UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-60738-CIV-ALTONAGA/Brown

CHABAD OF NOVA, INC.,

Plaintiff,

vs.

CITY OF COOPER CITY,

Defendant.
_____/

ORDER ON POST-TRIAL MOTIONS

THIS CAUSE came before the Court upon Plaintiff, Chabad of Nova, Inc.'s ("Chabad['s]") Revised Motion to Amend Final Judgment to Include Prejudgment Interest ("Chabad's Motion") [D.E. 146] and Defendant, City of Cooper City's (the "City'[s]")Motion for Remittitur, New Trial and to Alter or Amend Final Judgment ("the City's Motion") [D.E. 148]. On August 4, 2008, the parties proceeded to trial on Chabad's claims under 42 U.S.C. § 1983, the First Amendment, and the Religious Land Use and Institutionalized Persons Act of 2000 (the "RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.* On August 7, 2008, the jury returned a verdict in favor of Chabad awarding $325,750 in economic damages caused by the City to Chabad. (See Verdict Form [D.E. 142]). A Final Judgment [D.E. 143] in this amount issued on August 8, 2008. The Court has considered the parties' written submissions, the trial record, and applicable law.

I. BACKGROUND

A. Chabad's Claims for Relief

On July 5, 2005, Rabbi Shmuel Posner ("Rabbi Posner"), on behalf of Chabad, entered into

a lease for commercial space located in the store front of a shopping center known as Timberlake Plaza. Rabbi Posner intended to operate a Jewish Orthodox Chabad Outreach Center to serve the students at Nova University, Florida Atlantic University, and Broward Community College. In October 2005, however, the City notified Rabbi Posner that Chabad could not operate a place of worship on the property because the Cooper City Code of Ordinances (the "COO") prohibited religious assembly from locating in Timberlake Plaza due to its zoning designation. Chabad ceased operating in Timberlake Plaza after receiving this notice and was not permitted to return to full operation.

Chabad subsequently brought this action against the City. The Amended Complaint [D.E. 32] contains eleven counts. In Counts I and II, Chabad claims the restrictions placed upon the location of religious assemblies by the COO unreasonably limit them in violation of section (b)(3) of the RLUIPA. Counts III and IV state claims for violations of section (b)(1) of the RLUIPA, which prohibits governments from imposing land use regulations in a manner that treats religious assemblies on less than equal terms with non-religious assemblies. In Count V, Chabad alleges the COO's prohibition of religious assemblies in the City's business districts violates section (b)(2) of the RLUIPA, which bans governments from implementing any land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

Counts VI and VII state claims under Section1983 that the COO's prohibition of religious assemblies in the City's business districts, on its face and as-applied, violates the Equal Protection Clause of the Fourteenth Amendment. Count VIII does not stand as an independent cause of action separate and apart from the Section 1983 claims, but alleges that the City may be held liable for the

alleged violations asserted in Chabad's various Section 1983 claims on the theory of municipal liability, pursuant to *Monell v. Dept. of Social Serv.*, 436 U.S. 658, 691 (1978).

Count IX states a claim under Section 1983 that the COO's prohibition of religious assemblies in the business districts, on its face, violates Chabad's First Amendment rights to freedom of speech and freedom of assembly. Count X states a claim under Section 1983 that the COO's prohibition of religious assemblies in the business districts and various other zoning districts, and various limitations placed upon religious assemblies located in the City's residential and agricultural districts, violate Chabad's First Amendment right to free exercise of religion. Lastly, Count XI states a "hybrid" free exercise claim under the First Amendment.

The undersigned granted judgment on the pleadings in favor of Chabad as to Count III . (*See* Jan. 16, 2008 Order [D.E. 43]). Chabad agreed to voluntarily dismiss Count V without prejudice. (*See* Chabad's Response to Def.'s Am. Mot. for Partial Summ. J. [D.E. 88] at 7). Chabad was granted summary judgment as to Counts II and VI, and the City was granted summary judgment as to Counts X and XI. (*See* July 29, 2008 Order [D.E. 119]). The Court further determined that Count VII was rendered moot. (*See id.* at 22 n.12). The parties therefore proceeded to trial on liability as to Counts I, IV, and IX, and for a determination of damages as to Counts II, III and VI, as liability had already been determined in favor of Chabad.

