

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

R.M.A.,	)	
	)	
Plaintiff,	)	
	)	Case No. 1516-CV20874
v.	)	
	)	Div. 17
BLUE SPRINGS R-IV SCHOOL DISTRICT,	)	
	)	<b>ORAL ARGUMENT REQUESTED</b>
	)	
Defendant.	)	

**PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES, COSTS, EQUITABLE RELIEF,  
AND INTEREST WITH INCORPORATED SUGGESTIONS IN SUPPORT**

COMES NOW Plaintiff R.M.A. (hereinafter “Plaintiff”), by and through his undersigned counsel, and respectfully moves this Court to enter its Final Judgment in this case to include an award of Plaintiff’s reasonable attorneys’ fees (including expenses), costs, equitable relief, and interest, which Plaintiff requests be assessed against Defendant Blue Springs R-IV School District in this action. In support of said motion, Plaintiff states as follows:

**I. INTRODUCTION**

Through this motion, Plaintiff, as the prevailing party in this litigation, respectfully requests his reasonable attorney’s fees, costs, equitable relief, and interest, pursuant to the Missouri Human Rights Act (“MHRA”), RSMo. § 213.111.2. “A prevailing party is one that succeeds on any significant issue in the litigation which achieved some of the benefit the parties sought in bringing suit.” *Lippman v. Bridgecrest Estates I Unit Owners Ass’n, Inc.*, 4 S.W.3d 596, 598 (Mo. App. E.D. 1999). After a five (5) day trial, the jury found Defendant engaged in sex discrimination and awarded Plaintiff one hundred seventy-five thousand dollars (\$175,000.00) in compensatory damages, and four million dollars (\$4,000,000.00) in punitive damages. Thus, Plaintiff is the

prevailing party in this case. Plaintiff will address his requests for attorneys' fees, costs, equitable relief, and interest in turn.

## **II. ATTORNEYS' FEES**

Plaintiff seeks an award of his attorneys' fees. Plaintiff requested he be awarded such fees when this case was initially filed. (Petition for Damages, p. 8).

### **a. Plaintiff is Entitled to his Reasonable Attorneys' Fees**

Plaintiff is entitled to recover his attorneys' fees as the prevailing party in this case because a statute (the MHRA) authorizes said recovery. RSMo. § 213.111.2 (2016). Prevailing plaintiffs in MHRA cases are awarded their attorneys' fees "as a matter of course." *Wilson v. City of Kansas City*, 598 S.W.3d 888, 896 (Mo. banc 2020). As the Missouri Supreme Court noted, the "authorization for an award of attorney fees in section 213.111.2 was 'similar to a federal counterpart, 42 U.S.C. 1988, under which attorneys' fees are recovered unless there are circumstances that would render an award of such fees unjust.'" *Id.* (quoting *Gilliland v. Missouri Athletic Club*, 273 S.W.3d 516, 523 (Mo. banc 2009)).

The MHRA "recognizes the public purpose served by litigation that vindicates the rights of those who are discriminated against." *Gilliland*, 273 S.W.3d at 523. "For that reason, section 213.111.2's provision for court costs and attorney fees seeks to make an MHRA plaintiff whole 'by compensating [that plaintiff] for the costs of bringing suit.'" *Wilson*, 598 S.W.3d at 897 (quoting *Holmes v. Kansas City Bd. of Police Comm'rs*, 364 S.W.3d 615, 630 (Mo. App. W.D. 2012)).

### **b. Attorneys' Fees Calculated Using the Lodestar Method**

Trial courts are considered experts on attorney fees. *See e.g., Distler v. Reuther Jeep Eagle*, 14 S.W.3d 179, 186 (Mo. App. E.D. 2000). In determining said fees, "[t]he starting point in

determining reasonable attorneys' fees is the 'lodestar.'" *Terpstra v. State*, 565 S.W.3d 229, 250 (Mo. App. W.D. 2019); *see also*, *Berry v. Volkswagen Group of America, Inc.*, 397 S.W.3d 425, 431 (Mo. banc 2013); *Alhalabi v. Missouri Dept. of Natural Res.*, 300 S.W.3d 518, 530 n. 6 (Mo. App. E.D. 2009); *Soetart v. Novani Flips, LLC*, No. WD82933 (Mo. App. W.D. Aug. 3, 2021) (reversing award ignoring lodestar method). "The lodestar is determined by multiplying the number of hours reasonably expended on the case by a reasonable hourly rate." *Id.*

In determining the lodestar, relevant factors (addressed in turn below) in determining the reasonable value and amount of statutorily authorized fees include:

- 1) the rates customarily charged by the attorneys involved in the case and by other attorneys in the community for similar services; 2) the number of hours reasonably expended on the litigation; 3) the nature and character of the services rendered; 4) the degree of professional ability required; 5) the nature and importance of the subject matter; 6) the amount involved or the result obtained; and 7) the vigor of the opposition

*Wilson*, 598 S.W.3d at 897 (quoting *Gilliland*, 273 S.W.3d at 523). Factor 5 is particularly important in MHRA cases, because "[t]he Missouri legislature, in enacting the [MHRA], followed the lead of Congress in the choice of authorizing fees to private attorneys for enforcement of human rights claims, rather than relying principally upon government agencies for such enforcement." *Id.*

