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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

AMY FROGGE, JILL SPEERING, and FRAN BUSH, individually, and in their official capacities as members of the Metropolitan Nashville Board of Public Education,	)	
Plaintiffs,	)	
vs.	)	**No. 20-420-IV(III)**
SHAWN JOSEPH, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, acting by and through THE METROPOLITAN NASHVILLE BOARD OF PUBLIC EDUCATION,	)	
Defendants.	)	

MEMORANDUM AND FINAL ORDER AWARDING RECOVERY TO PLAINTIFFS OF ATTORNEY'S FEES AND COSTS

The Plaintiffs are awarded $50,481.52 in attorney's fees and costs, plus an additional $6,525.00 and $1,537.00 incurred in responding to the Defendants' motions for an extension of time to file opposition to the fee application and opposition to the fee award. It is therefore ORDERED that the Plaintiffs are awarded a total of $58,543.52 in attorney's fees and costs. Any delay in ruling on attorney's fees and entering a final order is attributable to the Defendants not this Court. This Court had ordered the Defendants to file any opposition to Plaintiffs' fee application by October 9, 2020. They failed to do so

but did file an appeal. An October 19, 2020 Court of Appeals' order states that the appellees in this case filed a motion to recover attorney's fees on September 25, 2020 "but the trial court has not yet ruled on the motion." The trial court had not yet ruled because the Defendants did not timely file their opposition to the fee award in the trial court by October 9, 2020, as ordered; filed a premature appeal; and then on October 19, 2020 filed their opposition in the trial court to the attorneys' fees along with a motion for an extension of time to file opposition to the fee award with the motion set to be heard November 6, 2020. It was only after that date that this Court could rule.

It is further ORDERED that the Court issues no ruling on the motions for an extension of time filed by Metro and Defendant Joseph and on whether there was or was not excusable neglect by these Defendants. The ruling herein renders those motions moot.

Finally, the Court finds that the task descriptions in Attachments B and C to Exhibit 1 to the September 25, 2020 *Plaintiffs' Motion for Attorney's Fees and Costs* reference privileged communications and work product—the disclosure of which the Plaintiffs have authorized for purposes of this motion—but which the Plaintiffs have requested that the document disclosing Counsel's task descriptions be redacted or sealed following this Court's resolution of the instant motion to safeguard the confidentiality of Plaintiffs' representation. It is therefore ORDERED that the Clerk and Master shall place under seal Exhibit 1 to the September 25, 2020 *Plaintiffs' Motion*.

Court costs are taxed to the Defendants.

Provided below are the facts and law on which this Final Order is based.

Itemization of Award

The fees and costs awarded are comprised of the following.

1. **$988.52** in actual costs incurred, consisting of: (i) $297.87 for filing the Plaintiffs' Complaint; (ii) $19.55 in mailing expenses associated with obtaining service of process; (iii) $75.00 in expenses regarding Defendant Joseph's service address; (iv) $290.00 for the court reporter's per diem for the July 31, 2020 motion hearing; and (v) $306.10 for the transcription of the July 31, 2020 motion hearing

2. **$43,123.00** for work performed by lead attorney Daniel A. Horwitz, reflecting: (i) 142.8 claimed hours regarding the merits of this action, and (ii) 5.9 claimed hours associated with preparing Plaintiffs' fee petition, *see Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 724–25 (6th Cir. 2016) ("failing to provide fully compensatory fees for fees undermines the congressional intent behind a fee-shifting statute, which is 'to encourage the private prosecution of civil rights suits through the transfer of the costs of litigation to those who infringe upon basic civil rights.'") (quoting *Weisenberger v. Huecker*, 593 F.2d 49, 53–54 (6th Cir. 1979)), all billed at a rate of $290.00 per hour

3. **$6,370.00** for work performed by associate attorney Sarah Martin, consisting of 31.85 claimed hours at a rate of $200.00 per hour.

4. **$6,525.00** at the rate of $290.00 per hour for the following: 5.1 hours associated with preparing Plaintiffs' Response to Metro's Motion for Extension of Time; 1.3 hours associated with preparing Plaintiffs' Response to Joseph's *Motion to* [sic] *Extension of Time*; 0.4 hours associated with preparing the Plaintiffs' *Reply to Defendants' Non-Response to Plaintiffs' Motion for Attorney's Fees and Costs*; and 15.7 hours associated with preparing the *Reply to Metro's Untimely Response to Plaintiffs' Motion for Attorney's Fees and Costs*

5. **$1,537.00** at the rate of $290.00 per hour that Plaintiffs' Counsel expended in preparing the October 22, 2020 *Reply* to Defendant Joseph's opposition to the fee award

Reasoning and Authorities

The Court cannot improve upon the Plaintiffs' briefing in support and reply on the application for fees, nor does the Court have anything to add. Therefore in the interest of time since an appeal is pending the Court quotes extensively from the Plaintiffs' briefing as follows to document the facts and law on which the Court bases its fee award.

The Plaintiffs are entitled to a fee award in this case under 42 U.S.C. § 1988(b) because they have secured final civil rights relief as to all of their constitutional claims and are the prevailing parties within the meaning of 42 U.S.C. § 1988(b).

42 U.S.C. § 1988(b) provides that:

> In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, the

> Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or section 12361 of Title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

Id.

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal quotation marks omitted). Accordingly, the United States Supreme Court has held that a prevailing civil rights plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968). *See also Indep. Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989) ("In *Newman, supra*, 390 U.S., at 402, 88 S. Ct., at 966, we held that in absence of special circumstances a district court not merely 'may' but must award fees to the prevailing plaintiff"); *Hensley*, 461 U.S. at 429 ("a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.") (internal quotation marks omitted).

