

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
C.A. NO. SUCV2016-00969

MASSACHUSETTS ASSOCIATION OF  
COURT INTERPRETERS, INC., MOUSSA  
ABBOUD, SOLEDADE GOMES  
DEBARROS, ANAHIT FLANAGAN,  
NORMA V. ROSEN-MANN, and MICHAEL  
R. LENZ, individually, and on behalf of other  
persons similarly situated,

Plaintiffs,

v.

LEWIS "HARRY" SPENCE, in his capacity  
as Administrator of the Trial Court, and his  
successors in office, MARIA FOURNIER, in  
her capacity as the Director of the Support  
Services Department of the Trial Court Office  
of Court Management and the Office of Court  
Interpreter Services Coordinator for the  
Administrative Office of the Trial Court, and  
her successors in office, and BRUCE  
SAWAYER, in his capacity as Manager of  
Accounting of the Fiscal Affairs Department  
of the Trial Court, and his successors in office,

Defendants,

**DEFENDANTS' MOTION TO CONFORM PLEADINGS**

Defendants Lewis "Harry" Spence, Maria Fournier, and Bruce Sawayer (collectively "Defendants"), current and former employees of the Massachusetts Trial Court ("Trial Court"), move to conform the pleadings with this Court's ruling on the Defendants' Motion to Dismiss. Plaintiffs' original complaint alleged that the Trial Court had improperly classified the named individual plaintiffs as independent contractors rather than as employees of the Trial Court. This

Court dismissed these claims based on the Defendants' Motion to Dismiss. What remains in this lawsuit is a breach of contract claim. But, the currently operative complaint as well as Plaintiffs' Proposed Substituted Amended Complaint ("PSAC") still name incorrect parties.

First, because Plaintiffs' sole remaining claim is a breach of contract action, this action only lies against the Trial Court. Defendants accordingly request that this Court dismiss the named individual Defendants from this lawsuit.

Second, the entity "Massachusetts Association of Court Interpreters, Inc." ("MACI") is not a proper plaintiff in this action. MACI does not have any legal relationship with the Defendants or with the Trial Court, contractual or otherwise. Accordingly, Defendants also request that this Court dismiss MACI as a plaintiff.

### **BACKGROUND**

Plaintiffs in this lawsuit are five individuals who are used by the Trial Court as *per diem* court interpreters, as well as MACI, a nonprofit corporation that, *inter alia*, advocates on behalf of judicial interpreters. See First Am. Compl. (Mar. 23, 2016) ("Am. Compl."); PSAC ¶¶ 1-6. The Office of Court Interpreter Services ("OCIS"), a department of the Trial Court, has hired *per diem* court interpreters since 2006. Am. Compl. ¶ 35; PSAC ¶ 36. These *per diem* interpreters are classified as independent contractors and submit to OCIS a schedule, which indicates their availability for court assignments. Am. Compl. ¶ 38; PSAC ¶ 39. The Trial Court also uses staff court interpreters who it employs directly.

In their initial and amended complaints, Plaintiffs claimed that they should be considered employees rather than independent contractors. See, e.g., Am. Compl. ¶¶ 36, 61-71. On November 3, 2016, this Court granted the Defendants' Motion to Dismiss all of Plaintiffs' claims in regard to their classification as independent contractors because the statute that authorizes



such claims specifically exempts most Commonwealth of Massachusetts employers from the provisions of the statute. *See* Docket #10 (Nov. 3, 2016). What remains after the Court's November 3, 2016 Order is Plaintiffs' claim for breach of contract by the Trial Court. Am. Compl. ¶¶ 72-75; PSAC ¶¶ 62-65.<sup>1</sup> Plaintiffs claim that they have a contract with the Trial Court because of a document called the Standards and Procedures of OCIS ("S&P").

Plaintiffs have now served a "Motion to Substitute Party Defendants and to Re-Define the Class," which Defendants have opposed, in part. With that motion, Plaintiffs have provided a Proposed Substituted Amended Complaint. However, regardless of which version of the Complaint is operative, the individual Defendants and MACI should be dismissed from this action.

### ARGUMENT

The individual named Defendants move this Court to dismiss them as parties to this lawsuit, with prejudice, because a breach of contract claim does not lie against them. In addition, Defendants respectfully request that this Court dismiss MACI as a Plaintiff because MACI has no claim against any of the Defendants or against the Trial Court.

