

**EXHIBIT A**

**ADMINISTRATIVE OFFICE OF THE TRIAL COURT  
INTERPRETER DAILY SERVICE RECORD**

Name: Norma V. Mann Vendor/Customer Code # VC6000252104 Date of Service 11/7/19  
 Address: 75 Col. John Gardner Rd Vendor Invoice # 110719 Language Spanish  
Narragansett, RI  
02882

**SECTION A: Interpreting Time**  
 Interpreting Hours: \* 4 1/2 Total Hours: 6 1/2  
 Waiting Hours: 2  
(No Lunch Time)  
 \* IF INTERPRETING HOURS IS "0" GIVE REASON IN "CASE NAME" SECTION

**A.M.** Judge: FINNERTY Court: Fall River District  
 Case Names: Luis Colom Docket # 1932 MH0370  
Alex Delgado - Ruiz 30 1932 CR 0310  
Raiza Llanos 1 1/2 hrs 1932 RD  
(Use back for additional Names & Docket #s)

**P.M.** Judge: \_\_\_\_\_ Court: \_\_\_\_\_  
 Case Names: Luis Colom Docket # 1932 MH0370  
1 1/2 hrs  
(Use back for additional Names & Docket #s)

**COMPENSATION**

<input checked="" type="checkbox"/> Certified / Qualified Check one: <input checked="" type="checkbox"/> \$300 Full Day <input type="checkbox"/> \$200 Half Day <input type="checkbox"/> Screened Check one: <input type="checkbox"/> \$200 Full Day <input type="checkbox"/> \$125 Half Day Additional _____ Total <u>300</u>	<b>SECTION B: Mileage and Travel Time</b> Total Miles <u>64</u> x \$.45 = <u>28.80</u> -50 = <u>14</u> Adjusted Mileage +25 = <u>.56</u> x \$10.00 = <u>5.60</u> Tolls/Public Transportation (Attach Receipts) _____ Total <u>34.40</u>	<b>SECTION B: Mileage and Travel Time for 2 courts.</b> Total Miles _____ x \$.45 = _____ +25 = _____ x \$10.00 = _____ Tolls/Public Transportation (Attach Receipts) _____ Total _____
	Total Compensation Due (Section A+B) <u>334.40</u>	

**SERVICE CONFIRMATION**

THE FIRST JUSTICE, CLERK MAGISTRATE, COURT LIAISON OR AUTHORIZED SIGNATORY MUST COMPLETE THIS SECTION.  
 I have reviewed and approved the case assignment and attendance information of the above-named interpreter. Please initial attendance confirmation.

Please Print Name: Assistant Clerk Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: 11-7-19

**VENDOR'S CERTIFICATION**

I CERTIFY THAT THE SERVICES WERE RENDERED AS SET FORTH ABOVE

SIGNATURE: Norma V. Mann DATE: 11/7/19

**ATTENDANCE CONFIRMATION**

Morning Session Time In: <u>9 AM</u> Time Out: <u>1 P</u>	Afternoon Session Time In: <u>2 P</u> Time Out: <u>4:30 P</u>
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**EXHIBIT B**



## COMMONWEALTH OF MASSACHUSETTS

Administrative Office of the Trial Court  
Office of Court Interpreter Services

Two Center Plaza  
Boston, Massachusetts 02108

(T) 617.878.0343 (F) 617.367.9293

I have reviewed the *Standards and Procedures* of the Office of Court Interpreter Services (OCIS), including Section 4, *The Code of Professional Conduct for Court Interpreters of the Trial Court*.

I agree to abide by and uphold the *Standards and Procedures* in their entirety and to be bound by the *Code of Professional Conduct for Court Interpreters of the Trial Court* when providing interpretation services in any proceeding before any Trial Court of the Commonwealth, before any attorney in connection with any matter that is brought before a court, or in any other activity ordered by a court or conducted under the supervision of a court.

I agree to interpret truthfully and impartially, using my best skills and judgment, in accordance with the standards prescribed by law and the ethics of the interpreter profession.

\_\_\_\_\_  
Interpreter's Name (print)

\_\_\_\_\_  
Interpreter's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
A copy of this statement shall be filed with the Office of Court Interpreter Services (OCIS), pursuant to Section 4.02 of the *Code of Professional Conduct/OCIS Standards and Procedures*.

# EXHIBIT C

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2016-969-A

MASSACHUSETTS ASSOCIATION OF COURT INTERPRETERS, INC. & others<sup>1</sup>

vs.

LEWIS "HARRY" SPENCE, in his capacity as Administrator of the Trial Court, and his successors in office & others<sup>2</sup>

MEMORANDUM OF DECISION AND ORDER  
ON DEFENDANTS' MOTION TO DISMISS  
PLAINTIFFS' AMENDED COMPLAINT

The individual plaintiffs are "per diem" court interpreters for the Trial Court. The defendants are Trial Court employees sued in their official capacities. The plaintiffs' Amended Complaint contains the following counts: violation of G. L. c. 149, § 148B (Count I), violation of the Fair Labor Standards Act (Count II), "Standards and Procedures constitutes a contract" (Count III), "S&P in violation of federal law" (Count IV), unjust enrichment (Count V), quantum meruit (Count VI), retaliation (Counts VII, VIII, and X), and breach of contract (Count IX). The matter is before the court on the defendants' Motion to Dismiss Plaintiffs' Amended Complaint. For the reasons that follow, the defendants' Motion to Dismiss is **ALLOWED** in part and **DENIED** in part.

Notice sent  
11.03.16  
JOH  
NR  
JOH  
AJR  
RLPC  
(MD)

<sup>1</sup> Moussa Abboud, Soledade Gomes DeBarros, Anahit Flanagan, Norma V. Rosen-Mann, and Michael R. Lenz, individually, and on behalf of other persons similarly situated

<sup>2</sup> 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 Sawyer, in his capacity as Manager of Accounting of the Fiscal Affairs Department of the Trial Court, and his successors in office.

## BACKGROUND

The court accepts as true the allegations in the complaint and draws every reasonable inference in favor of the plaintiff. Dartmouth v. Greater New Bedford Regional Vocational Technical High School Dist., 461 Mass. 366, 374 (2012).

The Office of Court Interpreter Services (“OCIS”), a department of the Trial Court, has twenty-seven in-house court interpreters. To fill a shortfall, OCIS has relied on approximately 180 court interpreters who work on a *per diem* basis. The Trial Court classifies the *per diem* interpreters as independent contractors and requires them to submit a monthly or bi-monthly schedule, indicating their availability for assignments. The *per diem* interpreters do the same work as staff court interpreters.