The driving force behind 42 U.S.C. § 1988(b) is to "encourage lawyers to accept civil rights cases, *which frequently involve substantial expenditures of time and effort but produce only small monetary recoveries*." *Keith v. Howerton*, 165 S.W.3d 248, 252 (Tenn. Ct. App. 2004) (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 576–578 (1986)). As

such, when considering a fee award, "the most critical factor is the degree of success obtained." *Hensley*, 461 U.S. at 436.

"There is no precise rule or formula for making" a determination as to the appropriate fee award. *Id.* However, the Supreme Court has "specifically rejected a 'mathematical approach' that simply compares the number of issues on which the plaintiff prevailed to the total number of issues overall in dispute." *Keith*, 165 S.W.3d at 252 (quoting *Hensley*, 461 U.S. at 435 n. 11). In this case, there is no need to sever claims, because the Plaintiffs prevailed in full as to all of their claims in this litigation, and the Defendants did not prevail on anything.

"A trial court, in calculating the 'reasonable hourly rate' component of the lodestar computation, should initially assess the '*prevailing market rate in the relevant community.*'" *Adcock-Ladd v. Sec'y of Treasury*, 227 F.3d 343, 350 (6th Cir. 2000) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). An attorney's lodestar is subject to a "'strong presumption'" of reasonableness, *see id.* (quoting *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992)), and deviation from counsel's lodestar is proper in only "'rare' and 'exceptional' cases, supported by both 'specific evidence' on the record and detailed findings," *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1987).

In determining counsel's lodestar, a reasonable hourly rate is generally determined by considering the skill, experience, and reputation of the attorneys involved and the market in which they practice. *Adcock-Ladd*, 227 F.3d at 349, n.8. "[A]wards in similar

cases" are relevant to this consideration as well. *Id.* (quotation omitted). And while "the determination of what constitutes a reasonable fee is still a subjective judgment based on evidence and the experience of the trier of facts," "the ultimate goal [is] securing of payment of a reasonable fee." *United Med. Corp. of Tennessee v. Hohenwald Bank & Tr. Co.*, 703 S.W.2d 133, 137 (Tenn. 1986).

The party seeking an attorney's fee award under 42 U.S.C. § 1988(b) has two primary obligations: (1) to provide the court with "evidence supporting the hours worked and rates claimed;" and (2) to demonstrate that the requested fee award is "reasonable." *See Anderson v. Metro*, Davidson County Circuit Court Case No. 15C3212, at Doc. #179, p. 5 (quoting *Building Service Local 47 v. Grandview Raceway*, 46 F. 3d 1392, 1402 (6th Cir. 1995); *U.S. Structures v. J.P. Structures*, 130 F. 3d 1185, 1196 (6th Cir. 1997)). In addition, "[c]ounsel for the prevailing party should [3] make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 429. Counsel's satisfaction of each of these obligations in the instant case is set forth in detail below and in the affidavit and exhibits that accompany this Memorandum.

In Tennessee, the reasonableness of a fee is determined by applying Rule 1.5 of the Tennessee Rules of Professional Conduct. *See, e.g., Harris v. Steward*, No. W2019-00231-COA-R3-CV, 2019 WL 6799774, at *2 (Tenn. Ct. App. Dec. 13, 2019). Rule 1.5 lists the following ten factors:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and

(10) whether the fee agreement is in writing.

TENN. SUP. CT. R. 8, RPC 1.5(a).

Findings of fact as to each of these factors is as follows, and the Court's findings derive from the *Affidavit of Daniel Horwitz,* filed September 25, 2020.

(1) Time and Labor Required, Novelty and Difficulty of the Questions Involved, and Skill Requisite to Perform the Legal Service Properly; (3) Fee Customarily Charged in the Locality for Similar Legal Services

In this case the Plaintiffs' representation involved complex constitutional claims—both state and federal—that the Plaintiffs successfully prosecuted. The time that the Plaintiffs' attorneys spent on this matter is found by the Court to be credible and accurate based upon the *Affidavit of Daniel Horwitz,* an affidavit detailing the work performed and

Counsel's itemized fee entries, task descriptions, and cost receipts for the fees that Plaintiffs are claiming.

With respect to the fee customarily charged in the locality for similar legal services, the Court finds that the standard hourly rate of $290.00 per hour for Attorney Horwitz is reasonable when compared to other attorneys within this jurisdiction who have comparable experience. *See, e.g.*, Middle District of Tennessee Case 3:13-cv-01159, Doc. 106-1, PageID ## 2231–32; Davidson County Case No. 15C3212, Doc. #179 and based upon the findings below as to factor (a)(7).

In addition, the fee application establishes that to avoid any claim of excessiveness, Plaintiffs' Counsel omitted all duplicative entries where multiple attorneys discussed a matter, and all billing for two of the four attorneys who participated in the litigation of this matter—attorney David Hudson (for whom the Plaintiffs would have sought an award at a rate of $350.00 per hour) and attorney Geoffrey Patterson (for whom the Plaintiffs would have sought an award at a rate of $190.00 per hour). These were omitted entirely although both of those attorneys were paid out-of-pocket for their work by Attorney Horwitz.

(2) Likelihood That Acceptance of This Case Precluded Other Employment by the Lawyer

This factor is not applicable since Plaintiffs' Counsel has stated that his representation in this case did not preclude other employment.

(4) Amount Involved and Results Obtained

The Plaintiffs promptly prevailed on the merits of their several constitutional claims over the Defendants' multi-ground opposition, and Plaintiffs also prevailed uniformly against all of the Defendants' asserted defenses.

Consequently, the amount involved is reasonable as the Plaintiffs achieved a high degree of success, and a full fee award is justified.

(5) Time Limitations Imposed by the Client or by the Circumstances

With respect to the time limitations imposed by the clients, no time limitations were imposed by the clients.

