

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

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VALERIE MONTONE

Plaintiff,

v.

CITY OF JERSEY CITY, ET AL.,

Defendants.

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JOHN ASTRIAB, ET AL.,

Plaintiffs,

v.

CITY OF JERSEY CITY, ET AL.,

Defendants.

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Civil Action No. 6-280 (SRC)  
Civil Action No. 6-3790 (SRC)

**OPINION & ORDER**

**CHESLER, District Judge**

This matter comes before the Court upon the filing by Plaintiffs of several post-trial motions. Plaintiff Valerie Montone has filed a motion to mold the verdict to offset the negative tax consequences of a lump-sum award and for prejudgment interest (2:06-cv-280, Docket No. 351), to which the remaining Plaintiffs (collectively, the “Astriab Plaintiffs”) have filed a supplemental brief in support. 2:06-cv-3790, Docket No. 216. The Astriab Plaintiffs have submitted an additional brief to correct for an error in the calculation of prejudgment interest for Plaintiff Ezio Scerbo. 2:06-cv-3790, Docket No. 218. Defendants have submitted the same opposition brief to both motions (2:06-cv-280, Docket No. 354; 2:06-3790, Docket No. 220, “Defs. Br.”), and Plaintiff Montone has filed a reply brief. 2:06-cv-280, Docket No. 355. The

Court has reviewed the parties' submissions and proceeds to rule without oral argument. See Fed. R. Civ. P. 78(b). For the reasons set forth below, this Court grants Plaintiffs' motion for prejudgment interest. This Court also grants Plaintiffs' motion to mold the verdict to offset the negative tax consequences of receiving a lump-sum award. Before determining the appropriate amount by which to mold the verdict to offset such tax consequences, this Court will grant Defendants leave to depose Plaintiffs' expert Kristin Kucsma regarding the methodology and calculations contained in her report, as well as leave to file an expert report in opposition.

### **I. Background**

This case concerns an employment dispute between Plaintiffs, all retired police sergeants of the Jersey City Police Department, and the City of Jersey City, its former mayor Jerramiah Healy, and its former police chief Robert Troy. The two above-captioned cases were consolidated for trial purposes, and a jury trial was held before this Court from April 16 to May 2, 2018. In its verdict, the jury found that Plaintiff Montone's political affiliation and expression about a matter of public concern were substantial or motivating factors in Jersey City's decision not to make promotions from the 2003-2006 Lieutenant's list, and that Plaintiff Montone's conduct, which is protected by the NJ Law Against Discrimination ("NJ LAD"), played a role and made an actual difference in this decision. Docket No. 335 (indicating 'Yes' to questions 1, 2, and 3).

The jury awarded Plaintiff Montone \$276,834 in economic damages and did not award damages for emotional distress. Based on handwritten jury notations to trial exhibit P-272, this award appears to modify Plaintiff Montone's own estimate of her economic losses by subtracting her estimate of 2005 lost wages, 2005-2017 interest on past loss wages, and 2010-2017 interest on past pension loss. See Docket No. 351, Ex. H, "Economic and Financial Losses

of Valerie Montone” (subtracting \$4,737, \$20,336, and \$8,082 respectively from the \$309,989 “Total loss,” with the resulting \$276,834 circled at bottom). As such, the jury did not award Plaintiff Montone prejudgment interest or account for the negative tax consequences of receiving a lump-sum award. The jury awarded approximately \$1.9 million in total economic damages for the other eight Plaintiffs. For each Astriab Plaintiff, the damage award exactly corresponds to the damage appraisal from the April 9, 2018 report issued by Plaintiffs’ expert Kristin Kucsma. Cf. 2:06-cv-280, Docket No. 335 with 2:06-cv-3790, Docket No. 216, Ex. K, 31. As such, the jury likewise did not award the Astriab Plaintiffs prejudgment interest or account for the negative tax consequences of receiving a lump-sum award.

For all nine Plaintiffs, the jury’s award of economic damages includes a present value calculation of the pension differential—accruing annually through the end of Plaintiffs’ life expectancy—that results from retiring with a lower police rank. Each Plaintiff will pay taxes on this lump-sum award within one tax year, instead of paying taxes on smaller amounts spread across past and future years. As a result of the progressive income tax structure, there are adverse tax consequences associated with paying taxes on a single lump-sum award within a single tax year as opposed to paying taxes on smaller amounts spread across multiple tax years.

