IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,	)	**CASE NO. 17CV193761**
	)	
Plaintiffs,	)	**JUDGE JOHN R. MIRALDI**
	)	
v.	)	**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PREJUDGMENT INTEREST**
	)	
OBERLIN COLLEGE, et al.,	)	
	)	
Defendants.	)	**REDACTED VERSION**

CLOSED HEARING REQUESTED

INTRODUCTION

To recover prejudgment interest, Plaintiffs must show that Defendants Oberlin College ("Oberlin College" or "College") and Dr. Meredith Raimondo ("Dean Raimondo," and collectively with the College, "Defendants") did not make a good faith effort to settle this case. Plaintiffs cannot meet this heavy burden.

Defendants had—and still have—a good faith, objectively reasonable belief that they are not liable to Plaintiffs. Indeed, if Defendants' post-trial motions are granted, Plaintiffs' Motion for Prejudgment Interest ("Plaintiffs' Motion") will be moot. Yet, Defendants nonetheless made multiple, good faith, [redacted] settlement offers to Plaintiffs to resolve this dispute. In fact, for two days in April 2019, the Court was intimately involved—and was almost successful—in

effecting a settlement between the parties. In analyzing Plaintiffs' Motion, the Court should take into consideration Defendants' good faith efforts to settle with Plaintiffs during those two days. Even outside of those two days, however, Defendants continuously pushed for a resolution of this dispute, including via a two-day mediation and through continued efforts with the enlisted private mediator. These are just a few of the many examples further described below of Defendants' good faith efforts to settle with Plaintiffs.

The Supreme Court of Ohio set forth a four-factor test to determine whether a defendant has made a good faith effort to settle a case. Each of these factors weighs in favor of denying Plaintiffs' Motion. However, even if the Court somehow finds that Defendants did not make a good faith effort to settle this case, Plaintiffs can only recover prejudgment interest upon their past economic damages of $420,000.

LAW AND ANALYSIS

I. Plaintiffs' Motion should be denied because Defendants made good faith efforts to settle with Plaintiffs.

To award prejudgment interest under R.C. 1343.03(C), a court "must find that the party required to pay the judgment failed to make a good faith effort to settle the case . . . ." *Tummino v. Gerber*, 121 Ohio App.3d 518, 521, 700 N.E.2d 382 (9th Dist. 1997), citing *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 658, 635 N.E.2d 331 (1994). The Supreme Court of Ohio has set forth four factors for courts to consider in determining whether a defendant has made a good faith effort to settle for purposes of a request for prejudgment interest:

> A party has not failed to make a good faith effort to settle under R.C. 1343.03(C) if he has (1) fully cooperated in discovery proceedings, (2) rationally evaluated his risks and potential liability, (3) not attempted to unnecessarily delay any of the proceedings, and (4) made a good faith monetary settlement offer or responded in good faith to an offer from the other party.

Id., citing *Moskovitz*, 69 Ohio St.3d at 658 and *Kalain v. Smith*, 25 Ohio St.3d 157, 159, 495 N.E.2d 572 (1986).

A plaintiff seeking a prejudgment interest award bears a "heavy" burden in showing that a defendant did not make a good faith effort to settle. *Moskovitz*, 69 Ohio St.3d at 659. Importantly, R.C. 1343.03(C) "does not penalize those who choose to go to trial; it only affects those who choose to go to trial and then abuse the trial process, those who failed to conduct a lawsuit in good faith." *Hardiman v. ZEP Mfg. Co.*, 14 Ohio App.3d 222, 227, 470 N.E.2d 941 (8th Dist. 1984). Individually and collectively, the above factors—most of which Plaintiffs' Motion fails to cite or analyze—establish that Defendants made a good faith effort to settle with Plaintiffs.

A. Defendants fully cooperated in discovery proceedings.

In their Motion, Plaintiffs make no allegation of any lack of cooperation in discovery. Nor could Plaintiffs support such an allegation, given that Defendants fully cooperated with Plaintiffs during discovery and complied with the Court's discovery orders.

