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June 18, 2020

VIA ELECTRONIC FILING

Michael E. Gans, Clerk of Court
United States Court of Appeals,
Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Re: *Mark Horton v. Midwest Geriatric Management, LLC*, Docket No. 18-1104
Citation of Supplemental Authorities Pursuant to FRAP 28(j)

Dear Circuit Clerk:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellant Mark Horton submits this letter advising the Court of the following citation of Supplemental Authority which was decided by the Supreme Court of the United States on June 15, 2020: *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 2020 WL 3146686 (U.S. June 15, 2020).

On April 25, 2019, this Court ordered that this case “be held in abeyance pending the Supreme Court’s decisions in *Altitude Express, Inc. v. Melissa Zarda*, No. 17-1623, *Gerald Lynn Bostock v. Clayton County, Georgia*, No. 17-1618, and *R.G. & G. R. Harris Funeral Homes, Inc. v. EEOC*, No. 18-107.” Order, *Horton v. Midwest Geriatric Management, LLC*, No. 18-1104 (8th Cir. Apr. 25, 2019). The Supreme Court has now issued its decision in these cases.

In *Bostock*, the Supreme Court held that, “An employer who fires an individual merely for being gay or transgender defies the law.” 2020 WL 3146686, at *18. More specifically, the Court noted, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* at *7. “Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.” *Id.* at *3. *Bostock* effectively overrules *Williamson v. A.G. Edwards and Sons, Inc.*, 876 F.2d 69 (8th Cir. 1989), to the extent it held otherwise, as well as other cases with the same holding. (See Part IV of Appellant’s Brief, pp. 41-49). Appellant brought this appeal from the District Court’s Order dismissing his Title VII claims of sex and religions discrimination. Believing it was bound by this Court’s decision in *Williamson*, the District Court dismissed Appellant’s Title VII sex discrimination claim. *Williamson* is also the primary case relied upon by the Appellee and its supporting *amici curiae* on this appeal.

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Appellant submits this supplemental authority on the grounds that the Supreme Court's holding in *Bostock* soundly rejects the Appellee's arguments and affirms the arguments and reasoning set forth at pages 12 through 25 and 35 through 54 of Appellant's Brief, and more specifically Sections I, III, IV and V thereof.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

A handwritten signature in black ink, appearing to be 'MS', with a long horizontal flourish extending to the right.

By: Mark S. Schuver
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cc: Counsel of Record (via CM-ECF)