With respect to the time limitations imposed by the circumstances, the Court finds that time was required to be devoted to this matter due to several factors, including:

(1) The constitutional defects in the challenged School Board Censorship Clause;

(2) Complex issues pertaining to both the merits and justiciability of this action as a result of the Defendants' evolving (and, in some cases, directly contrary) positions regarding the meaning of the contract at issue and the merits of certain claims presented;

(3) Defendant Joseph's unexplained untimely filing of critical papers and his unexplained delayed service of critical papers filed in this case prior to the scheduled hearing on the Parties' dispositive motions, resulting in the need for immediate and substantial outlays of time to ensure a timely response without delaying this Court's ultimate resolution of this time-sensitive action; and

(4) The Plaintiffs' need to address certain defenses such as Metro's assertion that a governmental contract adopted by a governmental Board of elected officials via a governmental legislative Resolution did not involve governmental action.

For all of these reasons, the circumstances of this litigation required representation that could not be achieved through either minimal time or limited attention.

(6) Nature and Length of the Professional Relationship with the Client

With respect to the length of the undersigned's professional relationship with the Plaintiffs, Counsel agreed to represent the Plaintiffs for this case alone.

With respect to the nature of Plaintiffs' counsel's professional relationship with the Plaintiffs, the Court finds that Counsel was retained to handle this matter because of his success and expertise in constitutional litigation—particularly First Amendment-related litigation—against governmental defendants, and because of his experience representing and advising elected officials in the Nashville area.

(7) Experience, Reputation, and Ability of the Lawyer Performing the Services

With respect to the experience, reputation, and ability of the lawyers performing the services, the Court finds that Plaintiffs' Counsel is appropriately experienced, enjoys a good reputation, and has demonstrated the ability to perform the services necessary to prevail in this lawsuit. The Court finds that the Plaintiffs' law practice is focused heavily on First Amendment litigation, constitutional litigation, and public interest litigation in both state and federal court. Within those practice areas, Plaintiffs' Counsel has successfully represented litigants in multiple high-profile First Amendment-related and

other constitutional cases, including, but not limited to, the cases, which list is adopted herein, stated on pages 13-17 of the *Memorandum* filed September 25, 2020, in support of the fee award.

The Court finds that Attorney Horwitz has been recognized as a Top 40 Young Lawyer in the United States by the American Bar Association; the Tennessee Bar Association for his success in complex constitutional litigation; and the Nashville Post as being among "the best of the best in the Nashville area" in 2019 and 2020.

Further Attorney Horwitz publishes legal scholarship on First Amendment and other constitutional issues, including the following law review articles:

a. Daniel A. Horwitz, *The Need for a Federal Anti-SLAPP Law*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (2020), https://nyujlpp.org/quorum/the-need-for-a-federal-anti-slapp-law/.

b. Daniel A. Horwitz, *Actually*, Padilla *Does Apply to Undocumented Defendants*, 19 HARVARD LATINO L. REV. 1 (2016);

c. Daniel A. Horwitz, *The First 48: Ending the Use of Categorically Unconstitutional Investigative Holds in Violation of County of Riverside v. McLaughlin*, 45 U. MEM. L. REV. 519 (2015);

d. Daniel A. Horwitz, *A Picture's Worth a Thousand Words: Why Ballot Selfies Are Protected by the First Amendment*, 18 SMU SCI. & TECH. L. REV. 247 (2015);

e. Daniel A. Horwitz, *Twelve Angry Hours: Improving Domestic Violence Holds in Tennessee Without Risk of Violating the Constitution*, 10 TENN. J. L. & POL'Y 215 (2015); and

f. Daniel A. Horwitz, *Closing the Crime Victims Coverage Gap: Protecting Crime Victims' Private Records from Public Disclosure Following The Tennessean v. Metro*, 11 TENN. J.L. & POL'Y 129 (2016).

The foregoing establishes that the experience, reputation, and ability of Plaintiffs' counsel merit the award claimed.

(8) Whether the Fee is Fixed or Contingent

Counsel's fee agreement was "pro bono with an expectation of seeking attorney's fees from the losing party if their client[] prevailed"—a proper consideration in determining a fee award. *See In re Nathaniel C.T.*, 447 S.W.3d 244, 247 (Tenn. Ct. App. 2014). This consideration is also particularly important where, as here, a litigant's civil rights were threatened and required specialized expertise to vindicate. *See, e.g., Keith v. Howerton*, 165 S.W.3d 248, 252 (Tenn. Ct. App. 2004) (noting that "the private market for legal services fails to provide many victims of civil rights violations with effective access to the judicial process.") (internal alterations omitted) (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 576–578 (1986)).

Plaintiffs' Counsel additionally is not seeking a "windfall" fee award regarding this matter—or even *any* fee award. *Cf. Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 559 n. 8 (2010) ("Section 1988 was enacted to ensure that civil rights plaintiffs are adequately

represented, not to provide such a windfall."); *see also id.* at 559 (counseling against "unjustified enhancements that serve only to enrich attorneys"). Instead, Plaintiffs' Counsel will be donating the entire fee award obtained, less actual out-of-pocket expenses incurred, to one or more charitable organizations upon receipt of it.

(9) Prior Advertisements or Statements by the Lawyer with Respect to the Fees the Lawyer Charges

The Court finds that with respect to prior advertisements or statements by the lawyer with respect to the fees the lawyer charges, Attorney Horwitz charges and is paid $290.00 per hour when he bills clients hourly, and that he has previously stated as much. With respect to attorney Sarah Martin, a former associate of Attorney Horwitz, her rate of $200.00 per hour in retained matters while she was employed with him has been filed with fee petitions claiming such rate for Ms. Martin in other cases within the locality. *See, e.g., Nandigam Neurology, PLC v. Kelly Beavers, et al*., Wilson County Circuit Court Case No. 2019-cv-663, *Defendant Beavers's Notice of TPPA Petition Hearing and Motion for Award of Fees, Costs, and Sanctions Pursuant to the Tennessee Public Participation Act*. With respect to attorneys David Hudson and Geoffrey Patterson—both of whom were paid by the undersigned out-of-pocket to assist with the litigation of this matter—the undersigned notes again that all of the time they devoted to this litigation has been omitted from this fee petition in its entirety in an effort to ensure the overall reasonableness of the award claimed, but if included, their time would have been billed at rates of $350.00 per hour and $190.00 per hour, respectively.

