

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1984-CV-1753C

ENERGY POLICY ADVOCATES)

PLAINTIFF)

V.)

OFFICE OF THE ATTORNEY GENERAL OF)
MASSACHUSETTS, MAURA HEALEY,)
in her official capacity as Attorney General, and)
OFFICE OF THE SECRETARY OF THE)
COMMONWEALTH and WILLIAM FRANCIS)
GALVIN, in his official capacity as Secretary of)
The Commonwealth)

DEFENDANTS)

PLAINTIFF'S EMERGENCY MOTION TO EXTEND NISI DATE UNTIL AUGUST 30, 2024, FOR AN EVIDENTIARY HEARING ON DEFENDANT'S BREACH OF THE SETTLEMENT AGREEMENT AND FOR AN ORDER IMPOSING SANCTIONS OF \$100 PER DAY FROM JULY 29, 2024 TO THE DATE OF COMPLIANCE FOR BREACH OF THE SETTLEMENT AGREEMENT

Plaintiff and Defendant completed a settlement agreement on or about June 25, 2024 that anticipated payment of \$45,450 in imposed legal fees following the Defendant's summary judgment loss in this public records case on March 15, 2023. Following foot dragging, delays and bad faith by the Office of the Attorney General on the issue of fees, the settlement agreement recognized the obligation to pay, and to close out this matter by the July 29, 2024 Nisi date imposed by the Court. Notwithstanding that the Settlement Agreement was a negotiated document, the Defendant has refused to comply with the terms of the Agreement which was supposed to end this 5 year nightmare. Subsequent to the completion of the Agreement, the Defendant has announced that the payment will come at some amorphous date

in the future when the “Comptroller” gets around to it, but certainly not before July 29, 2024.

The Defendant made no such condition precedent part of the negotiated Settlement Agreement, and such a proposal would have rendered the Settlement Agreement illusory at best. The clear intention, and the clear meeting of the minds, was to pay the Settlement by July 29, 2024, at which time the case would be dismissed and closed. Based upon communications with the Defendant, there is no clear date on which payment is to be made, or even if payment will be made, or that anyone in the Office of the Attorney General’s Office takes this Settlement Agreement seriously. At this juncture, there are lawyers who have been waiting to get paid in this matter for years.

The refusal to make payment by July 29, 2024 is just another example of bad faith, hindrance and delay in closing out this matter, a pattern that has been constant for five years. At the last hearing on this matter, on June 13, 2024, Judge Gordon warned the Defendant against more bad faith in hindering the wrapping up of a case that was only filed because of the unreasonable intransigence of the Defendant in releasing records in the public interest pertaining to her own acts five years ago. The Agreement, Notice Nisi and the Docket Sheet with the various order is appended.

With the Defendant’s adamant stance that she will not comply with the Settlement Agreement on July 29, 2024, this Court, and perhaps Judge Gordon, must issue further orders to effectuate conclusion of this matter.

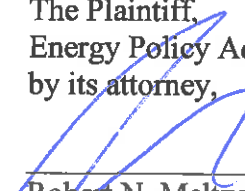
First, the Nisi date must be extended for 30 days, as this matter is not ripe for closure on Monday July 29, 2024, and this motion must be done on an emergency basis based on lack of time for the Rule 9A process to run its course. Notwithstanding, the Plaintiff has reached out to the Defendant advising her of the impending motion based upon the breach of the Agreement.

As always, the notification was met with bluster, bad faith, threats and no hint of compliance.

Second, the Court should schedule an evidentiary hearing with witnesses in which the Defendant can explain to the Court under oath her refusal to complete its obligations under the unambiguous Settlement Agreement that required closure by July 29, 2024. At that same hearing, the Court should award Plaintiff's counsel an additional fee award of approximately \$10,000 to be quantified at the evidentiary hearing to address the enormous sum of money spent by Plaintiff's counsel since the Court's Memorandum and Order of February 29, 2024. As the Court noted in that Order, "there remain only a very small number of open issues to be resolved by the parties; the undersigned is confident that the next filing in this case will either be a Stipulated Entry of Judgment or a Motion for Voluntary Dismissal." Instead, the Plaintiffs have experienced another five months of scorched earth litigation followed by refusal to comply with the Settlement Agreement.

Third, the Court should sanction the Defendant for ongoing bad faith in litigation and settlement by fining the Defendant \$100/day backdated to every day from July 29, 2024 to the date of payment.

Respectfully Submitted,
The Plaintiff,
Energy Policy Advocates,
by its attorney,


Robert N. Meltzer (BBO #564745)
The Mountain States Law Group
Wheelhouse at the Bradford Mill
33 Bradford Street
Concord, MA 01742
(978) 254 6289
r.meltzer@mountainstateslawgroup.com

July 23, 2024

Robert N. Meltzer
Attorney At Law

33 Bradford Street
Concord, MA 01742
(978) 254-6289
inbox@mountainstateslawgroup.com

CERTIFICATE OF SERVICE


I hereby certify that on this date I served the foregoing by first class mail, postage prepaid, on:

Katherine Fahey, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Law Office of Nathaniel M. Lindzen
57 School Street
Wayland, MA 01778



July 23, 2024

ORDER FOR ENTRY OF DISMISSAL NISI	DOCKET NUMBER 1984CV01753	Trial Court of Massachusetts The Superior Court 
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CASE NAME: Energy Policy Advocates et al vs. Maura Healey in her official capacity as Attorney General et al	John E. Powers III, Acting Clerk of Court Suffolk County Civil
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TO: Nathaniel Lindzen, Esq. SWI/Law Office of Nathaniel M. Lindzen 57 School St Wayland, MA 01778	COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108
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The above entitled action came on before the court, Hon. Robert B Gordon, and there upon was reported settled by counsel of record.