**c. Plaintiff's Attorney Fee Request Is Reasonable Under Lodestar Analysis**

In a case which has spanned approximately eight years, Plaintiff's attorneys have submitted a fee request for only 1,410.2 total hours<sup>1</sup> litigating this case, which includes the hours of all counsel and paralegals. *See* Exhibit A, Combined Billing of Edelman, Liesen & Myers, L.L.P and

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<sup>1</sup> Plaintiffs' attorneys have exercised billing judgment and have not charged for all hours expended in this matter. Unbilled hours are not reflected in Exhibit A, but include items such as: brief telephone calls with opposing counsel, brief email correspondence with opposing counsel, file review, file organization, brief client conversations, many conversations between co-counsel, much review of court filings by co-counsel, case analysis, edits to court filings, and hours of research.

the Law Offices of Madeline Johnson (hereinafter “Billing Statement”). Despite two law firms expending over 1,400 hours on this matter, including appellate work and a full jury trial, the firms have billed, in total, less than \$600,000.00 in attorneys’ fees. All of the hours submitted were for work performed on this matter. Exhibit B, Affidavit of Katherine Myers (hereinafter, “Myers Aff.”) ¶ 10; Exhibit C, Affidavit of Alexander Edelman (hereinafter, “Edelman Aff.”) ¶ 13; Exhibit D, Affidavit of Sarah Liesen (hereinafter, “Liesen Aff.”) ¶ 16; Exhibit E, Affidavit of Mary Madeline Johnson (hereinafter, “Johnson Aff.”) ¶ 11; Exhibit F, Affidavit of Ellen Crawford (hereinafter, “Crawford Aff.”) ¶ 9; Exhibit G, Affidavit of Angie Holtz (hereinafter, “Holtz Aff.”) ¶ 10; Exhibit H, Affidavit of Renee Morrison (hereinafter, “Morrison Aff.”) ¶ 6. Plaintiff’s fee request is in line with the factors relevant to the lodestar, as explained herein. Plaintiff seeks the following attorneys’ fees set out as follows.

<b>ATTORNEY/STAFF<sup>2</sup></b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS</b>	<b>TOTAL</b>
Katherine Myers	\$475.00	331.0	\$157,225.00
Alexander Edelman	\$475.00	428.7	\$203,632.50
Sarah Liesen	\$475.00	77.2	\$36,670.00
Ellen Crawford (paralegal)	\$150.00	27.6	\$4,140.00
Angie Holtz (paralegal)	\$150.00	101.3	\$18,445.00
Renee Morrison (paralegal)	\$125.00	61.2	\$7,650.00
M. Madeline Johnson	\$475.00	331.8	\$157,605.00
Luke Kalp (law clerk)	\$125.00	51.6	\$6,450.00
	<b>TOTALS:</b>	<b>1,410.4</b>	<b>\$591,817.50</b>

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<sup>2</sup> The law firm of Edelman, Liesen & Myers includes Ms. Myers, Mr. Edelman and Ms. Liesen, and paralegals Ellen Crawford, Angie Holtz, and Renee Morrison. The Law Offices of Madeline Johnson includes Ms. Johnson and law clerk Luke Kalp.

(Ex. A, Billing Statement). Each of the lodestar factors supports a full award of Plaintiff's attorneys' fees.

In addition to the time spent litigating the case to a verdict, Plaintiff has spent additional time researching and drafting this motion. Moreover, Defendant has already filed its Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for New Trial. Plaintiff counsel will need to expend additional time briefing Plaintiff's response to that motion. Thus, prior to the entry of judgment in this case, Plaintiff intends to submit a Supplemental request for fees including that time.

**1. Factor 1: the rates customarily charged by the attorneys in this case and in the community**

The inherent risk associated with contingent work supports Plaintiff's counsel's hourly rates. *See Berry*, 397 S.W.3d at 437 (Stith, J., concurring and dissenting in part) ("I do not disagree that in light of the contingency nature of the fee . . . the exceptionally high hourly rates [\$650 an hour] charged are justified"). With contingency comes delay and enormous risk that huge amounts of work will never be compensated.

The standard rule is that reimbursement of attorney's fees should use the hourly rate at the time the prevailing party motions for reimbursement of fees in order to compensate for the delay in payment. *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010). The hourly rates sought are the current hourly rates of Plaintiff's attorneys. Plaintiff requests these rates be awarded for all work performed over the entirety of the case, rather than lower rates for the work in the earlier part of the case, so that Plaintiff's attorneys will be compensated for the loss of the use of the money since the time the work was performed. This obviates the need for calculation of interest on the earlier fees and has been specifically approved by the Missouri Court of Appeals. *See*

*Alhalabi*, 300 S.W.3d at 531; *see also Pollock v. Wetterau Food Distribution Group*, 11 S.W.3d 754, 774 (Mo. App. E.D. 1999).

