

**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 REPLY SUGGESTIONS IN SUPPORT OF HIS MOTION FOR  
ATTORNEYS’ FEES, COSTS, EQUITABLE RELIEF, AND INTEREST**

COMES NOW Plaintiff R.M.A. (hereinafter “Plaintiff”), by and through his undersigned counsel, and for his Reply Suggestions in Support of his Motion for Attorneys’ Fees, Costs, Equitable Relief, and Interest with Incorporated Suggestions in Support (hereinafter, his “Motion”), states as follows:

**I. INTRODUCTION**

This is an action under the Missouri Human Rights Act (“MHRA”), RSMo. § 213.111.2. 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. On January 14, 2022, Plaintiff filed his Motion, asking that the Court enter its Final Judgment awarding Plaintiff his reasonable attorneys’ fees (including expenses), costs, equitable relief, and interest, against Defendant Blue Springs R-IV School District (hereinafter, “Defendant”). On February 3, 2022, Defendant filed its Suggestions in Opposition to Plaintiff’s Motion for Attorneys’ Fees, Costs, Equitable Relief, and Interest (hereinafter “Suggs. in Opp.”).

Plaintiff's Motion contained incorporated Suggestions in Support, which set forth the legal and factual basis for Plaintiff's claims. For the sake of judicial efficiency, Plaintiff has made every effort not to repeat those arguments, and to limit this Reply to addressing Defendant's Suggestions.

## **II. ATTORNEYS' FEES**

First, Plaintiff requested attorneys' fees, set out (in great detail), the basis for his claims. (Motion, at 2-18). Additionally, Plaintiff supports his arguments with numerous exhibits, mostly in the form of affidavits, but with other supporting materials as well. (Exhibits A-N).<sup>1</sup> Plaintiff thoroughly set forth the relevant case law (including the lodestar method and seven factors Missouri Courts discuss) and applied the facts thereto. Despite this, Defendant's responses ignore or misstates that law, and frequently descend into attacks on the character of Plaintiff's counsel.

### **a. Defendant recites some of the relevant case law, but its analysis is entirely inconsistent with that law**

In the first portion of its section on attorneys' fees, Defendant recites some of the relevant case law. Defendant correctly identifies that court's use the lodestar method to calculate attorneys' fees—by “multiplying the number of hours reasonably expended on the case by a reasonable hourly rate.” (Suggs. in Opp. at 2) (quoting *Terpstra v. State*, 565 S.W.3d 229, 250 (Mo. App. W.D. 2019)) (emphasis removed). It also recognizes that “the Court should consider” seven “factors” while reaching this calculation. (*Id.* at 2-3) (citing *Wilson v. City of Kansas City*, 598 S.W.3d 888, 896 (Mo. banc 2020)). However, despite recognizing these as “factors,” Defendant's arguments treat them more like elements, arguing that Plaintiff's failure to fully realize each one somehow means he is not entitled to attorneys' fees.

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<sup>1</sup> Plaintiff is not filing any new Exhibits with this Reply. All references to Exhibits are to the Exhibits to his Motion, unless designated as “Defendant's” exhibit, which reference to Exhibits to Defendant's suggestions.

(See, e.g., Suggs. in Opp. at 4) (“[i]n order to prevail on his Motion, Plaintiff **must prove** the rates he is claiming are (1) customarily charged by the Plaintiff’s attorneys, and (2) customarily charged by other attorneys in the community for similar services”) (emphasis added).

Defendant also ignores some relevant law, which directly contradicts its position. For example, Defendant repeatedly suggests that Plaintiff’s request for fees be denied entirely. (Suggs. in Opp. at 2, 14-15). Yet, as Plaintiff previously explained, such fees are awarded to prevailing MHRA plaintiffs as a matter of course, and only denied in very rare circumstances. (Motion at 2) (quoting *Wilson*, 598 S.W.3d at 896).

Similarly, Defendant repeatedly avers that Plaintiff failed to produce sufficient evidence to support an award of fees. (*See* Suggs. in Opp. at 3-4, 8, 17). However, Defendant never cites any authority for any evidentiary standard. In fact, the Missouri Supreme Court has made clear that **no evidence** is necessary to support the award of attorneys’ fees. It has long held that a trial courts “may fix the amount of attorney’s fees without the aid of evidence.” *Essex Contracting, Inc. v. Jefferson County*, 277 S.W.3d 647, 656 (Mo. banc 2009) (quoting *Nelson v. Hotchkiss*, 601 S.W.2d 14, 21 (Mo. banc 1980)) (internal quotations omitted).

Additionally, given the length at which Defendant complains (erroneously) about the supposed inadequacy of Plaintiff’s evidence, it is worth noting that the only evidence offered by Defendant—aside from affidavits of Plaintiff’s counsel from prior matters (Defendant’s Exhibits A-E)—is an affidavit by Paul Gordon, in which Mr. Gordon testifies to a single, substantive fact: “Our firm’s records show that our attorneys and paralegals billed collectively 1096.2 hours on this matter up through trial.” (Defendant’s Exhibit F, Affidavit of Paul Gordon hereinafter “Gordon Aff.”, at ¶ 3).

Defendant's failure to fully set forth and address the relevant case law makes most, if not all, of its legal analysis unpersuasive or even irrelevant. Plaintiff's arguments are supported by case law and evidence, and the Court should therefore reject Defendant's arguments and award Plaintiff the full amount he has requested.

**b. Defendant's reliance on *Ehlert* is erroneous**

Defendant avers that "[a]s a threshold issue, Plaintiff must establish that he owes attorneys' fees to be awarded such fees pursuant to the Missouri Supreme Court's decision in *Ehlert v. Ward*." (Suggs. in Opp. 3) (citing 588 S.W.2d 500 (Mo. banc 1979)). This assertion is not supported by the holding in *Ehlert* and is plainly contradicted by binding precedent. As Defendant acknowledges, *Ehlert* involved a prevailing party entitled to statutory fee shifting who was represented by Legal Aid of Western Missouri. (*Id.*) (citing 588 S.W.2d at 504-05). The Supreme Court did not hold that the party failed to establish that she owed attorneys' fees. Rather, it held that "appellant has not paid or become obligated to pay attorney fees" because she "was and is represented by the Legal Aid of Western Missouri, the counsel of which are paid by various federal, state and local grants so that indigent parties, such as appellant, may have legal representation without cost." *Ehlert*, 588 S.W.2d at 504-05.

