UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	Case No. 1:08-cv-827 (LMB/JFA)
v.	)	
CACI PREMIER TECHNOLOGY, INC.,	)	
Defendant.	)	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO AMEND THE JUDGMENT TO INCLUDE PREJUDGMENT AND POST-JUDGMENT INTEREST

As Plaintiffs set forth in their opening brief, prejudgment interest is presumptively available for violations of federal law, including ATS violations. Such interest routinely is awarded for damages resulting from the sorts of severe emotional, noneconomic harm that Plaintiffs suffered—particularly where, as here, the defendant engaged in inequitable "delay tactics." In opposition, CACI constructs claimed hurdles to Plaintiffs' recovery of prejudgment interest that simply do not exist. CACI insists that Plaintiffs needed to seek prejudgment interest expressly in the Complaint to recover it now: the Federal Rules of Civil Procedure, however, say exactly the opposite. CACI maintains that Plaintiffs must have requested prejudgment interest from the jury in order to recover it, but courts have debunked ancient precedents stating as much, and regularly add prejudgment interest to a jury's damages award when the jury was neither

instructed on—nor asked to award—such interest. Finally, CACI distorts a recent Fourth Circuit case, *Gilliam v. Allen*, from a decision that rejected prejudgment interest on the unique and distinguishable facts of a Section 1983 case into a decision that—with no acknowledgement whatsoever—would inaugurate a sea change in the law governing prejudgment interest. The Fourth Circuit intended no such thing.

Because prejudgment interest is available to Plaintiffs, because the "considerations of fairness" that guide courts' analysis favor award of such interest here, and because CACI offers no opposition to either Plaintiffs' proposed prejudgment interest rate or the period over which such interest has accrued, the Court should award prejudgment interest on Plaintiffs' compensatory damages as requested by Plaintiffs in this motion.

ARGUMENT

I. Plaintiffs Are Entitled to Prejudgment Interest Regardless of Whether Such Interest Was Expressly Requested in Their Pleadings

CACI spends pages of its opposition reciting excerpts from Plaintiffs' pleadings, initial disclosures, and interrogatory responses, in support of the claimed proposition that prejudgment interest is not available where Plaintiffs did not seek such interest in their Complaint and "plead that element of damages." *See* ECF No. 1844 at 7-8, 13. CACI is wrong.

Keeping aside that the jury demand Plaintiffs set forth in the Complaint seeking "costs permitted by law" does encompasses prejudgment interest,"[1] the law does not require that a party demand prejudgment interest in its complaint in order to receive such interest. As Federal Rule of

[1] *See, e.g.*, *Teen Challenge Int'l v. Metro. Gov't of Nashville & Davidson* Cnty., 2009 WL 2151379, at *2 (M.D. Tenn. July 17, 2009) (jury demand for "other and further relief as this Court may deem just and appropriate" constituted request for prejudgment interest).

Civil Procedure 54(c) provides, "[e]very … final judgment," other than a default judgment, "should grant the relief to which each party is entitled, ***even if the party has not demanded that relief in its pleadings***." Fed. R. Civ. P. 54(c) (emphasis added).[2] Courts "have consistently held that a party's entitlement to prejudgment interest is not waived even by failing to request interest as late as the pre-trial order or at trial." *Baker's Express, LLC v. Arrowpoint Cap. Corp.*, 2012 WL 4370265, at *26 (D. Md. Sept. 20, 2012) (collecting cases); *see also RK Co. v. See*, 622 F.3d 846, 853-54 (7th Cir. 2010) (citing Rule 54(c), holding that "a failure to request prejudgment interest in the final pretrial order does not result in a waiver," and emphasizing absence of prejudice to defendant, as defendant "cannot argue that he would have acted any differently had the request been spelled out in the pretrial order"); *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*, 610 F.3d 249, 262 (5th Cir. 2010) (stating that requiring parties to specifically request prejudgment interest prior to trial would "undermine" Rule 54(c)); *Dalal v. Alliant Techsystems, Inc.*, 72 F.3d 137 (Table) (10th Cir. 1995) (citing Rule 54(c) and holding that plaintiff's "failure to request prejudgment interest earlier did not preclude the district court from making the award" upon post-trial motion).

