NOTICE 8/8

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1384CV01250
consolidated with
NO. 1384CV01256

Notice Sent 9/8/22 (7) DK

BOSTON POLICE DEPARTMENT

vs.

RONNIE C. JONES & others[1]
(and a consolidated case)[2]

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFFS' MOTION FOR JUDGMENT ON STIPULATED FACTS

The remaining Plaintiffs, Shawn Harris, Walter Washington, George Downing, Ronnie C. Jones, Richard Beckers, and Jacqueline McGowan ("the six officers" or "Plaintiffs"), are three current and three former police officers who prevailed previously on claims of wrongful discharge against Defendant, Boston Police Department ("BPD"). Plaintiffs now move for Judgment on Stipulated Facts concerning two aspects of their damages. First, the three former officers request back pay or, in the alternative, annual pension benefits from the date they declined reinstatement to their effective dates of retirement. Second, all Plaintiffs argue that prejudgment interest should accrue until March 13, 2019, the date of entry of the Court's Order resolving the Parties' Joint Stipulation of Issues. BPD denies that the three former officers are entitled to damages for the period after they declined reinstatement. BPD also maintains that the Court's decision entered October 9, 2014 – finding that the Plaintiffs were entitled to reinstatement and back pay – ended the accrual of prejudgment interest.

[1] Richard Beckers, Shawn Harris, Jacqueline McGowan, Walter Washington, George Downing, and the Civil Service Commission.
[2] *Thompson v. Civil Serv. Comm'n*, Suffolk Super. Ct., No. 1384CV01250.

For the reasons below, the Court rules as follows:

1. The three former officers are not entitled to back pay after declining reinstatement. Plaintiffs' Motion is therefore **DENIED** and judgment for the Boston Police Department is **GRANTED** as to the three former officers' request for back pay after September 11, 2017.

2. The three former officers have not established a right to an award of retroactive pension benefits. Plaintiff's Motion is therefore **DENIED** as to these alleged damages, and judgment for the Boston Police Department is **GRANTED** as to the same.

3. Prejudgment interest pursuant to G.L. c. 231, § 6C, ended upon the Court's entry of judgment on October 9, 2014. (Fabricant, J.). Plaintiffs are entitled to statutory interest on the back pay for the period from their respective termination dates until October 9, 2014. Plaintiffs' Motion is **DENIED** and judgment for the Boston Police Department is **GRANTED** as to the end date of prejudgment interest.

BACKGROUND

The consolidated actions arose out of the BPD's discharge of ten officers and have been the subject of protracted litigation in this Court and the Appeals Court. The Court adopts by reference the findings set forth in the prior decisions[3] and recites additional stipulated facts as necessary to provide context for this decision.

In 2013, following 18 days of evidentiary hearings, the Civil Service Commission (the "Commission") issued a 134-page decision which upheld BPD's termination of four of the ten officers, but determined that BPD lacked just cause to terminate Plaintiffs. The Commission ordered that the Plaintiffs be reinstated with retroactive compensation and benefits as of October 21, 2010. That order did not quantify the back pay awards and did not address prejudgment or postjudgment interest. All parties appealed pursuant to G.L. c. 30A, § 14, and cross-moved for judgment on the pleadings.

[3] *Boston Police Dept.* v. *Jones*, No. 1384CV01250, slip op. (Super. Ct. Oct. 6, 2014) (Fabricant, J.) (Docket No. 22), *aff'd, Thompson v. Civil Serv. Comm'n*, 90 Mass. App. Ct. 462 (2016); *Boston Police Dept.* v. *Jones*, No. 1384CV01250, slip op. (Super. Ct. Mar. 11, 2019) (Tochka, J.) (Docket No. 48), *aff'd, Boston Police Dept.* v. *Jones*, 98 Mass. App. Ct. 762 (2020).

On October 6, 2014, the Court (Fabricant, J.) affirmed the Commission's decision in all respects except as to the remedy for the six officers:

> The Court orders entry of JUDGMENT that the Civil Service Commission's decision is AFFIRMED in all respects except as to the remedy afforded to Officers Beckers, Jones, McGowan, Harris, Washington, and Downing, which is modified such that the Boston Police Department is ORDERED to reinstate those officers with full back-pay and benefits as of the date of each officer's discharge.[4]

Boston Police Dept. v. *Jones,* No. 1384CV01250, slip op. at 26 (Super. Ct. Oct. 6, 2014) (Fabricant, J.) (Docket No. 22). The Court entered the judgment in the docket on October 9, 2014. BPD and the four officers whose terminations were upheld appealed the decision. On October 7, 2016, the Appeals Court affirmed Judge Fabricant's judgment in full. The Supreme Judicial Court denied applications for further appellate review and a rescript from the Appeals Court was entered in the Superior Court docket on December 7, 2016.