Nothing in the decision supports Defendant's assertion that Plaintiff must establish that he owes attorneys' fees, or that he must produce the contract for representation. Equally incorrect is Defendant's assertion that "Plaintiff has not provided the Court with the necessary evidence to find that an award of attorneys' fees is necessary to make Plaintiff whole." (Suggs. in Opp. at 3-4). As previously mentioned, no evidence is necessary for this Court to award fees. *Essex Contracting*, 277 S.W.3d at 656. Thus, Defendant's assertion that the contract between

Plaintiff and his counsel is necessary to establish his entitlement to attorneys' fees is plainly unsupported by law.

Perhaps aware of the substantive weakness of its arguments, Defendant engages in unprofessional and impertinent allegations. Defendant complains that Plaintiff did not attach the fee agreement to his motion and Plaintiff's counsel refused to turn it over when asked, then opines "It begs the question-What is Plaintiff hiding?" (Suggs. in Opp. at 3). Such an allegation (even if implied) is entirely inappropriate. Any such agreement would be entirely irrelevant. The actual amount Plaintiff owes has no bearing on any of the lodestar factors. See *Wilson*, 598 S.W.3d at 896. Meanwhile, attorneys for Plaintiff have a duty of confidentiality towards their client. Rule 4-1.6. Plaintiff is not "hiding" anything.

Plaintiff's fee agreement with his counsel is irrelevant, and Defendant's arguments to the contrary are entirely without merit. Therefore, the Court should award Plaintiff's full fee request.

**c. Plaintiff has shown that his counsel's rates are customarily charged by them or other attorneys**

Defendant next attacks Plaintiff's reasonable hourly rates. Defendant's arguments are full of inflammatory language,<sup>2</sup> but contain little in the way of citation to authority or reasoned argument. For example, Defendant avers that in "order to prevail on his Motion, Plaintiff must prove the rates he is claiming are (1) customarily charged by the Plaintiff's attorneys, and (2) customarily charged by other attorneys in the community for similar services." (Suggs. in Opp. at 4). Defendant cites no authority for this proposition, which is incorrect as the court needs no evidence to award attorneys' fees. *Essex Contracting*, 277 S.W.3d at 656.

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<sup>2</sup> For example, Defendant avers—without any citation or any basis for saying so—that Plaintiff's "alleged 'rate' appears to be completely fabricated." (Suggs. in Opp. 4).

**1. There is evidence that plaintiff's counsel customarily charges these rates**

Defendant next attacks Plaintiff's reasonable hourly rates. Defendant's Suggestions contain little in the way of citation to authority or reasoned arguments.

Defendant asserts that there is no evidence that Plaintiff customarily charges the requested rates because Plaintiff did not offer evidence that his attorneys' "ever billed a paying client that amount" and did not "provide any such billing to establish that amount was charged in any other matter." (Suggs. in Opp. at 4). In addition to Defendant continues to misstate the law on the requirement to provide evidence and Defendant cites no authority for the proposition that attorneys' only "customarily charges" the rate if they bill it to fee paying clients. Plaintiff's attorneys—like most attorneys' who focus their practice on protecting their clients' civil rights—take most, if not all, such cases on a contingency-fee basis. The suggestion that this means they do not "customarily charge" those rates, or that they should not be awarded them, is unsupported by any authority, and antithetical to one of the purposes of the fee shifting provision. The Missouri legislature sought to incentivize private attorneys to take these cases, "rather than relying principally upon government agencies for such enforcement" because their doing so serves an "important public purpose" in that it "vindicates the rights of those who are discriminated against." *Gilliland v. Missouri Athletic Club*, 273 S.W.3d 516, 523 (Mo. banc 2009). If attorneys cannot be awarded their reasonable rates because they focus their practice on taking such contingency cases, the entire purpose of the statute would be defeated.

**2. Defendant's evidence of Plaintiff's previously charged rates does not support its argument**

Next, Defendant discusses Plaintiff's counsel's historical rates, drawing from affidavits they filed in other matters. (Suggs. in Opp. at 4-6). While this portion of Defendant's argument is full of breathless complaints about Plaintiff's attorneys' rates going up, it offers little in the way of persuasive argument. For example, Defendant noted that in the summer of 2020, Mr. Edelman and Ms. Myers submitted affidavits stating their rates were \$400 an hour, and "[n]ow, *less than a year and half later*, without explanation or support, they claim their rates have skyrocketed to **\$475** an hour." (*Id.* at 5) (emphasis in original). Defendant ignores, among other things, the fact that in that time, Plaintiff's counsel prevailed in another high-profile civil rights case, which resulted in a Plaintiff's verdict of over 2 million dollars. See (Ex. D., Liesen Affidavit at ¶ 10) (citing *Harris v. Unified Government of Wyandotte County*, Case No. 18-cv-2084-JAR-GEB (D. Kan. 2021)).

**3. The use of Plaintiff's current rates for past work is supported by the law and warranted by the facts**

Defendant also takes issue with Plaintiff's argument that the Court use Plaintiff's current rates to compensate for the delay in payment. As Plaintiff pointed out, this is a regular practice, which has been approved by Missouri courts. (Motion at 5-6) (citing *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010); *Alhalabi v. Missouri Dept. of Natural Res.*, 300 S.W.3d 518, 530 n. 6 (Mo. App. E.D. 2009); *Pollock v. Wetterau Food Distribution Group*, 11 S.W.3d 754, 774 (Mo. App. E.D. 1999)). Defendant asserts, with no citation to authority, that the length of this case means the Court should not follow that rule. It also asserts (in direct contradiction to authority cited by both parties) that "there is no support in Missouri law to award a higher fee in order to account for interest." (Suggs. in Opp. at 6). And Defendant

continues to make erroneous arguments about Plaintiff's purported failures to meet evidentiary requirements. (*Id.* at 6-7); see *Essex Contracting*, 277 S.W.3d at 656.

In support of its position, Defendant cites *Pollock*, for the proposition that using an attorneys' rate at the time the services were rendered "has been upheld." (Suggs. in Opp. at 7) (citing 11 S.W.3d at 774). Indeed, the Court did hold that there is not a "presumption" that this method "should be used in all cases." *Pollock*, 11 S.W.3d at 774. But this does not support Defendant's assertion that there is "no support" in Missouri law for such a method. Similarly, Defendant attempts to distinguish *Alhalabi*, noting that the Court of Appeals "upheld the award of attorneys' fees based on the attorneys' rate at judgment **in part** because '[plaintiff's] contract with his attorneys stated they would be paid at the amount in effect at the time of the judgment.'" (Suggs. in Opp. at 7) (emphasis added). However, this was just one factor that was considered, and nothing in the decision suggests it was determinative.

