

WILLIAM T. WAUGH,
Individually and as Personal
Representative of the Estate of
Mark Waugh, et al.,

RAHUL GUPTA,
Defendant.

ORDER

Upon consideration of Plaintiffs' Motion For Summary Judgment, and for the reasons set forth more fully in the accompanying Memorandum Opinion, it is this 13th day of

March, 2018, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that Plaintiffs' Motion For Summary Judgment is hereby GRANTED, and it is

FURTHER ORDERED, that the Clerk shall forthwith enter judgment in Plaintiffs' favor, and against Defendant Rahul Gupta, on Count I (Wrongful Death – Battery) and Count IV (Survival – Battery), and it is

FURTHER ORDERED, that on Count I, the Clerk shall enter a money judgment in the total amount of **\$1,177,500.00**, apportioned as **\$588,750.00** to each Plaintiff, and it is

FURTHER ORDERED, that on Count IV, the Clerk shall enter a money judgment in the total amount of **\$800,000.00**, and it is

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Clerk of the Circuit Court
Montgomery County, Md

FURTHER ORDERED, that the Clerk shall enter judgment in Plaintiffs' favor for punitive damages in the amount of **\$10,000,000.00**, and it is

FURTHER ORDERED, that Plaintiffs are awarded costs, and it is

FURTHER ORDERED, that in accordance with Maryland Rule 2-604, the judgment shall bear interest at the rate prescribed by law from the date of entry, and it is

FURTHER ORDERED, that upon entry of the judgment set forth in this Order, all of Plaintiffs' remaining claims shall be marked as "DISMISSED."

SO ORDERED.

Dated: 3/13/18


The Honorable Terrence J. McGann

COPIES TO ALL COUNSEL

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Clerk of the Circuit Court
Montgomery County, Md.

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND
Civil Division

WILLIAM T. WAUGH,
Individually and as Personal
Representative of the Estate of
Mark Waugh, et al.,

Plaintiffs,
v.

RAHUL GUPTA,

Defendant.

Case No. 424774-V
Judge: Terrence J. McGann

Memorandum Opinion

Plaintiffs William T. Waugh (Individually and as Personal Representative of the Estate of Mark Waugh) and Nancy M. Waugh (collectively, "Plaintiffs") brought this wrongful death and survival action against Defendant Rahul Gupta ("Defendant," "Mr. Gupta"), arising out of the October 13, 2013, killing of Plaintiffs' son, Mark Waugh ("Mark"), by Defendant. Plaintiffs now seek summary judgment in their favor on Count I (Wrongful Death — Battery) and Count IV (Survival — Battery) of Plaintiffs' Complaint.

The Plaintiffs have filed a seventeen page Motion for Summary Judgment. Mr. Gupta has filed a response, as he has done throughout this case, invoking his right against self-incrimination pursuant to the Fifth Amendment to the United States Constitution and Article 22 of the Maryland Constitution Declaration of Rights. As the Defendant has not sought to file a substantive response to the Plaintiffs' Motion, based upon the state of the record, the Court finds that there are no genuine issues of material fact precluding the grant of summary judgment, and the Court grants Plaintiffs' motion.

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Background

Plaintiffs' son, Mark Waugh, was born on June 26, 1990. At the time of his death, twenty-three year old Mark was a first year law student at Georgetown University Law Center, having graduated Phi Beta Kappa, Magna Cum Laude from James Madison University.

Mark and Defendant had been friends since high school. On the evening of Saturday, October 12, 2013, Mark joined Defendant and Defendant's girlfriend, Taylor Gould, for an evening out, in the Dupont Circle area, to celebrate Mr. Gupta's October 13, 2013, birthday. At some point in the early morning hours of October 13, 2013, and after an evening of consuming alcohol, the three of them returned to an apartment in Silver Spring, where Defendant and Ms. Gould were living at the time. The apartment is located at 1220 East West Highway, Apartment 1601, Silver Spring, Maryland.

At about 3:25 a.m., Taylor Gould called 911. At the beginning of the call, Ms. Gould can be heard repeatedly yelling at Mr. Gupta, "What happened? What happened?" When asked by the dispatcher whether she needed "police, fire, or medical," she responded "police."

Montgomery County Police officers responded to the scene, where they found Mr. Gupta, covered in blood, lying on the carpet next to Mark, who was also covered in blood and was deceased. According to police reports, as well as the report of Bloodstain Pattern Analysis expert Jennifer Karschner, there was blood throughout much of the apartment, including on the carpeting, the walls, and the ceiling. Mr. Gupta confirmed that he was not hurt. The photograph of Mr. Gupta, as he appeared at the scene of the murder, clearly depicts Mr. Gupta's clothing drenched in Mark's blood. The murder weapon, a large carving knife, was found, covered in blood, under Mark's left leg.