Following rescript, BPD offered to reinstate the six officers on September 11, 2017, the earliest available date on which the officers could attend the Boston Police Academy for mandatory retraining. Harris, Downing and Washington accepted. They were reinstated on September 11, 2017 and returned to full duty in April 2018. Jones, McGowan and Beckers ("Retiree Plaintiffs") declined reinstatement but did not apply for retirement at that time.

Nonetheless, the Parties could not agree on the appropriate calculation of damages per Judge Fabricant's Order, and sought instruction from this Court. On September 1, 2017, this Court (Campo, J.) ruled, in relevant part:

> The parties now return to this Court seeking guidance on how to calculate the police officers' back pay and benefits. Pursuant to G.L. c. 30A, s. 14, this Court is vested with judicial review of agency decisions. However, the parties file these motions without taking any action on the Court's order. Accordingly, the issues raised by the parties are not ripe for

[4] Jones and Beckers were discharged August 9, 2002; McGowan was discharged January 14, 2003; Harris and Washington were discharged April 22, 2003; and Downing was discharged January 6, 2004.

consideration. The police officers move for judgment on how to calculate the damages while the Boston Police Department moves to remand the issue of damages to the Commission for further factual findings. Given Judge Fabricant's decision provided clear direction, and the Appeals Court affirmed the decision, this Court takes no action on the parties' cross-motions.

The parties are hereby **ORDERED** to follow this Court's Order dated October 6, 2014.

On February 16, 2018, BPD made partial payments consisting of base pay, holiday pay, shift differential, and educational pay to Harris, Downing, Washington, and Jones. The payments included certain contractual buy backs for unused vacation, personal days, and sick leave from the date of their respective terminations to September 11, 2017, but BPD did not include any payments for estimated amounts of overtime and detail pay. Additionally, BPD deducted wages earned by these officers from their alternate employment during the back pay period. BPD did not provide any payments to McGowan or Beckers, arguing that they had failed to mitigate their damages.

As the Parties remained unable to resolve their damages disputes, the six officers filed a Complaint for Contempt on June 8, 2018. The Parties subsequently submitted a Joint Stipulation of Issues and agreed to have the Superior Court, rather than the Commission, decide the outstanding disputes. The Parties also submitted a Joint Stipulation of Facts and memoranda of law in support of their respective positions. On March 11, 2019, this Court (Tochka, J.) ruled on each of the issues set forth in the Joint Stipulation as follows:

(1) [T]he six officers are entitled to back pay for all periods since their Boston Police Department termination, consistent with this decision [finding BPD had not met its burden that Plaintiffs had failed to mitigate their damages during periods of unemployment].

(2) BPD is not entitled to offset from any back pay awarded to the six officers, any overtime earnings and wages they earned from second and/or third jobs after BPD terminated them.

(3) The six officers' back pay award should not include pay they believe they would have received from overtime pay and paid details.[5]

(4) The six officers are entitled to prejudgment interest on back wages from the date they were each terminated. The six officers are not entitled to postjudgment interest.

(5) The six officers are not entitled to reimbursement from BPD for the additional tax burden created after receiving large lump sum payments.

Boston Police Dept. v. *Jones*, No. 1384CV01250, slip op. at 30 (Super. Ct. Mar. 11, 2019) (Tochka, J.) (Docket No. 48)[6]. Because the Tochka, J. Order did not quantify the back pay awards or interest, all Parties appealed. See *id.* On November 10, 2020, the Appeals Court affirmed Judge Tochka's order and remanded the case to this Court for determination of the back pay awards and interest.

In April 2021, BPD paid sums to the six officers reflecting their full back pay for the period from their respective terminations to September 11, 2017. (the earliest date on which the officers could attend the BPD academy for mandatory training).

Retiree Plaintiffs

A. Former Officer Jones

Following his discharge in 2002, Jones voluntarily withdrew his retirement contributions from his pension account. He declined BPD's offer of reinstatement. On February 16, 2018, BPD provided Jones with back pay compensation in the gross amount of $582,172.71. Of this, $179,115.50 was deducted and remitted to the Retirement Board for his withdrawn funds and as retirement contributions for the years between his termination and offer of reinstatement. Jones applied for retirement on February 27, 2018 and retired on March 13, 2018.