Plaintiff has provided substantial evidence that the hourly rates of \$475.00 per hour for, Mr. Edelman, Ms. Johnson, Ms. Myers, and Ms. Liesen, \$150.00 per hour for Ms. Crawford and Ms. Holtz, and \$125.00 per hour for Ms. Morrison and Mr. Kulp are reasonable. *See Exhibits B through N*, discussing the qualifications and expertise of Plaintiff's attorneys and staff. Mr. Edelman, Ms. Liesen, and Ms. Myers chose to open Edelman, Liesen & Myers, L.L.P. directly out of law school just under ten years ago, with the specific intention of representing individuals in civil rights litigation. Ex. B, Myers Aff. ¶ 2. Since then, their law firm has successfully litigated hundreds of cases through all stages of litigation, including successfully litigating two cases in front of the Missouri Supreme Court (one of which includes the instant case). Ex. C, Edelman Aff. ¶ 7.

Attorney Katherine Myers has tried numerous civil rights matters, including cases in the United States District Court for the District of Kansas, as well as in the 16th Circuit and has served as lead counsel on hundreds of civil rights cases. Ex. B, Myers Aff., ¶ 4. She has received numerous awards and recognitions throughout her career (including being specifically recognized as one of the top female litigators in Missouri by Missouri Lawyers Weekly) and speaks frequently on civil rights legal issues. *Id.* at ¶ 5-7. She is well respected by her peers; for example, one colleague comments: "She is tenacious, fearless, skilled at cross-examination, passionate and willing to work hard and tirelessly to fight on behalf of her clients. Ms. Myers has the maturity of a trial advocate who has been before many more juries and has tried as both first and second chair more jury trials than most attorneys who left law school 9-10 years ago. Pursuing a discrimination claim on behalf of a transgender client against a school district would require all of the skills in the arsenal of any

lawyer and law firm, and Ms. Myers brings to the table all of those necessary skills plus more.” Exhibit L, Affidavit of Marie Gockel ¶ 8.

Attorney Madeline Johnson also has extensive litigation experience, having represented numerous clients in a variety of settings, including first- or second- chairing 20 jury trials and trying many bench trials throughout her career in both private practice and as a public defender. Ex. E, Johnson Aff. ¶ 2. She has also received widespread recognition for her expertise in relevant areas of law, having been frequently asked to give lectures and teach CLEs on LGBT legal issues. *Id.* at ¶ 5. Her passion and dedication to litigation and individual rights have also been recognized by the legal community, including Missouri Lawyers Media’s Diversity and Inclusion award. *Id.* at ¶ 7.

Attorney Alexander Edelman has extensive appellate experience, including successfully arguing two cases (including this one) before the Missouri Supreme Court, and he is currently scheduled to argue a third. Ex. C, Edelman Aff. ¶ 7. Mr. Edelman has also written briefs for the Tenth Circuit Court of Appeal and a Petition for Certiorari to the United States Supreme Court. *Id.* at ¶ 7. Throughout his career, Mr. Edelman has been recognized for his dedication to civil rights and LGBT issues, including by being invited to speak on those topics. *Id.* at ¶ 10. Mr. Edelman’s rates reflect his experience and ability and are in line with the market rates for appellate work. *Id.* at ¶ 11.

Ms. Liesen’s experience is similarly extensive and well regarded in the community. Ex. D, Liesen Aff. ¶ 4, 5, 10. She has extensive litigation experience in civil rights cases, including a case she recently tried (with Ms. Myers) in the United States Federal Court for the District of Kansas that resulted in a multi-million dollar jury verdict. *Id.* at ¶ 10. Ms. Liesen is highly regarded by her colleagues for, among other things, her “exceptional analytical and writing and communication

skills” and for being “exceptional in her knowledge of the law . . . tenacious . . . [and] invaluable to a trial team in a plaintiff’s discrimination case.” Exhibit L, Affidavit of Marie Gockel, ¶ 9.

Further, Plaintiff has provided ample evidence from other attorneys in the Kansas City community to support the requested attorneys’ fees. The affidavits of attorneys Sarah Brown, Mark Buchanan, Kevin Baldwin, and Marie Gockel provide additional support that Plaintiff’s counsels’ hourly rates are reasonable based on their experience and skill and in line with what lawyers charge for this type of work in Kansas City. *See* Exhibit I, Affidavit of Sarah A. Brown; Exhibit J, Affidavit of Mark A. Buchanan; Exhibit K, Affidavit of Kevin Baldwin; Ex. L, Gockel Aff.; Exhibit M, Affidavit of Kenneth D. Kinney; Exhibit N, N. Affidavit of Phillip M. Murphy II. Further, a Missouri Lawyers Weekly yearly survey of billing rates **as far back as 2012** reported the **average** billing rate for attorneys (including associates and all levels of partners) in Kansas City was \$493 per hour. *Berry*, 397 S.W.3d at 437 (citing Missouri Lawyers Weekly, Aug. 6, 2012, at BR2). Here, the hourly rate of Ms. Myers, Mr. Edelman, Ms. Liesen, and Ms. Johnson’s—all founding partners of their respective law firms—is only \$475 and is below the average hourly rate of Kansas City lawyers *from a decade ago*.