The nature of Plaintiffs' damages disclosures, moreover, was the subject of extensive briefing by CACI, the upshot of which was that CACI had no illusions about Plaintiffs' intent to seek prejudgment interest years before trial. Even if Plaintiffs' disclosures regarding prejudgment interest were belated (and Rule 54(c) makes clear that they were not), CACI can offer no valid reason as to how it was supposedly prejudiced. Importantly, what is missing in CACI's opposition

[2] CACI argues—citing only to "the context of default judgments"—that Plaintiffs did not "provide adequate notice of a demand for prejudgment interest." ECF No. 1844 at 8 n.4. Rule 54(c), however, specifically exempts default judgments from its purview. *See* Fed. R. Civ. P. 54(c).

is an assertion that it would have not filed its seriatim motions to dismiss, would not have sought reconsideration of the Court's rulings denying those motions, would not have sought interlocutory appeals of the Court's rulings (including through mandamus petitions), or would have settled the dispute if it knew earlier that prejudgment interest was on the table. Accordingly, the timing of Plaintiffs' prejudgment interest disclosure is no basis to deny Plaintiffs such interest now.

II. Courts Routinely Award Prejudgment Interest Where Such Interest Was Not Requested from the Jury

CACI similarly insists that prejudgment interest cannot be awarded here because the Plaintiffs did not "expressly ask the jury to award" such interest. *See* ECF No. 1844 at 7. While "[i]n federal practice, usually the jury is required to pass on all elements of damages," prejudgment interest is an exception to this general rule and is "routinely added by the judge on motion to alter or amend the judgment under Fed. R. Civ. P. 59(e)." *Bos. Gas Co. v. Century Indem. Co.*, 529 F.3d 8, 21 (1st Cir. 2008) (citing the Supreme Court's decision in *Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989), affirming a post-verdict award of prejudgment interest).

Indeed, when parties file (oft-granted) Rule 59(c) motions to amend the judgment to include prejudgment interest, it is standard that such interest was not requested of the jury. Such cases are, accordingly, too legion to catalogue, though Plaintiffs provide a few representative examples, including from the Fourth Circuit. *See, e.g.*, *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 302 (4th Cir. 2009) (reversing district court where district court declined to award prejudgment interest on the ground that plaintiff did not request such interest in its initial post-trial briefing, much less at trial); *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013) (instructing district court to reconsider denial of prejudgment interest, where jury was not instructed on prejudgment interest and such interest was not requested of jury); *Pittington v. Great Smoky Mountain Lumberjack*

Feud, LLC, 880 F.3d 791, 807 (6th Cir. 2018) (holding that district court abused discretion in applying unreasonably low prejudgment interest rate where jury was not instructed on prejudgment interest and such interest was not requested of jury); *see also* cases discussed *infra* at 8. That courts—rather than juries—regularly award prejudgment interest after a jury trial is unsurprising, given the well-established proposition that "[a] decision whether to award prejudgment interest as a component of relief is entrusted to the discretion of the district court," not the jury. *United States v. Gregory*, 818 F.2d 1114, 1118 (4th Cir. 1987) (citing *Albemarle Paper Company v. Moody*, 422 U.S. 405 (1975)). Indeed, even where the motions are denied, the denial typically is based on an assessment of the factors relevant to the Court's exercise of discretion, not based on a failure of the plaintiff to ask the jury to award interest.

To be sure, there are some cases—mostly out-of-circuit, many several decades old and limited to claims under specific statutes—holding that requests for prejudgment interest must be submitted to a jury. *See Gilliam v. Allen*, 62 F.4th 829, 849 (4th Cir. 2023) (citing in dicta cases from the First, Second, and Fifth Circuits). In *all* of those Circuits, however, courts have expressly or implicitly overruled or limited those cited decisions and permit the award of prejudgment interest whether or not it was requested of the jury. *See, e.g.*, *Matter of AmeriSciences, L.P.*, 781 F. App'x 298, 306-07 (5th Cir. 2019) (affirming award of prejudgment interest awarded following jury verdict and noting that "there is no dispute [that] a district court can and usually should award" such interest); *Bos. Gas Co.*, 529 F.3d at 21, *supra* at 4; *Wickham Contracting Co. v. Loc. Union No. 3, Int'l Bhd. of Elec. Workers, AFL-CIO*, 955 F.2d 831, 833 (2d Cir. 1992) (affirming district court's post-verdict award of prejudgment interest); *see also Reed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1183 (2d Cir. 1996) (approvingly citing *Frank v. Relin*, 851 F. Supp. 87 (W.D.N.Y.