For instance, Defendants fully complied with each of the Court's pre-trial orders. *See, e.g.*, Entry and Ruling, dated Feb. 14, 2019. Defendants timely responded to no less than seven sets of discovery requests issued by Plaintiffs. Defendants took or defended the depositions of approximately fifty (50) individuals, and many of these depositions—given the complexity of this litigation—spanned multiple days. In fact, Defendants collaborated with Plaintiffs in scheduling and conducting these depositions. For example, following the entry of the Court's February 14, 2019 Entry and Ruling, *supra*, Defendants accommodated Plaintiffs' schedules in order to conduct the depositions of at least thirteen witnesses over the course of ten business days. In addition, at Plaintiffs' insistence, Defendants analyzed and produced tens of thousands of documents and records collected from no less than sixty (60) individuals. *See* Defs.' Statement Regarding the

February 14, 2019 In-Person Pretrial Status Conference, filed Feb. 13, 2019. Put simply, throughout this entire litigation, Defendants fully cooperated in the extensive discovery between the parties.

B. Defendants rationally evaluated their risks and potential liability.

Plaintiffs also make no argument in their Motion that Defendants failed to rationally evaluate their risk and potential liability. Nor could Plaintiffs establish the lack of a rational evaluation of Defendants' risk and potential liability. To be sure, Defendants' evaluation reflected in part their good faith belief that they have not engaged in any tortious conduct for which they can be properly held liable. Nonetheless, through written discovery, depositions, and pre-trial and trial proceedings, Defendants continued to evaluate their risk and potential liability by assessing the weight of their case on legal and factual grounds. In fact, Defendants' multiple settlement offers evidence Defendants' rational evaluation of their risk and liability in this action.

In particular, Defendants relied on longstanding legal precedent when evaluating their risk and potential liability. For instance, throughout this litigation, Defendants reasonably contended that they were not liable to Plaintiffs and, importantly, that there was no legal basis upon which this case could proceed to trial, including as to the three claims that the jury ultimately considered. *See* Defs.' Motions for Summary Judgment, filed Mar. 1, 2019; Defs.' Motion for Judgment Notwithstanding the Verdict, filed Aug. 14, 2019. However, once the Court permitted some of Plaintiffs' claims to proceed to trial, (*see* April 22, 2019 Entry and Ruling on Defendants' Motions for Summary Judgment), Defendants reasonably contended that Plaintiffs had no legal basis for the amount of damages they sought. Instead, Defendants believed that any settlement amount should be limited to the actual, provable harm that Plaintiffs may have suffered.

For example, upon Defendants' challenge, the Court excluded Plaintiffs' proposed expert Richard Maggiore, who was expected to testify that Plaintiffs were entitled to compensatory damages of $13.5 million in brand mitigation costs. Further, Defendants challenged—both via a pretrial motion in *limine* and cross-examination at trial—Plaintiffs' expert Frank Monaco's theory of damages, including his unsupported discount rate, risk rate, and 30-year projection of lost profits, and his speculative opinion on purported lost rental income and lost business opportunities. *See* Defs.' Motion for New Trial, Section III.C, filed Aug. 14, 2019; Defs.' Motion in *Limine* to Exclude Frank Monaco, filed April 23, 2019. And finally, as the Supreme Court of Ohio announced in December 2018, Defendants were aware that, should Plaintiffs recover noneconomic damages at trial, such damages were subject to the limits outlined in Ohio Revised Code Section 2315.18(B)(2). *See Wayt v. DHSC, LLC*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶ 2; *see also* Defs.' Motion to Cap Compensatory and Punitive Damages Pursuant to Ohio Revised Code Chapter 2315, filed June 21, 2019.

Plaintiffs' two-page Motion cites only to the size of the roughly $44 million verdict. As the Court is aware, Defendants regard the verdict to be unsupported by the facts and the law. Regardless, R.C. 1343.03 "affords no remedy . . . because one or both parties predict or fail to predict the ultimate verdict accurately." *Black v. Bell*, 20 Ohio App.3d 84, 88, 484 N.E.2d 739 (8th Dist. 1984). Thus, "[t]he fact that a jury verdict is or is not close to settlement figures is at best, circumstantial evidence of the reasonableness of a party's evaluation of the case." *Hughes v. Brogan*, 10th Dist. Franklin No. 95APE02-153, 1995 WL 571895, at *5 (Sept. 26, 1995). As a result, "the proximity of one party's settlement offer to the ultimate verdict . . . falls far short of demonstrating that such party [failed to make] a good faith effort to settle." *Id.*, quoting *Black*, 20

Ohio App.3d at 88. Plaintiffs' reliance on the size of the verdict alone thus cannot establish that Defendants failed to make good faith efforts to settle.