Other attorneys in the Kansas City area—including defense attorneys— with comparable experience to Plaintiff’s attorneys, currently charge at least \$475 per hour for their work, and in many case, a higher hourly rate. Ex. J, Buchanan Aff. ¶ 10. In addition, other MHRA cases tried to a jury in the Kansas City metropolitan area have resulted in fee awards at rates well-exceeding the rate requested in the instant case. *See e.g. Cooper v. Scripps Media, Inc.*, No. 17-0041-CV-W-BP at \*18 (W.D. Mo. June 26, 2019) (approved rate of \$600.00 an hour).

Similarly, the amount billed for the attorneys’ staff was reasonable as well. The rates charged for Holtz, Crawford, and Morrison were reasonable, and in line with the rates in the

community. Ex. B, Myers Aff. at ¶ 14. They performed the work being billed, as overseen by an attorney. *Id.* The rate charged for Mr. Kulp was also reasonable, and in similarly line with the rates in the community Ex. E, Johnson Aff. at ¶ 15. Recently, a Judge in the area approved an award of \$175 an hour for paralegals. *Abernathy v. McCray Lumber Co.*, No. 20CY-CV02160, \*3 (Dec. 21, 2021) (Judgment attached hereto as Exhibit P).

Plaintiff's submitted hourly rates are comparable and, if anything, lower, than the rates charged by attorneys in the Kansas City area performing similar work. Ex. L, Gockel Aff. ¶ 8-11; Ex. K, Baldwin Aff. ¶ 11. As such, Plaintiff respectfully requests the Court approve their hourly rates in this matter at \$475.00 per hour for Mr. Edelman, Ms. Johnson, Ms. Liesen, and Ms. Myers, \$150.00 per hour for Ms. Crawford and Ms. Holtz, and \$125.00 per hour for Ms. Morrison and Mr. Kulp.

**2. Factor 2: The number of hours expended in the case are reasonable**

Plaintiffs submitted hourly rates should further be deemed reasonable due to the total number of hours expended on this matter. Plaintiff's total fee submission (through the verdict) is only \$591,817.50 for 1410.4 hours of work. The number of hours expended in this litigation are reasonable, especially considering the complexity and novelty of the issues litigated as well as the procedural history of this litigation. *See* Ex. J, Buchanan Aff. ¶ 12-16; Ex. K, Baldwin Aff. ¶ 12. Certain factors reduced the number of hours included in this bill, which favor the full award of Plaintiff's fees. First, the fee submission amount was arrived at due to the prior training and experience of Plaintiff's counsel. *See* Ex. B, Myers Aff. ¶ 2, 4; Ex. C, Edelman Aff. ¶ 13-15; Ex. D, Liesen Aff., ¶ 11-12. Plaintiff's counsel were able to efficiently litigate this matter and have submitted a fee request only for the time indispensable to the proper litigation of this matter. As

Plaintiff's counsel were able to efficiently litigate the matter, their hourly rates reflect their experience and knowledge which allows them to complete tasks more quickly.

Second, this dollar amount was arrived at in part due to billing discretion exercised by Plaintiff's counsel. For example, the limited conversations between co-counsel which were billed were conversations in which each person contributed different items equally and thus were not redundant or duplicative. Ex. B, Myers Aff. ¶ 12. Counsel conducted extensive research pertaining to this case that could be considered to be 'background' research not specific to the issues in this case, and that research was not billed. Ex. C, Edelman Aff. ¶ 15.

The number of hours expended on this matter are comparable to, or less than (sometimes significantly less than) the number of hours expended and approved in other MHRA cases. *See Ingraham v. UBS Financial Services, Inc.*, Case No. 0916-CV36471 (Sept. 13, 2011) (Hon. Brent Powell) (over 2,051 hours approved); *Eickoff v. Union Pacific R.R. Co.*, Case No. 0816-CV20813 (Mar. 16, 2010) (Hon. Dale Youngs) (over 1,500 hours approved). Neither of those cases included visits to the Court of Appeals, let alone the Missouri Supreme Court.

As can be seen by the billing records submitted, the vast majority of the time submitted in this matter was for time spent specifically briefing written arguments in the case or preparing for and attending trial, depositions, or oral arguments. *See* Exhibit A. Thus, the number of hours expended are reasonable, and support the Court awarding Plaintiff his requested fees.

### **3. Factor 3: The nature and character of the services rendered**

The Court's knowledge and expertise in the area of fee submissions puts the Court in a position to weigh the nature and character of the services rendered to the Plaintiff in this case. *See Distler*, 14 S.W.3d at 186. Plaintiff's attorneys have significant experience and abilities in litigating and trying cases under civil rights and remedial statutes such as the MHRA, as well as

in appellate advocacy. *See* Ex. B, Myers Aff. ¶ 2, 4; Ex. C, Edelman Aff. ¶ 13-15; Ex. D, Liesen Aff., ¶ 11-12; Ex. L Gockel Aff. ¶ 8-11. This case in particular called on the full array of tools in a litigator’s toolkit, including: drafting pleadings, extensive motion practice, legal research, appellate advocacy, the recruiting and coordination of *amici*, discovery, the gathering and organizing of documents and testimony, oral argument, the use of expert testimony, voir dire involving “hot-button” issues, and trial advocacy skills.