1994), which described the overruling of old precedents prohibiting prejudgment interest awards not found by a jury). As another court, carefully tracing the law on the question, has explained in rejecting a defendant's contention that a plaintiff should have requested prejudgment interest from the jury rather than via a Rule 59(c) motion, "Defendant cannot ignore … that subsequent cases in those same Circuits [whose earlier decisions defendant cited] have rejected the argument that, for federal claims, the issue of prejudgment interest must first be presented to the jury." *Badger v. S. Farm Bureau Life Ins. Co.*, 2009 WL 10664257, at *1-2 (M.D. Fla. Sept. 14, 2009), *rev'd and remanded on other grounds*, 612 F.3d 1334 (11th Cir. 2010).

Moreover, it makes particular sense on the facts of this case that Plaintiffs did not make their request for prejudgment interest to the jury. As explained in Plaintiffs' opening brief (and as was undisputed by CACI), the award of prejudgment "is given in response to considerations of fairness," ECF No. 1836-1 at 7 (quoting *Bd. of Comm'rs of Jackson Cnty. v. United States*, 308 U.S. 343, 352 (1939)), including, among other considerations, a defendant's "persistent delay tactics over the course of th[e] litigation," *id.* at 9 (quoting *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216, 265 (D.D.C. 2008)). The Court certainly would not have permitted Plaintiffs to offer evidence of CACI's "persistent delay tactics"—including its endless motions "repeat[ing] many of the same arguments [CACI] has previously made and which have been rejected by the Court," ECF No. 1396 at 9, its frivolous mandamus petitions, and the eve-of-trial interlocutory appeal that was squarely foreclosed by Circuit precedent ***in this very case***—even when such factors are relevant to the propriety of a prejudgment interest award. It is more appropriate for the Court to make that assessment, rather than the jury.

Accordingly, it was neither necessary that Plaintiffs request prejudgment interest from the jury in order to receive such interest, nor unusual that Plaintiffs did not do so in this case.

III. *Gilliam* Does Not Preclude the Award of Prejudgment Interest Here

As an initial matter, it is important for the Court to consider the Fourth Circuit's ruling on the prejudgment interest issue in *Gilliam v. Allen*, 62 F.4th 829 (4th Cir. 2023) in the context of that case as a whole. In *Gilliam*, the district court instructed the jury to award compensatory damages not only for past harm but for harm they were "reasonably likely to suffer in the future," *id.* at 849, the jury awarded a staggering $62 million in compensatory damages, *id.* at 850, and the district court made a variety of errors in assessing damages, *see, e.g., id.* at 844-47.

As Plaintiffs explained in their opening brief, the Fourth Circuit's reversal of the prejudgment interest award turned primarily on two factors. First was its "assump[tion]," "absent any indication to the contrary," that "the jury awarded fully compensating damages" to the Plaintiffs. *See* ECF No. 1836-1 at 10-11. Second was the Court's concern that the award of any additional prejudgment interest would be speculative, particularly in light of the jury's likely award of damages for future harm. *See id.* at 12. As discussed below, CACI transforms the Fourth Circuit's discussion of both factors into broad, categorical principles that would—without any acknowledgement whatsoever—transform the way courts award prejudgment interest.

CACI insists that *Gilliam* stands for the proposition that in a tort case involving non-fixed damages, "where the jury has been instructed to award complete compensation to the Plaintiffs," courts must always assume that jurors awarded compensation that was "complete" in the sense that it accounted for the time-value of money. *See* ECF No. 1844 at 9-10. But the assumption described in *Gilliam* is fact-specific and case dependent, and it is only where that particularized

assumption is appropriate that the court should decline "to add prejudgment interest to a jury verdict." *Id.* at 10.