(10) Whether the Fee Agreement is in Writing

With respect to whether the fee agreement is in writing, the undersigned represents that Counsel's fee agreement is in writing.

As to the opposition to the fee filed by Defendants Joseph and Metro, the opposition is overruled based upon the following, again, in the interest of time, quoting extensively from the Plaintiffs' replies filed October 21, 2020 and October 22, 2020.

The Plaintiffs' lodestar—the time expended on the litigation multiplied by counsel's hourly rate—is subject to a "'strong presumption'" of reasonableness, *Adcock-Ladd v. Sec'y of Treasury*, 227 F.3d 343, 350 (6th Cir. 2000) (quoting *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992)), and deviation from it is proper in only "'rare" and 'exceptional' cases, supported by both 'specific evidence' on the record and detailed findings," *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1987) (cleaned up). *See also id.* ("[T]he figure resulting from this calculation is more than a mere 'rough guess' or initial approximation of the final award to be made. Instead, we found that '[w]hen . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product *is presumed* to be the reasonable fee' to which counsel is entitled." (quoting *Blum v. Stenson*, 465 U.S. 887 (1984)).

Plaintiffs' lodestar is supported by Counsel's affidavit and accompanying exhibits, itemized time entries, and detailed analysis of the ten factors contemplated by Rule 1.5(a)

of the Rules of Professional Conduct and by § 1983 itself. *See generally Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Attorney's Fees & Costs*. Critically, where, as here, "a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). "Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Id.* The Plaintiffs are entitled to recover their lodestar unless the Defendants meet their burden of demonstrating unreasonableness. *See, e.g.*, *Painsolvers, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. CIV. 09-00429 ACK, 2012 WL 1982433, at *4 (D. Haw. May 31, 2012) ("[T]he party opposing a motion for attorneys' fees bears a burden in opposing these fees as well."); *Gates v. Deukmejian*, 987 F.2d 1392, 1397–98 (9th Cir. 1992) ("The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the [trial] court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits." (citing *Blum*, 465 U.S. at 892 n.5 (1984); *Toussaint v. McCarthy*, 826 F.2d 901, 904 (9th Cir. 1987))).

The Defendants' burden also cannot be met with mere conclusory assertions about poor billing judgment. *See, e.g.*, *Perotti v. Seiter*, 935 F.2d 761, 764 (6th Cir. 1991) ("Defendant's arguments to this court are mere conclusory allegations that the award was excessive and that plaintiff's counsel employed poor billing judgment. These assertions do not suffice to establish that there was error . . . ."). Instead, reasonable precision is required. *See Am. Civil Liberties Union of Ga. v. Barnes*, 168 F.3d 423, 428 (11th Cir.

1999) ("Those opposing fee applications have obligations, too. In order for courts to carry out their duties in this area, 'objections and proof from fee opponents' concerning hours that should be excluded must be specific and 'reasonably precise.'" (quoting *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988))).

Defendant Joseph contends that "Plaintiff's [sic] counsel expended an unreasonable number of hours" on this case, *see Joseph's Untimely Response*, pp. 6–7, and that the "the total billed time for this case (over 150 hours) is well beyond what courts in this circuit have deemed reasonable," *id.* at 7,

More particularly, Metro asserts that "Plaintiffs' counsel expended over 22 hours drafting the Complaint, which consisted of only nine pages and two exhibits." Metro's Untimely Response, p. 4. The Plaintiffs' time entries do not support this assertion. Instead, they reflect that Plaintiffs' attorneys collectively spent 14.55 hours on the drafting of the Complaint at issue. The balance of the referenced time that was devoted to the Plaintiffs' Complaint was not spent on drafting it, but was reasonably devoted to, among other things, discussion of Plaintiffs' claims and litigation strategy among counsel (only one side of which has been billed), and researching underlying factual matters.

In any event, even if the Plaintiffs' attorneys had spent 22 hours drafting their Complaint, that amount would still be well within the range of reasonableness for a novel, non-boilerplate matter like this one, as any number of courts have held under similar circumstances. *See, e.g., Dickinson v. Ind. State Election Bd.*, 817 F. Supp. 737, 749 (S.D. Ind. 1992) ("[T]he State defendants challenge several parts of this request. First, they claim

that 34.5 hours spent by Groth and Laudig to prepare the 'simple 8 ½ page complaint' is excessive. The Court disagrees. Given the nature of the suit, taking the equivalent of four work days to draft and revise the complaint does not seem unreasonable."); *Wheeler v. Coss*, No. 3:06-CV-00717-RAM, 2010 WL 2628667, at *4 (D. Nev. June 28, 2010) ("The court finds that the 16.8 hours expended by Plaintiff's counsel in drafting the [thirteen-page] complaint were reasonably necessary."); *Jennette v. City of New York*, 800 F. Supp. 1165, 1171 (S.D.N.Y. 1992) ("With respect to the 24 hours allocated to the preparation of the complaint, having reviewed the complaint, which consists of twenty-one pages of text and sets forth a detailed account of the nature of plaintiff's claims, we are persuaded that the number of hours claimed is not unreasonable."). The amount of time spent on the Plaintiffs' Complaint is not so far outside the bounds of presumptive reasonableness as to merit depriving the Plaintiffs of their lodestar. *Cf. Rehm v. Rolling Hills Consol. Library*, No. 04-6088-CV-SJ-JTM, 2007 WL 9718092, at *2 (W.D. Mo. Jan. 19, 2007) (reducing lodestar where "two law firms devoted 63.90 hours to researching, drafting and discussing the 7-page, straightforward Complaint [Doc. 1] filed in this case.").