Further, counsel for Plaintiff is specifically dedicated to and experienced in litigating nuanced, difficult, and complex legal issues in the civil rights arena. Ex. B, Myers Aff. ¶ 2; Ex. E, Johnson Aff. ¶ 2. The nature of the services rendered by Plaintiff’s counsel were methodically and intentionally developed over many years of thoughtful and intentional dedication to this particular area of litigation. *Id.* The ramifications of this litigation have been, and will certainly continue to be, exceptionally impactful to many individuals. *See* Ex. L, Gockel Aff. ¶ 12. Plaintiff’s attorneys were required to engage in strategic, well-reasoned and researched, complex, and at times uncharted legal analysis to achieve the result obtained in this case. Indeed, the ultimate conclusion reached by our Missouri Supreme Court in this case came over one year before the United States Supreme Court’s *Bostock* decision. *See* Ex. J, Buchanan Aff. ¶ 14.

Despite the complexities of the case, Plaintiff’s attorneys litigated this case in an effective manner that was also efficient, and their fee submission reflects that balance of effectiveness and efficiency. Ex. I, Brown Aff. ¶ 8-11. Plaintiff’s attorneys’ competency levels for performing trial and appellate work allowed them to provide services to see the case to conclusion and to obtain a result with the Plaintiff prevailing at the Missouri Supreme Court and with the jury.

#### **4. Factor 4: The degree of professional ability required**

In this day and age, gaining knowledge and experience in civil litigation is somewhat difficult, due to the general lack of cases being tried. Gaining this experience takes significant dedication and determination to the practice of civil trial work. Further, civil litigators, especially those practicing under remedial statutes such as the MHRA, are required to achieve a skill and knowledge level beyond the general practice of law, as litigation and trial work requires professional ability in multiple areas of law and involves an understanding of complex substantive and procedural laws, the interpretation of which is constantly shifting, as well as managing stringent time demands and deadlines. Additionally, this matter required Plaintiff's counsel to engage in extensive appellate advocacy, writing briefs and presenting arguments on multiple, complex questions of law. This required an extremely high level of professional ability. Plaintiff's counsel collectively possesses the unique and rare set of skills to be able to effectively and efficiently litigate cases such as this. *See e.g.* Ex. L, Gockel Aff. ¶ 8-11.

“Fee awards must be structured so as to attract attorneys of quality and confidence with other profitable demands on their time.” *Spulak v. K-Mart*, 894 F.2d 1150, 1160 (10th Cir. 1990); *see* Ex. J, Buchanan Aff. ¶ 12. As the Court can see from the submitted billing records, Plaintiff's attorneys dedicated almost all of their waking hours to the prosecution of this matter during this trial and at certain stages of the appeal. Dedication to civil litigation takes a determined effort, and Plaintiff respectfully requests his reasonable fee submission be approved.

#### **5. Factor 5: The nature and importance of the subject matter**

There is no stronger public interest than eradicating discrimination. The MHRA itself explains that “[a]ll persons within the jurisdiction of the state of Missouri are free and equal and shall be entitled to the full and equal use and enjoyment within this state of any place of public

accommodation . . . without discrimination or segregation on the grounds of . . . sex.” RSMo. § 213.065.1 (2016). Indeed, the Missouri Supreme Court has noted that this factor is of particular significance in an MHRA case. *Wilson*, 598 S.W.3d at 897.

In addition to the importance of vindicating the rights of individual plaintiffs, it is also important that attorneys take cases where there are questions of law that are not clearly settled by courts. Under our common-law system, the law is clarified though the adversarial process of parties bringing cases. *See, e.g., Marbury v. Madison*, 5 U.S. 137 (1803). Thus, it is important that attorneys be willing to take such cases, so these questions of law can be brought before appellate courts and case law can be established to clarify the law. Here, there were multiple questions of law that needed to be clarified at the time Plaintiff filed the claim, which were the basis for Defendant’s motion to dismiss that had to be taken all the way to the Missouri Supreme Court to be reversed. *R.M.A. v. Blue Springs R-IV School Dist.*, 568 S.W.3d 420, 425 (Mo. banc 2019). It is necessary that the case law around the MHRA’s important protections be clearly set forth in appellate case law. Thus, the difficult, important subject matter of this long, winding action supports awarding Plaintiff his requested fees.

#### **6. Factor 6: The amount involved or the result obtained**

There are two results to consider in this case: the appellate victory and the jury verdict. The impact of the Missouri Supreme Court’s decision in this matter cannot be understated. This litigation has been referred to as “historic.” Ex. J, Buchanan Aff. ¶ 17. It will “help to protect similarly situated children, teens, adults and employees in the State of Missouri.” Ex. K, Baldwin Aff. ¶ 19. Plaintiff obtained a total jury verdict in this case of \$4,175,000, which by any standard is an extraordinary result. Some reports have indicated that it might be among the largest of its

kind ever awarded.<sup>3</sup> The large verdict is also notable considering Plaintiff had no pecuniary losses (such as lost wages and was not seeking medical expenses). It is also notable that in both its compensatory and punitive damages award, the jury gave Plaintiff more than he requested in closing arguments, and the jury was unanimous. Plaintiff also notes that he prevailed on the single count before the Court. Thus, the Court should not consider any proportional reduction of the fees for partial success, as Plaintiff was not partially successful. *See* Ex. K, Baldwin Aff. ¶ 17.