The plaintiffs allege unequal treatment between staff interpreters and themselves. They also claim that they should be considered employees rather than independent contracts, are inconsistently paid for their half or full day commitments, do not receive adequate travel expenses, do not receive pay in a timely manner, and are occasionally replaced by Screened Interpreters whom they allege are less qualified. Finally, the plaintiffs allege that OCIS improperly retaliated against them for bringing complaints concerning pay.

## DISCUSSION

To withstand a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a plaintiff’s complaint must contain factual “allegations plausibly suggesting (not merely consistent with) an entitlement to relief, in order to reflect [a] threshold requirement . . . that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief.” Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1966 (2007) (internal

quotations omitted). While a complaint need not set forth detailed factual allegations, a plaintiff is required to present more than labels and conclusions, and must raise a right to relief “above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” Iannacchino, 451 Mass. at 636, quoting Bell Atl. Corp., 127 S. Ct. at 1964-1965 (internal quotations omitted).

### **I. Count I – Violation of G. L. c. 149, § 148B**

The plaintiffs claim that the defendants have violated G. L. c. 149, § 148B because they have misclassified them as independent contractors and not employees.<sup>3</sup> The defendants contend that the plaintiffs’ claim is barred by sovereign immunity.

The doctrine of sovereign immunity provides that the Commonwealth “cannot be impleaded into its own courts except with its consent.” Walter E. Fernald Corp. v. The Governor, 471 Mass. 520, 523 (2015) (citation omitted). Sovereign immunity may be waived expressly by statute or implicitly, where “governmental liability is necessary to effectuate the legislative purpose.” Woodward Sch. For Girls, Inc. v. Quincy, 469 Mass. 151, 177 (2014) (citation and quotations omitted). In reading a statute to determine whether there has been an implied waiver of sovereign immunity, courts have been “reluctant to infer a private cause of action from a statute in the absence of some indication from the Legislature supporting such an inference.” Loffredo v. Center for Addictive Behaviors, 426 Mass. 541, 544 (1998).

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<sup>3</sup> The plaintiffs have brought suit under G. L. c. 149, § 150 which provides that an employee claiming to be aggrieved by a violation of G. L. c. 149, § 148B can “institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits.” Further, “[a]n employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys’ fees.” G. L. c. 149, § 150.



Nothing in G. L. c. 149, §148B expressly provides a private right of action against the Commonwealth. Thus, the court must consider whether the Legislature has, by necessary implication, authorized a private right of action against the Commonwealth for failing to comply with G. L. c. 149, §148B. While there is no appellate case in the Commonwealth in which a court has considered whether the Commonwealth has waived its sovereign immunity for claims under G. L. c. 149, §148B, this court recently addressed the issue in Jergensen v. Massachusetts Historical Comm'n, 2015 Mass. Super. LEXIS 58 (May 13, 2015) (Krupp, J.). In Jergensen, Judge Krupp considered the language used in Section 148<sup>4</sup> because of its “interrelationship” with §148B. Jergensen, 2015 Mass. Super. LEXIS 58 \* 5. Theoretically, if the Commonwealth misclassifies one of its workers covered by Section 148 as an independent contractor in violation of Section 148B, and as a result fails to pay the worker as required under Section 148, a private cause of action will lie under G. L. c. 149, §§148 and 150. Jergensen, 2015 Mass. Super. LEXIS 58 \*10-11. Judge Krupp noted that Section 148 contains specific provisions for government employers which define the scope of the government employers’ obligations to comply with the timing obligations for payment of earned wages under Section 148. Jergensen, 2015 Mass.

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<sup>4</sup> G. L. c. 149, § 148 provides, in relevant part:

Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week . . . ; and the commonwealth, its departments, officers, boards and commissions shall so pay every mechanic, workman and laborer employed by it or them, and every person employed in any other capacity by it or them in any penal or charitable institution, and every county and city shall so pay every employee engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee engaged in its business if so required by him . . . .

Super. LEXIS 58 \*7. The Commonwealth's obligations under Section 148 apply to a narrower group of employees than are covered by Section 148 if employed privately or by a county or municipality. Jergensen, 2015 Mass. Super. LEXIS 58 \*7-8. Specifically, the Commonwealth is obligated to pay its mechanics, workmen, laborers, and every person employed in any other capacity at a penal or charitable institution in accordance with Section 148. See G. L. c. 149, § 148. Judge Krupp determined that because Section 148 applies only to certain limited categories of state employees, the waiver of sovereign immunity to allow claims under Section 148 is similarly limited only to those employees. Jergensen, 2015 Mass. Super. LEXIS 58 \*9, citing Newton v. Commissioner of the Dep't of Youth Servs., 62 Mass. App. Ct. 343, 347 (2004) (stating that time limits for payment of wages under § 148 apply only to Commonwealth employees who are a "mechanic, workman [or] laborer" or are employed in any other capacity "in a penal or charitable institution").

The plaintiffs ask this court to abrogate sovereign immunity in this case. See Randall v. Haddad, 468 Mass. 347, 356 (2014), quoting Morash & Sons, Inc. v. Commonwealth, 363 Mass. 612, 615 (1973) (court has long recognized that "sovereign immunity is a judicially created common law concept," and, as such, is subject to judicial abrogation or limitation); see also Walter E. Fernald Corp., 471 Mass. at 524, quoting Whitney v. Worcester, 373 Mass. 208, 209 (1977) and Morash & Sons, Inc., 363 Mass. at 621 (recognizing that "an overly comprehensive rule of sovereign immunity is 'unjust and indefensible as a matter of logic and sound public policy'" because "sovereign immunity creates an 'inversion of the law,' shielding the government from liability for wrongs that ordinarily would be redressed."). The Supreme Judicial Court has identified three "reasons of justice and public policy" where it would continue

to apply sovereign immunity: if sovereign immunity would (1) protect the discretionary functions of a public official, (2) prevent the unauthorized actions of a public official, or (3) shield the public fisc from the specter of virtually unlimited liability. Walter E. Fernald Corp., 471 Mass. at 524-525, citing Randall, 468 Mass. at 358-359 (purposes of sovereign immunity not served where, in violation of court order, public employee deposited funds in State retirement account); Bates v. Director of the Office of Campaign & Political Finance, 436 Mass. 144, 174 (2002) (purposes not served where Legislature failed to appropriate funds to effect law enacted by ballot measure).