Second, Metro asserts that the amount of time Plaintiffs' Counsel devoted to "researching and drafting the motion for summary judgment" and responding to the Defendants' motion to dismiss was unreasonable. *See Metro's Untimely Response*, p. 4. Metro asserts such time as "over 54 hours" and "over 35 hours," respectively, though again, the Plaintiffs' actual time entries do not reflect that. What Metro appears to have done—though it is not entirely clear, because no specific time entries are cited even though

"'objections and proof from fee opponents' concerning hours that should be excluded must be specific and 'reasonably precise[,]'" *see Barnes*, 168 F.3d at 428 (quoting *Norman*, 836 F.2d at 1301)—is aggregate some combination of the time that was devoted to preparing the Plaintiffs' 35-page *Memorandum in Support of their Motion for Summary Judgment*, their 24-page *Reply*, their 41-page Response to Metro's Motion to Dismiss, their 6-page Response to Joseph's Motion to Dismiss, and perhaps other matters.

Regardless, however characterized, the amount of time devoted to the Plaintiffs' uniformly successful merits briefing is well within the range of presumptive reasonableness. *See Norman*, 836 F.2d at 1301 ("Generalized statements that the time spent was reasonable or unreasonable of course are not particularly helpful and not entitled to much weight."). Indeed, far from demonstrating excessiveness, the time devoted to the Plaintiffs' thorough merits briefing—the quality of which the Court expressly noted—was exceedingly reasonable on a comparative basis. *See, e.g.*, *Hall v. City of Fairfield*, No. 2:10-CV-0508 DAD, 2014 WL 1286001, at *12 (E.D. Cal. Mar. 31, 2014) ("Defendants also object to plaintiffs' seeking compensation for 144 hours in time spent drafting plaintiffs' motion for summary judgment and opposing defendants' motion for summary judgment. (Defs.' Opp.'n (Doc. No. 218) at 12.) As plaintiffs' correctly point out, because the parties had filed cross-motions for summary judgment, plaintiffs' attorneys also had to prepare a reply in support of their own motion for summary judgment. (Pls' Reply (Doc. No. 219) at 8.) In this instance as well, the court has reviewed the billing statements submitted by plaintiffs' counsel in support of their motion, as well as the parties'

briefs filed in connection with the cross motions for summary judgment, and finds that the hours billed by plaintiffs' counsel in connection with the extensive cross-motions for summary judgment were reasonably expended. Therefore, those hours will also not be excluded from the fee award."); *Boxell v. Plan for Grp. Ins. of Verizon Comm'ns, Inc*., No. 13-cv-89, 2015 WL 4464147, at *7 (N.D. Ind. July 21, 2015) (approving 19.2 hours for "preliminary work," 91.9 hours briefing summary judgment motions, and 33.6 hours briefing cross-motions for attorney's fees as reasonable); *Kaiser v. United of Omaha Life Ins. Co*., No. 14-cv-762, 2016 WL 6581355, at *2 (W.D. Wis. Nov. 4, 2016) (approving 19 hours drafting a complaint and 92 hours briefing summary judgment motions as reasonable). *See also Beattie v. Colvin*, 240 F. Supp. 3d 294, 298 (D.N.J. 2017) ("[C]ourts in this district have regularly applied the '3 hours per page' rule in determining the reasonableness of hours spent on a brief in social security cases." (citing *Bilak v. Colvin*, 73 F.Supp.3d 481, 488 (D.N.J. 2014) (finding that the hours spent was within the "stated average" of "3 hours per page);" *Halley v. Comm'r of Soc. Sec*., 2014 WL 334779, at *1 (D.N.J. 2014) (stating that, because judges in this district apply a 3–hour per page standard, Plaintiff's counsel started off with "60 hours in the bank" for a 20–page brief); *Chahua v. Astrue*, No. 10-cv-4093, 2011 WL 2491232, at *2 (D.N.J. June 21, 2011) (finding that "briefing in this matter falls well below Third Circuit precedent approving up to three hours per page spent on briefing"))); *Nature Conservancy, Inc. v. Sims*, No. 07–112–JMH, 2009 WL 2382378, at *2 (E.D. Ky. July 30, 2009) ("[T]he time spent drafting and revising documents does not appear unreasonable. TNC's attorneys spent nearly eighteen and one-

half hours drafting and revising a ten page Complaint, which does not appear unreasonable given the detailed facts of the case and the need to determine how best to bring the action. Nearly fifty-three hours were spent drafting and revising the Motion for Preliminary Injunction that was filed simultaneously with the Complaint. This time appears reasonable given the in-depth treatment of the issues presented in the twenty-eight page memorandum and twenty-one exhibits."), *aff'd*, 680 F.3d 672 (6th Cir. 2012).

Also Metro has not met its heavy burden of substantiating its conclusory claim of excessiveness with evidence. *Cf. Perotti*, 935 F.2d at 764 ("Defendant's arguments to this court are mere conclusory allegations that the award was excessive and that plaintiff's counsel employed poor billing judgment. These assertions do not suffice to establish that there was error . . . ."). *See also Painsolvers,* 2012 WL 1982433, at *4 ("[T]he party opposing a motion for attorneys' fees bears a burden in opposing these fees as well."). For example, Metro has wholesale failed to provide any evidence of the time that *Metro* devoted to the same litigated matters. *But see Cohen v. Brown Univ.,* No. CA 92-197 L, 1999 WL 695235, at *2 (D.R.I. May 19, 1999) (collecting cases regarding the "authority on the question of whether the fees, hours and costs incurred by one party are relevant to determining the fees, hours and costs for which the other party should be compensated"); *Kaiser*, 2016 WL 6581355, at *2 ("[D]efendants provide no insight into the amount of time defendants' counsel actually spent on this case, including in particular the time spent (1) in investigating and drafting an answer to the complaint and (2) responding to summary judgment. Without this, the court has no basis to reduce the hours attributed to either

category of time as reported by plaintiff's counsel, which were well-documented and within a range of reasonableness.").