Finally, Defendant discusses Plaintiff's attorneys' differing levels of experience from the time they started the case until the present day, and states that the change in their rates "reflects the substantial difference in experience possessed by counsel at different points during their representation of Plaintiff, and not simply the passage of time." (Suggs. in Opp. at 8). However, Defendant cites no authority for why this is determinative.

Again, Defendant's arguments are at odds with the established case law. Defendant insists that Plaintiff must provide evidence showing why the increase in his attorneys' rates are justified, or why it is appropriate to use their current rates to compensate for the delay. But the Court needs **no evidence** to award attorneys' fees. *Essex Contracting*, 277 S.W.3d at 656. This is a method that the Court, as an expert on attorneys' fees, may use to reach a reasonable number. If Defendant wanted to suggest another way for the Court to do so it could have. Yet

Defendant's brief does not even offer a general idea of how the lodestar calculation would be changed by using some other method. Instead, it simply criticized Plaintiff's position.

**4. Plaintiff provided evidence that the rates claimed by plaintiff are customarily charged by other attorneys in the community for similar services**

In support of his motion, Plaintiff obtained Affidavits from six (6) attorneys' outside of his counsel's firms to support his claims. See (Ex. I -- Brown Affidavit); (Ex. J, Buchanan Affidavit); (Ex. K, Baldwin affidavit); (Ex. L, Gockel Affidavit); (Ex. M, Kinney Affidavit); (Ex. N, Murphy Affidavit). Defendant, without a single citation to the record or any authority, attempts to downplay the significance of these affidavits, alleging that "the affiants have an indirect pecuniary interest in raising the awarded rates of attorneys working on similar cases," and that it "is well known" that "plaintiffs' attorneys help each other out by executing affidavits" and criticizing them for not containing "supporting evidence" and for "fail[ing] to identify actual billing they have done to fee-paying clients." (Suggs. in Opp. at 8). It characterizes the evidence as "[i]nsufficient." (*Id.*) (in a heading).

As Plaintiff has repeatedly pointed out, this Court could enter an award of attorneys' fees with no evidence. *Essex Contracting*, 277 S.W.3d at 656. Thus, any suggestion that the evidence is insufficient is without merit. Moreover, Defendant offers no support for its criticisms of Plaintiff's affiants. Even if it had, the fact remains that Plaintiff has six witnesses (in addition to his own attorneys) testifying to the reasonableness of his rate, while Defendant does not have a single one testifying otherwise.

**d. Plaintiff's proposed lodestar uses a reasonable number of hours**

As Plaintiff explained, the number of hours used in his proposed are reasonable. (Motion at 9-10). Defendant disagrees, but its arguments are entirely unpersuasive. First,

Defendant avers that “[o]ne test to determine whether the hours expended by Plaintiff’s counsel is excessive is to compare it to those of defense counsel.” (Suggs. in Opp. at 9). Defendant cites no authority for this proposition, and Plaintiff has not found any. Even if the Court were to consider this as part of the factor, Defendant’s argument is unpersuasive.

There is no reason to believe that a plaintiff’s attorneys should work the same number of hours over the course of a given case as the defendant’s attorneys. A Plaintiff bears both the burden of production (meaning he must produce substantive evidence to support each element, both during summary judgment and at trial) and the burden of persuasion (meaning he must convince the jury by a preponderance of the evidence that the facts supporting a verdict in his favor are true). *See Clevenger v. Oliver Ins. Agency, Inc.*, 237 S.W.3d 588, 590 (Mo. banc 2007) (production); MAI No. 3.01 (2016) (persuasion). A defendant has no such burden (unless it is attempting to assert an affirmative defense) and need only prevent a plaintiff from meeting his burden. This disparity was illustrated in this case by the vast difference in the amount of time Plaintiff spent putting on his case-in-chief versus Defendant. There are other reasons why Plaintiff’s attorneys’ spending more time on the case than Defendant’s is reasonable. As the Court is well aware, this case went before the Missouri Court of Appeals, Western District and the Missouri Supreme Court. *See R.M.A. v. Blue Springs R-IV School Dist.*, 568 S.W.3d 420 (Mo. banc 2019); *R.M.A. v. Blue Springs R-IV School Dist.*, No. WD80005 (Mo. App. W.D. July 18, 2017). As the Appellant on appeal, Plaintiff submitted two briefs to each court an Appellant’s brief (or Substitute Appellant’s brief before the Supreme Court) and a (Substitute) Reply Brief, while Defendant (as Respondent on appeal) only submitted one. *See* Rule 83.08(c); Rule 84.05(a); *see also* Rule 84.06(b) (relative length); Mo. App. W.D. Rule 41(A). Additionally, Plaintiff produced an

expert witness, doing all of the work that entails. While Defendant was entitled to produce its own “dueling expert” (as Plaintiff expected it would), it failed to do so. This does not make the additional time Plaintiff spent “unreasonable.”

Defendant asserts that its hours, including paralegal work, totaled 1096.2 hours, and that “Plaintiff’s counsel is claiming they worked about 129% of the hours the School District’s counsel did to litigate the same case.” (Suggs. in Opp. at 9) (citing Defendant’s Ex. F, Gordon Aff.). Given the disparity in the amount of work there was for each side to do, Plaintiff spending 30% more time is not at all unreasonable. Also, Defendant’s only evidence of the amount of time its counsel spent is a single, declaratory statement that “[o]ur firm’s records show that our attorneys and paralegals billed collectively 1096.2 hours on this matter up through trial.” (Ex. F, Gordon Aff. at ¶ 3). It is not clear that this represents the number of hours worked, or those actually billed (and not discounted or reduced). While Plaintiff’s submitted hours reflect billing discretion and do not reflect all of the time Plaintiff spent on the matter, it is conceivable that Defendant’s counsel discounted substantially more time (especially given the outcome of the Missouri Supreme Court case). Plaintiff also points out that he was successful in this case due, in part, to the amount of time that was put into this case by Plaintiff’s counsel and Plaintiff should not be punished for putting in the amount of time necessary to win this case.

Next, Defendant argues that certain billing is duplicative because more than one attorney worked on a particular task. (Suggs. in Opp. at 9). As an example, Defendant points to “December 4, 2021, Ms. Liesen and Ms. Johnson worked together several hours on *Ms. Johnson’s* opening statement. Mr. Edelman and Ms. Liesen then continued working on *Ms. Johnson’s* opening statement the next day.” (*Id.*) (emphasis in original). Defendant also

complains about “many instances where multiple attorneys bill for meeting with each other regarding one task,” but does not give any examples, except to state that “[t]here are even instances where **all four attorneys** bill for meeting to discuss the case (see entries on January 12, 2021 and November 9, 2021).” (*Id.*) (emphasis in original).