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Two uniformed police officers canvassed the adjoining apartments and spoke with a neighbor, who stated that about forty-minutes before the police arrived, he had heard a loud bang and he heard a male voice say "Call 911."

At the scene, when a responding police officer asked Mr. Gupta what happened, he responded, "My girlfriend and my buddy were cheating. I walked in on my girlfriend and my buddy cheating. I killed my buddy." After being taken to the Major Crimes Division, Mr. Gupta stated to Montgomery County Police Officer Richardson, "Please, sir, look, I f***ed up. He tried to stab me." In a later recorded jailhouse telephone call with his father, Mr. Gupta told his father that "Mark and I got into a fight and he tried to get a knife and then I...got the knife."

At his criminal trial, Mr. Gupta not only admitted that in fact Mark had never had the knife, but he also admitted that he had confessed to committing murder to a uniformed police officer. During his interview at the police station, Mr. Gupta advised police officers that he thought that Mark was suffering from a stab wound, even though that information had not been disclosed to him by investigators.

The State of Maryland's Chief Medical Examiner concluded that Mark had suffered six stab wounds (left side of the neck, left upper chest, left arm — superior, left arm — inferior, left anterior forearm, right side of the back) and five cutting wounds (left posterior forearm, back of the left middle finger, two to the lateral left middle finger, and lateral left index finger). The medical examiner also concluded that Mark died of the multiple stab and cutting wounds. The medical examiner further concluded that "[t]he stab wound and cutting wound to the left forearm, cutting wounds to the left middle finger and left index finger are consistent with defensive wounds."

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According to both the sworn expert testimony and the report of Montgomery County Police Department Bloodstain Pattern Analysis expert Jennifer Karschner, Mark lived for a period of time after first being stabbed/cut, and had actually moved around the apartment, leaving a trail of his own blood. Ms. Karschner opined that the altercation between Mark and his assailant began in the living room area of the apartment near the north wall, where Mark received multiple injuries resulting in substantial blood loss. Mark was possibly both trying to staunch the flow of blood with his hands, while simultaneously trying to defend himself.

Ms. Karschner report further indicates that Mark was kneeling or crouching when he came into contact with the north wall, then resumed a vertical position and began moving away from the north wall toward the sleeping area of the apartment. Mark landed in a sitting or partially prone position on the right side of the bed. The notable presence of blood on the front of Mr. Gupta's clothes, in comparison to the lack of blood on the back, suggests that Mr. Gupta was facing Mark in close proximity during the altercation and bloodletting. The fact that Mark's blood trailed through different areas of the apartment is evidence of Mark's efforts to escape repeated attacks with the knife. Additionally, during his interview at the police station, Defendant acknowledged that Mark was talking while he was bleeding, that he was conscious, that his eyes were open, and that he was bleeding out.

On March 16, 2015, after a two-week trial in this Court, Defendant was convicted of first degree murder. On May 27, 2015, Mr. Gupta was sentenced to life in prison. During sentencing, a fellow member of this Court, who had the opportunity to observe the demeanor and credibility of the witnesses — including Mr. Gupta himself, who chose to waive his Fifth Amendment rights and to testify on his own behalf— made clear his conclusion that there was no reasonable

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doubt either in the jury's mind or in his own mind that Mr. Gupta killed Mark. Moreover, he concluded that Mr. Gupta committed perjury when he lied on the witness stand.

The Maryland Court of Special Appeals affirmed the conviction, and the Maryland Court of Appeals ultimately affirmed the conviction. *Gupta v. State*, 452 Md. 103 (2017). The United States Supreme Court denied Defendant's petition for a writ of *certiorari* in October 2017. *Gupta v. Maryland*, 2017 U.S. LEXIS 5858 (U.S., Oct. 2, 2017).

Throughout the course of the instant litigation, Mr. Gupta has invoked the Fifth Amendment in response to both written and deposition discovery.