> Evidence is key to supporting a challenge to requested attorney fees, although it is [an applicant's] burden to show the requested fees are reasonable and necessary, a documented request for fees may not be defeated simply by a claim of excessiveness. As the party opposing the fee application, [the opposing party] carries the burden of rebuttal and he is required to submit evidence in challenging the accuracy and reasonableness of the requested hours, or the facts asserted by the prevailing party. *See, e.g.*, *Gates*, 987 F.2d at 1397–98 (citing *Blum v. Stenson*, 465 U.S. 886, 892 n.5, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)); *see also Moreno v. City of Sacramento*, 534 F.3d 1106, 1116 (9th Cir. 2008) ("[T]he burden of producing a sufficiently cogent explanation [for reducing an excessive fee request] can mostly be placed on the shoulders of the losing parties, who not only have the incentive, but also the knowledge of the case to point out such things as excessive or duplicative billing practices. If opposing counsel cannot come up with specific reasons for reducing the fee request that the district court finds persuasive, it should normally grant the award in full, or with no more than a haircut."); *Quinones v. Chase Bank USA, N.A.*, CV No. 09–2748–AJB(BGS), 2012 WL 1327829, *at 3 (S.D. Cal. 2012) (defendant failed to bear its burden to show specifically why the fees claimed were excessive, duplicative or unrelated).

U.S. ex rel. Berglund v. Boeing Co., No. 03:02-CV-193-AC, 2012 WL 1902599, at *4 (D. Or. May 24, 2012).

The only specific argument that Metro does make regarding excessiveness is that the time spent researching the claims raised by the Defendants in their motions to dismiss "would have been duplicative of the research done in preparing the Complaint and/or the motion for summary judgment," *see Metro's Untimely Response*, p. 4. This however is not supported by the record. The Defendants' respective motions to dismiss introduced numerous additional issues into this case, including whether there was state action involved in this matter, claims regarding standing and ripeness, claims regarding whether the

Defendants' efforts to censor the Plaintiffs on an "individual" basis separate from the Board qualified as a restriction on "government speech" alone, whether the Plaintiffs should be treated as mere public employees for First Amendment purposes but should not be regarded as public employees at all for PEPFA purposes, whether the reduced standard established by the *Pickering-Connick* line of jurisprudence applies to elected officials, and other issues. The Plaintiffs' Motion for Summary Judgment also involved distinct and highly detailed issues that never came into play again due to the Defendants' failure to respond to them. *See Memorandum & Order (1) Granting Plaintiffs' Motion for Summary Judgment and (2) Denying Motions to Dismiss Filed by Each Defendant*, Sep. 15, 2020, p. 25 ("As to the Plaintiffs' overbreadth claims, and their claims with respect to art. I, section 19 of the Tennessee Constitution, and their legislative immunity claims, neither Defendant has addressed, responded to, or constructed any argument to oppose those claims. *See* Joseph's Response; *see* Metro's Response. Accordingly, the Defendants' opposition to these claims is waived, and the Nondisparagement Clause is invalidated on each of these grounds.").

Neither does any of the authority cited by Metro support a contrary conclusion—either directly or even by implication. Lawsuits are not uniform. Accordingly, the amount of time reasonably devoted to drafting a motion in a given case is necessarily case-specific. Thus, when Metro cites *Coulter v. Tennessee*, 805 F.2d 146 (6th Cir. 1986), *abrogated by Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686 (6th Cir. 2016), for the proposition that the Sixth Circuit once determined that "16 hours or 2 days . . . spent

on [a] motion [for summary judgment] should be allowed," *see Metro's Untimely Response*, p. 3, it does not lend itself to the conclusion that 16 hours is the appropriate time to spend on a motion for summary judgment in every case. Examination of the facts in *Coulter* reveals that the fully compensated motion for summary at issue there did not result in the plaintiff's victory. Instead, it merely "narrowed the issue in the case and helped [plaintiff's counsel's] client win at the trial." *Coulter*, 805 F.2d at 152.

Additionally, in the event that any given entry was ultimately challenged or determined to be excessive, to ensure the overall reasonableness of the claimed award, the Plaintiffs' fee Application preemptively incorporated several omissions, which were detailed at length in the Plaintiffs' Memorandum. Metro also benefited substantially from overlapping research and drafting from another recent case—work that enabled the Plaintiffs, for instance, to draft their entire lengthy fee Application in a 5.9 hours and which cut down on the time devoted to certain merits issues as well.

For all of these reasons, the Plaintiffs are presumptively entitled to recover their Counsel's lodestar, and Metro has failed to meet its burden of demonstrating—with evidence or otherwise—that any aspect of the Plaintiffs' claimed lodestar is excessive.

Metro additionally argues, along with Defendant Joseph, that the Plaintiffs are "not entitled to attorneys' fees" *at all* because "they achieved only a symbolic victory." *Metro's Untimely Response*, p. 5. Metro asserts that "the declaratory judgment obtained by the Plaintiff [sic] here only amounts to a symbolic victory, something which § 1988 does not compensate." *Metro's Untimely Response*, p. 5.