The plaintiffs, however, have not provided the court with any reason that would allow the court to waive sovereign immunity in this case. In fact, the trial court's classification of certain employees as independent contractors would seem to be a discretionary function of the court. See Patrazza v. Commonwealth, 398 Mass. 464, 467 (1986) (generally, discretionary conduct is "characterized by the high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning"); Whitney, 373 Mass. at 217 ("appropriate dividing line" from governmental immunity "falls between those functions which rest on the exercise of judgment and discretion and represent planning and policymaking and those functions which involve the implementation and execution of such governmental policy or planning"). Further, the plaintiffs have stated in no uncertain terms that they are not mechanics, workmen, or laborers nor are they persons performing work for a penal or charitable organization. See e.g., Plaintiffs' Opposition to Defendants' Motion to Dismiss, page 3 ("Plaintiffs are not going to insult the intelligence of this Court by trying to compare themselves to persons performing work for a penal or charitable organization, or workmen, laborers, or

mechanics . . . .”). Indeed, the plaintiffs have stated that they are “highly-skilled and trained professionals . . . .” Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, page 3. Thus, the Commonwealth’s waiver of sovereign immunity to allow mechanics, workmen, and laborers or persons performing work for a penal or charitable organization to bring claims under Section 148 does not apply to them. See Jergensen, 2015 Mass. Super. LEXIS 58 \*9.

As the court cannot waive sovereign immunity in this case, the plaintiffs’ claim for violation of G. L. c. 149, § 148B cannot stand.<sup>5</sup>

## **II. Counts III and IX - Breach of Contract**

### **A. Count III**

Court interpreters are required to sign a document stating that they will abide by and uphold the *Standards and Procedures of the Office of Court Interpreter Services* (“*Standards and Procedures*”) when providing interpretation services for the Trial Court. The plaintiffs claim that the *Standards and Procedures* constitutes a contract between it and the Trial Court and that the Trial Court has violated certain provisions of that contract.

Section 7.01 of the *Standards and Procedures* provides that the rate of compensation for

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<sup>5</sup> The plaintiffs conceded in open court that if the court does not waive sovereign immunity for its claim regarding violations of G. L. c. 149, § 148B, then its claims for retaliation (Counts VII, VIII, and V) also fail. See G. L. c. 149, § 148A (“No employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek his or her rights under the wages and hours provisions of this chapter.”).

Further, the plaintiffs’ claims for violation of the Fair Labor Standard Act (Count II) and for violation of 29 C.F.R. § 785.35 (Count IV) are dismissed as the plaintiffs did not address the defendants’ arguments regarding these claims in their opposition papers or at the hearing. See also Edelman v. Jordan, 415 U.S. 651, 673 (1974), overruled on other grounds, Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989) (citation omitted) (court will find waiver of a State’s constitutional protection under the Eleventh Amendment only when stated “by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction”).

per diem court reporters is set by the Committee for the Administration of Interpreters for the Trial Court. Section 7.02 states that

Compensable time shall be calculated beginning at the time the court interpreter arrives at the assigned court and reports to the Court Liaison. A 'half day' shall be calculated as time spent up to and including four hours of actual interpreting or the time when the court interpreter is available and waiting to perform actual interpreting. 'Full day' means a period of time that is more than four hours. . . . If the court interpreter is present at the courthouse for the four-hour period, the court interpreter will receive payment for a half day as long as the court interpreter is available for the full four hour period or is otherwise excused from providing services during that period by OCIS.

There is nothing in the *Standards and Procedures* regarding an hourly payment system except Section 7.04, which is not relevant here, stating that per diem court interpreters will be paid an hourly rate after eight hours of work. The plaintiffs have alleged, in their complaint, and in affidavits attached to their complaint, that the Trial Court changed its interpretation of this provision in 2014 and started paying them an hourly rate, as opposed to the half-day/full-day rate set forth in Section 7.02. At this stage, the court determines that the plaintiffs have sufficiently alleged a violation of the *Standards and Procedures* against the defendants. Thus, the defendants' motion to dismiss with respect to Count III is denied.

#### **B. Count IX**

Section 4.05(j) of the *Standards and Procedures* states: "Court interpreters shall wear their official identification badges in such a manner as to make their presence clear to all persons in court in need of their services." The plaintiffs claim that after they filed their complaint, the defendants failed to renew their identification badges in retaliation for their filing of the complaint and also in violation of the *Standards and Procedures*.

The court agrees with the defendants that, at most, Section 4.05(j) creates a condition

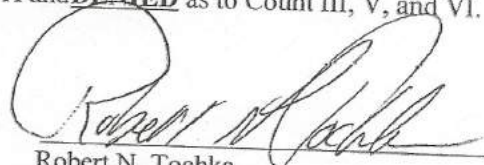
(wearing identification badges) that cannot be enforced until the defendants provide the plaintiffs with identification badges. See Twin Fires Inv., LLC v. Morgan Stanley, 445 Mass. 411, 420-421 (2005) (citation and quotations omitted) (“A condition precedent defines an event which must occur before a contract becomes effective or before an obligation to perform arises under the contract. If the condition is not fulfilled, the contract, or the obligations attached to the condition may not be enforced.”). Thus, there is no breach of contract and Count IX is dismissed.

### **III. Counts V and VI - Unjust Enrichment and Quantum Meruit**

The defendants argue that these claims should be dismissed because the plaintiffs have alleged that a contract exists. See Boswell v. Zephyr Lines, Inc., 414 Mass. 241, 250 (1993) (“Recovery in quantum meruit presupposes that no valid contract covers the subject matter of a dispute. Where such a contract exists, the law need not create a quantum meruit right to receive compensation for services rendered.”). The parties, however, have not briefed the issue of whether the *Standards and Procedures* can be considered a contract between the plaintiffs and the Trial Court. Thus, the court will not dismiss the unjust enrichment and quantum meruit claims at this stage as the plaintiffs have alleged that they performed services for which they were not properly compensated.

**ORDER**

For all of these reasons, it is hereby **ORDERED** that Defendants' Motion to Dismiss is **ALLOWED** as to Counts I, II, IV, VII, VIII, IX, and X and **DENIED** as to Count III, V, and VI.