#### **7. Factor 7: The vigor of the opposition**

An attorney's decision to step in and help expose wrongs through a remedial statute is often not pleasantly received by the defendant and is often fought with substantial vigor. However, "[a] party cannot litigate tenaciously and then be heard to complain about the time necessarily spent overcoming its vigorous defense." *Williams v. Finance Plaza, Inc.*, 78 S.W.3d 175, 187 (Mo. App. W.D. 2002). Here, Defendant chose to defend this case well before the Petition was filed in this matter (when Plaintiff initially filed a Petition for Mandamus, then a charge of discrimination) all the way through to the end of trial. Where, as here, Defendant alleges no liability for the damage done, fights the case at every stage, and attacks the very thing the MHRA is meant to protect—Plaintiff's sex (for example, referring to Plaintiff as a "little girl" during closing)—Plaintiff and counsel feel the "pinch" of undesirability. Further, because of the effective advocacy and vigorous representation by competent attorneys for Defendant, this case was certainly difficult and risky to try.

As was testified to during trial, before any of this began, Plaintiff's mother, in an attempt to resolve the matter without conflict or litigation, made multiple attempts to work with Defendant

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<sup>3</sup> *See* Margolies, Dan. "Jackson County jury awards \$4 million to transgender student who was denied use of boys' bathrooms", KCUR, Dec. 15, 2021 (available at <https://www.kcur.org/news/2021-12-15/jackson-county-jury-awards-4-million-to-transgender-student-who-was-denied-use-of-boys-bathrooms>)

to find the best way for Defendant to stop discriminating against Plaintiff and brought resources and educational material to show them how other school districts had done so. Instead of working to resolve the matter and to be compliance with the MHRA, Defendant refused, and vigorously litigated the matter at every possible stage. As the Missouri Supreme Court has said, “[t]he time has come to pay the fiddler. [Defendant] has listened to the music [it] ordered and should not be allowed to complain about paying the bill.” *Munday v. Thielecke*, 290 S.W.2d 88, 92 (Mo. 1956).

Accepting this representation comes at a considerable economic risk to the litigators. Without the policy and promise of fully adequate compensation, any given attorney may turn from the challenge, even when facing a meritorious case. Plaintiff surmises that Defendant’s counsel, by contrast, has had no such risk, as it is customary for defense counsel to be paid on a non-contingency basis regardless of the outcome of the case.

A truly compensable fee is always necessary to attract skilled and experienced attorneys, who desire to zealously advocate for their clients and the causes they champion through the litigation of remedial statutes. Indeed, without a fully compensable fee, it is likely a vast majority of legitimate claims under the MHRA would never be filed, due to the prospective actual damages being relatively small.

**d. A Lodestar Multiplier of 2 is Necessary to Reasonably Compensate Plaintiff’s Counsel**

Plaintiff also respectfully requests this Court apply a multiplier to enhance the “lodestar” amount of attorneys’ fees, in order to compensate Plaintiff’s counsel for assuming the extreme risk of representing Plaintiff in this case and for obtaining an excellent result. Fee awards including multipliers have been affirmed by the Missouri Supreme Court. *See Berry*, 397 S.W.3d at 431; *Zweig v. Metropolitan St. Louis Sewer Dist.*, 412 S.W.3d 223, 250 (Mo. banc 2013). Cole County

Circuit Judge Patricia Joyce awarded a 2.0 multiplier for the attorneys' fees incurred in *Terrie Fuchs v. Missouri Dept. of Revenue*, Case No. 11AC-CC00486-01.

The Missouri Supreme Court affirmed applications of multipliers in both *Berry* and *Zweig*, finding that enhancement was supported by several factors: “[t]he fee that might be received by plaintiff’s counsel was always contingent, unlike the fees received by counsel for defendant who got paid immediately and timely, win or lose;” “[t]aking this case precluded plaintiff’s counsel from accepting other employment that would have been less risky;” and “[t]he time required by the demands of preparing this cause for trial delayed work on plaintiff’s counsel’s existing workload.” 397 S.W. 3d at 432-33; *See also Zweig*, 412 S.W. 3d at 250 (affirming trial court’s application of a 2.0 multiplier based on the same factors delineated in *Berry*).

Notably, in *Berry*, actual recovery for the class was only \$125,261. 397 S.W.3d at 428. Yet, a “lodestar” of \$3,087,320 (7,910 hours) was multiplied by 2.0, resulting in \$6,174,640 in enhanced fees, all of which was affirmed on appeal. *Id.* at 429. In *Zweig*, the only money judgment was for fees. 412 S.W. 3d at 249. A multiplier resulted in fees of \$4.3 million; plus an additional \$470,000 in expenses. *Id.*

Plaintiff’s counsel in the instant case seeks their current hourly market rates for their hours expended and asks for a 2.0 multiplier, for a total fee award of \$1,183,635.00. As in *Berry* and *Zweig*, Plaintiff’s counsel receiving compensation for many hours worked has always been contingent upon securing a favorable result for Plaintiff. Ex. E. Johnson Aff. ¶ 19; Ex. I, Brown Aff. ¶ 7; Ex. K, Baldwin Aff. ¶ 13. Moreover, when Plaintiff’s counsel accepted this matter, they did so knowing it was doubly contingent, as they would lose not only to an adverse ruling at trial, but also from the appellate courts.