Plaintiff’s counsel work collaboratively, with each focusing on those tasks to which their particular strengths are best suited. This is why, for example, Mr. Edelman argued before the Supreme Court (and argued a number of motions before this Court) while Ms. Myers and Ms. Johnson tried the matter before the jury. By focusing on tasks that play to each attorneys’ strength, Plaintiff’s attorneys are more efficient, and ultimately reduce the total amount of hours billed, even though it does require the attorneys to meet to co-ordinate their efforts.

For example, although Ms. Johnson drafted and ultimately delivered the opening statement, she did so with significant assistance from her co-counsel. While Defendant complains about Ms. Liesen and Mr. Edelman billing time to assist on Ms. Johnson with the opening on December 4th and 5th, 2021, that time was both necessary and efficient. Ms. Liesen, who had the best overall familiarity with Plaintiff’s trial strategy, helped Ms. Johnson ensure her opening statement fit that strategy. Similarly, Mr. Edelman, who had already begun conducting research for Plaintiff’s proposed jury instructions, helped ensure that the facts they were planning to include would be in line with what Plaintiff would ultimately have to prove. For Ms. Johnson to completely master those elements herself before drafting her Opening Statement would have taken far longer and increased the total number of hours. Finally, this reflects an example of Plaintiff’s counsel’s billing judgment. Although Ms. Johnson was in the December 5 meeting, she billed no time. (Ex. A, Billing Statement, at 32). Thus, the time spent on preparing Ms. Johnson’s opening statement was not duplicative.

Similarly, Defendant's complaints about meetings of Plaintiff's attorneys are unpersuasive. Plaintiff has provided the Court evidence (in the form of affidavit testimony) that Plaintiff's work was not duplicative. Plaintiff's counsel did not bill for the vast majority of time spent meeting on the case, and the "limited conversations between co-counsel which were billed were conversations which each person contributed different items equally and thus were not redundant or duplicative." (Ex. B, Myers Aff. at ¶ 12); *see also* (Ex. C, Edelman Aff. at ¶ 15); (Ex. D, Liesen Aff. at ¶ 15, 16); (Ex. E, Johnson Aff. at ¶ 13). By contrast, Defendant has offered no evidence of the supposedly duplicative nature of this activity.

Defendant avers that "[i]nternal office meetings are not typically billable," but cites no authority or evidence for this proposition. (Suggs. in Opp. at 9). Additionally, these were not "internal" office meetings, as they were between attorneys with different firms.

Finally, Plaintiff notes that all of the purportedly duplicative time Defendant points to (work on the open statement by Mr. Edelman and Ms. Liesen on December 4th and 5th, 2021 and meetings of all four attorneys on January 12, 2021 and November 9, 2021) constitutes just 13.3 billable hours. (Ex. A, Billing Statement at 22, 23, 31-32).

Defendant complains about their paralegal, Ellen Crawford, spending a full day on December 4, 2021 (two days before trial) assisting with the "organization and preparation of trial notebooks." (Suggs. in Opp. at 10). It is unclear what Defendant's objection with this entry or work is, except perhaps that it was divided into two portions (presumably before and after Ms. Crawford had lunch). Beyond that, it is unclear what the basis for Defendant's objection is. The trial notebooks in this case were quite large. This is work Ms. Crawford did, as supported by her sworn affidavit. (Ex. F, Crawford Aff. at ¶ 8); *see also* (Ex. B, Myers Aff.

at ¶ 14). It is a clerical task, which is considerably more affordable when done by Ms. Crawford, a paralegal, at her rate, rather than by an attorney.

Similarly, Defendant attacks Plaintiff's billing for the work by law clerk Luke Kalp taking notes "at trial, at the pre-trial conference, and at client meetings," calling it "clearly unnecessary" and "outrageous." (Suggs. in Opp. at 10). First, Plaintiff offered evidence of the reasonableness of this time. (*See* Ex. E, Johnson Aff. at ¶ 15). The notes Mr. Kalp took at trial were necessary for Plaintiff's responses to Defendant's motions for directed verdict and judgment notwithstanding the verdict and much of the trial testimony used in Plaintiff's closing was pulled directly from these notes. As previously mentioned, Plaintiff bears the burden of production, and he needed to be able to tell the Court what evidence was produced prior to a transcript being available. His notetaking at the meetings allowed them to run more efficiently (as Ms. Johnson did not have to take the notes herself) and his doing so at the hearing saved the need for a second attorney to attend. Thus, all of these matters were necessary and contributed to the efficiency in billing.

Finally, Defendant complains of a June 7, 2014 meeting between Plaintiff's parents, Scott Young, and Ryan Fry, involving "negotiation and discussion of access to boys' bathrooms and locker rooms" which Defendant avers "is not work related to the litigation." (Suggs. in Opp. at 10-11). In fact, this is plainly part of the representation for which Plaintiff hired his counsel, which ultimately led to this litigation. Defendant cites no authority to support drawing such a distinction.

All of the time billed was reasonably necessary and supported by evidence. In fact, Plaintiff's billing reflects less than the full amount of time his attorneys worked on the case.

Therefore, Defendant's arguments on this topic are unpersuasive, and the Court should award Plaintiff the full amount requested.

**e. The nature and character of the services rendered support the requested award**

As Plaintiff explained, the third factor, the nature and character of the services rendered, support the full award of his attorneys' fees. (Motion, at 10-11). In response, Defendant does nothing more than re-litigate its case-in-chief and pending Motion for JNOV, arguing (among other things) that Plaintiff offered no evidence supporting the elements of his case. (Suggs. in Opp. at 11-12). Obviously, Plaintiff categorically disagrees with every argument Defendant makes. However, he will limit those arguments to where they belong, in his briefing on Defendant's JNOV motion.

In the context of this motion, Defendant's arguments are entirely meritless. The question of whether Plaintiff proved his case was decided when the trier of fact found in his favor using the exact verdict director the Missouri Supreme Court set forth (which, puzzlingly, Defendant quotes in its briefing). Defendant cites no authority to support its assertion that attorneys' fees should not be awarded because Plaintiff did not really win the case. This is unsurprising, as such an argument makes no sense in the context of a motion to include attorneys' fees in a judgment accepting the verdict in Plaintiff's favor. Defendant's arguments on the third factor are entirely meritless, and it supports awarding Plaintiff his full amount of attorneys' fees.