But the Court finds that the Plaintiffs did not only win a declaratory judgment in this matter even though that alone would have been sufficient under the circumstances. Instead, the Plaintiffs also won a permanent injunction. *Memorandum and Order (1) Granting Plaintiffs' Motion for Summary Judgment and (2) Denying Motions to Dismiss Filed by Each Defendant*, Sep. 15, 2020, p. 27 ("For the foregoing reasons, the Court has . . . ordered that the Nondisparagement Clause's continued enforcement is permanently enjoined"). Such a permanent injunction "certainly qualifies" as a material alteration between the Parties for § 1983 purposes. *See, e.g.*, *Deja Vu v. Metro. Gov't of Nashville & Davidson Cty.*, 421 F.3d 417, 420 (6th Cir. 2005) ("[T]he net result of the litigation was the entry of a permanent injunction barring enforcement of Chapter 6.54. That qualifies as an enforceable judgment on the merits that 'materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiffs[.]'" (quoting *Farrar v. Hobby,* 506 U.S. 103, 111–12 (1992))). Indeed, the U.S. Supreme Court has "repeatedly" held as much, stating:

> A plaintiff "prevails," we have held, "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar v. Hobby*, 506 U.S. 103, 111–112, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). And **we have repeatedly held that an injunction or declaratory judgment**, like a damages award, **will usually satisfy that test**. *See, e.g., Rhodes v. Stewart*, 488 U.S. 1, 4, 109 S. Ct. 202, 102 L. Ed. 2d 1 (1988) (per curiam).

Lefemine v. Wideman, 568 U.S. 1, 4 (2012) (emphases added).

In addition the value of the declaratory judgment is very real because it allows the Plaintiffs to speak freely on topics which they were previously forbidden from speaking—

a right that they have since exercised. It also resulted in the invalidation of a provision of the Parties' contract that was so material to the Parties' agreement that the contract itself indicates that it is one of its only inseverable paragraphs.

Last, Metro insists that the "Plaintiffs are not entitled to an award of attorney [sic] fees since their goal is to give any fee award to charity," *Metro's Untimely Response*, p. 6, but this argument is not supported by the law. *See, e.g.*, *Bowers ex rel. Alexander S. v. Boyd*, 929 F. Supp. 925, 933 (D.S.C. 1995), *aff'd sub nom. Burnside v. Boyd*, 89 F.3d 827 (4th Cir. 1996) ("Defendants suggest in their memorandum that because Nelson Mullins entered the case on a pro bono basis, it would not be appropriate to award attorneys' fees to this firm. Defendants cite no authority for this proposition, and the court's own independent research has disclosed none. Indeed, every court that has considered the question has concluded to the contrary."). *See Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989) ("That a nonprofit legal services organization may contractually have agreed not to charge *any* fee of a civil rights plaintiff does not preclude the award of a reasonable fee to a prevailing party in a § 1983 action, calculated in the usual way."). *See, e.g.*, *Skinner v. Uphoff*, 324 F. Supp. 2d 1278, 1286 (D. Wyo. 2004) ("This Court does not believe there is any merit in the argument that an attorney should be able to recover fees that would benefit him personally, but should not be allowed to recover fees if that attorney is planning on donating those fees to an organization. This Court does not believe the purposes of § 1988 would be served by a rule prohibiting an attorney's fee award to attorneys who plan on donating those fees to a public interest organization."); *Ramos v. Lamm*, 713 F.2d 546, 551

(10th Cir. 1983) ("[T]he defendants argue that fee awards to public interest lawyers, those employed by public interest organizations or those in private practice who donate their services to such organizations, should be calculated differently than awards to lawyers in private practice who would personally receive the benefit of the awards. We reject this contention. We agree with most courts that have considered the issue that calculating attorney's fees for public interest lawyers and private firm lawyers in the same manner furthers the legislative intent underlying 42 U.S.C. § 1988." (citing *Copeland v. Marshall*, 641 F.2d 880, 899–900 (D.C. Cir.1980) (en banc); *Palmigiano v. Garrahy*, 616 F.2d 598, 601–03 (1st Cir. 1980), *cert. denied*, 449 U.S. 839 (1980); *Reynolds v. Coomey*, 567 F.2d 1166, 1167 (1st Cir. 1978); *Torres v. Sachs*, 538 F.2d 10, 13–14 (2d Cir. 1976); *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 70 n.9 (1980); *Love v. Mayor of Cheyenne*, 620 F.2d 235, 237 (10th Cir. 1980))).

Also it is not the Plaintiffs who will be donating the obtained award. Instead, it is the Plaintiffs' attorney, who agreed to undertake the Plaintiffs' representation on the specific condition that he could donate any obtained award to a charitable purpose.

The Court also finds that because Metro and Mr. Joseph have extended the litigation over the Plaintiffs' fee award, the Court awards the Plaintiffs their reasonable attorney's fees for the additional hours devoted to the work that the Defendants generated following the Plaintiffs' initial fee Application. *See generally Ne. Ohio Coal. for the Homeless*, 831 F.3d at 724–25. In particular, the Court has awarded compensation for:

-5.1 hours associated with preparing Plaintiffs' Response to Metro's Motion for Extension of Time;

-1.3 hours associated with preparing Plaintiffs' Response to Joseph's *Motion to* [sic] *Extension of Time*;

-0.4 hours associated with preparing the Plaintiffs' *Reply to Defendants' Non-Response to Plaintiffs' Motion for Attorney's Fees and Costs*; and

-15.7 hours associated with preparing the instant *Reply to Metro's Untimely Response to Plaintiffs' Motion for Attorney's Fees and Costs*.

As to opposition filed by Defendant Joseph, "Plaintiffs have not set forth any evidence to support the allegation that Dr. Joseph acted under color of law." *Joseph's Response*, p. 2, this opposition is overruled for these reasons.

Defendant Joseph has never contested his status as a state actor for purposes of this action, and he declined to raise the defense in his Motion to Dismiss. Thus, to the extent that the defense was ever cognizable. *See, e.g., McCormick v. Illinois Cent. R. Co.*, No. W2008-00902-COA-R9-CV, 2009 WL 1392575, at *8 (Tenn. Ct. App. May 19, 2009) ("Rule 12.08 provides that '[a] party waives all defenses . . . which the party does not present either by motion as hereinabove provided, or, if the party has made no motion, in the party's answer or reply, or any amendments thereto[.]'") (quoting Tenn. R. Civ. P. 12.08 (2008)); *Young ex rel. Young v. Kennedy*, 429 S.W.3d 536, 544 (Tenn. Ct. App. 2013) ("Rule 12.08 provides, in pertinent part, that any defenses not properly raised may be waived").