That assumption was easy to make in *Gilliam,* given the substantial nature of the jury's compensatory damages award and the Court's specific instruction to the jury to award damages even for future harm. But, as courts regularly recognize, it cannot be assumed that juries award compensatory damages that adequately account for the time-value of money—obviating the need for prejudgment interest—as a matter of course. *See, e.g.*, *Bangert Bros. Const. Co. v. Kiewit W. Co*., 310 F.3d 1278, 1298 (10th Cir. 2002) ("the district court erred in presuming that the jury's award necessarily included an award of prejudgment interest" where "there was nothing in the instructions to require the jury to include an interest component" and "nothing about the amount of damages awarded by the jury necessarily indicates that the jury included prejudgment interest in its damages award")[3]; *Gierlinger v. Gleason*, 160 F.3d 858, 874-75 (2d Cir. 1998) (district court abused its discretion in failing to award prejudgment interest where "[t]he court's presumption that the jury's award included prejudgment interest finds no support in the record" as the jury was not asked "to engage in complicated computations of interest"); *H.H. Robertson Co., Cupples Prods. Div. v. V.S. DiCarlo Gen. Contractors, Inc*., 950 F.2d 572, 579 (8th Cir. 1991) (rejecting contention that district court's award of prejudgment interest constituted a double-recovery because the "jury was not specifically instructed to award interest … We therefore cannot conclude that the jury included prejudgment interest within the general verdict").

[3] The district court reasoned—wrongly, as the Tenth Circuit explained—"that the jury was instructed to fully compensate Bangert for the damages it incurred" so that the court could "'presume[] that the jury followed their charge' and included prejudgment interest in its damage award." *Bangert Bros. Const. Co*., 310 F.3d at 1297.

Indeed, if CACI's view of the law were reality, there would be no need for courts to emphasize that "[w]ithout [prejudgment interest], compensation of the plaintiff is incomplete" and award such interest so regularly in addition to juries' compensatory awards. *Gorenstein Enters., Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 436 (7th Cir. 1989); *see also United Phosphorus, Ltd. v. Midland Fumigant, Inc.*, 205 F.3d 1219, 1237 (10th Cir. 2000) (emphasizing that prejudgment interest is "ordinarily awarded, absent some justification for withholding it" and reversing district court's denial of motion for prejudgment interest following a jury verdict (citation omitted)); *supra* at 4-5.[4]

In the instant case, there are the "indications" missing in *Gilliam* that the jury's compensatory damages award did ***not*** account for prejudgment interest. Plaintiffs only asked that the jury award $3 million per plaintiff—an amount capped by Plaintiffs' damages disclosures years earlier (which expressly ***did not include*** prejudgment interest), and which did not, unlike in *Gilliam*, reflect harms projected into the future and for which prejudgment interest categorically could not apply. *See* ECF No. 1836-1 at 6. The jury awarded Plaintiffs what they asked for, but there is every reason to believe that this amount did not reflect the time-value of money (a subject on which the jury was not instructed and would have no reason to know that it should have

[4] Similarly, there would be no need to ask the jury to award prejudgment interest—as CACI argues Plaintiffs should have done—if it were assumed that juries' compensatory awards generally account for such interest.

Even CACI implicitly recognizes this: CACI appears to acknowledge that a jury's compensatory damages award is not assumed to be "complete" and does not account for the time-value of money where the case involves ***fixed*** damages. But if juries do not account for the time-value of money where damages are fixed or definite, there is no reason to believe they nevertheless do account for the time-value of money where damages are not fixed.

considered, *see supra* at 8) and simply awarded what Plaintiffs requested because at least that amount plainly was appropriate.[5]