Robert N. Tochka  
Associate Justice

Dated:

11/3/16

**EXHIBIT D**



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 2016-00969

MASSACHUSETTS ASSOCIATION OF COURT )  
INTERPRETERS, INC., MOUSSA ABOUD, )  
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 )  
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' RESPONSES AND OBJECTIONS TO PLAINTIFFS'**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Massachusetts Rules of Civil Procedure and Superior Court Rule 30A, Defendants Lewis "Harry" Spence, Maria Fournier, and Bruce Sawyer, as, respectively, the Administrator of the Trial Court, 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 the Manager of Accounting of the Fiscal Affairs Department of the Trial Court, in their official capacities

(collectively, "Defendants"), serve these responses and objections to the Plaintiffs' Request for Production of Documents, dated February 1, 2017.

### GENERAL OBJECTIONS

1. Defendants object to these Requests to the extent that they are vague and ambiguous, overly broad, unduly burdensome, are not reasonably calculated to lead to the discovery of admissible evidence, or seek documents and information that are not relevant to the claims or defenses of any part to this action.

2. Defendants object to these Requests to the extent that they seek discovery of the mental impressions, conclusions, or opinions of counsel; documents subject to the attorney-client privilege, or any other privilege; documents subject to the qualified protection for litigation work product; or documents that are personal, confidential or proprietary and protected from disclosure by others laws or agreements. Any inadvertent production of such documents shall not be deemed a waiver of any privilege or work-product protection for such documents.

3. Defendants object to the Requests to the extent that the information requested is protected from disclosure by the Fair Information Practices Act, G. L. c. 66A.

4. Defendants will produce documents pursuant to the Requests without waiver of or prejudice to Defendants' right to raise later objections to the relevance, materiality, or admissibility of the produced documents.

5. Defendants object to these Request to the extent they seek documents and information that are equally available to Plaintiffs, are publicly available, and/or are already within Plaintiffs' possession, custody and control.

6. Defendants object to these Requests to the extent they seek documents that pertain solely to claims that were dismissed by the Superior Court in its Memorandum of Decision and

Order on Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, dated November 3, 2016 ("November 3, 2016 Order"). Defendants will respond only to the extent that the Requests seek documents that are relevant to Plaintiffs' surviving claims pursuant to the November 3, 2016 Order.

7. Defendants object to these Requests to the extent they seek documents that pertain to causes of action that are barred by the statute of limitations. Defendants will respond only to the extent that the Requests seek documents that pertain to causes of action that arose on or after October 15, 2012 ("Relevant Time Period").

8. Defendants object to these Requests to the extent they seek documents that do not pertain to the individually named Plaintiffs in this action, Moussa Abboud, Soledade Gomes Debarros, Anahit Flanagan, Norma V. Rosen-Mann, and Michael R. Lenz (collectively, "Individual Plaintiffs"). Defendants will respond only to the extent that the Requests seek documents that pertain to the claims of the Individual Plaintiffs.

9. Defendants object to the instruction in the Requests to indicate "[i]f no documents exist satisfying any numbered request" to the extent that such instruction purports to impose obligations inconsistent with and broader than those set forth in paragraph 3 of Superior Court Rule 30A. Defendants will serve supplemental responses no later than 10 days after the completion of its document production pursuant to paragraph 3(b) of Superior Court Rule 30A.

10. Any undertaking by Defendants to produce documents within the scope of any specific Request is not intended as, and should not be construed as, a representation that there exist documents within the scope of such a Request that are within Defendants' possession, custody or control. Such a response is instead intended only as, and should be construed only as, a representation that, subject to any objections, Defendants have conducted or will conduct a

reasonably diligent search for documents within the scope of such Request, and will produce non-privileged documents in accordance with Defendants' response that are identified, if any.

11. Defendants object to the definitions of the terms "document," "records," "defendants," "plaintiffs," "identify," "MACI," and "Trial Court" to the extent that they purport to impose obligations inconsistent with and broader than those set forth in paragraph 1(c) of Superior Court Rule 30A. Defendants further object to the definition of the term "MACI" to the extent that it is premised on an assertion that a class has been certified in this action.

12. Defendants respond to these requests in their official capacities, on behalf of the Trial Court, and not on behalf of any other agency, division, or part of the Commonwealth of Massachusetts. In order to locate documents in connection with Defendants' responses to Plaintiffs' requests, and subject to and without waiving the General and Specific Objections, Defendants have searched or will search hard copy and electronic storage locations in Defendants' possession, custody or control.

### **SPECIFIC RESPONSES AND OBJECTIONS**

Subject to and without waiving the foregoing General Objections, Defendants respond as follows:

#### **REQUEST NO. 1**

Please identify name, address, telephone number, and position of the person(s) providing the information in each request.

#### **RESPONSE NO. 1**

Defendants object to this Request on the grounds that it falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things that Defendants are capable of physically producing. Defendants will respond, subject to objections, to interrogatories requesting this information properly served pursuant to Mass. R. Civ. P. 33.

## REQUEST NO. 2

For each court interpreter considered by defendants to be a *per diem* independent contractor in the span of the following years: 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, or from the first year such each *per diem* contractor was hired at any time after October 15, 2009, and up to and including the date of production of the documents requested, all documents including, but not limited to the Massachusetts Management Accounting Reporting System (“MMARS”), detailing or showing:

- a) Whether each said interpreter is certified or screened, the date each such interpreter was hired by OCIS, and the date each certified interpreter received his/her certification;
- b) Monthly, bi-monthly, or quarterly schedules of availability submitted to OCIS by each court interpreter considered by defendants and OCIS to be a *per diem* independent contractor;
- c) Dates each such *per diem* court interpreter was assigned to work for any and each court, for any district attorney (e.g. grand jury), for any probation department, or any other specific entity served by OCIS;
- d) Number of Limited English Proficient (“LEP”) persons served in each court by each *per diem* independent contractor for each day that each *per diem* independent contractor was assigned to work in each of the above said years;
- e) Total hours each *per diem* independent contractor worked in each of the above said years;
- f) Total hours each Spanish and Portuguese *per diem* interpreter worked in each month, and each of the above said years;
- g) Total actual interpreting hours each court *per diem* interpreter spent each half day and/or full day when multiple LEP cases, long hearings, and on-going trials were involved;
- h) Records of whether such long working hours by the *per diem* interpreter was supported or not supported by a working partner that is often a standard requirement for a on-going (sic) trial including a full-day trial;
- i) Records of all instances when court had requested two or three interpreters for a case while OCIS sent only one interpreter;
- j) Records of the differences, on daily basis, between the number of requests from each courthouse and the number of interpreters assigned to the said court in the above said years;
- k) Records of all telephonic interpreting being assigned to Language Line instead of assign a (sic) in-person interpreter to each of the courthouse (sic) on each day when Language Line was being utilized;
- l) All records including but not limited to case name, docket number, language needed, charge(s), and the type of court procedure for which all such Language Line services were utilized;
- m) E-mails to and from each *per diem* interpreter communicating, after receiving a weekly schedule and/or a last minute assignment, as to whether he/she has a problem with it;
- n) Records of those Spanish or Portuguese *per diem* interpreters who were routinely assigned either by OCIS or requested through the court to multiple cases ranging from 6 to +20 and/or records of routine “Automatic Morning Coverage” assignment to the same *per diem* court interpreter without any limitation on the number of the cases per morning;