B. The Evidence Presented at Trial[1]

At trial, Rabbi Posner and three non-party rabbis operating outreach centers similar to

[1] Neither of the parties submitted citations to the record with the exception of reference to one trial exhibit. Therefore, the Court accepts the restatement of the testimony as presented by the parties, the substance of which does not materially conflict.

Chabad testified regarding the donations they received in their first three years of operation. Rabbi Posner testified with respect to the donations received by Chabad between 2005 and 2008. In August 2005, Chabad's first month in Timberlake Plaza, it generated $15,100 in donations, and in September 2005 Chabad collected $29,320, for a total of $44,420, or an average of approximately $22,000 per month before Chabad was forced to cease operations at Timberlake Plaza. (*See* Joint Ex. 7). During the remainder of 2005, Chabad generated $7,536 in donations, or an average of approximately $2,500 per month. (*See id.*). During the course of its operation in 2005, Chabad therefore generated a total of $51,956 in donations.

In 2006, bank records reflect that Chabad collected $15,454.85 in donations, and in 2007, Chabad collected $ 90,707.54 in donations. (*See id.*). In 2008, Rabbi Posner testified that Chabad generated approximately $46,000 in donations between the period of January 1 and July 31. Therefore, in its first three years of operation, Chabad generated a total of $204,118.39.

The three non-party rabbis operated outreach centers at the University of Florida, the University of Miami, and Florida International University, respectively. The rabbis testified to having received the following donations during their first years of operation at their respective outreach centers:

Chabad	Year 1	Year 2	Year 3	Year 4
University of Florida	$13,000	$65,000	$117,000	$152,000
University of Miami	$71,000	$77,000	$106,000	$195,000
Florida International University	$10,000	$25,200	$80,000	$106,000

Rabbi Posner testified he had several years of experience as a rabbi and had personal

knowledge of the operations of his own and other outreach centers, although prior to opening Chabad, he had never worked in a fund-raising capacity. Rabbi Posner testified to his belief that Chabad would have generated more revenue than the other outreach centers during its first years of operation because Chabad had a traditional synagogue component which the other outreach centers did not have. Chabad also charged a membership fee for families and individuals which the other centers did not charge. Based on these facts, Rabbi Posner testified that he expected Chabad to generate between $150,000 and $200,000 per year in donations during its first three years had its operations at Timberlake Plaza not been interrupted.

The rabbis also testified with respect to their receipt of funds from the Rohr Foundation, an organization that provides grants to new outreach centers as seed money. Rabbi Fellig of the University of Miami and Rabbi Friedman at Florida International University applied for and were granted Rohr Foundation funds to open their respective outreach centers. Rabbi Goldman of the University of Florida received no substantial money to begin operation of his outreach center. Rabbi Posner testified that he applied for but was denied a grant in the amount of $150,000 from the Rohr Foundation.

In closing argument, Chabad asked the jury to award damages for the first three years of operations, leading up to trial, during which it was precluded from operating in Timberlake Plaza. Chabad requested the net differential between its projected revenue amounts - $150,000 (year 1), $175,000 (year 2), and $200,000 (year 3) - and Chabad's actual revenues. Chabad also requested $150,000 in compensation for the Rohr Foundation grant it applied for but was denied.

C. The Jury's Verdict

At the conclusion of the trial, the jury was instructed as follows:

> With respect to your determination of damages, you should assess the amount of compensatory damages you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of Chabad's economic damages caused by the City.

(Jury Instructions at 4). The jury was further instructed:

> In determining the amount of any economic damages sustained by Plaintiff as a result of a constitutional, or civil rights violation or violation of rights under RLUIPA, you can compare the Plaintiff's donation record prior to the deprivation or violation, as compared with its donation record subsequent thereto. Moreover, the amount of any lost donations can also be determined by a study of the donation record of business operations that are closely comparable to Plaintiff. Although allowances can be made for differences between the operations, any business used as a standard must be nearly identical to the Plaintiff, Chabad, as possible.

(*Id*. at 4-5).

The verdict form asked the jurors to determine "the amount of proven economic damages caused by the City to Chabad." (Verdict Form at 3). The verdict form also instructed the jury to consider presumed damages, "economic harm caused by the City to Chabad . . . which are presumed to have occurred but are not already included in the amount set forth" above as proven economic damages. (*Id.*). Based on the Court's instructions, the jury returned a verdict which awarded Chabad economic damages in the total amount of $325,750. (*See id.*). The jury did not find Chabad was entitled to recover presumed damages. (*See id.*). The Final Judgment therefore provides that Chabad "shall recover $325,750.00 from City of Cooper City, for which sum let execution issue." (Final Judgment at 1).