Discussion

Under Maryland Rule 2-501, a motion for summary judgment must be granted if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact; and that the moving party is entitled to judgment as a matter of law. "The Supreme Court and the Court of Appeals have, in recent years, emphasized that a trial court should not be reluctant to grant a motion for summary judgment in an appropriate case." *Halliday v. Sturm, Ruger & Co.*, 138 Md. App. 136, 770 A.2d 1072 (2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317(1986)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242(1986). "A motion for summary judgment, although not a substitute for trial, is nevertheless not disfavored." *Halliday*, 138 Md. App. at 146, 770 A.2d at 1078. The court should properly grant a summary judgment motion unless the parties truly dispute a material fact, i.e., the evidence is such that a fair-minded jury could return a verdict for the non-movant. *Id.*

Plaintiffs move for summary judgment on Count I (Wrongful Death — Battery) and Count IV (Survival — Battery) of their Complaint. Under Maryland law, "battery" is defined as

the intentional touching of a person without that person's consent. Touching includes the intentional putting into motion of anything that touches another

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person, or that touches something that is connected with, or in contact with, another person. In order to be a battery, the touching must be harmful or offensive. A touching is harmful if it causes physical pain, injury or illness. A touching is offensive if it offends the other person's reasonable sense of personal dignity.

MPJI-Cv 15:2; see also, Saba v. Darling, 72 Md. App. 487, 531 A.2d 696 (1987). There can be little doubt that what Mark endured constitutes battery. The repeated stabbing and cutting of another human being can only be described as a quintessential battery. There is zero evidence — from both a forensic and a common sense perspective — to support the proposition that Mark Waugh consented to such brutal attacks against his person, and it ultimately resulted in his death.

Having established the foundational premise (battery) for Counts I and IV, the Court turns to the issue of whether there exists a genuine issue of material fact as to Defendant's commission of these acts against Mark. There is no no such dispute of material fact in this record.

As discussed *supra*, Mr. Gupta implicated himself to uniformed police officers who arrived at the scene, and to another uniformed police officer later that same day at the Major Crimes Division. Yet a third time, during a recorded jailhouse telephone call between Mr. Gupta and his father, Mr. Gupta made statements incriminating himself. Later, during his criminal trial and while testifying under oath, Mr. Gupta admitted to having confessed to murder to a uniformed police officer. Gupta has asserted his Fifth Amendment right to remain silent throughout these proceedings. Those facts, in and of themselves, would be sufficient to establish his civil liability on the battery-based claims.

The forensic evidence further substantiates that there is no genuine of material fact. First, as is depicted in the photograph of Mr. Gupta taken at the police station, the entire front of his clothing, essentially from head to toe, is covered in lood. Mr. Gupta confirmed at the scene that

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he was unhurt. As Bloodstain Pattern Analysis expert Jennifer Karschner described in her report, this fact indicates that Defendant was facing *and in close proximity* of Mark during the altercation and bloodletting event(s). The statement of the neighbor (Miguel Jose Teodoro) from the adjoining apartment also corroborates the Court's finding. Specifically, Mr. Teodor stated that about 45 minutes before the police arrived on scene, he heard a loud bang and he heard a *male* voice saying "Call 911." Ms. Karschner's observations about the bloodstain on the wall are consistent with what Mr. Teodoro heard. Moreover, at the beginning of the 911 call, Ms. Gould can be heard repeatedly asking Mr. Gupta, "What happened? What happened?"

As there is no evidence that there were any other individuals in the apartment at the time, and given the undisputed fact that Mark was completely incapacitated (if not already deceased) at the time of the 911 call, there is no genuine dispute of fact in the record that Defendant was responsible for Mark's injuries and death.

Mr. Gupta has also invoked the Fifth Amendment throughout this civil litigation. As Plaintiffs correctly note in their motion, under Maryland law a party's invocation of the Fifth Amendment against self-incrimination in a civil proceeding, entitles the trier of facts in a civil case to draw an adverse inference against him:

When a witness in a civil proceeding refuses to answer a question on the ground that his answer might tend to incriminate him, the result sought to be achieved by invoking the privilege is accomplished. Such result cannot be used against him in a subsequent criminal proceeding. **However, the trier of facts in a civil case is entitled to draw an inference from his refusal to so testify.** *See, e.g., Ikeda v. Curtis*, 43 Wash.2d 449, 261 P.2d 684 (1953).

Whithker v. Prince George's County, 307 Md. 368, 385, 514 A.2d 4, 13, 1986 Md. LEXIS 286, ***25 (1986) (emphases added). "Put another way, the privilege does not forbid the drawing of adverse inferences against parties to civil actions when they refuse to testify.....After

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Clerk of the Circuit Court

Baxter,¹ there is no longer any doubt that at trial a civil defendant's silence may be used against him, even if that silence is an exercise of his constitutional privilege against self-incrimination."² *Id.*, 307 Md. at 386, 514 A.2d at 14, 1986 Md. LEXIS 286, ***27 (citation omitted). As the Court is permitted to do in a civil case, it draws adverse inferences against the Defendant based upon his assertion of his right against self-incrimination.