- o) Records of all "Automatic Morning Coverage" assignments which resulted in "Full Day Coverage";
- p) Records of each day that each *per diem* interpreter worked between 1:00 p.m. and 2:00 p.m., and the amount of payment, if any, such *per diem* court interpreter received, with a full explanation to such amount, or non-payment, for each such *per diem* interpreter working between 1:00 p.m. and 2:00 p.m.;
- q) Records reflected on all *per diem* court interpreters' Daily Service Records ("DSRs") showing travel time spent by each *per diem* court interpreter between 1:00 p.m. and 2:00 p.m. in an effort to arrive on time for the afternoon session at the next court location;
- r) Records of each *per diem* interpreter who ended up working for a full-day per court's request but was not paid for the full-day because OCIS had assigned such *per diem* interpreter to work for half-day only;
- s) Copies of all invoices, digital and hard copy, submitted by each *per diem* court interpreter and the date each such invoice was received by OCIS; and
- t) Records of payments along with payment vouchers from the OCIS computer system of each such invoice submitted by court interpreters considered by defendants to be *per diem* independent contractors, including, but not limited to, the date each such payment was issued, deductions made for any reason and each such reason, if any, for each such deduction, payment for mileage, payment for travel time, payment time spent in transit from court to court, including, but not limited to, traveling from court to home and to the newly assigned court when each *per diem* interpreter was called upon, and any and all other records from the data base of the OCIS Fiscal Department.

## RESPONSE NO. 2

Defendants object on the grounds that the Request is overly broad and unduly burdensome, and seeks documents that are not relevant to the claims or defenses of any party to this action, including documents that do not pertain to the Individual Plaintiffs in this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "considered by defendants," "hired," "worked," "multiple LEP cases," "long hearings," "on-going trials," "such long working hours," "supported," "last assignment," "whether he/she has a problem with it," "routinely assigned," "Automatic Morning Coverage," "Full Day Coverage," "full explanation," "full-day," "half-day," and "newly assigned court." Defendants further object on the grounds that the Request is argumentative and premised on legal and factual conclusions regarding the employment status and practices of *per diem* court interpreters. Defendants further object on the grounds that the Request seeks documents that are not within Defendants' possession, custody or control. Defendants further object on the ground that paragraphs (g), (n) and (t) of the Request are unintelligible.

Subject to and without waiving the foregoing General and Specific Objections, Defendants respond as follows:

With respect to paragraph (a), Defendants will produce records sufficient to show the certification status of each of the Individual Plaintiffs, the dates on which the Individual Plaintiffs first provided court interpreter services to OCIS, and the dates on which the Individual Plaintiffs became certified to provide services to OCIS.

With respect to paragraph (b), Defendants will conduct a reasonably diligent search for schedules of availability submitted to OCIS by the Individual Plaintiffs during the Relevant Time Period, and will produce responsive documents, if any.

With respect to paragraph (c), Defendants will produce Daily Service Records ("DSRs") for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (d), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request.

With respect to paragraph (e), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (f), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (g), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

Defendants object without further response to paragraph (h).

With respect to paragraph (i), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request.

With respect to paragraph (j), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request.

With respect to paragraph (k), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request, as the requests for Language Line services are made by the respective courts directly to Language Line.

With respect to paragraph (l), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request, as the requests for Language Line services are made directly by the respective courts to Language Line. Defendants will produce invoices submitted to the Trial Court for services provided by Language Line during the Relevant Time Period.

Defendants object without further response to paragraph (m).

Defendants object without further response to paragraph (n).

With respect to paragraph (o), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (p), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (q), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (r), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (s), Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

With respect to paragraph (t), Defendants will produce DSRs and payment request commodity forms for the Individual Plaintiffs for the Relevant Time Period.

### **REQUEST NO. 3**

Records showing a break-down list of payments based on each payment voucher for each for each [sic] and all payment vouchers that the OCIS Fiscal Department issued to each *per diem* court interpreter for each year beginning with 2009 (October 15th), such break-down of payments showing the amount of each payment for each half-day/full-day that each *per diem* court interpreter worked.

### **RESPONSE NO. 3**

Defendants object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks documents that are not relevant to the claims or defenses of any party to this action, including documents that do not pertain to the five Individual Plaintiffs in this action. Defendants further object on the grounds that the Request is argumentative and premised on factual conclusions regarding the payment records of the Trial Court. Defendants further object on the grounds that the Request is unintelligible. Defendants further object to the extent that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things that Defendants are capable of physically producing.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce DSRs and payment request commodity forms for the Individual Plaintiffs for the Relevant Time Period.

### **REQUEST NO. 4**

For each staff court interpreter employed by OCIS for each or part of the years 2009 (beginning on October 15th), 2010, 2011, 2012, 2013, 2014, 2015, 2016, and up to and including the date of production of the documents requested, all documents detailing or showing:

- a) The number of LEPs served during each court appearance on each date by the staff court interpreter;



- b) The parking tickets or hotel costs submitted by and reimbursed to each staff court interpreter for each day such parking and hotel expenses incurred by each such staff court interpreter;
- c) The amount of overtime billed by each staff court interpreter for each day when such over-time occurred;
- d) Morning and afternoon check-in time for each staff court interpreter for each day and if any monetary penalty of late arrival was imposed on the staff court interpreter
- e) The salary earned by each staff court interpreter in said year(s) and the most recent contracted increase amount;
- f) Benefits received by each staff court interpreter during said year, and its value in dollars, including, but not limited to, retirement benefits, paid vacation days, sick days, personal days for any reason, time, or for any other category; and
- g) Any other deductions and reasons for each deduction made to each of the staff court interpreters in said year(s).