**f. Defendant's arguments about Plaintiff's purported motivations are both irrelevant and unsupported by the record**

Next, Defendant purports to address the fourth, fifth, and sixth factors as one, but its arguments have little or no bearing on any of them. (Suggs. in Opp. at 13) (addressing "(1)

the degree of professional ability required [factor 4]; (2) the nature and importance of the subject matter [factor 5]; and (3) the amount involved, or the result obtained [factor 6]”). Plaintiff addressed each of these factors and explained why they support his lodestar calculations. (Motion at 12-14).

In its attempt to address these factors, Defendant avers that, although the jury found for Plaintiff on the only count in his petition and awarded him huge damages awards, he did not get what he really wanted. Defendant avers (with no citation to the record) that “Plaintiff’s goal in this litigation was to have the protections afforded by the MHRA extended to transgender individuals.” (Suggs. in Opp. at 13). Defendant further asserts that “Plaintiff failed to accomplish this goal” as “[t]his was not a ‘landmark’ case, as it did not change Missouri law regarding transgender rights” and “**Transgender persons have no more protections under the MHRA now than they did prior to Plaintiff’s lawsuit.**” (*Id.* at 13-14) (emphasis in the original). Defendant’s argument is entirely meritless in almost every way possible.

First, Defendant has no basis for asserting that Plaintiff did not get what he wanted. Plaintiff agreed with the decision to bring this case and has ratified that decision through his ongoing participation. In the context at issue (an action in civil court pursuant to RSMo. § 213.111.1 (2016)), he has obtained the best possible result—a jury verdict in his favor.

Second, even if Defendant’s wholly unsupported assertions about Plaintiff’s internal desires and motivations were true, it cites no authority that it would have any bearing on the three factors listed. Plaintiff will not rehash his briefing on the matter, but there is no support for the suggestion that a plaintiff not getting the precise outcome he wanted warrants a reduction under any of the factors.

Third, Defendant's assertion that Plaintiff did not get what he wanted is factually incorrect. Plaintiff is a transgender male. He brought an action for sex discrimination in public accommodation for Defendant's discrimination against him. Using the verdict directed from the decision of the Missouri Supreme Court, he proved to a jury that he was discriminated against because of his sex. Thus, he accomplished precisely what he set out to do.

In arguing that Plaintiff did not, Defendant cites the decision of the Court of Appeals (and implies that it is somehow still in effect, as "[o]n appeal, the Missouri Supreme Court did not reach a decision on whether transgender status is a type of sex under the MHRA"). (Suggs. in Opp. at 13). However, the matter was not appealed from the Court of Appeals, but transferred. Such a transfer "immediately renders the court of appeals' decision (if any) a nullity." *Williams v. Hubbard*, 455 S.W.3d 426, 431 (Mo. banc 2015).

The Missouri Supreme Court ruled that a transgender person can state a claim for sex discrimination under the MHRA, as long as he can prove that his sex was a contributing factor in the discrimination. *R.M.A.*, 568 S.W.3d at 428. While this may not have "changed" the law, it did clarify that a Defendant cannot use the fact that an MHRA Plaintiff is transgender to have the case dismissed. The necessity of this clarification is illustrated by the fact that this Court (before the case was transferred to this division), granted Defendant's motion to dismiss based upon precisely that argument.

Defendant's arguments on this topic are entirely meritless and should be disregarded by the Court.

**g. The vigor of Defendant's opposition does support the award**

Defendant "does not deny its counsel vigorously defended it" but asserts that "none of the criticized billing was necessitated as a result of defense counsel's vigor." (Suggs. in Opp.

at 14). This is not true. Defendant railed against the notetaking by Mr. Kalp. (*Id.* at 10). Yet much of that notetaking was necessary to respond to Defendant’s JNOV. Plaintiff has already explained how this factor supports the award of attorneys’ fees. (Motion at 14-15). Defendant does not appear to dispute these arguments.

**h. Defendant has not even attempted to put forth a different lodestar amount**

Finally, Defendant asserts that Plaintiff “failed to provide evidence or reasonable arguments supporting his” proffered lodestar amount, that the amount “is unjustified for several reasons” and that “[t]hese reasons have a cumulative effect, which has resulted in a grossly inflated requested lodestar.” (Suggs. in Opp. at 14). In fact, Plaintiff has already addressed each of Defendant’s arguments, showing how they are unsupported by the facts and the law.

Next, Defendant asserts, with no citation to authority, that “the Court is fully justified in exercising its discretion to deny Plaintiff’s motion entirely.” (*Id.* at 14-15). This assertion is directly at odds with actual authority, which makes clear that prevailing plaintiffs in MHRA cases should be awarded attorneys’ fees as a matter of course, and those awards should only be denied in exceptional circumstances that would make awarding fees unjust. *Wilson*, 598 S.W.3d at 896 (quoting *Gilliland*, 273 S.W.3d at 523). Even if the Court agreed with Defendant’s arguments about Plaintiff’s billing amounts, an excessive request does not make a proper award of fees unjust, so Defendant’s suggestion is at odds with Missouri law.

Then, Defendant avers that “if the Court chooses to award an attorneys’ fee amount, Defendant suggests it reduce the requested lodestar amount by at least 50%.” (Suggs. in Opp. at 15). Defendant offers no support for where it got this number, and Plaintiff cannot conceive of its basis. Tellingly, Defendant titled this section “Correct Lodestar” (*Id.* at 14), but does

not even attempt to make the most basic lodestar calculation, multiplying what it suggests is a reasonable hourly rate by a reasonable number of hours. Such a suggestion is entirely unpersuasive.

Although the Court could award attorneys' fees without evidence, Plaintiff has gone to great lengths to gather and present a substantial amount of it, offering more than a dozen affidavits. Plaintiff has also carefully documented the hours his legal team worked, and presented it in an organized manner to the Court. By contrast, Defendant's evidence (aside from the past affidavits of Plaintiff's counsel) is made of a single assertion in an affidavit. (See Defendant's Ex. F, Gordon Aff. at ¶ 3). In addition to being unsupported by the law or the facts, Defendant's arguments are vague, and therefore, unpersuasive. Defendant has not shown that Plaintiff's lodestar calculation is improper and has not even attempted to show the Court what it should do instead.

**i. The multiplier is not improper**

Next, Defendant argues that the multiplier that Plaintiff has sought is improper. (Suggs. in Opp. at 15). Plaintiff has set out the arguments supporting the multiplier and will not repeat them. (Motion at 15-18). Defendant's arguments against the use of the lodestar are unsupported and without merit.