Even if Defendant Joseph had not been acting directly as a state actor, he engaged in concerted action with state actors regarding this matter—the facts of which are uncontested—which independently gives rise to a cause of action under § 1983. *See, e.g.*, *Memphis, Tennessee Area Local, Am. Postal Workers Union, AFL-CIO v. City of Memphis*, 361 F.3d 898, 905 (6th Cir. 2004) ("Private persons may be held liable under § 1983 if they willfully participate in joint action with state agents.") (citing *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980); *United States v. Price*, 383 U.S. 787 (1966) (stating that to act under color of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.); *Hooks v. Hooks*, 771 F.2d 935, 943 (6th Cir.1985) ("Private persons jointly engaged with state officials in a deprivation of civil rights are acting under color of law for purposes of § 1983.")). *See also Rudd v. City of Norton Shores, Michigan*, No. 19-1226, 2020 WL 5905062, at *5 (6th Cir. Oct. 6, 2020) ("private parties who conspire with public actors to violate constitutional rights "act[ ] 'under color' of law for purposes of" § 1983.") (citing *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970)*; Dennis v. Sparks*, 449 U.S. 24, 28 (1980)); *Vance v. Billingsly*, 487 F. Supp. 439, 442 (E.D. Tenn. 1980) ("once concerted action has been made out, an independent cause of action lies against the private individual which cannot be defeated by defenses available only to the public officials.").

In addition, Defendant Joseph was undisputedly the Director of Metro Nashville Public Schools—and thus a governmental actor—at the time the constitutional tort at issue here was committed. It is also undisputed that the School Board voted "to accept the terms

of the severance agreement with Dr. Joseph" at its April 9, 2019 meeting, *see* Exhibit #2 to Plaintiffs' Complaint, p. 2, and that Defendant Joseph was the Director of Metro Nashville Public Schools on April 9, 2019. *See* Exhibit #1 to Plaintiffs' Complaint, p. 1 (providing that the Parties have mutually decided to terminate Dr. Joseph's employment contract as Director of Schools effective April 12, 2019[.]") (emphasis added). Although Defendant Joseph contests it, it also is not seriously contestable that the Defendants "drafted and reviewed jointly" the offending provision at issue before adopting it, *see* Exhibit #1 to Plaintiffs' Complaint, p. 5, § 14, and that they jointly agreed "to take all actions that may be necessary or appropriate to effectuate" it. *Id.* at § 15.

For all of these reasons, Defendant Joseph has waived any defense regarding state action, and the facts of this matter make clear that he was both a state actor himself and also "willfully participate[d] in joint action with state agents" to abridge the Plaintiffs' First Amendment rights. *See Memphis, Tennessee Area Local, Am. Postal Workers Union,* 361 F.3d at 905.

Defendant Joseph additionally contends that "42 U.S.C. § 1988 does not require an automatic award of attorney's fees." *See Joseph's Untimely Response, p. 2*. The Plaintiffs' contention is different. It is that because they are prevailing parties who secured final civil rights relief, they are entitled to a fee award under § 1988.

Defendant Joseph also suggests that in all cases, whether to award "attorney's fees under 42 USC § 1988 is discretionary, not mandatory." *Id.* This is an oversimplification. The United States Supreme Court has held that "one who succeeds in obtaining an

injunction under [§ 1983] should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enter., Inc.*, 390 U.S. 400, 402 (1968). Accordingly, absent special circumstances, attorney's fees *must*—not may—be awarded under § 1988. *See Indep. Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989) ("In *Newman*, supra, 390 U.S., at 402, 88 S.Ct., at 966, we held that in absence of special circumstances a district court not merely 'may' but *must* award fees to the prevailing plaintiff . . . .") (emphasis in original). The Tennessee Supreme Court has read the U.S. Supreme Court's instructions on the matter the same way. *See Bloomingdale's By Mail Ltd. v. Huddleston*, 848 S.W.2d 52, 56 (Tenn. 1992) ("[T]he cases interpreting that statute state that the prevailing party should receive an award, unless there are 'special circumstances' that would render an award unjust.") (collecting cases).

Defendant Joseph's additional contention that "there are several special circumstances that warrant the court's consideration for denial of fees," *See Joseph's Response*, p. 4. Each supposed "special circumstance[]" is also overruled.

Defendant Joseph contends that "Dr. Joseph did not participate in drafting the agreement at issue in this matter, nor did he participate in the vote to adopt it." *Joseph's Response*, p. 5. Accordingly, he contends that he was "powerless to prevent, and precluded from making any effort to redress" the Plaintiffs' injury. To the contrary the record establishes that Defendant Joseph executed the agreement at issue and swore to its contents before a notary. *See* Exhibit #1 to Plaintiffs' Complaint, p. 6 ("Sworn to and subscribed before me this 11th day of April, 2019."). Section 14 of that agreement also

states that Defendant Joseph and his counsel jointly drafted it . *See id.* at p. 5, § 14 ("This Severance Agreement has been drafted and reviewed jointly by the Parties and their respective counsel and no presumption in construction or interpretation shall be applied for the benefit of, or against, any of the Parties.").

For all of these reasons the Defendants' Objections to the Plaintiffs' application to recover attorney's fees and costs are overruled.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc: Due to the pandemic, and as authorized by the COVID-19 Plan of the Twentieth Judicial District of the State of Tennessee, as approved by the Tennessee Supreme Court, this Court shall send copies solely by means of email to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an email address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

Daniel A. Horwitz
Charles W. Cagle
J. Brooks Fox

Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

s/Phyllis D. Hobson November 25, 2020
Deputy Clerk
Chancery Court