#### **RESPONSE NO. 4**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "served," "check-in time," "benefits," and "deductions."

#### **REQUEST NO. 5**

All documents reflecting the budget allocated for staff court interpreters, the budget allocated for *per diem* independent contractors, and the budget allocated for interpreters for the deaf and hard of hearing in said years.

#### **RESPONSE NO. 5**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "budget" and "allocated." Defendants further object on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs.

#### **REQUEST NO. 6**

All documents or records regarding the annual expenditure for court interpreter services, of which how much was paid in total to *per diem* interpreters in 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016, including but not limited to:

- a) All records of total annual payments to all *per diem* interpreters in 2009 (beginning on October 15th), 2010, 2011, 2012, 2013, 2014, 2015, and 2016, with a breakdown payment to each individual *per diem* court interpreter
- b) All records of expenditure on other interpreter related services including but not limited to the installation of video remote devices in each courthouse since October 15, 2009, the cost of the system for Language Line telephonic interpreting, any office related expenses that was part of the interpreters' budget, as well as any interpretation and/or translation agencies hired to provide additional over-the- phone or on-site language services including but not limited to Baystate Interpreters, Benoit Language Services, Global Link Translations, International Translation Company, Language Bridge, Language Connections, Language Line Services, Optimal Phone Interpreters, Transfluenci, Translations Interamerica, and other such contractors such as out-of-state interpreters directly hired by OCIS to interpret for trials, and all related expenditures which was part of the total expenditure for the Trial Court Interpreter Services in each said year since October 15, 2009; and
- c) all records for other costs of running interpreter services, including, but not limited to, legal services for the administrative staff of OCIS, extra costs, if any, for OCIS Fiscal Department that processes *per diem* interpreters' invoices, office furniture, office supplies, office warehouse storage for records of past and current DSR's, digital record system, and any other costs which was part of the total expenditure for the Trial Court Interpreter Services in each said year since October 15, 2009.

#### **RESPONSE NO. 6**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "court interpreter services," "other interpreter related services," "video remote devices," "office related expenses," "language services," "running interpreter services," "legal services," and "extra costs." Defendants further object on the grounds that the Request seeks documents that are not within Defendants' possession, custody or control. Defendants further object on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce DSRs and payment request commodity forms for the Individual Plaintiffs for the Relevant Time Period.

#### **REQUEST NO. 7**

All documents reflecting the number of *per diem* court interpreters in each of the languages served leaving OCIS each year, and the number of *per diem* court interpreters in each language hired/contracted by OCIS in each year from October 15, 2009 to the present.

### **RESPONSE NO. 7**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms “languages served,” “leaving OCIS,” and “hired/contracted.” Defendants further object on the grounds that the Request is argumentative and premised on legal and factual conclusions regarding the employment status of *per diem* court interpreters.

### **REQUEST NO. 8**

The total and itemized breakdown of payments paid to each interpreter from outside of Massachusetts for criminal trials, including but not limited to the murder case of at Essex Superior Court in February, April, and May 2016.

### **RESPONSE NO. 8**

Defendants object on the grounds that the Request seeks documents or information that is not relevant to the claims or defenses of any party to this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the term “each interpreter from outside Massachusetts.” Defendants further object on the grounds that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things that Defendants are capable of physically producing.

### **REQUEST NO. 9**

A list of the names of each such out-of-state interpreter, including but not limited to, Waw P. Moy, Melissa Lo, and Stephanie Liu, for any criminal trials between October 15, 2009 and 2016.

### **RESPONSE NO. 9**

Defendants object on the grounds that the Request seeks documents or information that is not relevant to the claims or defenses of any party to this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the term “out-of-state interpreter.” Defendants further object on the grounds that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things that Defendants are capable of physically producing.

### **REQUEST NO. 10**

All documents reflecting all per diem court interpreters removed from the list of available court interpreters pursuant to Section 12.01 of the S & P, regardless of whether they were removed for cause or no cause.

**RESPONSE NO. 10**

Defendants object on the grounds that the Request is overly broad and unduly burdensome and seeks documents that are not relevant to the claims or defenses of any party to this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "removed from the list" and "cause."

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents sufficient to show which, if any, of the Individual Plaintiffs have been removed from the list of available court interpreters maintained by OCIS during the Relevant Time Period.

**REQUEST NO. 11**

All documents reflecting details of the types of expenses in the annual OCIS budget for things other than *per diem* court interpreter services.

**RESPONSE NO. 11**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "details" and "types of expenses." Defendants further object on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs.

**REQUEST NO. 12**

All documents reflecting the types of expenses that are reimbursable and non-reimbursable for staff court interpreters, but not for *per diem* court interpreters, including, but not limited to, interpreting equipment, car rentals, parking, travel time, overtime rates, and hotel accommodations, while traveling to assignments in courts in Nantucket and/or Martha's Vinyard, etc., and the rate of reimbursement for each such activity.

**RESPONSE NO. 12**

Defendants object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order.

**REQUEST NO. 13**

All documents reflecting the total expenses paid to each *per diem* court interpreters for each of the years 2009 through the present.

### RESPONSE NO. 13

Defendants object on the grounds that the Request is vague and ambiguous, including but not limited to the term "expenses." Defendants further object on the grounds that the Request is overly broad and unduly burdensome.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce DSRs for the Individual Plaintiffs for the Relevant Time Period.

### REQUEST NO. 14

All documents showing the total number of requests for court interpreter services, including, but not limited to, requests for interpreting services by district attorneys for grand jury proceedings and the probation department, and the total number of court events that received interpretation services for each of the years: October 15, 2009 through the present that were performed by a) staff court interpreters, and b) *per diem* court interpreters.

### RESPONSE NO. 14

Defendants object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "requests," "court interpreter services," and "court events." Defendants further object on the grounds that the Request is overly broad and unduly burdensome.

### REQUEST NO. 15

The contract, or other relevant documents, reflecting the business relationship between the Trial Court and Language Line for telephonic interpretation services, including, but not limited to, the rate per minute fee, the minimum per call fee, and:

- a) All entries/documents from the Trial Court database showing the rate and total amounts paid to Language Line for its telephonic interpretation services since the month and year of its use.
- b) All entries/documents that show each court event using Language Line since October 15, 2009, including, but not limited to, case name, docket number, court location, language, and type of court proceeding (such as restraining order hearing, child custody hearing), case name, docket number; bench trial or jury trial.
- c) All entries/documents that show each court event using VRI since its implementation, including, but not limited to, case name, docket number, court locations, languages, types of court proceedings, and whether such services in each said case were rendered by staff court interpreters and/or *per diem* court interpreters through OCIS, or from interpreters who performed the services from outside of Massachusetts.