**1. Plaintiff does not rely on the same facts to for his lodestar amount and his request for a multiplier**

Defendant argues that Plaintiff relies on the same facts to support the multiplier as supported the lodestar. Specifically, it asserts (without any citation to Plaintiff's motion) that Plaintiff used two facts for arguing for both a multiplier and for the lodestar amount: "the risk involved because the case was taken on a contingency basis" and "his 'excellent result'" in the case. (Suggs. in Opp. at 16). Defendant cites caselaw explaining that "When a trial court

must determine whether to apply a multiplier, it should avoid awarding a multiplier based upon facts that it considered in its initial determination of the lodestar amounts.” (*Id.*) (quoting *Berry v. Volkswagen Group of America, Inc.*, 397 S.W.3d 425, 432 (Mo banc 2013)) (emphasis removed).

Plaintiff did offhandedly mention the contingency nature of his attorneys’ practice in the lodestar section. (Motion at 5). It does not bear directly on his arguments in that section (which are about what rates are actually reasonable). Similarly, Plaintiff’s use of the phrase “excellent result” in the multiplier section is not substantively the same as what was discussed in the lodestar section. (*Id.* at 15). While that can be the basis for a multiplier, it is not a part of Plaintiff’s actual arguments. (*Id.* at 15-17). Importantly, in *Berry*, the Supreme Court affirmed a multiplier of 2.0, even where some of the factors considered overlapped, because “three of the seven factors directly support the application of a multiplier.” 397 S.W.3d at 432. Moreover, the specific factors were that “[t]he fee to be received by class counsel was always contingent, unlike the fees received by counsel for Defendant;” “[t]aking this case precluded class 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 class counsel’s other work.” *Berry*, 397 S.W.3d at 432-33. Plaintiff demonstrated these exact factors. (Motion at 16-17).

**2. Plaintiff offered evidence that his counsel was precluded from working on other cases and accepting new clients**

Recognizing that Plaintiff’s motion supports an award of a multiplier, Defendant avers that Plaintiff’s affidavits do not “support a finding that Plaintiff’s counsel’s work on Plaintiff’s case precluded them from (1) accepting new clients, or (2) delayed work on other cases. In fact, all evidence is to the contrary.” (Suggs. in Opp. at 17). As Plaintiff has already explained,

he showed exactly that. (Motion at 17) (citing Ex. B, Myers Aff. ¶ 15; Ex. E, Johnson Aff. ¶ 16-17; Ex. J, Buchanan Aff. ¶17). Defendant attempts to dismiss this evidence, suggesting that Plaintiff's language in the affidavits was not precise enough. But it cites no authority

Defendant also suggests that the affidavits do not show that the work Plaintiff was foregoing was less risky than this case. (Suggs. in Opp. at 17-18). However, as Plaintiff alluded to in his motion, virtually any other case his counsel could take would be less risky. From the very beginning, Plaintiff's counsel understood that Defendant would likely use the fact that Plaintiff is transgender to argue that its discrimination was not sex discrimination. (Motion at 16). This is the only case that counsel for Plaintiff has ever taken that necessitated a visit to the Missouri Supreme Court to even get past a Motion to Dismiss. Thus, this was the riskiest case Plaintiff's counsel could possibly have taken, and all the cases they did not take (as set forth in their affidavits) were less risky.

Defendant argues that "Plaintiff's counsel's affidavits tout that they take high risk civil rights cases" so "it is reasonable to conclude that even if there were cases that could not be accepted because of work on this case . . . such cases would not have been less risky." (Suggs. in Opp. at 17-18). This argument turns the *Berry* decision on its head. If Plaintiff's counsel, like the counsel in *Berry*, is willing to take risky cases, that is a reason to apply a multiplier, not a reason to refuse it. Moreover, Defendant is simply incorrect that all of Plaintiff's counsel's cases are as risky. A recent case mentioned in the affidavits involved a claim for race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII") which, as the statute's name suggests, has prohibited race discrimination in employment for nearly 60 years. (Ex. D., Liesen Affidavit at ¶ 10) (citing

*Harris v. Unified Government of Wyandotte County*, Case No. 18-cv-2084-JAR-GEB (D. Kan. 2021)).

Defendant suggests that “if they exist, Plaintiff’s counsel should be able to identify how many clients they could not have accepted because of their work on this case, and why.” (Suggs. in Opp. at 17). This ignores how new clients are retained. They do not arrive pre-packaged and clearly marked. Client intake is an arduous process that requires a great deal of work by an attorney. It is this work (as well as the additional work that will inevitably follow) that Plaintiff’s counsel was precluded from doing by the demands of this case.

On the issue of delay of other matters, Plaintiff’s counsel stated plainly in their affidavits that such a delay was caused. (Ex. B, Myers Aff. at ¶ 15); (Ex. C, Edelman Aff. at 19); (Ex. D, Liesen Aff. at ¶ 16); (Ex. E, Johnson Aff. at ¶ 16-17).

### **3. Plaintiff does not rely on deterrence as a factor for receiving his multiplier**

Defendant argues, with no citation to Plaintiff’s motion, the record, or any authority, that “Plaintiff claims the Court should double the lodestar amount ‘to deter the Blue Springs School District and to shake it out of its brazenly discriminatory behavior’” and that “deterrence is an inappropriate and unwarranted factor to consider in this case.” (Suggs. in Opp. 18). Defendant then goes on to argue that deterrence is addressed by punitive damages, which have already been awarded in this case (and which Defendant is fighting in its motion for JNOV), so should not be a factor in considering a multiplier. (*Id.* at 19). Defendant also relitigates is JNOV arguments yet again. (*Id.* at 19-20). Plaintiff will not address the JNOV arguments here but will address the other arguments.