D. Post-Trial Motions

The City's Motion requests a remittitur of the damages award to $155,587.56, positing that this is the maximum amount of damages the evidence presented at trial would support. The City also moves to amend the Final Judgment to strike the words "for which sum let execution issue," arguing that Florida law does not permit writs of execution to be issued against municipalities, therefore barring enforcement of any judgment against the City in this manner.

Chabad's Motion requests that the Final Judgment be amended to include an award for prejudgment interest in the amount of $91,904.49, calculated from October 11, 2005, the date when Chabad was notified to cease operations at Timberlake Plaza. Chabad also requests that the Final Judgment be amended to incorporate by reference the Court's orders on the motion for judgment on the pleadings and the summary judgment motions which determined the City's liability as to many counts of the Amended Complaint before the jury trial.

II. ANALYSIS

A. Motion for Remittitur

The City requests that the Court, in its discretion, order a remittitur pursuant to Federal Rule of Civil Procedure 59(e). *See Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1331 (11th Cir. 1999) (observing that a traditional request for a remittitur on the grounds that the evidence does not support the amount of a jury's verdict is governed by Rule 59). "A federal court has no general authority to reduce the amount of a jury's verdict . . . [since] . . . [t]he Seventh Amendment prohibits re-examination of a jury's determination of the facts, which includes its assessment of the extent of plaintiff's injury." *Id.* at 1328 (citing *Kennon v. Gilmer*, 131 U.S. 22, 29 (1889)). However, "'a

remittitur order reducing a jury's award to the outer limit of the proof is the appropriate remedy where the jury's damage award exceeds the amount established by the evidence.'" *Rodriguez v. Farm Stores Grocery, Inc.*, 518 F.3d 1259, 1266 (11th Cir. 2008) (quoting *Goldstein v. Manhattan Indus., Inc.*, 758 F.2d 1435, 1448 (11th Cir. 1985)). In such instances, "the plaintiff [must] be given the option of a new trial in lieu of remitting a portion of the jury's award." *Johansen*, 170 F.3d at 1329 (citing *Hetzel v. Prince William County*, 523 U.S. 208 (1998)).

Chabad seeks compensation for donations and grant money it argues it would have received but for the City's malfeasance.[2] Such claimed damages may be compared to a claim for lost profits. In order to recover lost profits, a party must show that "'1) the defendant's action caused the damage and 2) there is some standard by which the amount of damages may be adequately determined.'" *Nebula Glass Int'l, Inc. v. Reichhold, Inc.*, 454 F.3d 1203, 1214 (11th Cir. 2006) (quoting *W.W. Gay Mech. Contractor, Inc. v. Wharfside Two, Ltd.*, 545 So. 2d 1348, 1351 (Fla. 1989)); *see also Alphamed Pharms. Corp. v. Arriva Pharms., Inc.*, 432 F. Supp. 2d 1319, 1344 (S.D. Fla. 2006). "[T]here is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage and the measure of proof necessary to enable the jury to fix the amount." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562 (1931); *see also Alphamed*, 432 F. Supp. 2d at 1343. "[O]nce causation is proven with reasonable certainty,

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[2] Such claimed injury is curable by the monetary relief Chabad sought at trial. *See, e.g., Community Housing Trust v. Dep't of Consumer and Reg. Affairs*, 257 F. Supp. 2d 208, 220 (D.D.C., 2003) ("[P]laintiffs contend that defendants' actions caused . . . (1) a loss of charitable donations, and (2) a frustration of their respective missions. *See . . . Samaritan Inns. v. District of Columbia*, 114 F.3d 1227, 1234 (1997) (noting that a party may recover for a loss of charitable donations, provided the damages are proved with requisite particularity); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 . . . (1982) (providing that frustration of an organization's mission constitutes a cognizable injury).").

uncertainty as to the precise amount of the lost profits will not defeat recovery so long as there is a reasonable yardstick by which to estimate the damages." *Nebula*, 454 F.3d at 1217.

