UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANGELICA WOODS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:21 CV 462 CDP
	)	
CITY OF ST. LOUIS, MO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter was tried to a jury on plaintiff Angelica Woods's claim of First Amendment retaliation against the City of St. Louis's former Director of the Department of Streets, James Wilson. After a four-day trial, the jury returned a verdict in Woods's favor, awarding her $207,612 in actual damages and $50,000 in punitive damages.[1]

Now before the Court is Wilson's renewed motion for judgment as a matter of law under Rule 50(b), Federal Rules of Civil Procedure, and alternative motion for new trial under Fed. R. Civ. P. 59. In support of his renewed motion for

[1] Plaintiff also proceeded to trial on a Family Medical Leave Act (FMLA) interference claim against the City, but the Court granted judgment as a matter of law to the City at the close of the evidence because plaintiff failed to present any evidence of damages compensable under the FMLA. ECF 143 Tr. Vol. III at 150-151. In addition, the Court previously dismissed a First Amendment retaliation claim against the City (ECF 55) and a retaliation claim against Wilson in his official (as opposed to personal) capacity. ECF 26. The Court also declined to exercise supplemental jurisdiction over a claim that the City violated its Whistleblower Ordinance (ECF 26) and granted summary judgment to the City on a FMLA retaliation claim. ECF 86. None of these rulings are challenged in these post-trial motions.

judgment as a matter of law, Wilson argues: there is no evidence of pretext; he is entitled to qualified immunity; and, the evidence was insufficient to submit a punitive damages instruction to the jury. Wilson alternatively argues that he is entitled to a new trial because the Court erred in admitting certain evidence and in deciding that Woods's complaints to her supervisors and city officials are not protected speech. I will deny this motion.

Because Woods prevailed on her claim against Wilson brought under 42 U.S.C. § 1983, she seeks an award of attorney's fees under 42 U.S.C. § 1988 in the amount of $263,349.50 and costs in the amount of $4,531.09. After careful consideration, I will award $233,673.60 as a reasonable attorney's fee and $2,694.41 in taxable costs.[2]

Legal Standards Governing Motions Under Rules 50 and 59

Fed. R. Civ. P. 50(a) provides that, "[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may resolve the issue against the party before the case is submitted to the jury." (cleaned up).

When considering such a motion, a court must view the record in the light most favorable to the verdict, resolve direct factual conflicts in favor of the

[2] As explained below, the attorney's fee award includes certain non-taxable costs.

prevailing party, assume as true all facts supporting the prevailing party which the evidence tended to prove, give the prevailing party the benefit of all reasonable inferences, and deny the motion if the evidence so viewed would allow reasonable jurors to differ as to the conclusions that could be drawn. *Ryan Data Exchange, Ltd. v. Graco, Inc.*, 913 F.3d 726, 732–33 (8th Cir. 2019). "If the evidence viewed according to this standard would permit reasonable jurors to differ in the conclusions they draw, judgment as a matter of law cannot be granted." *Hinz v. Neuroscience, Inc.*, 538 F.3d 979, 984 (8th Cir. 2008) (cleaned up). "Where conflicting inferences reasonably can be drawn from the evidence, it is the role of the jury, not the court, to determine which inference shall be drawn." *Hunt v. Nebraska Pub. Power Dist.*, 282 F.3d 1021, 1029 (8th Cir. 2002). Credibility issues are resolved in favor of the verdict. *Bayes v. Biomet, Inc.*, 55 F.4th 643, 649 (8th Cir. 2022). Granting a motion for judgment as a matter of law is only appropriate when "all the evidence points in one direction and is susceptible to no reasonable interpretation supporting the jury verdict." *Mears v. Nationwide Mut. Ins. Co.*, 91 F.3d 1118, 1122 (8th Cir. 1996).