Plaintiff does use the word deter and the phrase Defendant quotes. (Motion at 17). However, it is clear from the context that Plaintiff is not arguing that the multiplier itself

should be imposed as a deterrent in the same way punitive damages are. Rather, it is the existence of the MHRA, and the fact that, even in difficult circumstances, private attorneys are willing to step up and take these cases, that is the deterrent. In order to ensure that this remains true, it is necessary for the Court to fully compensate Plaintiff for the fair market value of his attorneys' fees. *Gilliland*, 273 S.W.3d at 523. And, in risky, challenging cases such as this, such full compensation requires a multiplier. *Berry*, 397 S.W.3d at 432. Thus, as Plaintiff explained, in order to ensure that the MHRA is enforced and civil rights are properly protected, the Court should award the multiplier so Defendant knows it cannot get away with discrimination in challenging cases. (Motion at 17) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 445 (1983) (Brennan, J., concurring in part and dissenting in part

#### **4. Reasoning behind lodestar multipliers does apply in this matter**

Finally, Defendant asserts, with no citation to authority, that “[t]he rare case in which a multiplier might be warranted is where counsel for a plaintiff has essentially devoted their entire practice over a substantial time period to the plaintiff’s case, requiring an extraordinary outlay of both time and expenses.” (Suggs. in Opp. at 20). Defendant has not cited, and Plaintiff cannot find, any authority to support that proposition. As Plaintiff explained in his motion and above, the actual factors that the *Berry* court enumerated for a multiplier apply to this case. Defendant’s argument to the contrary is totally unsupported by any authority.

### **III. EXPENSES AND COSTS**

In his motion, Plaintiff requested the Court award both “litigation expenses” and “court costs.” (Motion at 18-20). As Plaintiff explained, the first category includes those “reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client” and may be awarded as attorneys’ fees. (*Id.* at 18) (quoting *Wilson*, 598 S.W.3d at 897). The second

category (“court costs”) include cost “specifically authorized by statute.” (Id. at 19) (quoting *Wilson*, 598 S.W.3d at 895). Plaintiff seeks litigation expenses in the amount of \$4,567.22 and court costs in the amount of \$2,665.15. (Id. at 18, 20).

Defendant does not appear to oppose either such award. Its Suggestions in Opposition does not address either category and does not make any argument or claims opposing Plaintiff’s reasoning or any category or amount requested. Therefore, the Court should award Plaintiff both his out-of-pocket expenses and court costs in full.

#### **IV. POST-JUDGMENT INTEREST**

Defendant, with no citation to the record or any authority, asks the Court to set post-judgment interest at the lowest portion of the permissible range because “the School District is a public entity responsible for the education of children.” (Suggs. in Opp. at 20). Plaintiff notes that he was one of those children, and it did not stop Defendant from violating his rights under the MHRA. Additionally, the Missouri Supreme Court has rejected the argument a Defendant should not be fully liable for damages under the MHRA because of its status as a public entity. *See Howard v. City of Kansas City*, 332 S.W.3d 772, 786-88 (Mo. banc 2011).

Plaintiff also notes that post-judgment interest is meant “to compensate a judgment creditor for the judgment debtor’s delay in satisfying the judgment.” *Peterson v. Discover Property & Cas. Ins. Co.*, 460 SW 3d 393, 413 (Mo. App. W.D. 2015) (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). Thus, it is irrelevant who the parties are or what they might otherwise do with the money.

## VI. EQUITABLE RELIEF

Finally, Plaintiff sought equitable relief, asking the Court to enter a permanent restraining order requiring Defendant to end the discriminatory policies at issue in this case. (Motion at 22). As Plaintiff explained, the MHRA authorizes this Court to grant such relief. (*Id.* at 21).

Defendant notes that “Plaintiff has not cited *any* Missouri case in which a court granted equitable relief in a MHRA case.” (Suggs. in Opp. at 21). Defendant is correct, and Plaintiff has not found any public accommodation cases in which equitable relief was granted. However, that is unsurprising, and there are very few reported cases of any type involving this portion of the statute. Indeed, it is Plaintiff’s understanding that this is the only case brought under RSMo. § 213.065 to have been heard by the Missouri Supreme Court, and only a handful of such cases have been heard by the Court of Appeals.

However, there is case law regarding equitable relief in the employment context. Specifically, in the context of employment it is well established that trial courts have the power to grant a plaintiff equitable relief in the form of reinstatement. *Hurst v. Kansas City, Missouri School Dist.*, 437 S.W.3d 327, 344 (Mo. App. W.D. 2014). When “reinstatement is not feasible, such as in this case where the employer-employee relationship cannot be repaired through reinstatement,” the court can consider the alternative equitable remedy of front pay. *Gilliland*, 273 S.W.3d at 524. The trial court has a considerable amount of discretion in awarding equitable remedies under the MHRA. *Id.*

In the context of public accommodation discrimination, the obvious equivalent to reinstatement would be an order for the court requiring the Defendant to stop discriminating, and to allow the Plaintiff equal access to the place of public accommodation. Less obvious is what the equivalent of front pay would be where, as here, an order to stop discriminating

against a plaintiff in the provision of the public accommodation “is not feasible.” Front pay is an economic remedy, which substitutes for the economic relationship of employment. By contrast, the prohibition on public accommodation discrimination protects a dignitary interest and Plaintiff’s right to be “free and equal.” RSMo. § 213.065.1; see also *MCHR v. Red Dragon Restaurant, Inc.*, 991 S.W.2d 161, 170-71 (Mo. App. W.D. 1999). Plaintiff notes that when a complaint of discrimination is heard by a panel of the MCHR, if such a panel finds

That a respondent has engaged in an unlawful discriminatory practice as defined in this chapter, the commission shall issue . . . an **order** requiring the respondent to cease and desist from the unlawful discriminatory practice. The order **shall require the respondent to take such affirmative action**, as in the panel’s judgment will implement the purposes of this chapter, **including, but not limited to**, payment of back pay; hiring; **reinstatement or upgrading . . . the extension of full, equal and unsegregated public accommodations . . .**

RSMo. § 213.075.11(1). Plaintiff recognizes that this statute is not directly applicable. But it does strongly suggest that, in the eyes of the legislature, an order to end discriminatory public accommodation practices is on par with reinstatement. Since reinstatement is plainly an equitable remedy available under the MHRA, it follows that ending discrimination is as well.

**a. Plaintiff pled equitable relief**

Defendant first argues that Plaintiff failed to plead a claim for equitable relief. (Suggs. in Opp. at 21-23).

In fact, Plaintiff did plead such a claim. Plaintiff pled that he was a member of a protected class under the MHRA. (Petition at ¶ 25). Plaintiff pled that Defendant denied him “access to the boys’ restrooms and locker rooms.” (*Id.* at ¶ 27, 31, 40, 42). Plaintiff pled that his sex was a contributing factor the denial of his use of public accommodation (*Id.* at ¶ 35, 43, 50). Plaintiff has pled that as a result of Defendant conduct, he suffered damages. (*Id.* at ¶ 51). In Plaintiff’s prayer for relief, he asked “for appropriate equitable relief.” (*Id.* at 8).