[5] Plaintiffs' back pay awards thus consisted of their regular compensation and buy backs (personal, vacation, and sick leave). See *Jones*, (Docket No. 48), slip op. at 10-20, 25.
[6] Entered on the docket on 3/13/2019.

B. Former Officers Beckers and McGowan

Beckers and McGowan were approximately 56 years old when they declined the offer of reinstatement on September 11, 2017. They were eligible to retire at age 55. Following his termination in 2002, Beckers withdrew his retirement contributions and moved to Honduras. McGowan never withdrew her retirement contributions and could have retired with an annual pension of $17,425.89, a lesser amount than she would be entitled to once retirement contributions were allocated from her back pay award.

BPD did not make any payments to Beckers or McGowan until April 30, 2021, after the Appeals Court affirmed that they had not failed to mitigate their damages. Beckers and McGowan were awarded $1,264,843.63 and $1,226,524.64 respectively, as back pay from their terminations until September 11, 2017. From the award to Beckers, $175,22.25 was remitted to the Retirement Board for his withdrawn funds and the appropriate contributions from his discharge to the offer of reinstatement. Likewise, $119,335.61 from McGowan's award was remitted to the Retirement Board as contributions for the discharge period.

Beckers retired effective May 28, 2021, and McGowan seeks back pay through the same date.[7]

DISCUSSION

Plaintiffs have moved for judgment on the stipulated facts and argue that (1) Retiree Plaintiffs are entitled to back pay or retroactive pension benefits from September 11, 2017 to their respective dates of retirement; and (2) prejudgment interest is to be calculated to the date of Judge Tochka's 2019 decision, as opposed to Judge Fabricant's 2014 decision. The Court

[7] McGowan acknowledges additional delays in filing her retirement application after May 28, 2021 but concedes they are unrelated to any action or inaction of BPD. See Pls.' Mot. at 5, n.7.

concludes that Retiree Plaintiffs are not entitled to back pay for the period after September 11, 2017 because there is no evidence that they were ready, willing, and able to work, or that the BPD wrongfully prevented them from working after that date. As to Retiree Plaintiffs' alternative request for retroactive pension benefits, genuine issues of fact and law exist as to whether they are entitled to such an award. Lastly, Judge Fabricant's Order, entered October 9, 2014, ended the accrual of prejudgment interest as it was the first final, appealable judgment of the merits of Plaintiffs' wrongful discharge claims and sufficiently ascertained the Plaintiffs' damages.

1. Claims of Retiree Plaintiffs for Back Pay or Pension Payments

A. Back Pay

Retiree Plaintiffs claim that they could not retire with full credit for the years since their terminations until BPD paid their back pay awards and allocated corresponding contributions to the Retirement Board.[8] They argue that they are entitled to back pay from BPD's offer of reinstatement until BPD paid the award funds to the Retirement Board.

General Laws c. 31, § 43 provides that a civil service employee who is wrongfully terminated "shall be returned to his position without loss of compensation or other rights[.]" The government employer is not obliged, however, "to pay more than the employee's salary or base pay as fixed by statute or ordinance." *Boston Police Dep't* v. *Jones*, 98 Mass. App. Ct. 762, 765-766 (2020) (citations omitted). Back pay is compensation an individual "normally *would have earned* had a violation [of employment law] not occurred." *Calixto* v. *Coughlin*, 481 Mass. 157, 162 (2018) (emphasis in original), quoting *Phelps Dodge Corp.* v. *National Labor Relations Bd.*,

[8] Specifically, Jones and Beckers allege that they could not retire prior to the award allocations because they had withdrawn their retirement contributions. The Parties stipulate that McGowan could have retired as of September 11, 2017, but that she would have received a lower annual pension benefit prior to the award allocation.

313 U.S. 177, 197 (1941). An individual is only entitled to compensation for the period he or she "was ready, willing, and able to work, but was prevented or limited because of the employer's prohibited conduct." *Police Comm'r* v. *Personnel Adm'r of the Dep't of the Personnel Admin.*, 423 Mass. 1017, 1018 n.2 (1996). A plaintiff's rejection of an appropriate offer of reinstatement terminates eligibility for lost pay accruing after such a rejection. *Conway* v. *Electro Switch Corp.*, 402 Mass. 385, 389-390 (1988).