Plaintiff's counsel also attests that this essential commitment of time and resources precluded them from working on any other cases, and from accepting any new clients, during the time periods carved out for briefing, preparing for oral arguments (particularly before the Missouri Supreme Court), engaging in discovery, and trying this difficult, intense case, over the course of five days of trial. *See* Ex. B, Myers Aff. ¶ 15; Ex. E, Johnson Aff. ¶ 16-17; Ex. J, Buchanan Aff. ¶ 17.

The need to deter the Blue Springs School District and to shake it out of its brazenly discriminatory behavior provides further strong reasons for a multiplier. This Court occupied the best seat available to see and hear the overwhelming evidence of discrimination which no doubt triggered the jury's strong verdict. Awarding fully compensable fees and expenses — as enhanced by the requested 2.0 multiplier — would maximize Plaintiff's ability to reap as much as possible of the jury's intended result.

If the MHRA means more than just words on paper, the citizens of Missouri depend upon private citizens (such as Plaintiff) and private attorneys (his counsel) to make sure such laws are followed. "All of these civil rights laws depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important congressional policies which these laws contain. In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must recover what it cost them to vindicate these rights in court." *Hensley v. Eckerhart*, 461 U.S. 424, 445 (1983) (Brennan, J., concurring in part and dissenting in part). Allowing the 2.0 multiplier further vindicates these crucial civil rights.

In applying the 2.0 multiplier in this, case to the \$591,817.50 in fees, Plaintiff seeks a total of \$1,183,635.00 in Attorneys' fees, plus additional fees incurred post-verdict.

### III. EXPENSES

As part of the attorney fee award, the Court may include "litigation expenses." *Wilson*, 598 S.W.3d at 896-97. Such expenses include "reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client." *Id.* at 897. To determine which litigation expenses may be paid as part of an attorney fee award, the Court may consider federal court decisions in civil rights cases and "the prevailing practice of the local community." *See id.* Expenses that "lawyers ordinarily include in their bills to clients" are recoverable as part of the attorneys' fees in civil rights cases. *Neufeld v. Searle Laboratories*, 884 F.2d 335, 342 (8th Cir. 1989).

Here, Plaintiff seeks his expenses related to the litigation of the case. Plaintiff seeks expenses in the total amount of \$4,567.22, as follow:

Printing and Records	\$920.55
Service of Trial Subpoenas	\$1,360.00
Food and Travel	\$694.17
Mediation	\$1,137.50
Focus Group	\$455.00
<b>TOTAL</b>	<b>\$4,567.22</b>

Ex. A. Plaintiff has provided an itemized list of these expenses. (*Id.* at 36). Plaintiff has also included receipts for each item (which are noted on the itemized list. (Exhibit O, Combined Receipts).

Plaintiff's out-of-pocket expenses are of the type that are generally charged to fee-paying clients. (See Ex. A, at 36). For example, under Food and Travel, Plaintiff has included the cost of meals that were ordered during and immediately before trial for Plaintiff, Plaintiff's counsel, their staff, and witnesses (and other members of Plaintiff's family). These meals, and the other food

was ordered in so that Plaintiff and his counsel could continue working on the case through lunch. Ex. C, Edelman Aff. at ¶ 17; Ex. D, Liesen Aff. at ¶ 14. Plaintiff also included the cost of his counsel's travel to Jefferson City to represent him before the Missouri Supreme Court. Ex. C, Edelman Aff. at ¶ 17. The Eighth Circuit has recognized "travel expenses for attorneys" as being one kind of "expenses that a law firm normally would bill to its client" which are "properly characterized as part of an attorney's fees award." *Williams v. ConAgra Poultry Co.*, 113 F. App'x 725, 728 (8th Cir. 2004).

The expenses requested by Plaintiff are of the type that attorneys in this area charge to their fee-paying clients. Ex. C, Edelman Aff. at ¶ 17; Ex. D, Liesen Aff. at ¶ 14. Thus, as the Missouri Supreme Court explained in *Wilson*, they are includable as attorneys' fees. Therefore, Plaintiff respectfully requests that in addition to the fees awarded using the lodestar method (with the multiplier), the Court award Plaintiff an additional \$4,567.22 in out-of-pocket expenses as part of the attorneys' fees.

#### **IV. COURT COSTS**

Under the MHRA, courts may award, in addition to attorneys' fees, "court costs . . . to the prevailing party," RSMo. § 213.111.2 (2016). A "court cost" is a cost "specifically authorized by statute." *Wilson*, 598 S.W.3d at 895. Under the MHRA, the Court taxes costs. *See id.* As itemized below, Plaintiff seeks \$2,665.15 in court costs, which were advanced by his attorneys in this litigation.

Among those categories that are authorized by statute are "filing fees" and "witness fees." *Wilson*, 598 S.W.3d at 895 (citing RSMo. § 488.012). Costs of transcripts of court proceedings are court costs. RSMo. § 488.012.3(8). As are the costs of filing an appeal. RSMo. § 488.012.3(8). A prevailing party may recover the "costs and expenses of depositions," including the cost of

transcripts and court reporter fees. RSMo. § 492.590.1. Additionally, a prevailing party may recover “fees paid to a special process server.” RSMo. § 506.140.2.