It is **ORDERED** that an **AGREEMENT FOR JUDGMENT** or **STIPULATION OF DISMISSAL**, be filed in the Clerk's office by **07/29/2024**.

If said Agreement or Stipulation is not filed by said date the Clerk is hereby directed to prepare, sign and enter Judgment dismissing the Complaint, and all other claims, without prejudice and without statutory costs.

DATE ISSUED 06/14/2024	ASSOCIATE JUSTICE Hon. Robert B Gordon	ASSISTANT CLERK Michael O'Loughlin	SESSION PHONE# (617)788-8172
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1984CV01753

ENERGY POLICY ADVOCATES,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL
OF MASSACHUSETTS, ANDREA
CAMPBELL, in her official capacity as
ATTORNEY GENERAL, OFFICE OF THE
SECRETARY OF THE
COMMONWEALTH, and WILLIAM
FRANCIS GALVIN, in his official capacity
as Secretary of the Commonwealth,

Defendants.

**SETTLEMENT AGREEMENT REGARDING ATTORNEYS' FEES, COSTS AND UN-
IMPOUNDING**

This agreement ("Agreement") is made by and between Plaintiff, Energy Policy Advocates and Defendant the Massachusetts Office of the Attorney General ("AGO") (together the "Parties").

WHEREAS, Plaintiffs brought the Action in June 2019 in Suffolk Superior Court under the Massachusetts Public Records Law, M.G.L. c. 66, § 10A and c. 4, § 7, and the Declaratory Judgment Act, M.G.L. c. 231A, § 1, against the AGO and the Office of the Secretary of the Commonwealth and Secretary William Galvin, seeking production of records previously requested by way of public records request letters sent to the AGO in February and April 2019,

WHEREAS, following the production of numerous records, and motion practice regarding nine records with respect to which the AGO claimed exemptions, the Court granted Plaintiff's Motion for Summary Judgment in part and denied it in part, and furthermore ordered the un-impounding of redacted versions of related Summary Judgment briefs and the Court's ruling thereon,

WHEREAS, following the production of numerous records, Plaintiff amended its

complaint, striking all claims against Defendants Office of the Secretary of the Commonwealth and Secretary Galvin, and Plaintiff sought summary judgment and attorneys' fees and costs against the AGO only, Defendants Office of the Secretary and Secretary Galvin are not parties to this Agreement and bear no obligations hereunder,

WHEREAS, Plaintiff filed a motion seeking attorneys' fees M.G.L. c. 66, § 10A, which the Suffolk Superior Court granted in part and denied in part,

NOW, THEREFORE, in consideration of the covenants, undertakings, and promises set forth herein, and for other good and valuable consideration, the sufficiency of which is expressly and irrevocably acknowledged, the Parties hereby agree as follows:

- I. Parties stipulate and agree to submit to the Court for publication in the docket the redacted versions of the Court's Memorandum and Order on Plaintiff's Motion for Summary Judgment and associated 5-page briefs by Plaintiff and Defendants (Docket at Nos. 29-30) that have been redacted pursuant to the Court's Decision and Order on Plaintiff's Motion to Modify Order of Impoundment dated February 29, 2024.
- II. Parties stipulate and agree to submit to the Court for publication in the docket the appropriately redacted versions of the Parties Memoranda in Support of, and in Opposition to, Plaintiff's Motion to Modify Order of Impoundment located at docket nos. 33 and 35.
- III. Defendant shall pay to Plaintiff's attorneys, Robert Meltzer and Nathaniel Lindzen a non-refundable sum of **\$45,450.00** (the "Fees Payment"), as calculated by the Parties in accordance with the Suffolk Superior Court's February 28, 2024 Order on Plaintiff's Motion for Attorneys' Fees (Docket No. 41). The Fees Payment shall be paid as follows:
 - a. This payment shall be made to counsel for Plaintiff as follows:
 - i. Robert Meltzer, Mountain States Law Group, in the amount of \$23,000;
 - ii. Nathaniel Lindzen, the Law Offices of Nathaniel M. Lindzen, in the amount of \$22,450.
 - b. The date on which Plaintiffs receive the Fees Payment in full shall be the "Effective Date."
- IV. Following the execution of this Agreement by both sides, and prior to July 29, 2024, Plaintiff will file a stipulation of dismissal, attached hereto as Exhibit A, in the above-captioned action.
- V. Upon the Effective Date, Plaintiffs fully, finally and forever release, relinquish, discharge, and waive any and all claims against the Defendant for attorneys' fees, costs and expenses that are asserted or could have been asserted in this Action.