There is no evidence that Retiree Plaintiffs were ready, willing, and able to work after BPD offered reinstatement. To the contrary, they acknowledge they did not intend to rejoin the police force on or after September 11, 2017.[9] As such, BPD did not deny Retiree Plaintiffs any wages they *would have earned* after they declined reinstatement.[10]

The true gravamen of the Retiree Plaintiffs' request is that they should receive additional damages for delay receiving their awards. Interest is typically the appropriate remedy for delay. *Trinity Church in the City of Bos.* v. *John Hancock Mut. Life Ins. Co.*, 405 Mass. 682, 684 (1989). Retiree Plaintiffs do not cite any precedent for an award of back pay under these circumstances and sovereign immunity bars postjudgment interest. *Jones*, 98 Mass. App. Ct. at 768-769. Retiree Plaintiffs cannot circumvent the Court's prior ruling by erroneously recasting their damages as back pay. Their request for back pay after September 11, 2017 is therefore

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[9] Notably, Beckers and McGowan argue that they wanted to retire as early as 2016. Pls.' Reply at 3. This conflicts with their past representations to this Court and acceptance of back pay awards up to BPD's offer of reinstatement. As BPD does not contest the award of back pay through September 11, 2017, the Court declines to disturb the Parties' agreement.

[10] At hearing on their Motion, the Retiree Plaintiffs argued – by analogy to discrimination cases – BPD's offer of reinstatement was not reasonable given their age and the fact Beckers was living in Honduras. Therefore, the Retiree Plaintiffs argue, their rejection of BPD's offer should not end their eligibility for lost wages. In discrimination cases, courts have acknowledged that "special circumstances" may justify rejection of reinstatement, such as an objectively reasonable expectation of further discrimination. See, e.g., *Brady* v. *Nestor*, 398 Mass. 184, 188 (1986). The Retiree Plaintiffs cite no caselaw applying this exception to G.L. c. 31, § 43's mandatory reinstatement remedy, see *Brookline* v. *Alston*, 487 Mass. 278, 306 (2021) (reinstatement requirement as "unequivocal"). Also, the record for not indicate any ongoing hostile work environment or other special circumstances that would justify extending back pay beyond the Retiree Plaintiffs' rejection of reinstatement. Most notably, the Retiree Plaintiffs did not object to this remedy prior to the Court's 2014 or 2019 decisions.

Denied and judgment is to be entered for BPD as to the same.

B. Retroactive Pension Benefits

In the alternative, Retiree Plaintiffs request the pension payments they would have received if they had retired on September 11, 2017 with full retirement contributions. Pls.' Mot. at 6, n.8. As pension benefits are paid in fixed annual amounts, *Dullea* v. *Massachusetts Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 89 (1981), the alleged damages are not the same as an interest award for the lost time value of money. See *Trinity*, 405 Mass. at 684. Nonetheless, the Appeals Court has already held in this matter that a waiver of sovereign immunity requires explicit or "uncommonly forceful language," and G.L. c. 31, § 43 does not entitle Plaintiffs to recovery for every collateral effect of a delay in payment. See *Jones*, 98 Mass. App. Ct. at 768-770 (holding sovereign immunity bars postjudgment interest and setoffs for the tax consequences of lump sum payments). Retiree Plaintiffs do offer any precedent for their requested relief or any reason why the same sovereign immunity analysis does not apply. See *id.* at 768 ("[S]overeign immunity . . . protects the public treasury from unanticipated money judgments.").[11]

Moreover, the record does not establish that BPD prevented the Retiree Plaintiffs from retiring on or after September 11, 2017. The only relevant exhibit is a letter dated June 17, 2021 from the General Counsel of the Boston Retirement Board stating that the applicable statute, G.L. c. 32, § 10(3), does not permit the Board to backdate the Retiree Plaintiffs' retirements. The Retiree Plaintiffs do not refute this conclusion nor do they identify any prior, unsuccessful efforts to effectuate their retirements. Likewise, they do not explain their failure to raise such

[11] Retiree Plaintiffs also fail to cite any support for their argument that G.L. c. 31, § 43 requires an employer to offer reinstatement and pay back wages "at the same time." Pls.' Reply at 3. Their argument is inconsistent with the prior rulings in this case and would undermine the legislative intent favoring expeditious reinstatement of wrongfully discharged employees. Alston, 487 Mass. at 306.

issues in the Joint Statement of Issues filed in 2019. The Parties acknowledge that McGowan could have retired at age 55 and received pension benefits thereafter, albeit at a lower rate. Joint Statement of Undisputed Facts, at ¶ 25. BPD maintains that McGowan could have subsequently applied for a retroactive increase. Defs.' Opp. at 9. The record is unclear whether Jones and Beckers could retire, or attempted to do so, prior to allocation of retirement contributions from their awards.