## **II. Discussion**

After a careful review of the applicable case law, this Court is satisfied that Plaintiffs are entitled to an award of prejudgment interest as well as a molded verdict to offset the adverse tax consequences of receiving a lump-sum jury award.

### **a. Plaintiffs are Entitled to the Award of Prejudgment Interest**

The jury found that Defendants violated the NJ LAD, codified at N.J. Stat. Ann. § 10:5. See Docket No. 335 (indicating ‘Yes’ to questions 2). The statute provides a broad set of

remedies to prevailing plaintiffs. N.J. Stat. Ann. § 10:5-13 (“All remedies available in common law tort actions shall be available to prevailing plaintiffs”). To effectuate its antidiscrimination policies, the statute codifies a “legislative finding[] and declaration[]” that damages available to prevailing plaintiffs under the NJ LAD “shall be liberally construed in combination with other protections available under the laws of this State.” N.J. Stat. Ann. § 10:5-3.

Under the New Jersey Rules of Court, prejudgment interest is available to prevailing plaintiffs in tort actions under certain circumstances:

Except where provided by statute with respect to a public entity or employee, and except as otherwise provided by law, the court shall, in tort actions, including products liability actions, include in the judgment simple interest, calculated as hereafter provided, from the date of the institution of the action or from a date 6 months after the date the cause of action arises, whichever is later, provided that in exceptional cases the court may suspend the running of such prejudgment interest.

N.J. Ct. R. R. 4:42-11. This rule contains a presumption in favor of granting prejudgment interest. Potente v. Cty. of Hudson, 187 N.J. 103, 114 (N.J. 2006) (“What the rule actually says is that pre-judgment interest *shall* be awarded against all defendants *unless* it is prohibited by applicable law.”) (emphasis in original). In light of the broad remedies available under the NJ LAD, the New Jersey Supreme Court has held that the presumption in favor of granting prejudgment interest applies to prevailing plaintiffs under the NJ LAD. Id. at 114.

Plaintiffs who have been awarded backpay damages under Title VII, codified at 42 U.S.C. § 2000e-1 et seq, are entitled to a “strong presumption in favor of awarding prejudgment interest.” Booker v. Taylor Milk Co., 64 F.3d 860, 868 (3d Cir. 1995). While this Court has discretion not to award prejudgment interest, it may “exercise its discretion to depart from this presumption only when it provides a justification that reasonably supports the departure.” Id. at 868; see also Nance v. City of Newark, 501 F. App’x 123, 129 (3d Cir. 2012) (“Thus, to the extent ... that the damages awarded to the plaintiff represent compensation for lost wages, it is

ordinarily an abuse of discretion *not* to include pre-judgment interest.”) (citing Gierlinger v. Gleason, 160 F.3d 858, 873 (2d Cir. 1998)) (emphasis in original). Plaintiffs who have been awarded backpay damages under 42 U.S.C. §1983 are likewise entitled to a presumption in favor of prejudgment interest. Nance, 501 F. App’x at 131.

Notwithstanding the clear presumption in favor of prejudgment interest, Defendants argue that such an award is inappropriate here because the “jury intentionally and willfully removed” prejudgment interest from its award and therefore Plaintiffs seek “to override the jury’s verdict and award the specific monies that the jury determined were not recoverable or should not be awarded as damages.” Defs. Br. 6. This argument is not persuasive. First, the jury rendered a general verdict, which merely asked the jury to determine “the amount of money that would fully and fairly compensate plaintiff” for economic damages. Docket No. 335, 2. The verdict contained no special interrogatories regarding prejudgment interest, nor any indication by the jury that such prejudgment interest was not appropriate. While Defendants make a colorable argument that the handwritten annotations to the trial exhibit evince the jury’s disinclination to award prejudgment interest, those notes are subject to multiple interpretations. In any case, such notes are pre-verdict and do not themselves constitute the verdict. Even if the notes were unambiguous, Defendants provide no caselaw authority for the proposition that this Court is bound by such pre-verdict handwritten notes. As such, Defendants’ argument does not overcome the strong presumption in favor of granting prejudgment interest to Plaintiffs, and this Court will accordingly grant such relief.

**b. Plaintiffs are Entitled to Molding the Verdict to Offset the Negative Tax Consequences of Receiving a Lump-sum Jury Award**

As noted above, the NJ LAD entitles prevailing plaintiffs to a broad set of remedies. New Jersey courts have interpreted this mandate for broad, liberally construed remedies to include

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