For all of the foregoing reasons, the Court will grant summary judgment to Plaintiffs on Count I (Wrongful Death — Battery) and Count IV (Survival — Battery).²

Damages

The Court now turns to the issue of damages. Mark was unmarried and childless at the time of his death. Mark was a law student, and his parents (Plaintiffs) contributed 50% or more of Mark's support within the twelve month period immediately preceding his death.³ Thus, with respect to Plaintiffs' wrongful death action, the two statutory beneficiaries are his parents, Plaintiffs. *Md. Code Ann., Cts. & Ad. Proc I § 3-904(a) (2013 Repl. Vol.)*. Maryland law allows Plaintiffs to recover damages for, *inter cilia*, mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of filial care, loss of attention, loss of advice, loss of counsel, loss of training, and loss of guidance. *Md. Code Ann., Cts. & Jud. Proc I § 3-904(d) (2013 Repl. Vol.)*. Pursuant to *Md. Code Ann., Cts. & Jud. Proc. II § 11-108(b)(3)(ii) (2013 Repl. Vol.)*, the non-economic damages cap is \$1,177,500.00 (*i.e.*, 150% of the limitation set forth in § 11-108(b)(2)).

¹ *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976).

² Even if Gupta were intoxicated at the time, Maryland law makes clear that intoxication does not vitiate the intent element of battery. *Janelins v. Button*, 102 Md. App. 30, 648 A.2d 1039 (1994).

³ See, *Md. Code Ann., Cts. & Jud. Proc. I § 3-904(d)(4)(0)*.

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The Court has reviewed the victim impact statement submitted by Mark's father, on behalf of the Waugh family, in connection with Defendant's sentencing in the criminal case. The statement, which details the devastating impact of Mark's death upon Plaintiffs and Mark's siblings, fully supports a substantial damages award on Plaintiffs' wrongful death claim. Mr. Waugh describes in painful detail how each and every night he relives those last moments of Mark's life, and the grisly manner in which his son was killed.

There is not genuine dispute of material fact that the sorrow, grief, loss of comfort, and loss of filial care are immeasurable. Plaintiffs have been deprived of decades of love, care, and affection from their son; they will never see him reach his potential as an attorney; they will never attend his wedding; they will never see him become a father, nor will they experience grandparenthood to Mark's future children. Maryland law caps Plaintiffs' non-economics damages to \$1,177,500.00. The Court therefore awards Plaintiffs damages on Count 1 of the Complaint (Wrongful Death — Battery) in the amount of \$588,750.00 per Plaintiff, for a total of \$1,177,500.00.

With respect to damages on Plaintiffs' survival action:

"Survival action damages currently include conscious pain and suffering as well as medical expenses, but exclude future loss of earnings, solatium damages, and damages which result to other persons from the death.");⁴ *ACandS, Inc. v. Asner*, 104 Md. App. 608, 645, 657 A.2d 379, 397 (1995) ("Damages in a survival action are limited to the damages that would have been recoverable by the decedent had he survived, i.e., appropriate compensation for the time between injury and death. . . ."), *rev'd on other grounds*, 34 Md. 155, 686 A2d 250 (1996); *Globe American Casualty Co. v. Chung*, 76 Md. App. 525, 539, 547 A.2d 654, 661 (1988) (damages in a survival action are "confined to [the victim's] personal loss and suffering before he died" (citation omitted)), *vacated on other grounds*, 322 Md. 713, 589 A.2d 956 (1991).

⁴ *Fennell v. Southern Maryland Hosp. Center, Inc.*, 320 Md. 776, 792, 580 A.2d 206, 214 (1990).

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Clerk of the Circuit Court
Montgomery County, Md

Jones v. Flood, 118 Md. App. 217, 222, 702 A.2d 440, 442, 1997 Md. App. LEXIS 171, ***7 (1997). Additionally, pursuant to *Md. Code Ann., Est. & Tr. § 8-106(c)(2) (2016 Supp.)*, as made applicable by *Md. Code Ann., Est. & Tr. § 8-106(c)(2) (2011 Repl. Vol.)*, Plaintiffs can recover up to \$15,000.00 in funeral expenses. Plaintiffs have submitted documents reflecting that they have incurred almost \$20,000.00 in funeral expenses, and thus are entitled to recover \$15,000.00 under the statute. The non-economic damages cap on Plaintiffs' survival action is \$785,000.00, since the incident occurred on October 13, 2013. *See, Md. Code Ann., Cts. & Jud. Proc. II § 11-108(b) (2013 Repl. Vol.)*. Thus, Plaintiffs seek judgment in the amount of \$800,000.00 on the survival claim.