Rule 59(a)(1)(A) provides: "[t]he court may, on motion, grant a new trial on all or some of the issues after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." (cleaned up). Where reasonable minds can differ in evaluating credible evidence, a new trial based on

the weight of the evidence should not be granted. *Jacobs Mfg. Co. v. Sam Brown Co.*, 19 F.3d 1259, 1267 (8th Cir. 1994). "A new trial is appropriate when the first trial, through a verdict against the weight of the evidence, an excessive damage award, or legal errors at trial, resulted in a miscarriage of justice." *Gray v. Bicknell*, 86 F.3d 1472, 1480 (8th Cir. 1996).

Background Facts

Evidence and testimony adduced at trial showed that Woods was a long-time City employee. In 1997 she began working for the City as a corrections officer until she was transferred to the City's tow lot in April of 2020. She remained there as a clerk typist until her termination on February 5, 2021. As a clerk typist, Woods dispatched tow trucks around the City and then completed and inputted the necessary paperwork into the computer system to document the tow service. When Woods began working at the tow lot, Kent Flake was in charge of the tow lot[3] and was her supervisor. Defendant Wilson[4] was the head of the street department (which included the tow lot division) in his position as the City of St. Louis' Director of the Department of Streets. He made the decision to terminate Woods. As for immediate supervisors, Woods reported to Edwin Young and then began reporting to Steve Estopare in June of 2020.

[3] Flake was the Commissioner of the Street Division (one of the divisions within the street department) and was assigned management duties over the tow division, which did not have a Commissioner at that time.

[4] Wilson became the Commissioner of Traffic in early 2021.

Woods immediately began experiencing problems at the tow lot. Shortly after she started, other tow lot employees, including Joseph English, told her that she could get cheap cars for herself and family members from the tow lot by changing the price and getting a new title. ECF 141 Tr. Vol. I at 58. Woods observed a non-tow lot employee going into the office to look for cars with keys and titles, which were then sold to him without going through auction. ECF 141 Tr. Vol. I at 58-60. Woods heard tow lot employee Cheryl Pogue call individuals to inform them when nice vehicles with titles came onto the tow lot so that they could cherry pick the best cars on the lot. ECF 141 Tr. Vol. I at 84-85. Woods observed tow lot employees Pogue, Shonnell Stayton, and Kenya Lott falsifying tow records by not recording the necessary information and falsifying bills of sale for cars bought at auction. ECF 141 Tr. Vol. I at 82-90. A buyer would place the highest bid at auction to purchase the vehicle but then tow lot employees would lower the price when the buyer actually paid for the vehicle. *Id.* Some of these vehicles were then transferred to tow lot employees. *Id.*

Woods reported these activities[5] to Young, Flake, Wilson, the Mayor's office, the St. Louis City Comptroller's Office, the City's Personnel Department,

[5] Woods reported other activities, too, but the Court concluded that only the reporting of the unlawful sale or transfer of vehicles constituted activity protected by the First Amendment and accordingly limited Woods's retaliation claim to those activities.

and, eventually, the media (KSDK).[6] After she did so, Woods experienced harassment and retaliation by her coworkers (especially Stayton) and supervisors who were part of the "buddy system," a group of people who either directly participated in the fraud and/or protected those who did (and retaliated against those who did not).[7] Woods was labeled a "snitch" and marginalized because she refused to participate in the illegal activities. For example, Woods received a call from St. Louis City police detective Alexander Evans, who told her that someone at city tow reported her for secretly recording a supervisor's meeting. Woods denied the allegation to Evans and testified that she recorded only those workplace activities in which she participated. Woods testified that this was commonplace at the tow lot. ECF 142 Tr. Vol. II at 22-23.[8] Woods believed that Young asked Flake to initiate the police investigation to retaliate against her because of their

[6] The jury found that Wilson was aware of all of Woods's complaints, a finding fully supported by the record. ECF 138.