Retiree Plaintiffs have not cited any statute or precedent recognizing a waiver of sovereign immunity as to retroactive pension benefits. Further, the Retiree Plaintiffs have not justified their delay in raising this issue or established that they were, in fact, denied retirement because of the actions or inactions of BPD. As the Court cannot conclude from that Retiree Plaintiffs are entitled to retroactive pension benefits, their Motion for these damages is therefore **Denied** and judgment is granted in favor of BPD.

2. Termination of Prejudgment Interest

Plaintiffs argue that prejudgment interest should be calculated to the date of Judge Tochka's decision in 2019, rather than Judge Fabricant's decision in 2014, because "it was only after Judge Tochka's ruling in March 2019 that a true measure of damages was determined." Pls.' Mot. at 9. The Court disagrees. Judge Fabricant's decision was a final, appealable judgment that sufficiently ascertained the Plaintiffs' damages and thus terminated the accrual of prejudgment interest.

The pre- and postjudgment interest statutes must be read "as a harmonious whole" to "avoid absurd results." *Anderson* v. *Nat'l Union Fire Ins. Co. of Pittsburgh PA*, 476 Mass. 377, 382-383 (2017). The applicable prejudgment interest statute, G.L. c. 231, § 6C, provides,

> In all actions based on contractual obligations, upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the

> clerk of the court to the amount of damages, at the contract rate, if established, or at the rate of twelve per cent per annum from the date of the breach or demand.

The postjudgment interest statute, G.L. c. 235, § 8, separately provides,

> When judgment is rendered . . . upon the verdict of a jury or the finding of a justice, interest shall be computed upon the amount of the award, report, verdict or finding from the time when made to the time the judgment is entered. Every judgment for the payment of money shall bear interest from the day of its entry at the same rate per annum as provided for prejudgment interest in such award, report, verdict or finding.

While the statutes establish the entry of a "judgment" as the dividing line, neither statute defines the term. See G.L. c. 231, § 6C; G.L. c. 235, § 8. Massachusetts Rule of Civil Procedure 54 provides some guidance, defining both "judgment" and "final judgment" as "the act of the trial court finally adjudicating the rights of the parties[.]" *Osborne* v. *Biotti*, 404 Mass. 112, 114 (1989), quoting Mass. R. Civ. P. 54(a). Rule 54 further explains that "judgment" does not mean "the last step in the case" or that the case be "forensically dead," but "is merely the final adjudicating act of the trial court [that] starts the timetable for appellate review." Mass. R. Civ. P. 54(a), Reporter's notes (1973).

The Court must also look beyond "the literal meaning" of the text and consider statutes in the context of their purposes and objectives. *Sterilite Corp.* v. *Continental Cas. Co.*, 397 Mass. 837, 839 (1986); *International Org. of Masters* v. *Woods Hole, Martha's Vineyard & Nantucket S.S. Auth.*, 392 Mass. 811, 813 (1984).[12] Prejudgment interest "compensates the prevailing party for the time value of money accrued before resolution of the legal dispute." *Anderson*, 476 Mass. at 383-384. Prejudgment interest is not punitive or conduct regulating; it is merely a component of compensatory damages and thus, part of the judgment. *Id.* at 383; *Lou* v. *Otis*

[12] See also *Sterilite Corp. v. Continental Cas. Co.*, 20 Mass. App. Ct. 215, 218 n.8 (1985) ("We have not been referred to nor have we found any legislative history to the enactment of G. L. c. 231 § 6C.").

Elevator Co., 77 Mass. App. Ct. 571, 586 (2010); *Salvi* v. *Suffolk Cnty. Sheriff's Dep't*, 67 Mass. App. Ct. 596, 609 (2006).