### **RESPONSE NO. 15**

Defendants object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "business relationship," "Trial Court database," "court event," and "VRI." Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce the contract or agreement for the provision of services by Language Line to the Trial Court. Further answering, Defendants respond as follows:

With respect to paragraph (a), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request, as the requests for Language Line services are made by the respective courts directly to Language Line. Defendants will produce invoices submitted to the Trial Court for services provided by Language Line during the Relevant Time Period.

With respect to paragraph (b), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request, as the requests for Language Line services are made by the respective courts directly to Language Line. Defendants will produce invoices submitted to the Trial Court for services provided by Language Line during the Relevant Time Period.

With respect to paragraph (c), Defendants are not aware of documents in their possession, custody or control that are responsive to this Request, as the Trial Court does not provide video-remote interpreting services.

### **REQUEST NO. 16**

All OCIS memos and internal emails generated by the OCIS director (including Maria Fournier), OCIS managers (including Gaye Gentes, Leonor Figueroa-Feher, and Sybil A. Martin), and the head of OCIS Accounting Department (including Bruce J. Sawyer) on any proposed or about-to-be implemented policies, absent from the S&P, including but not limited to hourly rate, new hourly rate for travel time and over-time, two-hour minimum rate, change of travel rate and formula, lunch time compensation rate, deductions and penalties for signing "late" upon interpreters' arrival since 2008.

### **RESPONSE NO. 16**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "about-to-be" and "signing 'late.'" Defendants further object to the extent that the

Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents sufficient to identify the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for *per diem* court interpreters.

#### **REQUEST NO. 17**

Specific memos and internal communications generated and received by Gaye Gentes on major 75% travel time reduction for *per diem* interpreters.

#### **RESPONSE NO. 17**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "specific" and "major 75% travel time reduction." Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents sufficient to identify the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for travel time for *per diem* court interpreters.

#### **REQUEST NO. 18**

Specific memos and internal communications for the months leading to June and July 2014, generated and received by Maria Fournier on major rate change for *per diem* interpreters, namely from that of the half- day/full-day to that of the two-hour minimum.

#### **RESPONSE NO. 18**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "specific," "months leading to," "major rate change," "half-day/full-day," and "two-hour minimum." Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents sufficient to reflect the policies of the Trial Court adopted or

in effect during the Relevant Time Period regarding compensation for *per diem* court interpreters.

**REQUEST NO. 19**

Records reflect such policy being implemented, i.e. *per diem* interpreters either being paid at such rate starting in June 2014 and ending in July 2014 or being forced to hang around the courthouse till 1:00 p.m. in order to avoid being paid at two-hour minimum rate.

**RESPONSE NO. 19**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "such policy," "such rate," "forced to hang around," and "two-hour minimum rate." Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents reflecting the implementation of policies in June 2014 or July 2014 regarding compensation for *per diem* court interpreters, including DSRs and payment request commodity forms for the Individual Plaintiffs.

**REQUEST NO. 20**

Records on whether such short-lived two-hour rate for *per diem* interpreters were productive or counter productive, i.e. if the *per diem* interpreters were travelling to the next court as posted on the White Board, rather than hanging around at the current courthouse for 1 p.m. to clock-in.

**RESPONSE NO. 20**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms "such short-lived two-hour rate," "productive or counter productive," "White Board," "hanging around," and "clock-in."

**REQUEST NO. 21**

Specific memoranda on the source of the decisions and the decisions by either the court administration or the Security Department on stopping renewing of interpreters' badges and not issuing badges to *per diem* interpreters, including but not limited to:



- a) When such policy on stop renewing of badges was implemented;
- b) When OCIS started not to issue badges to *per diem* interpreters;
- c) Specific memos or internal communications of the new policy of having *per diem* interpreters stand in line with other litigants in order to gain access to the courthouses, and all reasons for such new policy that has already been in effect.

**RESPONSE NO. 21**

Defendants object on the grounds that the Request is overly broad and unduly burdensome, and seeks documents that are not relevant to the claims or defenses of any party to this action and pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms “specific,” “source,” “Security Department,” and “badges.” Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

**REQUEST NO. 22 (#1)<sup>1</sup>**

All documents and internal memos reflecting changes to the S & P affecting *per diem* court interpreters including but not limited to:

- a) Two hour minimum compensation when assignment is scheduled for later than 9:00 a.m., at 1:00 p.m., or at 3:00 p.m.;
- b) Reduction in payment in the amount of \$13/\$20, \$26/\$40, or \$39/60 when when [sic] *per diem* interpreters sign in after 9:15 a.m. and before 11:00 a.m., when car accidents on the road cause significant delays, and ALL policy changes in penalty amounts before and after this lawsuit was filed;
- c) When only scheduled for the afternoon session (2:00 p.m. to 4:30 p.m.), compensation being a two-hour minimum, and if not a two-hour minimum, but at an hourly rate, those documents;
- d) Non-payments for working between 1:00 p.m. and 2:00 p.m.;
- e) Non-payment for working at second court between 1:00 p.m. and 2:00 p.m.;
- f) Hourly rate payment when *per diem* interpreters took the assignment on short notice, and
- g) Any non-payment to any *per diem* interpreters when any assignments was on short notice via telephone by OCIS but the cases got a continuance or were heard without waiting for the arrival of the *per diem* interpreters.

**RESPONSE NO. 22 (#1)**

Defendants object on the grounds that the Request is overly broad and unduly burdensome. Defendants further object on the grounds that the Request is argumentative and is premised on legal or factual conclusions. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms “two hour minimum compensation,” “second court,” and “short notice.” Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product

<sup>1</sup> Plaintiffs’ Request for Production of Documents designates two requests as No. 22.

doctrine. Defendants further object on the grounds that the Request is unintelligible. Defendants further object to the extent that the Request is duplicative of Request No. 16.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce the *Standards and Procedures* of the Office of Court Interpreter Services that have been in effect during the Relevant Time Period. Defendants also incorporate by reference their response to Request No. 16.

