutes in which any matter pertaining to town resident Peter Frei was discussed.
2. Selectmen meeting agendas and minutes in which any matter pertaining to town resident and highway surveyor Brian Johnson was discussed.
3. Selectmen meeting agendas and minutes in which any matter pertaining to legal services provided by Attorney Tani Saperstein of Springfield, MA was discussed.
4. Selectmen meeting agendas and minutes in which any matter pertaining to disputes, litigation or the possibility of litigation involving either the said Peter Frei, Brian Johnson or Attorney Tani Saperstein was discussed.
5. Copies of all records, including but not limited to ledgers, stubs, invoices, vouchers, canceled checks and the like, pertaining to the payment of legal fees by the Town of Holland to Attorney Tani Saperstein in any matter involving the said Brian Johnson or Peter Frei.
6. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to the said Peter Frei was discussed.
7. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to the said Brian Johnson was discussed.
8. Minutes of Executive Session conducted by the Selectmen in which any matter pertaining to Attorney Tani Saperstein was discussed.
9. Whether a posted or chance meeting, records of any "meeting" of a "governmental body" of the Town of Holland as those terms are defined in G.L. c. 39 § 23A, in which any matter pertaining to the said Peter Frei; Brian Johnson; Attorney Tani Saperstein; litigation or the possibility of litigation involving them or the payment of legal fees was discussed.

**AFFIDAVIT OF RECORD CUSTODIAN
FILED PURSUANT TO 233 MGL 79E and J**

My name is LINDA BLODGETT. I am the Treasurer and record custodian for the Treasurer's Office of the Town of Holland, Massachusetts.

Pursuant to the attached subpoena seeking records described in

Item 5, Schedule A attached,

Upon my oath, I hereby state and certify under penalty of perjury that the records sought and being provided are kept and maintained by the Treasurer's Office for the Town of Holland in the ordinary and regular course of business and that the attached records are the true, accurate and complete such records in the possession of the Treasurer's Office, relative thereto.

Signed under penalty of perjury:

Linda Blodgett, Treasurer
Town of Holland, MA

Date on which records are provided: April _____, 2013

Total number of pages being provide including this Affidavit _____ pages.