[7] There was ample evidence in the record from which the jury could conclude that this "buddy system" did, in fact, exist. Woods testified that Flake was a participant in the illegal activities, ECF 141 Tr. Vol. I at 100, and that Wilson was also part of the "buddy system." ECF 141 Tr. Vol. I at 118. Flake admitted that he was close friends with Young, Wilson, and Todd Waelterman, who was Director of Operations in the Mayor's Office and Wilson's boss. ECF 143 Tr. Vol. III at 66. Woods reported the illegal activities to Waelterman ECF 141 Tr. Vol. I at 107, who then immediately contacted Wilson "for an update." Pl. Ex. 25, ECF 142 Tr. Vol. II at 144-45. Unless otherwise indicated, citations to exhibits refer to trial exhibits.

[8] Woods's testimony was corroborated by other evidence, including a video recording made by another coworker (without the consent of those being taped) and an audio recording that Flake made of one of his conversations with Woods without her knowledge or consent. ECF 142 Tr. Vol. II at 21-25.

close personal relationship. No further action was taken by the police department respecting this alleged surreptitious recording.[9]

Woods requested to meet with Wilson as early as November to discuss the illegal activities at the tow lot, Pl. Ex. 12, but Wilson refused to meet with her.

In November of 2020, an irate customer came to the tow office with a police officer complaining that tow lot employees had stolen a bag out of her car. Woods testified that the customer and officer were being helped by another employee, not her, and that she never spoke to the customer at all. ECF 141 Tr. Vol. I at 128. Despite this, Woods was accused of providing false information to a customer, and this incident was cited as one of the reasons for her termination.

On December 17, 2020, Woods received a six month employee service rating from Young and Estopare. Def. Ex. V. She received unsuccessful ratings in the categories of judgment, interpersonal skills, and work habits. She was rated successful in the areas of customer service, productivity, quality, and safety. Her overall performance rating was successful. *Id.* at 5. Woods noted on her evaluation that the justifications for her unsuccessful ratings were false, stating that she had not been the subject of any disciplinary action and that her negative performance evaluation was due to the grievances she filed as well as her reporting fraudulent activities. *Id.* at 4.

[9] Plaintiff filed a complaint against Evans over the incident but it was never resolved.

In early December of 2020, Woods contacted KSDK reporters Rhyan Henson and PJ Randhawa about the illegal sale and transfer of vehicles at the tow lot. ECF 142 Tr. Vol II at 120-21. Woods spoke with them numerous times by phone and met with them twice in person in January of 2021 to assist them with a story that eventually aired in early February. ECF 142 Tr. Vol. II at 122.

On December 31, 2020, Woods and Stayton were involved in a heated dispute at the tow lot which was captured on cell phone and surveillance video. The surveillance video was played to the jury multiple times and shows Woods and Stayton screaming at each other after Stayton instigates the dispute by laughing at Woods in a taunting manner. Woods shouts at Stayton that she is "gender confused. You don't know if you have a penis or a vagina." Stayton refers to Woods as "Stay Puft" in reference to her weight, states that Woods needs to get another weight loss surgery, and calls her a bitch several times. Stayton and Woods are both restrained by other employees at times, but neither makes physical contact with the other. Stayton begins to remove her high heeled boots to fight Woods. This entire confrontation is witnessed by Estopare, who suddenly tells Woods to leave and her pay will be docked.[10] He does not address Stayton at all or

[10] Woods successfully grieved the issue and was eventually paid for that day.

send her home on the video.[11] When Woods challenges Estopare's decision, he calls the police to remove Woods, hanging up the phone only after she leaves.