#### **REQUEST NO. 22 (#2)**

All documents reflecting the total of federal funds received by the Trial Court and the allocation of those funds to OCIS and other departments or divisions of the Trial Court for language services for each year beginning October 15, 2009 through the present, how much of said funds were used in each year, and the use of those funds in each said year.

#### **RESPONSE NO. 22 (#2)**

Defendants object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendants further object on the grounds that the Request is vague and ambiguous, including but not limited to the terms “federal funds,” “language services,” and “the use.”

#### **REQUEST NO. 23**

All documents that demonstrate the information alleged by Plaintiffs in their Amended Complaint for which Defendants’ response was the documents or records referred to “speak for themselves,” including, but not limited to Defendants’ Answers to Paragraphs 28, 29, 30, 31, 32, 41, 42, 49, 52, 55, and 73.

#### **RESPONSE NO. 23**

Defendants object to the extent that the Request seeks documents that are publicly available, in Plaintiffs’ possession, custody or control, or otherwise equally available to Plaintiffs. Defendants further object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order. Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendants further object on the grounds that the requested documents are equally accessible to Plaintiffs.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents cited or referenced in the paragraphs of the Amended Complaint to which Defendants answered that the cited or referenced documents speak for themselves.

**REQUEST NO. 24**

All documents that reflect acceptance of the terms and conditions of the S & P by *per diem* court interpreters, including their signatures.

**RESPONSE NO. 24**

Defendants object to the extent that the Request is premised on legal or factual conclusions.

Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce documents sufficient to reflect the acceptance, agreement or acknowledgment by the Individual Plaintiffs of the *Standards and Procedures* of the Office of Court Interpreter Services.

**REQUEST NO. 25**

All documents that reflect any proposed revisions to the S & P from the version *per diem* court interpreters are currently bound by, including any documents that describe reasons for any proposed changes.

**RESPONSE NO. 25**

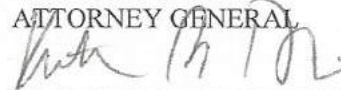
Defendants object to the extent that the Request is premised on legal or factual conclusions. Defendants further object on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendants further object to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine.

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,

MAURA HEALEY  
ATTORNEY GENERAL



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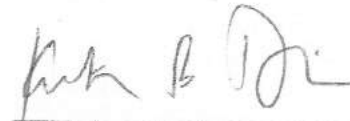
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Dated: April 3, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2017, I served the foregoing document via first-class mail upon the following counsel:

Alan Jay Rom, Esq.  
Rom Law P.C.  
P.O. Box 585  
Chelmsford, MA 01824



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Katherine B. Dirks (BBO No. 673674)

Dated: April 3, 2017

**EXHIBIT E**

RL MAC  
AR NR  
KD

NOTIFY

V8128

Massachusetts Association of Court Interpreters v. Lewis "Harry" Spence

Suffolk Superior Court Civil Action No. 2016-00969-A

**Endorsement regarding Plaintiffs' Motion to Add Defendants and Re-Define the Class (Docket No. 15) and Defendants' Motion to Conform Pleadings (Docket No. 16):**

The Plaintiffs in this action are per diem court interpreters and the Massachusetts Association of Court Interpreters ("MACI"), a non-profit corporation that advocates for court interpreters' working conditions. The Defendants are Lewis "Harry" Spence ("Spence"), in his capacity as Administrator of the Trial Court, Maria Fournier ("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 ("OCIS") Coordinator for the Administrative Office of the Trial Court, and Bruce Sawayer ("Sawayer"), in his capacity as Manager of Accounting of the Fiscal Affairs Department of the Trial Court, as well as their respective successors. The Plaintiffs allege that the Defendants breached their contract with the per diem court interpreters by violating the terms of the Standards and Procedures of the OCIS.

The Plaintiffs now move to amend their Amended Complaint ("Complaint") to redefine their proposed class and to substitute party defendants. See Mass. R. Civ. P. 15(a). The Defendants, in turn, move to conform the pleadings with this Court's ruling on the Defendants' Motion to Dismiss.

With respect to the Plaintiffs' proposed class, the Complaint describes the class as "both certified and screened court interpreters who regularly make themselves available to and provide court interpreter services for OCIS in the Commonwealth of Massachusetts, yet are or may in the future be treated as per diem court interpreters by OCIS." In light of this Court's dismissal of the Plaintiffs' challenge to their classification as per diem workers, and that their only surviving claim is for breach of contract, the Plaintiffs seek to redefine their class as "consist[ing] of all certified and screened per-diem court interpreters whose rights under the Standards and Procedures have been violated by Defendants."

The Defendants contend that the Plaintiffs' motion should be denied as a futile request because the record does not support the certification of the proposed class. Given that discovery is not yet concluded, the Defendants' argument is premature. This Court concludes that there is no good reason to deny the Plaintiffs' motion to redefine their class. See *Mathis v. Massachusetts Electric Co.*, 409 Mass. 256, 264 (1991) (finding that a party's motion to amend his or her pleadings should be granted unless there are good reasons for denying the motion). Accordingly, the Plaintiffs' motion to redefine their proposed class is ALLOWED.

The Plaintiffs next move, unopposed, to add the Executive Office of the Trial Court ("Trial Court") as a party defendant. ~~Because the Trial Court was a party to the contract at issue, the Plaintiff's motion to add the Trial Court is **ALLOWED**.~~

With respect to the individual defendants in this lawsuit, the Plaintiffs move to substitute Spence and Fournier with their respective successors. The Defendants, in turn, filed a separate motion to dismiss the individual defendants from the lawsuit because they were not parties to the contract at issue. Here, the Trial Court is the true party in interest for the breach of contract claim. The Plaintiffs' concern that they will be precluded from deposing the individuals if they are not named as party defendants is unwarranted. See Mass. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party."). For these reasons, the Plaintiffs' motion to substitute Spence and Fournier is **DENIED**, and the Defendants' motion to conform the pleadings by dismissing Spence, Fournier and Sawyer is **ALLOWED**.

Finally, the Defendants seek to dismiss MACI as a plaintiff because its members, not the association, are parties to the contract. The Complaint sufficiently alleges that MACI has associational standing. See *Massachusetts Ass'n of Cosmetology Schs., Inc. v. Board of Registration in Cosmetology*, 40 Mass. App. Ct. 706, 708 (1996). While MACI's standing may be appropriate for review again after the close of discovery, at this stage, the Defendants' motion to conform the pleadings by dismissing MACI must be **DENIED**.

(Robert Tochka, J.)

Date: August 2, 2018