#### **I. Plaintiffs' Breach of Contract Claim Does Not Lie Against Individual Officials of the Trial Court Who Should Be Dismissed from this Action**

Plaintiffs' original complaint challenged the Trial Court's classification of *per diem* court interpreters as independent contractors, rather than as employees. This Court granted the Defendants' Motion to Dismiss all of those claims because they are barred by the Commonwealth of Massachusetts' sovereign immunity. *See* Docket #10 (Nov. 3, 2016).

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<sup>1</sup> Plaintiff's Amended Complaint also asserted claims for quantum meruit and unjust enrichment. In their Proposed Substituted Amended Complaint, Plaintiffs have not reasserted these claims which are generally not cognizable when a plaintiff also asserts a breach of contract claim. *See* PSAC ¶¶ 62-65. Because Plaintiffs are declining to reassert these claims, Defendants do not address them here.

Plaintiffs' remaining claim is for breach of contract. *See* PSAC ¶¶ 62-65. In this claim, Plaintiffs state that the Trial Court's S&P constitutes a contract between the Trial Court and the *per diem* court interpreters, and that the Trial Court has breached this contract. PSAC ¶¶ 62-65. A claim for breach of contract lies against the entity that purportedly entered into the contract—here, the Trial Court. *See* PSAC Ex. A at iii (describing process for developing S&P). And, no individual official may bind his or her employer to contractual terms with implications for the public fisc without express authority. *See Lovering v. Beaudette*, 30 Mass. App. Ct. 665, 668-670 (1991).

Accordingly, Defendants request that this Court dismiss the individual named Defendants from this lawsuit, with prejudice, because no claim lies against them.<sup>2</sup>

## **II. MACI Has Asserted No Claim in this Litigation and Should Be Dismissed as a Party**

Defendants also respectfully request that this Court dismiss MACI as a plaintiff because it has no cause of action against the individual Defendants or against the Trial Court.

In the PSAC, Plaintiffs state that MACI “is a non-profit corporation organized...to advocate for meaningful language access and equal justice to people of limited English proficiency [] and improved interpreting services available to courts of the Commonwealth.” PSAC at pages 1-2. Its purposes include “advocating for fair and just pay and working conditions for all judicial interpreters.” PSAC at page 2. MACI is listed as a party in the “Parties” section of the complaint and in the case caption. PSAC at page 1 & ¶ 1.

But, MACI has asserted no cause of action in this lawsuit. The only remaining claim in this lawsuit is for breach of contract. Plaintiffs assert that the S&P constitutes a contract and that

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<sup>2</sup> Defendants have also presented this argument in opposition to Plaintiffs' Motion to Substitute Party Defendants, insofar as that Motion seeks to replace the Trial Court officials currently named with other Trial Court officials. As stated in that brief, Defendants do not oppose Plaintiffs' proposal to add the Trial Court as a Defendant because the Trial Court would be the proper party for a breach of contract case.

“all members of the plaintiff class are entitled to benefit from it.” PSAC ¶ 64.<sup>3</sup> Plaintiffs make no claim that MACI is a party to this purported contract or otherwise benefits from it. *See also Statewide Towing Ass’n v. City of Lowell*, 68 Mass. App. Ct. 791 (2007) (“a prayer for declaratory relief does not vitiate the requirements of standing”). Accordingly, the Defendants respectfully request that this Court dismiss MACI from this lawsuit.

**CONCLUSION**

For all these reasons, the Defendants respectfully request that this Court conform the pleadings to this Court’s rulings by dismissing the individual named Defendants, with prejudice, and by dismissing MACI as a plaintiff.

Respectfully submitted,

LEWIS “HARRY” SPENCE in his official  
capacity; MARIA FOURNIER in her official  
capacity; and BRUCE SAWAYER in his official  
capacity

By their Attorneys,

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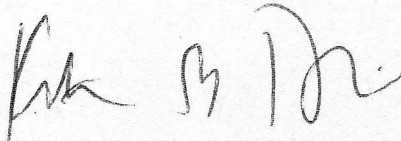
<sup>3</sup> Plaintiffs have recently served a motion to “Re-Define the Class,” despite the fact that Plaintiffs have never moved to certify a class in this case. Defendants have opposed that motion.



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, May 22, 2018, served the foregoing document, upon all parties, by mailing a copy, first class, postage prepaid to:

Alan Jay Rom, Esq.  
Rom Law P.C.  
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A handwritten signature in black ink, appearing to read "Katherine B. Dirks", written over a horizontal line.

Katherine B. Dirks  
Assistant Attorney General