The evidence submitted by Plaintiffs — including, but not limited to: Bloodstain Pattern Analysis expert Jennifer Karschner's written description of the altercation and Mark's movement throughout the apartment after the first stab/cutting wounds were inflicted; the Chief Medical Examiner's opinions regarding the eleven stabbing/cutting wounds, including multiple defensive wounds; the fact that Mark's blood was found throughout the apartment, suggesting an attempt to escape his attacker; Defendant's statements that Mark was conscious, talking and his eyes were open as he bled — overwhelmingly establishes pre-death conscious pain and suffering, fright, and emotional anguish. Maryland law limits Plaintiffs' non-economic damages recovery on their survival claim to \$785,000.00, in addition to a limit of \$15,000.00 in funeral expenses. The Court therefore awards Plaintiffs damages on Count IV of the Complaint (Survival — Battery) in the amount of \$800,000.00.

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Finally, with respect to punitive damages, Maryland law requires clear and convincing evidence that Mr. Gupta acted with “malice.” “Malice” is conduct motivated by evil motive, intent to injure, ill will, or fraud. *MPJI-Cv 10:14 (Fifth Edition)*; see also, *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 841 A.2d 828 (2004); *Tierco Md., Inc. v. Williams*, 381 Md. 378, 849 A.2d 504 (2004).

Defendant was convicted by a Montgomery County jury of murder in the first degree, defined under Maryland law as “a deliberate, premeditated, and wilful killing.” *Md. Code. Ann., Grim. Law 5C 2-201(x)N*. To justify a conviction of murder in the first degree, the jury or the court sitting without a jury must find the actual intent, the fully formed purpose to kill, with enough time for deliberation and premeditation to convince that the purpose is not the immediate offspring of rashness and impetuous temper and that the mind has become fully conscious of its own design. *Faulcon v. State*, 211 Md. 249, 126 A.2d 858 (1956); *cert. denied*, 366 U.S. 922, 81 S. Ct. 1098, 6 L.Ed.2d 243 (1961); *James v. State*, 31 Md. App. 666, 358 A.2d 595; *cert. denied*, 278 Md. 725 (1976). All of the above-adduced, undisputed facts compel a finding that this was not a simple act of negligence, but rather an intentional act committed with malice. Any argument that Mr. Gupta was intoxicated does not erase the element of intent. See, *Janelins, supra*. In this Court’s view, first degree murder is a crime for which punitive damages are warranted.

As the United States Supreme Court wrote, in *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003):

‘[T]he most important indicium of the reasonableness of a punitive damages award is the **degree of reprehensibility of the defendant’s conduct.**’ *Gore, supra*, at 575. We have instructed courts to determine the reprehensibility of a defendant by considering whether: the **harm caused was physical** as opposed to economic; **the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others**; the target of the conduct had

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financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of **intentional malice**, trickery, or deceit, or mere accident. 517 U.S., 576577. The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id.*, at 575.

Id., 538 U.S. at 419, 123 S. Ct. at 1521 (emphases added).

With respect to what constitutes an appropriate amount of punitive damages, the Supreme Court wrote:

Turning to the second *Gore* guidepost, we have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award. *Gore, supra*, at 582 ("We have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award"); *TXO, supra*, at 458. We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip*, in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. 499 U.S., at 2324. We cited that 4-to-1 ratio again in *Gore*. 517 U.S., at 581. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. *Id.*, at 581, and n. 33. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: **Single-digit multipliers are more likely to comport with due process**, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1, *id.*, at 582, or, in this case, of 145 to 1.

State Farm, 538 U.S. at 419, 123 S. Ct. at 1521 (emphases added).

Based upon the state of the record in this case, there is no factual dispute that Mr. Gupta's murder of Mark was committed intentionally and with malice. The purpose for punitive damages is to both punish the wrongdoer and to deter others from similar behavior. Using a

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Clerk of the Circuit Court
Montgomery, Ala.

"single-digit multiplier" of the compensatory damages (totaling \$1,977,500.00, the caps described above), at 9 times that amount, a punitive damages award could be \$17,797,500.00. The Court believes that an award of \$10,000,000.00 is appropriate and reasonable, as it represents just over a 5-to-1 ratio of the compensatory damages, and is in keeping with the holdings of the U.S. Supreme Court, as discussed above. The Court will therefore award Plaintiffs \$10,000,000.00 in punitive damages.

WHEREFORE, for all of the foregoing reasons, Plaintiffs' Motion For Summary Judgment is GRANTED. A separate Order shall issue.

Dated: 3/13/18

Terrence J. McGann
The Honorable Terrence J. McGann

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Clerk of the Circuit Court
Montgomery County, Md.