"[W]hile the damages may not be determined by mere speculation or guess, it will be enough if the evidence show[s] the extent of the damage as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment*, 282 U.S. at 563. "In such circumstances 'juries are allowed to act on probable and inferential as well as [upon] direct and positive proof.'" *G.M. Brod & Co., Inc. v. U.S. Home Corp.*, 759 F.2d 1526, 1540 (11th Cir. 1985) (quoting *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264 (1946)). "'The proof may be indirect and it may include estimates based on assumptions, so long as the assumptions rest on adequate data.'" *Id.* at 1539 (quoting *Lehrman v. Gulf Oil Corp.* (*Lehrman I*), 500 F.2d 659, 668 (5th Cir. 1974)).

When a new business has a limited track record, damages may be difficult to calculate. However, "a plaintiff's status as a new or unestablished business will not automatically preclude the recovery of lost profit damages." *Alphamed*, 432 F. Supp. 2d at 1339-40. "It would be a perversion of the fundamental principles of justice '[t]o deny recovery to a businessman who has struggled to establish a business in the face of wrongful conduct . . . simply because he never managed to escape from the quicksand of red ink to the dry land of profitable enterprise . . . .'" *G.M. Brod*, 759 F.2d at 1540 (quoting *Lehrman I*, 500 F.2d at 669). "'The wrongdoer must bear the risk of the uncertainty in measuring the harm he causes.'" *G.M. Brod*, 759 F.2d at 1538 (quoting *Lehrman v. Gulf Oil Corp.* (*Lehrman II*), 464 F.2d 26, 45 (5th Cir. 1972)). The two generally recognized methods of proving lost profits are (1) the before and after theory and (2) the yardstick test. *See G.M. Brod*, 759

F.2d at 1538-39. However,

> 'the before and after theory is not easily adaptable to a plaintiff who is driven out of business before he is able to compile an earnings record sufficient to allow estimation of lost profits. Therefore, the yardstick test is sometimes employed. It consists of a study of the profits of business operations that are closely comparable to the plaintiff's. Although allowances can be made for differences between the firms, the business used as a standard must be as nearly identical to the plaintiff's as possible.'

Id. (quoting *Lehrman I*, 500 F.2d at 667).

Chabad seeks damages in two forms: 1) the value of the donations it would have generated over the course of its first three years in operation, and 2) the value of the Rohr Foundation grant which Rabbi Posner was denied. As to the value of the lost donations, the City admits the evidence is sufficient to support a jury's determination that Chabad's eviction from Timberlake Plaza caused it to lose donations during the organization's formative years. What the City challenges is the amount of damages awarded by the jury, arguing it was not supported by the evidence. Chabad argued to the jury it would have collected a total of $525,000 during its first three years of operation under normal circumstances. Less the actual donations collected over those three years ($204,118.39), Chabad asked the jury to award $320,881.61 to compensate it for the value of lost donations.

The City argues the only support for the requested damages is Rabbi Posner's unfounded testimony that Chabad would have collected between $150,000 and $200,000 a year during its first three years of operation. A business owner or officer is routinely permitted to testify as to the value of lost profits on the theory that he or she has a better understanding and knowledge of his or her own business, even if not an expert in the field. *See Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co., Ltd.*, 320 F.3d 1213, 1223 (11th Cir. 2003); *Malloy v. Monahan*, 73 F.3d 1012, 1016

(10th Cir. 1996) (plaintiff engaged in the business of rehabilitating and selling residential properties qualified to testify regarding projected sales of houses because of his special knowledge of the properties). The opinion must be grounded in fact and not mere speculation. *See Malloy*, 73 F.3d at 1016. Rabbi Posner's testimony appears to satisfy this standard. But even if Rabbi Posner's estimate of Chabad's lost donations is considered speculative, the Court need not rely upon his testimony in this regard to determine the maximum award the evidence would support.