- VI. This Agreement contains all the agreements, conditions, promises and covenants among Parties regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of this Agreement.
- VII. This Agreement shall not establish, or be evidence of: (1) a “reasonable” hourly rate for Plaintiffs’ or any other counsel; (2) the “reasonableness” of counsel’s hours, or of any legal services or activities performed by counsel; (3) the compensability of any legal services or activities performed by counsel in this or any other action; (4) a precedent for including, in future settlement agreements, fees for any legal services or activities; or (5) the compensability of any item of costs or expenses in this or any other action.
- VIII. Nothing in this Agreement shall modify any obligations of the Parties pursuant to the Court’s orders not pertaining to attorney’s fees, including with respect to the confidentiality of material that remains impounded, or with respect to materials provided pursuant to the February 9, 2023 Protective Order, that Plaintiff’s counsel must, following the conclusion of the litigation, destroy all copies, paper or electronic, of the subject records that were deemed not to be public records by the Court, and certify in writing that they have returned or destroyed those records that are not deemed to be public records. Counsel for Plaintiff shall return to counsel for Defendant, or shall certify in writing to counsel for Defendant that all copies of the records in question within Plaintiff’s or Plaintiff’s counsels’ possession, custody, and control have been destroyed, by the date Plaintiff files a stipulation of dismissal, and in no event later than July 29, 2024.
- IX. Notwithstanding anything above or below or in the Stipulated Notice of Dismissal, nothing in this agreement shall have any preclusive effect or impact on any other action past, present or future between the Parties. The impact of this agreement is limited exclusively to this action, C.A. No. 1984CV01753 (Suffolk Superior Court).
- X. Signatures transmitted by facsimile or electronically in the form of a PDF file are deemed to be originals and this Agreement may be executed in counterparts, each of which together shall constitute one and the same instrument.
- XI. The Parties represent and warrant that they have authority to enter into this Agreement and that this Agreement shall be binding upon, and inure to the benefit of, their successors and assigns. Each of the persons executing this Agreement on behalf of Plaintiff or Defendant represents and warrants that he or she has the authority to do so.
- XII. The validity, construction, interpretation, and performance of this Agreement, and any disputes or legal action arising under or from this Agreement, shall be governed by the laws of the Commonwealth of Massachusetts, without reference to conflicts of laws principles. In the event a dispute arises out of or relating to this Agreement,

the Parties agree that such dispute shall be adjudicated in a state court of competent jurisdiction in Suffolk County in the Commonwealth of Massachusetts. The Parties expressly consent to venue and personal jurisdiction in said courts for purposes of disputes arising under this Agreement.

Energy Policy Advocates,
Through Counsel,

OFFICE OF THE ATTORNEY GENERAL
OF MASSACHUSETTS,

By: /s/ Nathaniel Lindzen _____

By: _____

Print Name: Nathaniel Lindzen _____

Print Name: Lisa Maki, General Counsel _____

Date: 6/25/24 _____

Date: _____

Docket
Date

Docket Text

File
Ref
Nbr.

Image
Avail.

Has been: Held as Scheduled
Hon. Robert B Gordon, Presiding
Staff:
Michael O'Loughlin, Assistant Clerk Magistrate

02/29/2024 MEMORANDUM & ORDER:

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[Image](#)

Memorandum of Decision and Order on Plaintiff's Motion for Attorney's Fees

The Court believes that the fees and costs ordered herein are fair, reasonable, and proportional to the importance of the issues at stake and the degree of success EPA obtained in the case. Although the fee award will not be small, the AGO cannot be surprised that 4 1/2 years of contentious litigation (in which the overwhelming majority of its pre-suit position were either conceded or rejected) has been produced such a result.

The Court declines to perform the granular math that will be required to convert the foregoing rulings into a single fee award. However, in light of the clarity of the within ruling, and acknowledging that there main only a very small number of open issues to be resolved by the parties, the undersigned is confident that the next filing in this case will be either a Stipulated Entry of Judgment or a Motion for Voluntary Dismissal.

See paper #41
(Dated 2/27/24)

Judge: Gordon, Hon. Robert B

Notice Sent 3/1/24

02/29/2024 ORDER: Decision and Order on Plaintiff's Motion to Modify Order of Impoundment
See paper #42
(Dated 2/27/2024)
Notice sent 3/4/24

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[Image](#)

04/19/2024 Event Result:: Conference to Review Status scheduled on:
06/10/2024 02:00 PM
Has been: Rescheduled For the following reason: By Court prior to date
Hon. Robert B Gordon, Presiding
Staff:
Michael O'Loughlin, Assistant Clerk Magistrate

06/13/2024 Event Result:: Conference to Review Status scheduled on:
06/13/2024 02:00 PM
Has been: Held via Video/Phone
Hon. Robert B Gordon, Presiding
Staff:
Michael O'Loughlin, Assistant Clerk Magistrate

06/14/2024 ORDER of dismissal nisi entered after action was reported settled; Agreement or Stipulation shall be filed in this court by 07/29/2024

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[Image](#)

Case Disposition

Disposition

Date

Case Judge

Pending