In support of its argument, Defendant cites numerous cases that deal with common-law claims for equitable relief. (Suggs. in Opp. at 21-23) (citing, e.g. *The City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 264-65 (Mo. App. W.D. 2010)). However, these common-law principles are inapplicable to the MHRA, which expressly grants this Court the authority to “grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order.” RSMo. § 213.111.2 (2016). This right arises from a civil action against a respondent against whom the plaintiff filed a charge of discrimination. RSMo. § 213.111.1 (2016). Such a charge is filed against a “person alleged to have committed the unlawful discriminatory practice.” RSMo. § 213.075.1 (2016). Thus, all that is required to be pled to be entitled to equitable relief (including “any permanent . . . injunction”) is that the Defendant committed an unlawful discriminatory practice. One such unlawful discriminatory practice is public accommodation discrimination. RSMo. § 213.065.2. As the Missouri Supreme Court recognized, Plaintiff has pled such a claim against Defendant. *R.M.A.*, 568 S.W.3d at 426-28.

Defendant avers that “Plaintiff failed to plead a claim for a permanent restraining order” as “[a] general request for ‘appropriate equitable relief’ in the prayer is inadequate.” (Suggs. in Opp. at 23) (citing *City of Greenwood*, 311 S.W.3d at 264). However, the Court of Appeals actually rejected this argument. In that case, the prayer for relief contained the even more vague “request for ‘such other relief this court deems just and proper.’” *City of Greenwood*, 311 S.W.3d at 264.<sup>3</sup> While the other party argued that this “was insufficient to support the trial court’s grant of injunctive relief,” the court disagreed, finding that the language “is elastic enough to encompass other equitable relief, including an injunction” and

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<sup>3</sup> Plaintiff notes that he also asked for “such other relief as the Court deems just and proper” in his Petition. (Petition at 8).

that “the ‘just and proper’ language ‘is more than mere custom’ and may allow an equity court ‘to enter relief required to resolve the issues raised by the allegations in the cause pleaded.’” *Id.* (internal citations omitted). The court ultimately threw out the grant of the injunction because the party seeking it had not pled the elements that entitled it to such an injunction. Here, however, Plaintiff has pled such elements. As Plaintiff explained (above), his right to this injunctive relief arises from his claim under the MHRA, which (as the Missouri Supreme Court decided) he has adequately pled.

**b. Collateral estoppel and res judicata are inapplicable**

Next, Defendant asserts that Plaintiff’s request for an injunction is barred by res judicata or collateral estoppel. Defendant cites *In Re the Matter: R.M.A. by His Next Friend Rachelle Appleberry*, Case No. 1416-CV17208, and claims that Plaintiff “now asks the Court for the same relief against the same party” and therefore “Plaintiff’s claim is barred by collateral estoppel and res judicata.” (Suggs. in Opp. at 23-24).

Defendant’s assertions are without merit. Plaintiff’s current claim is brought under RSMo. § 213.111.1 (2016), which specifically provides for a cause of action and relief arising out of claims of violation of the MHRA. However, the right to bring such a claim does not arise until the MCHR issues a notice of right to sue. RSMo. § 213.111.1 (2016). Thus, Plaintiff’s current claim is that Defendant is liable because it unlawfully discriminated against him, and the MCHR issued him a notice of right to sue. (*See* Petition at ¶¶ 14-17). The judgment in the mandamus decision was issued on March 5, 2015. *In Re the Matter: R.M.A. by His Next Friend Rachelle Appleberry*, Case No. 1416-CV17208. The MCHR did not issue its notice of right to sue until July 8, 2015. (Petition at ¶ 15). Thus, the rights Plaintiff is claiming in this action were plainly not at issue in the mandamus action.

Thus, neither collateral estoppel nor res judicata are appropriate. Collateral estoppel precludes “the relitigation of an issue that was necessary and unambiguously already decided in a different cause of action.” *Kesler v. Curators of the University of Missouri*, 516 S.W.3d 884, 896 (Mo. App. W.D. 2017). The issue of Plaintiff’s entitlement to injunctive relief under the RSMo. § 213.111.2 (2016) after he had been issued a notice of right to sue could not have been at issue, since no such notice had been issued at the time. The inapplicability of res judicata is even more obvious. It will only “bar a second suit if the prior judgment . . . disposed of the same causes of action involved in the second suit.” *Bugg v. Rutter*, 330 S.W.3d 148, 153 (Mo. App. W.D. 2010). Here, the causes of action are entirely different. The first suit was for a writ of mandamus, while the second suit is for relief under the MHRA pursuant to RSMo. § 213.111.1 (2016).

**c. There is both a legal and evidentiary basis for the Court to grant equitable relief**

Next Defendant yet again relitigates its arguments from trial and in its Motion for JNOV. (Suggs. in Opp. at 26). Such arguments are obviously improper, as they are outside the scope of this motion. Plaintiff will not relitigate the case or make his JNOV arguments here.

Defendant also avers that “[n]o evidence was provided about what the ramifications of such an order would be, including how it would impact other children, costs, etc.” (Suggs. in Opp. at 26). In fact, there was testimony about schools which have non-discriminatory policies, how they work and how they can be implement. (Plaintiff’s mother testified that she attempted to share that information with Defendant, but Defendant was not interested in it).

Using the elements in the verdict director suggested by the Supreme Court, Plaintiff proved to a finder of fact that Defendant’s treatment of him constituted sex discrimination

under the MHRA. No matter how many times Defendant says that Plaintiff's evidence was regarding "gender" and not "sex," it does not make it so. Plaintiff's expert explained that Plaintiff's sex was male, and that the indicia of sex upon which Defendant sought to rely (such as Plaintiff's chromosomes or his anatomy) were not determinative. Because Plaintiff proved that the conduct Defendant was engaged in (and which Defendant has made clear it still intends to engage in) is unlawful discriminatory conduct under the MHRA, there is both an evidentiary and legal basis for the Court to issue a permanent injunction.

**d. Plaintiff had standing to seek equitable relief**

Finally, Defendant argues that because Plaintiff is no longer a student, he lacks standing. (Suggs. in Opp. at 26). Defendant cites authority that says that "Plaintiff must have standing to bring an action." (*Id.*); see *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013). Plaintiff brought this action on October 2, 2015. (*See* Petition at 1). That was also the time he asked for equitable relief. (*Id.* at 8). There is no dispute that at that time, Plaintiff was a student at Blue Springs South High School. (*Id.* at 20). Thus, Plaintiff did "have standing to bring [this] action."

**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. Defendant's arguments to the contrary are unpersuasive and unsupported by the relevant law and authority.

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 11th day of February, 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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