The uncontested evidence admitted at trial demonstrated that Chabad collected an average of $22,000 per month in donations during the two months it occupied the Timberlake Plaza location. If giving continued at this rate during its first three years of operation, Chabad would have generated $792,000 in donations, or $264,000 per year of operation. Less its actual donations during those years, Chabad might have earned as much as $587,881.61 in additional donations. The evidence presented by the other three outreach centers demonstrates Chabad could have reasonably expected its donations to actually increase over the three years, which would make the total donations Chabad might have generated even higher. The undersigned need not calculate the absolute maximum Chabad could have generated, as the actual damages awarded by the jury ($325,750) are supported by this evidence.[3]

Despite these projections, the City argues the jury was limited to awarding the maximum amount of donations that any of the three non-party outreach centers generated during the first years in operation. While the yardstick test is intended to provide a reasonable standard by which lost

[3] The City suggests the Court should deduct from this total a loan of approximately $20,000 that Rabbi Posner made to Chabad as start-up money. Even subtracting the $20,000, the maximum possible award still exceeds the actual damages awarded.

profits can be calculated, *see G.M. Brod*, 759 F.2d at 1538-39, the City offers no authority for its assertion that a jury cannot award more than the other outreach centers generated so long as damages are consistent with the established yardstick. In this case, Chabad's existing, albeit limited, track record at the time it was forced to close indicated its initial donations exceeded the earnings of the other outreach centers. A reasonable jury could have concluded that Chabad's donations would have increased at the same rate as the other outreach centers' donations, meaning Chabad could have earned more in total donations than the other outreach centers after three years. Although the absolute measure of damages is uncertain, damages can be estimated using a reasonable standard, and the City bears the risk of the uncertainty. *Nebula*, 454 F.3d at 1217.

As to the second element of damages, Rabbi Posner testified that he applied for but was denied a Rohr Foundation grant. Chabad presented no evidence as to why the grant was denied. The Rohr Foundation apparently did not communicate its basis for the denial, and it is not clear that Chabad's eviction from Timberlake Plaza in any way affected the grant application. While two of the third-party rabbis at trial testified they received grants from the Rohr Foundation as seed money to open their outreach centers, a third did not. This testimony does not demonstrate with any degree of certainty that Chabad would have received a grant even if it had continued to operate at Timberlake Plaza. "While . . . a relaxed burden of proof should apply to the ascertainment of the *amount* of damage, the plaintiff retains the burden of proof to a reasonable certainty that some damage occurred." *Alphamed*, 432 F. Supp. 2d at 1342. Chabad did not satisfy this burden and no reasonable jury could have concluded that Chabad was entitled to damages for the denial of the Rohr Foundation grant. In any event, this conclusion does not affect the Court's determination that the

evidence regarding lost donations was sufficient to support the jury's award of economic damages.

B. Execution of Final Judgment

The City objects to the inclusion of the language "for which let execution issue" following the declaration of money damages in the Final Judgment. (Final Judgment at 1). The City relies upon Federal Rule of Civil Procedure 69(a)(1):

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution–and in proceedings supplementary to and in aid of judgment or execution–must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

The City argues that the language of Rule 69 incorporating "the procedure of the state where the court is located," requires the application of Florida Statute § 55.11 with respect to any writ of execution issued against the City:

> No money judgment or decree against a municipal corporation is a lien on its property *nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied*.

(emphasis added); *see also City of Haines City v. Allen*, 549 So. 2d 678 (Fla. 2d DCA 1989) (striking language "for which let execution issue" to avoid further litigation with city, in light of Florida Statute § 55.11).

A plaintiff generally may not avail itself of a method of enforcement not available under state law. *See Leroy v. City of Houston*, 906 F.2d 1068, 1085 (5th Cir. 1990); *Comer v. City of Palm Bay*, 147 F. Supp. 2d 1292, 1295 (M.D. Fla. 2001). Nevertheless, courts have held that a state anti-seizure law may be set aside where a defendant-municipality is recalcitrant in satisfying a judgment or otherwise contesting its obligation to do so. *See Collins v. Thomas*, 649 F.2d 1203, 1206 (5th Cir. 1981) ("The County may not successfully hide behind state procedural shields to avoid the

consequences of a valid district court judgment effectuating an appropriate . . . award."); *Comer*, 147 F. Supp. 2d at 1295 (state indicated its unwillingness to comply with valid judgment); *City of Highland Park v. Chrysler Corp.*, 878 F. Supp. 87, 89-90 (E.D. Mich. 1995) (state agency contended that state law prevented it from satisfying judgment against it).

The phrase "for which let execution issue" is not essential to the finality of the judgment. The City has recognized its obligation to satisfy the judgment and there is no evidence that it has otherwise attempted to avoid this responsibility. In the event the need arises for Chabad to enforce the Final Judgment against the City, Chabad may apply to the court for the appropriate relief. The phrase will not appear in the amended final judgment to issue.