C. Defendants did not attempt to unnecessarily delay any of the proceedings.

Plaintiffs' Motion does not address this factor, and the record shows that Defendants never attempted to unnecessarily delay any of the proceedings. This complex litigation—which involved the production of several hundred thousand documents by the parties, multiple sets of discovery requests, approximately 50 depositions, and extensive dispositive motion practice—went from filing to verdict in just over one and one-half years. By way of comparison, that time frame is less than the two years that the U.S. District Court for the Northern District of Ohio aspires to dispose of cases assigned to its complex track. *See* N.D. Ohio Local Rule 16.2(a)(2)(C). In consideration of the complexity of this action, Plaintiffs could not show that Defendants unnecessarily delayed these proceedings.

D. Defendants made multiple good faith monetary settlement offers and responded in good faith to Plaintiffs' settlement demands.

Defendants made multiple good faith settlement offers, and responded in good faith to settlement offers made by Plaintiffs.

Importantly, as to this factor, the Supreme Court of Ohio instructs that a defendant need not make a monetary settlement offer if he has "a good faith, objectively reasonable belief that he has no liability." *Desai v. Franklin*, 177 Ohio App.3d 679, 2008-Ohio-3957, 895 N.E.2d 875, ¶ 34 (9th Dist.), citing *Kalain*, 25 Ohio St.3d at 159. Here, as articulated in Defendants' Motions for Summary Judgment and Defendants' Motion for Judgment Notwithstanding the Verdict, Defendants have long held—and continue to hold—a good faith, objectively reasonable belief that, under the governing law, they are not liable to Plaintiffs. Therefore, it was not incumbent upon Defendants to make **any** monetary settlement offer to avoid an award of prejudgment interest.

Nonetheless, Defendants made multiple and considerable good faith settlement offers to Plaintiffs, and also evaluated and reasonably responded to settlement demands made by Plaintiffs. *Compare Torres v. Concrete Designs Inc.*, 2019-Ohio-1342, -- N.E.3d --, ¶¶ 110-113 (8th Dist.) (holding that because the defendant "had a good faith, objectively reasonable belief that it had no liability" and thus "was not required to make a monetary settlement offer," the defendant acted in good faith when making multiple offers to settle the matter).

1. *Defendants sought a resolution of this case before it was filed.*

Defendants pursued a resolution of this dispute even before Plaintiffs filed their lawsuit. On October 20, 2017, Plaintiffs' counsel sent the College a letter attaching a draft of the Complaint and demanding a payment of [redacted].[1] In a response letter dated October 26, 2017, Oberlin College General Counsel Donica Varner requested "an opportunity to meet" with Plaintiffs' counsel and informed Plaintiffs' counsel that the College "will contact [Plaintiffs' counsel's] scheduler . . . to arrange a meeting."[2]

At 11:00 a.m. on November 1, 2017, Ms. Varner spoke with Plaintiffs' counsel Lee Plakas and Terry Moore. During this conversation, Ms. Varner requested that the parties pursue a resolution via mediation. **Plaintiffs denied Ms. Varner's request**. In fact, Plaintiffs' counsel stated that, unless the College would agree to [redacted] to settle, Plaintiffs were not interested in mediation.

2. *Defendants initiated and continued to pursue resolution via mediation.*

Despite the above, Defendants continued to dedicate significant time and effort to a resolution via private mediation. In fact, beginning in May 2018—i.e., just months into this

[1] Plaintiffs' October 20, 2017 letter is attached hereto as Exhibit 1.
[2] Defendants' October 26, 2017 letter is attached hereto as Exhibit 2.

litigation—Defendants reached out to Plaintiffs multiple times about pursuing mediation. These early efforts by Defendants to pursue mediation are as follows:

- On May 8, 2018, Defendants' lead counsel Ron Holman left a voicemail for Plaintiffs' lead counsel Lee Plakas to discuss resolving this litigation through mediation. **Plaintiffs did not respond**.
- On May 11, 2018, in a follow up to Attorney Holman's voicemail, Defendants sent Plaintiffs a letter to inquire about pursuing mediation.[3] Again, **Plaintiffs did not respond**.
- On May 15, 2018, during a break in the deposition of Constance Rehm, Attorney Holman initiated a discussion with Attorney Plakas about whether Plaintiffs were interested in exploring a potential resolution in mediation. Attorney Plakas responded favorably and shared his thoughts regarding the logistics of a possible mediation—[redacted]. Attorney Plakas told Attorney Holman that Plaintiffs would send Defendants a formal letter regarding the possibility of mediation. **Plaintiffs did not do so.**
- On May 24, 2018, Defendants sent Plaintiffs a letter expressing their continued interest in resolving this litigation via mediation.[4] Importantly, this letter referenced in detail the May 15 conversation between Attorneys Holman and Plakas. Again, though, **Plaintiffs did not respond**.