In contrast, the "purpose of postjudgment interest is to compensate the successful plaintiff for. . . the time between the ascertainment of the damage and the payment by the defendant." *Anderson*, 476 Mass. at 384, quoting *Kaiser Aluminum & Chem. Corp.* v. *Bonjorno*, 494 U.S. 827, 835-836 (1990). Post judgment interest "is not an element of compensatory damages" and thus, "is separate and distinct from the underlying amount." *Id.* at 383. The Court's entry of a judgment triggers the prevailing party's right to receive compound interest (post-judgment interest on the prejudgment interest), as well as interest on punitive damages, front pay, costs, and attorneys' fees which are not subject to prejudgment interest. *McEvoy Travel Bureau, Inc. v. Norton Co.*, 408 Mass. 704, 716 (1990); *Osborne*, 404 Mass. at 114; *Conway*, 402 Mass. at 390. Because postjudgment interest applies the same interest rate to this greater multiplicand, imposing postjudgment interest from the date of an appealable judgment discourages meritless appeals and frivolous postjudgment motions. *R. H. White Realty Co.* v. *Boston Redev. Auth.*, 371 Mass. 452, 455 (1976); see also *Anderson*, 476 Mass. at 386 ("The Legislature established the statutory twelve percent postjudgment interest rate specifically to protect prevailing parties during the appellate process."). As such, an appealable judgment entitling the plaintiff to monetary damages will end prejudgment interest and start of postjudgment interest. See *Peak* v. *Massachusetts Bay Transp. Auth.*, 20 Mass. App. Ct. 726, 729 (1985) ("[W]here a judgment is affirmed on appeal, the [controlling] date . . . is the date judgment originally entered in the trial court.").

Plaintiffs argue, pursuant to *Kaiser*, *supra*, that prejudgment interest does not end until a judgment "meaningfully ascertains" the prevailing party's damages. However, Plaintiffs'

reliance on *Kaiser* is misplaced. First, the United States Supreme Court's interpretation of the Federal postjudgment interest statute, 28 U.S.C. § 1961[13], does not bind this Court's interpretation of Massachusetts law. *Commonwealth* v. *Murphy*, 448 Mass. 452, 462 (2007). Second, *Kaiser* does not compel the conclusion that prejudgment interest accrued until Judge Tochka's 2019 decision. In *Kaiser*, the United States Supreme Court held that postjudgment interest does not run from a vacated judgment. 494 U.S. at 836. The Supreme Court reasoned that "where the [initial] judgment was not supported by the evidence, the damages have not been 'ascertained' *in any meaningful way*." *Id.* (emphasis added). Congress could not have "intended postjudgment interest to be calculated from such a judgment." *Id.*

Kaiser merely holds "that [postjudgment] interest cannot run from a legally insufficient judgment." *Boyd* v. *Bulala*, 751 F. Supp. 576, 580 (W.D. Va. 1990).[14] As the First Circuit explained, the standard for determining which of two decisions triggered post judgment interest under 28 U.S.C. § 1961 is as follows:

> [W]here a first judgment lacks an evidentiary or legal basis, post-judgment interest accrues from the date of the second judgment; where the original judgment is basically sound but is modified on remand, post-judgment interest accrues from the date of the first judgment.

Cordero v. *De Jesus-Mendez*, 922 F.2d 11, 16 (1st Cir. 1990), citing *Kaiser*, 494 U.S. 827; see also *Ultratec, Inc.* v. *Sorenson Commc'ns, Inc.*, No. 14-CV-66-JDP, 2019 WL 2285487, at *11 (W.D. Wis. May 29, 2019) (recognizing *Cordero* as the "majority rule"). Notably, "[t]he narrow exception set forth in *Kaiser* [ ] applies when an initial finding of liability is vacated, or when an

[13] The Federal postjudgment statute provides, "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961.

[14] See also *Kaiser*, 494 U.S. at 870 (White, J., dissenting) ("Nor does the Court state any rule applicable to various other fact patterns not before us but commonly encountered by the lower courts, e.g., where the district court correctly ascertains total damages but improperly apportions them among the parties, . . . or where an interest award is reduced on appeal and a new judgment is entered on remand.").

initial computation of damages lacks factual support." *McKnight* v. *Circuit City Stores, Inc.*, 14 F. App'x 147, 155 (4th Cir. 2001). "By contrast, the exception rarely, if ever, applies when an initial liability determination is upheld but the amount of the award is vacated due to error or abuse of discretion by the district court." *Id.*, citing *Cordero*, 922 F.2d at 18.

Whether interpreting "judgment for pecuniary damages" under G.L. c. 231, § 6C or "money judgment" under 28 U.S.C. § 1961, courts do not require a specific, exhaustive, or unassailable accounting of damages to divide pre- and postjudgment interest. Notably, in *Liberty Mut. Ins. Co.* v. *Black & Decker Corp.*, Black & Decker sought to recover prejudgment interest for a series of invoiced legal bills, under G.L. c. 231, § 6C. 383 F. Supp. 2d 200, 208 (D. Mass. 2004. The court held the judgment "establishing Liberty Mutual's liability for pecuniary damages" ended the accrual of prejudgment interest even though Black & Decker's damages would be tallied thereafter. *Id.* at 209. The court concluded,

> While the . . . orders have not stated the *amount* of damages, § 6C does not appear to require an adjudication so final that it is ready for execution. Rather, it is satisfied when the parties have forced the court (and/or a jury) to resolve the merits of the dispute.