C. Prejudgment Interest

Chabad argues that the Final Judgment should be amended to award prejudgment interest from the date of Chabad's eviction from Timberlake Plaza until the date of the Final Judgment. If the federal law at issue does not provide standards for the allowance of prejudgment interest, the Court may use state law as a reference point. *See Nat'l R.R. Passenger Corp. v. Rountree Transp. & Rigging, Inc.*, 286 F.3d 1233, 1259 n.25 (11th Cir. 2002); *U.S. for Use of Ga. Elec. Supply Co., Inc. v. U.S. Fid. & Guar. Co.*, 656 F.2d 993, 997 (5th Cir. 1981). In this case, the Court looks to Florida law as the relevant source.

The parties dispute whether Chabad's damages are liquidated or unliquidated, which the City argues is dispositive to determining whether Chabad is entitled to prejudgment interest under Florida law. However, the Florida Supreme Court has eliminated the distinction between liquidated and unliquidated damages when determining entitlement to prejudgment interest. *See Argonaut Ins. Co.*

v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985). "[W]hen a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss." *Id.* at 215. As an award of prejudgment interest is non-discretionary, it need not be pleaded in the complaint. *See Mercedes-Benz of N. Am., Inc. v. Florescue & Andrews Invs., Inc.*, 653 So. 2d 1067, 1068 (Fla. 4th DCA 1995).

"Under Florida law, prejudgment interest is appropriate only from the date of the jury's verdict when damages are not liquidated until the jury renders its verdict." *KMS Rest. Corp. v. Wendy's Int'l, Inc.*, 194 Fed. Appx. 591, 595 (11th Cir. 2006) (citing *Checkers Drive-In Rests., Inc. v. Tampa Checkmate Food Servs., Inc.*, 805 So. 2d 941 (Fla. 2d DCA 2001)). Chabad is entitled to prejudgment interest as matter of law, but Chabad's damages were speculative and unliquidated until the jury rendered its verdict. Chabad is therefore only entitled to prejudgment interest from the date of the verdict (August 7, 2008) to the date of the Final Judgment (August 8, 2008).

Having determined that Chabad is entitled to prejudgment interest, the only remaining question is the rate at which interest will be calculated:

> In the absence of a controlling statute, the choice of a rate at which to set the amount of prejudgment interest is also within the discretion of a federal court. That decision is "usually guided by principles of reasonableness and fairness, by relevant state law, and by the relevant fifty-two week United States Treasury bond rate, which is the rate that federal courts must use in awarding post-judgment interest."

In re Int'l Admin. Servs., Inc., 408 F.3d 689, 710 (11th Cir. 2005) (quoting *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1447 (11th Cir. 1998)). As this case raised only federal claims, it is reasonable to compute prejudgment interest according to 28 U.S.C. § 1961, the federal rate at which postjudgment interest will also be calculated in this matter. *See In re Int'l*

Admin. Serv., Inc., 408 F.3d at 710 (affirming application of Treasury bond rate by bankruptcy court in calculating prejudgment interest).

D. Incorporation of Prior Orders

Finally, Chabad requests that the Final Judgment be amended to incorporate by reference 1) the January 16, 2008 Order granting Chabad judgment on the pleadings as to Count III and 2) the July 29, 2008 Order granting Chabad summary judgment as to Counts II and VI and the City summary judgment as to Counts X and XI. The City opposes the requested relief, noting that Federal Rule of Civil Procedure 54 dictates that "a judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings." Rule 54 also indicates that a "judgment" includes "a decree and any order from which an appeal lies." In this case, the finality of the judgment is dependent not only on the jury verdict, but on the prior orders of the Court that resolved several counts of the Amended Complaint which are not presently reflected in the Final Judgment. To finalize all counts, it is reasonable to incorporate these orders by reference, without including a record of prior proceedings.

III. CONCLUSION

For all of the foregoing reasons, it is

ORDERED AND ADJUDGED as follows:

1. Chabad's Motion **[D.E. 146]** is **GRANTED** in part and **DENIED** in part.

2. The City's Motion **[D.E. 148]** is **GRANTED** in part and **DENIED** in part.

3. Chabad shall have up to and including **December 30, 2008**, to submit a proposed Amended Final Judgment incorporating the amendments permitted by this order.

DONE AND ORDERED in Chambers at Miami, Florida, this 16th day of December, 2008.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record