As can be seen, unfortunately, Plaintiffs did not respond to any of Defendants' letters and failed to follow through on their May 15, 2018 representations. However, more than six months later, Defendants were pleased to receive a letter from Plaintiffs raising the possibility of mediation. Defendants' good faith efforts regarding mediation from November 2018 up until just before trial are as follows:

- On November 28, 2018, Plaintiffs sent Defendants a letter, in which Plaintiffs broached the option of resolution through private mediation.[5]
- In their continued, good faith efforts to resolve this litigation, Defendants responded to Plaintiffs in a December 10, 2018 letter, and agreed that they wanted to pursue a resolution through mediation.[6] Shortly thereafter, in a December 20, 2018 letter to Plaintiffs, Defendants further discussed the logistics of a private mediation, and stated that they are

[3] Defendants' May 11, 2018 letter, which refers to the May 8, 2018 voicemail, is attached hereto as Exhibit 3.
[4] Defendants' May 24, 2018 letter is attached hereto as Exhibit 4.
[5] Plaintiffs' November 28, 2018 letter is attached hereto as Exhibit 5.
[6] Defendants' December 10, 2018 letter is attached hereto as Exhibit 6.

"pleased that Plaintiffs are interested in **pursuing settlement** through a private mediation."[7]

- On January 23, 2019 and January 25, 2019, the parties participated in two full-day mediation sessions. Importantly, the parties continued their discussions with the private mediator for months thereafter, up to the date trial commenced, with the goal—at least for Defendants—to resolve this matter outside of the courtroom. However, pursuant to the Uniform Mediation Act, which is codified at Ohio Revised Code Chapter 2710, and the parties' confidentiality agreement, Defendants cannot reveal in this Opposition detailed information relating to the parties' mediation efforts, which would support Defendants' contention that they made good faith efforts to settle. **Because this information warrants denying Plaintiffs' Motion and should be presented to the Court, Defendants hereby request that the forthcoming hearing on Plaintiffs' Motion be a closed hearing in order to protect the confidentiality of the parties' mediation efforts and communications in accordance with the Uniform Mediation Act and the parties' confidentiality agreement.**

3. *Defendants made a good faith effort to settle this case with Plaintiffs during the two-day Final Pre-Trial.*

Defendants continued to make good faith efforts to settle with Plaintiffs even outside of mediation. In fact, on April 16 and 17, 2019, the parties participated in a Final Pre-Trial with the Court. And during these two days, the Court was intimately involved with the parties to effect a settlement. Plaintiffs David Gibson and Allyn W. Gibson, other members of the Gibson family, Plaintiffs' counsel, Dean Raimondo, Oberlin College's General Counsel Donica Varner, representatives from Oberlin College's insurers, and Defendants' counsel all participated in these discussions. Defendants ultimately offered [redacted] to settle this matter, which Plaintiffs rejected.

4. *Defendants made a good faith attempt to settle this case with Plaintiffs during trial.*

During trial, Defendants negotiated extensively and in good faith to settle with Plaintiffs. On June 2, 2019—i.e., prior to the jury's verdict at the liability phase of trial—Plaintiffs sent Defendants a settlement demand letter, in which they demanded [redacted]

[7] (Emphasis added) Defendants' December 20, 2018 letter is attached hereto as Exhibit 7.