Id. (emphasis in original).

"The Supreme Court [in *Kaiser*] specifically defined the phrase 'ascertainment of the damage' as a judgment supported by the evidence or judgment on the merits, leaving no doubt that it did not mean an exact quantum judgment." *Boehner* v. *McDermott*, 541 F. Supp. 2d 310, 323 (D.D.C. 2008). Subsequent decisions of the Courts of Appeals emphasized that an appealable judgment on the merits marks the "clear dividing line" for pre- and post judgment interest. *Dishman* v. *UNUM Life Ins. Co. of America*, 269 F.3d 974, 991 (9th Cir. 2001); see also *Transmatic, Inc.* v. *Gulton Indus.*, 180 F.3d 1343, 1350 (Fed. Cir. 1999) ("Congress specifically intend[ed] post judgment, not prejudgment, interest to eliminate an economic

incentive for a losing defendant to . . . accumulate interest . . . during the pendency of the appeal."). Unless completely set aside, a judgment entitling a plaintiff to money damages triggers postjudgment interest, even if the award is remanded, modified, or calculated thereafter. See, e.g, *McKnight,* 14 F. App'x at 155; *Transmatic*, 180 F.3d at 1349; *Cordero*, 922 F.2d at 18; see also *Johansen* v. *Combustion Engineering, Inc.*, 170 F.3d 1320, 1339 (11th Cir. 1999) ("[W]here the initial judgment is supported by the evidence and the later judgment merely reflects a remittitur, courts of appeals have routinely decided that damages were sufficiently ascertained at the time of the first judgment."). This is entirely consistent with Massachusetts precedent. See *Stephens* v. *Naps*, 70 Mass. App. Ct. 676, 681 (2007) (holding initial judgment was "final judgment" for purposes of appeal where the later judgment merely revised the damages award); *Thomas O'Connor & Co.* v. *Medford*, 20 Mass. App. Ct. 761, 764-767 (1985) (holding postjudgment interest accrued from original judgment where the portion of damages affirmed was "ascertained or *ascertainable* in a dollar amount") (emphasis added).

Based on the foregoing, the Court concludes that Judge Fabricant's judgment ended the accrual of prejudgment interest. Judge Fabricant's judgment was a final, appealable order and it sufficiently ascertained Plaintiffs' damages as "full back-pay and benefits as of the date of each officer's discharge." The remaining calculations merely required mechanical application of salary schedules, statutes, and certain ascertainable setoffs. See *White*, 57 Mass. App. Ct. at 360, citing G.L. c. 31, § 43 (employee is entitled to salary as fixed by statute or ordinance); *O'Malley* v. *O'Malley*, 419 Mass. 377, 381 (1995) (prejudgment interest attaches automatically without a need to mention it in the judgment). Given the officers' differing seniority and termination dates, the indeterminate future date of reinstatement, and the procedural posture of a G.L. c. 30A, § 14 review, it was entirely rational for Judge Fabricant's order to leave the specific calculations

to the Parties and/or the Commission. Judge Campo's order reaffirmed this approach. This did not render Judge Fabricant's decision interlocutory or any less final. See *Thomas*, 20 Mass. App. Ct. at 767.[15] Moreover, the Appeals Court affirmed Judge Fabricant's order in full. See *ExxonMobil Corp.* v. *Electrical Reliability Servs.*, 868 F.3d 408, 420 (5th Cir. 2017) ("The primary consideration is the degree to which the original judgment is ultimately upheld[.]"). Judge Tochka's decision, while clarifying the award, left it essentially unchanged. See Docket No. 48, slip op. at 30 (holding Plaintiffs were entitled to base pay and prejudgment interest but not overtime/detail pay, postjudgment interest, or a tax setoff).