On January 20, 2021, Woods received a pre-termination review notice from Wilson, who oversaw the pre-termination review and made the decision to terminate Woods. Pl. Ex. 65. The letter states in pertinent part as follows:

> The City of St. Louis Street Department – Towing Service Division is considering your dismissal for the following reasons:
>
> On November 17, 2020 you illegally wiretapped/eavesdropped when you attempted to record a supervisor's meeting at City Tow of which you were not a participant. This is in direct violation of Missouri State Statute 542.402 and the Code of Conduct.
>
> On November 24, 2020 you were involved with providing information to a customer at City Tow which resulted in the police being called due to your false allegation and misinformation that two tow lot employees stole a duffle bag out of a customer's vehicle. Once investigated the bag was found to be seized by the Saint Louis Metropolitan Police Department because it contained contraband. This is a direct violation of the City's Code of Conduct specifically the Honesty subsection.
>
> On December 31, 2020 at City Tow you were involved in a verbal altercation with another employee of City Tow, Ms. Stayton. During this altercation with Ms. Stayton you stated towards her "You gender confused, you don't know if you have a vagina or a penis." You also charged at Ms. Stayton.
>
> This behavior is also in violation of Administrative Regulation 142—the policy of Workplace Violence that states specifically that "Employees are expected to treat citizens, members of the public, customers, co-workers . . . . with courtesy and respect." It also specifically forbids "hostile behavior including belittling, abusing or bullying behaviors." This action also

[11] Stayton was later disciplined for this incident, but was not terminated. ECF 143 Tr. Vol. III at 143.

> violated Administrative Regulation 113 which specifically states that harassment based on "sex, sexual orientation or gender identity or expression" is prohibited.
>
> The Code of Conduct states that City Employees are responsible for: "Contributing to a workplace attitude that respects the standards and behaviors promoted by this code." "City Employees must be completely honest in their dealings with the public or other employees. Lying in any form, omitting some facts or exaggeration undermines the fundamental trust that must exist between employer and employee and has no place in public service."
>
> Administrative Regulation 117 specifically states that any violation which is so serious that continued employment in the agency would pose a threat to the patients, clients, employees, visitors, or public confidence in and the well-being of the agency is unacceptable and may be grounds for termination.
>
> The following are also exceptions to progressive discipline: Violations of Administrate Regulation 113 and 142 and "The commission of any act while on duty or off duty which would be a violation of Federal, State or local law, other than minor traffic violations. This does not mean that a conviction or even an arrest need have occurred for such a violation."
>
> Your prior work record may be considered.
>
> The purpose of the Pre-Termination Review is to afford you the opportunity to respond to the charges, review any evidence against you, and present any evidence on your behalf, including any mitigating circumstances. You may have a representative present at the review.

Pl. Ex. 65. Woods hired attorney Lynette Petruska to represent her, and Petruska sent Wilson a letter accusing the City of retaliating against Woods and other whistleblowers and referring specifically to Woods's reports of wrongdoing. Pl. Ex. 63.

On February 1, 2021, Petruska and Woods met with Wilson for Woods's pre-termination review hearing. Woods's pretermination hearing was the only pretermination hearing Wilson conducted during his entire tenure as Director of the Department of Streets. ECF 143 Tr. Vol. III at 37. The pretermination hearing was recorded and played to the jury over Wilson's objections. In the hearing, Petruska states that Woods is being targeted for termination in retaliation for her reports of illegal activities at the tow lot, including her reports to the Comptroller's office, the Mayor's office, the Personnel department, and to KSDK. Petruska specifically refers to Woods's participation in the upcoming KSDK story.

On February 4, 2021, KSDK published a news article about improprieties at the tow lot and aired a newscast regarding the same. Pl. Exhs. 109, 113. Woods is not identified by name in the news article, but she is anonymously quoted as saying that tow lot employees "know how to go in there and change the numbers and the name." Pl. Ex. 109 at 4. This quote refers to the allegation that cars were being redeemed from the tow lot without money being paid to the City. The anonymous source (Woods) is identified as a current tow employee who was working with KDSK to dissect more than a hundred pages of tow lot records. *Id.*