Plaintiff has requested Court costs falling into these categories, as set forth in Exhibit A. Plaintiff’s exhibit identifies each such cost, and the statute that supports awarding it. Plaintiff has also attached receipts for each expense (Ex. O), and the chart references the page number of such receipts. Therefore, Plaintiff respectfully requests the Court award him \$2,665.15 in court costs.

## **V. POST-JUDGMENT INTEREST**

Plaintiff respectfully requests this Court’s Judgment include an award of post-judgment interest. Under Missouri law, post-judgment interest “shall be allowed on all money due” and accrues “from the date judgment is entered by the trial court until full satisfaction.” RSMo. § 408.040.3. Thus, the statute mandates the award of post-judgment interest. *See Peterson v. Discover Property & Cas. Ins. Co.*, 460 SW 3d 393, 413 (Mo. App. W.D. 2015). Post-judgment interest is meant “to compensate a judgment creditor for the judgment debtor’s delay in satisfying the judgment.” *Id.* (internal quotations omitted). Interest on judgments “recognize[] the time value of money, a basic economic concept.” *Akers v. City of Oak Grove*, 246 SW 3d 916, 921 (Mo. banc 2008) (discussing prejudgment interest).

Judgments “shall bear a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus five percent, until full satisfaction is made.” *Id.* As the Supreme Court has noted, since 2008, “the intended federal funds rate . . . is no longer a fixed percentage but a range.” *McGuire v. Kenoma, LLC*, 447 S.W.3d 659, 665 n.5 (Mo. banc 2014). Thus, the Court has the discretion to choose from within that range (before adding an additional five percent). *Id.* Currently, the intended federal funds rate is set to a range of 0-0.25 percent, where it has been since March 16, 2020. “Open Market Operations” Federal Reserve

website (available at <https://www.federalreserve.gov/monetarypolicy/openmarket.htm>). Plaintiff requests the Court use the highest end of this range. While the Court is statutorily bound to set post-judgment interest at a number within this range plus five percent, Plaintiff notes that such a rate will likely be inadequate to truly compensate Plaintiff for the delay, given the current high rate of inflation. Thus, the Court should award the highest amount available within its discretion. Plaintiff also notes that there has been discussion of the Federal Reserve raising its rates. If it does so before this Court enters its Judgment, Plaintiff respectfully requests the Court choose the highest rate from the new range.

The Court should expressly include its award of post-judgment interest in its Judgment. “The judgment shall state the applicable interest rate, which shall not vary once entered.” RSMo. §408.040.3. The Court must state the rate in the judgment in order for Plaintiff to receive the post-judgment interest he is entitled to by law. *See McGuire*, 447 S.W.3d at 666-67. Thus, the Judgment should reflect a post-judgment interest rate of 5.25% per annum (or higher, if the intended federal funds rate is increased before the Judgment is entered).

## **VI. EQUITABLE RELIEF**

Section 213.111.1 of the MHRA also authorizes this Court to “grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order.” Missouri Courts have followed federal civil rights case law, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), when interpreting the MHRA, when the federal case law is consistent with Missouri law. *See Hammond v. Municipal Correction Institute*, 117 S.W.3d 130, 137 (Mo. App. W.D. 2003). Throughout its history, Title VII has provided for injunctions and equitable relief to “bar like discrimination in the future.” *Albemarle Paper Co. v. Moody*, 422 U. S. 405, 418 (1975) (internal citations omitted). In accordance with the jury’s

favorable verdict to Plaintiff, this Court should enter a permanent restraining ordering, requiring Defendant to end its discriminatory policies and practices of excluding transgender students from using the correct restroom.

## VII. CONCLUSION

Plaintiff is the prevailing party in this litigation. Defendant insisted on vigorously litigating this matter through motions, appeal, discovery, and ultimately a full jury trial. Defendant has also just filed a Motion for New Trial, indicating the vigorous litigation strategy is continuing. Plaintiff is entitled to a fully compensatory fee award, cost award, equitable relief, and post-judgment interest, pursuant to the MHRA. The hourly rates sought by Plaintiff's counsel are reasonable in light of the nature of case and the number of hours expended were reasonable in light of the length of the case and the vigorous defense mounted by Defendant.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that his Motion for Attorneys' Fees, Costs, Equitable Relief and Interest be granted, that the Judgment be entered to include a total of \$1,183,635.00 in attorneys' fees, which includes a 2.0 multiplier, in favor of Plaintiff and against Defendant; that the Judgment be entered to award \$4,567.22 in additional fees categorized as litigation expenses and \$2,665.15 categorized as court costs in favor of Plaintiff and against Defendant; that the Judgment reflect a post-judgment interest at the rate of 5.25% per annum (unless the relevant rate is raised prior to the entry of judgment); that the Court enter a permanent injunction requiring Defendant to stop engaging in like discrimination in the future; and for such further relief as this Court deems just and proper.

**Respectfully Submitted,**  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 14th day of January, 2022, the above and foregoing was filed with the Clerk of the Circuit Court of Jackson County, Missouri via the Case.Net electronic filing system which serves a copy via electronic mail, to:

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