Drawing the line at Judge Fabricant's judgment is consistent with the purpose dividing pre- and postjudgment interest. In the vast majority of cases, imposing postjudgment interest at the first, final appealable judgment will deter frivolous appeals and meritless postjudgment motions. *Anderson*, 476 Mass. at 386; *Drabik,* 250 F.3d at 494-495. While this matter presents a unique circumstance in which Plaintiffs are not entitled to postjudgment interest, the principles of sovereign immunity counsel against, rather than for, any court-made exception to the proper application of the pre- and postjudgment interest statutes.[16]

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[15] The cases Plaintiffs rely upon are distinguishable and not persuasive. In *Ericsson Inc. v. Harris Corp.*, the trial court's initial judgment found no liability and thus did not embody a damages award. *Tobin* v. *Liberty Mut. Ins. Co.*, and *Foley* v. *Lowell*, did not involve an appeal between the judgments at issue. See *Tobin*, 553 F.3d 121, 146-147 (1st Cir. 2009) (trial court explicitly stated the latter decision was the final, appealable judgment); *Foley*, 948 F.2d at 10, 12 and 17 (1st Cir. 1991) (deciding between jury verdict and the trial court's entry of final judgment). *Tobin* and *Foley* concerned the application of G.L. c. 231, § 6C and substantially lower postjudgment interest rates. See *Tobin*, 553 F.3d at 145, n.35 (12% versus 4.98%); *Foley*, 948 F.2d at 17 (12% versus 8.16%). This undercut the usual purpose of applying postjudgment interest to discourage frivolous appeals. See *Anderson*, 476 Mass. at 386. Lastly, none of three cases dealt with the interplay between the end of prejudgment interest under G.L. c. 231, § 6C and sovereign immunity from postjudgment interest. See *Cox* v. *Massachusetts Dep't of Corr.*, No. 13-10379-FDS, 2019 U.S. Dist. LEXIS 154649, at *7 (D. Mass. Sep. 10, 2019) (noting that the *Foley* court did not address sovereign immunity or the Eleventh Amendment concerns).

[16] Plaintiffs' expansive interpretation of G.L. c. 231, § 6C cannot be harmonized with G.L. c. 235, § 8 or the Court's prior rulings on sovereign immunity, nor do they ever attempt to do so. See *Turley* v. *W. Mass. Reg'l Police Acad.*, No. CV 18-0118-B, 2018 Mass. Super. LEXIS 4635, at *5 (Mass. Super. Nov. 13, 2018) (noting "[o]nly the Legislature" can address an unfairness inherent to sovereign immunity); *Neal* v. *City of Bos.*, No. CV 16-2848-H, 2022 WL 303492, at *4 (Mass. Super. Jan. 18, 2022) (declining to award prejudgment interest on future emotional distress as beyond the scope of the limited waiver of sovereign immunity).

Plaintiffs are thus entitled to prejudgment interest from their respective termination dates until October 9, 2014 on back pay correlating to that same time period. Because Judge Fabricant's order was the pivotal judgment, Plaintiffs' lost wages for the period after October 9, 2014 amount to front pay for the purpose of the interest statutes. See *Shawmut*, 419 Mass. at 224 ("A judgment will be treated on the footing of its substance and not of its name."); *Johnson* v. *Spencer Press of Me., Inc.*, 364 F.3d 368, 379 (1st Cir. 2004) ("[B]ack pay compensates plaintiffs for lost wages and benefits between the time of the discharge and the trial court judgment. Front pay, by contrast, is money awarded for lost compensation during the period between judgment and reinstatement . . . .") (internal quotations and citations omitted). "[P]rejudgment interest is not assessed on front pay awards." *Conway,* 402 Mass. at 390-391; see also *DeSantis* v. *Commonwealth Energy Sys.*, 68 Mass. App. Ct. 759, 760 (2007) (holding G.L. c. 231, §6C does not "apply to an award of damages based upon lost earnings and benefits occurring after the date of judgment."). As such, Plaintiffs are not entitled to prejudgment interest on compensation correlating to the period after October 9, 2014.

ORDER

It is therefore **ORDERED** as follows:

1. Plaintiffs' request for back pay for the three former officers for the period after September 11, 2017 is **DENIED**. Judgment for the Boston Police Department.is **GRANTED** as to the same.

2. Plaintiffs' request for an award equaling the pension benefits from September 11, 2017 to their respective dates of retirement is **DENIED.** Judgment for the Boston Police Department.is **GRANTED** as to the same.

3. Plaintiffs' Motion as to the end date of prejudgment interest is **DENIED.** Judgment for the Boston Police Department.is **GRANTED** as to the same. Each Plaintiff is entitled to prejudgment interest pursuant to G.L. c. 231, § 6C, from his/her date of determination until October 9, 2014 on the portion of their awards equating to that same period. Plaintiffs are not entitled to prejudgment interest on back pay or benefits for the period after October 9, 2014.

Elaine M. Buckley
Justice of the Superior Court

Dated: August 2, 2022