As to *Gilliam*'s discussion of the district court's ability to calculate prejudgment interest, CACI derives a principle that it is "'impossible' in a tort case involving continuing injuries" for the district court to calculate prejudgment interest following a jury verdict. *See* ECF No. 1844 at 10-11. That proposition is at odds with the presumptive principle that prejudgment interest is available for violations of federal law. Pursuant to that principle, district courts routinely calculate and award prejudgment interest for past harm caused by continuing noneconomic injuries; indeed, Circuit courts frequently find an ***abuse of discretion*** when district courts fail to do so. *See, e.g.*, *Theobald*, 721 F.3d at 1078 (holding that "to the extent the district court denied prejudgment interest because it thought [prejudgment interest] is unavailable for non-economic damages, the district court abused its discretion" and advising court to "consider whether it is appropriate to award prejudgment interest for … [plaintiff's] past pain and suffering"); *Hillier v. S. Towing Co*., 740 F.2d 583, 586 (7th Cir. 1984) (district court erred in refusing to award prejudgment interest, following verdict, "for … intangible damages (pain, suffering and loss of society)"; *see also Thomas v. Texas Dep't of Crim. Just*., 297 F.3d 361, 372 (5th Cir. 2002) (holding that "[p]rejudgment interest should apply to all past injuries, including past emotional injuries"; "[b]ecause the jury found that [plaintiff] suffered past emotional injuries, the district court was compelled to award prejudgment interest on those past injuries"). It would be remarkable if the

[5] CACI's contention that "[d]etermining what the jury collectively considered is guesswork," ECF No. 1844 at 13, is hypocritical in the extreme, given that CACI challenges the jury's punitive damages award based on sheer speculation about the intent motivating a jury note. *See* ECF No. 1832 at 31.

Fourth Circuit had asserted the proposition that CACI ascribes to it with no discussion—or even acknowledgment—of the departure that it would thereby be staking out from other Circuits.

In the end, CACI overreads *Gilliam*. Again, the Fourth Circuit was particularly concerned in that case with the jury's likely award of future damages, given the district court's instruction to include in its compensatory damages award damages for harms that plaintiffs were "reasonably likely to suffer in the future." Such future damages could not bear interest, and the court did not know what portion of the damages awarded were "future." *Gilliam*, 62 F.4th at 849; *see also id*. (emphasizing that prejudgment interest is not available for future damages and that the district court could not know "what portion of damages represented compensation for future suffering"). In this case, by contrast, there is no reason to think that the jury awarded future damages: this Court did not instruct the jury to do so, and Plaintiffs' arguments to the jury about damages asked them only to award damages to "recompense" Plaintiffs for injuries that they had ***already*** suffered. *See* ECF No. 1823, 11/7/24 Trial Tr. at 71:1, 132:5-133:12. Thus, *Gilliam* does not prevent this Court from calculating prejudgment interest on noneconomic harm, a task that courts undertake every day. *Cf. McDill v. VSSI Tokyo, Inc*., 920 F. Supp. 727, 729-30 (S.D. Tex. 1996) (recognizing that "the equities of the case require the Court" to make an allocation of past versus present emotional harm for purposes of awarding prejudgment interest on jury's damages award, even when doing so is challenging).

Accordingly, Plaintiffs respectfully submit that the Court should award Plaintiffs prejudgment interest at the requested rate of 6 percent per year, starting from the date of each Plaintiff's injuries.[6]

IV. The Judgment Should be Amended to Reflect Post-Judgment Interest

CACI does not dispute that post-judgment interest is compulsory. ECF No. 1844 at 13. Nor does CACI dispute that such post-judgment interest should encompass the entirety of Plaintiffs' damages awards, including punitive damages and any prejudgment interest awarded by the Court. *See id.*; ECF No. 1836-1 at 14. To avoid any future disputes that may arise on this subject, the Court should amend the judgment to reflect Plaintiffs' entitlement to such interest.

CONCLUSION

For the reasons stated above, and for the reasons set forth in Plaintiffs' opening brief, *see* ECF No. 1836-1, Plaintiffs respectfully request that the Court amend the judgment to include both prejudgment and post-judgment interest.

Respectfully submitted,

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[6] CACI has not contested Plaintiffs' arguments regarding the appropriate rate of prejudgment interest, or the proposed start date from which prejudgment interest should run, thereby waiving any such objections.

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendants.

/s/ Charles B. Molster, III
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