[redacted].[8] On June 4, 2019, Defendants responded in writing, rejecting Plaintiffs' settlement demand and offering their reasons for doing so.[9]

Just days later, on June 9, 2019—i.e., after the jury returned its verdict at the liability phase of trial, but before the jury returned its verdict at the punitive phase of trial—Plaintiffs sent Defendants a settlement demand letter, in which they demanded [redacted].[10] On June 11, 2019, Defendants responded in writing, rejecting Plaintiffs' settlement demand, and instead offering [redacted] to settle.[11] Importantly, and as explained in Defendants' letter, Defendants premised their offer on two factors: (1) Defendants' calculation of the noneconomic damages cap under R.C. 2315.18(B)(2);[12] and (2) Defendants' contention, based on longstanding legal precedent, that Plaintiffs' libel claims could not be the basis for a punitive damages award. *See* Defs.' Motion for Reconsideration, filed June 12, 2019; Defs.' Motion for Judgment Notwithstanding the Verdict, filed Aug. 14, 2019, Section V.A. Indeed, based upon Defendants' research, only **one** jury verdict in the history of Ohio defamation jurisprudence that was not overturned on appeal is greater than the [redacted] that Defendants offered, and the parties in that matter settled during a pending appeal. *See* Defs.' Motion for Remittitur, filed Aug. 14, 2019. In response to Defendants' letter, later on June 11, 2019, Plaintiffs sent a final

[8] Plaintiffs' June 2, 2019 letter is attached hereto as Exhibit 8.
[9] Defendants' June 4, 2019 letter is attached hereto as Exhibit 9.
[10] Plaintiffs' June 9, 2019 letter is attached hereto as Exhibit 10.
[11] Defendants' June 11, 2019 letter is attached hereto as Exhibit 11.
[12] Indeed, in the letter, Defendants state that the amount offered is "the maximum amount Plaintiffs are entitled to recover in this matter pursuant to the statutory cap on non-economic damages under R.C. 2315.18(B)."

settlement demand letter, in which they demanded [redacted] to settle this action.[13] The jury returned their punitive damages verdict shortly thereafter.

The above demonstrates Defendants made multiple, good faith attempts for more than a year throughout this litigation to resolve this matter. In short, Defendants (1) made multiple attempts to resolve this dispute through mediation; (2) participated in a two-day mediation and continued to participate in discussions with the private mediator for months thereafter in hopes of reaching a resolution; (3) participated in a two-day Final Pre-Trial with Plaintiffs, in which the Court was intimately involved in Defendants' good faith efforts to settle with Plaintiffs; and (4) negotiated settlement with Plaintiffs throughout trial, ultimately offering an amount that Defendants believed would have made Plaintiffs whole in consideration of the compensatory damages cap under R.C. 2315.18(B)(2).

Based on the foregoing, Plaintiffs cannot meet their heavy burden to establish that Defendants failed to make a good faith effort to settle this case. As a result, the Court should deny Plaintiffs' Motion and Plaintiffs' request for limited expedited discovery. Given the foregoing, additional discovery is unnecessary and would serve only to further prolong these proceedings.

II. Even if the Court finds that Defendants did not make a good faith effort to settle this case, Plaintiffs are only entitled to prejudgment interest on damages awarded for past economic loss.

Ohio Revised Code Section 1343.03(C)(1) requires that any award of prejudgment interest shall be limited to "the judgment"—here, the Court's June 27, 2019 Judgment Entry ("Judgment Entry"). However, as to the Judgment Entry, Ohio law is clear: a plaintiff cannot recover prejudgment interest for ***punitive damages*** or ***future damages***. R.C. 2315.21(D)(3); R.C. 1343.03(C)(2). Further, Plaintiffs cannot recover prejudgment interest for noneconomic damages.

[13] Plaintiffs' June 11, 2019 letter is attached hereto as Exhibit 12.

Accordingly, and as explained in more detailed below, should the Court find that Defendants did not make a good faith effort to settle, Plaintiffs can only recover prejudgment interest for their past economic loss—i.e., the $420,000 of past economic damages awarded to Gibson Bros., Inc.

First, Plaintiffs cannot recover prejudgment interest for punitive damages. Section 2315.21(D)(3) of the Ohio Revised Code instructs that "[n]o award of prejudgment interest under division (C)(1) of section 1343.03 of the Revised Code shall include any prejudgment interest on punitive or exemplary damages found by the trier of fact." The Supreme Court of Ohio confirmed that "prejudgment interest applies only to the compensatory damages award, as 'only those damages . . . would have been measurable with some degree of certainty prior to trial.'" *Galmish v. Cicchini*, 90 Ohio St.3d 22, 33, 734 N.E.2d 782 (2000), *Digital & Analog Design Corp. v. N. Supply Co.*, 63 Ohio St.3d 657, 660, 590 N.E.2d 737 (1992). Accordingly, the Court cannot apply any prejudgment interest to Plaintiffs' punitive damages award.

Second, Plaintiffs cannot recover prejudgment interest for future damages. Section 1343.03(C)(2) of the Ohio Revised Code instructs that "[n]o court shall award interest under division (C)(1) of this section on future damages, as defined in section 2323.56 of the Revised Code, that are found by the trier of fact." *See also* R.C. 2323.56(A)(2) (defining "future damages" as "any damages that result from an injury to person that is a subject of a tort action and that will accrue after the verdict or determination of liability by the trier of fact is rendered in that tort action."); *Terrago-Snyder v. Mauro*, 7th Dist. Mahoning No. 08 MA 237, 2010-Ohio-5524, ¶ 85 (stating that "[t]he 2004 amendments to the statute served to limit prejudgment interest awards. The amended statute prohibits prejudgment awards predicated on future damages . . . ."). Accordingly, the Court cannot apply any prejudgment interest to Plaintiffs' future damages award.

Third, the Court should not award any prejudgment interest on Plaintiffs' past noneconomic loss. "[T]he law recognizes as a basis for [prejudgment] interest only those damages that would have been **measurable with some degree of certainty prior to trial.**" (Emphasis added) *Digital & Analog Design Corp. v. N. Supply Co.*, 63 Ohio St.3d 657, 660, 590 N.E.2d 737 (1992). Under this reasoning, noneconomic damages, which are not "measurable with some degree of certainty prior to trial," cannot be the basis of a prejudgment interest award. The Supreme Court of Ohio has noted that "noneconomic damages [are] inherently subjective and thus easily tainted by irrelevant considerations." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 55. Thus, should this Court award any prejudgment interest, such an award should only be based on the $420,000 of Plaintiffs' past economic loss.

Ohio law is clear: "prejudgment interest acts as compensation and serves ultimately to make the aggrieved party whole." *Wasserman v. The Home Corp.*, 8th Dist. Cuyahoga No. 90915, 2008-Ohio-5477, ¶ 8. Economic damages are inherently distinct from noneconomic damages. For instance, Plaintiffs presumably recovered economic damages based on the loss about which their economic damages expert, Frank Monaco, opined: decline in business revenue, lost rental income, and lost business opportunities. Put differently, and accepting the merit of Mr. Monaco's testimony for purposes of this Opposition only, Plaintiffs experienced an identifiable loss of money, for which they could be made whole with an award of interest dating back to the date the cause of action accrued. Yet, in contrast, adding interest to an intangible harm would not make Plaintiffs any more whole than a judgment for noneconomic damages would, as there can, by definition, be no monetary loss or outlay connected to an intangible harm. Plaintiffs should thus not be awarded prejudgment interest for their past noneconomic damages, and, at most, should only be awarded prejudgment interest for their ascertainable $420,000 of past economic damages.

Lastly, should the Court award Plaintiffs prejudgment interest on past noneconomic damages (it should not), the Court should only award such interest on Plaintiffs' **capped** noneconomic damages. As stated above, the goal of prejudgment interest is to "make the aggrieved party whole." *Wasserman*, 2008-Ohio-5477, ¶ 8. By enacting the noneconomic damages caps in R.C. 2315.18(B)(2), the Ohio legislature has already determined that a plaintiff suffering intangible harm is made whole at an amount not exceeding either $250,000 or $350,000. Further, as indicated above, R.C. 1343.03(C)(1) requires that the Court may only apply prejudgment interest "on the judgment"—here, the Judgment Entry, in which the Court capped Plaintiffs' noneconomic damages pursuant to R.C. 2315.18(B)(2), albeit without differentiating between past and future noneconomic damages. As a result, this Court should not award Plaintiffs an unjust windfall that exceeds limits set by the Ohio legislature in R.C. 2315.18(B)(2) and would exceed the "judgment" contemplated under R.C. 1343.03(C)(1).

CONCLUSION

For the above reasons, Plaintiffs cannot meet their heavy burden to establish that Defendants did not make a good faith effort to settle this case, so their Motion must be denied. However, even if the Court finds that Defendants did not make a good faith effort to settle this case, Plaintiffs can only recover prejudgment interest for their past economic loss of $420,000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served this 29th day of August 2019, via e-mail, pursuant to Civ.R. 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

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Exhibits 1-12 in Support of Defendants' Opposition to Plaintiffs' Motion for Prejudgment Interest

FILED UNDER SEAL