The newscast begins with a "confirmation" from the St. Louis Circuit Attorney's office that an investigation into the city tow low "is underway . . . after [the newcast's] investigation uncovered a paper trail of missing money and

questionable practices." Pl. Ex. 113. The tow lot is described as a place where cars are never seen again if towed there. The newscast states that "several" tow lot employees have reported suspicious activity at the tow lot to the City and to KSDK. The reporter describes how the tow lot is supposed to operate, but then goes on to state that it does not actually operate that way. The newscast then cuts to Woods, who is shown only in silhouette. Her identity is withheld and a voice modulator distorts her voice when she talks on camera because she "fears retaliation." Woods repeats her statement from the news article that employees "know how to go in there and change the numbers and the name." The reporter then states that Woods worked with the news team to "dissect hundreds of pages" of tow lot records, which revealed that in 2019, 155 cars were marked as "redeemed" but no money was paid to the City and no buyer was properly identified. The falsified records shown on camera were recorded by Pogue. The reporter calculates that, if plaintiff is correct, the records demonstrate that the City was owed $77,860 for these cars but it was never collected.

The news report then references prior complaints of misconduct at the tow lot, including a police investigation from 2019 about cars disappearing from the tow lot without proper payment made. Onscreen, sentences from the police report are highlighted and enlarged, including a statement that an auto parts and recycling company collected cars (allegedly for salvage) with no money being paid. State

senator Karla May also appears in the newscast, stating that she has heard about mismanagement at the city tow lot from several tow lot employees. In 2019, May urged the St. Louis City Mayor's Office to launch an investigation into improprieties at the tow lot, and the Mayor forwarded her letter to the police unit investigating the missing vehicles. May reiterated Woods's allegations that cars were disappearing or held over with no money being paid to the City. Flake also appears in the newscast and states that cars should not be leaving the tow lot for free. Flake refers to an audit and claims that there was no wrongdoing found. The reporter states that the news team is still waiting for the audit reports. Flake claims that after the police investigation in 2019, the tow lot made changes to its daily operations, including using a third-party auctioneer and installing cameras in the tow lot and offices. Flake admitted, however, that the tow lot did not have a written manual of standard operating procedures. The report concludes with a statement that the 2019 police investigation is still "ongoing" and encourages anyone who had a "questionable experience" with the tow lot to contact KSDK.

The next day, February 5, 2021, Woods was fired. Pl. Ex. 87.

Defendant's Renewed Motion for Judgment As a Matter of Law or, Alternatively, For a New Trial

Woods Presented Ample Evidence of Pretext

At trial, Wilson pointed to the pretermination letter he sent Woods and argued that he fired her for workplace misconduct. The jury believed otherwise.

Wilson nevertheless claims that he is entitled to judgment as a matter of law because "viewing the evidence in the light of Wilson's justification, plaintiff did not adduce evidence sufficient to rebut Wilson's legitimate, non-discriminatory reasons for her termination." ECF 148 at 8. But this is not the appropriate standard to apply, as the Court views the evidence in favor of Woods, not Wilson, and resolves all credibility issues in favor of the verdict.

Here, the jury unanimously decided that Woods's reports of illegal activities to her supervisors, other City officials, and the media were a motivating factor in Wilson's decision to fire her and that she would not have been fired if Wilson had not considered her protected first amendment activity.[12] ECF 138. There was ample evidence in the record to support the jury's findings given the evidence of pretext presented by Woods. As for the first reason given by Wilson in Woods's pretermination letter (giving false information to a customer), a reasonable jury could believe Woods's uncontroverted testimony that she never told a customer that her bag was stolen by a tow lot employee. As for the second reason given by Wilson in Woods's pretermination letter (secretly taping a supervisor's meeting), a reasonable jury could also credit Woods's testimony that she was taping her own

[12] The Court decided as a matter of law that reports of the illegal sale and transfer of vehicles by tow lot employees constituted speech on a matter of public concern, as "concerns about corruption and financial mismanagement are related to institutional integrity – an important governmental function." *Noon v. City of Platte Woods, Missouri*, 94 F.4th 759, 764 (8th Cir. 2024) (cleaned up).

activities, not a supervisor's meeting, given the video surveillance which showed Woods putting her phone down in the common area where she was plainly visible.

As for the third reason given by Wilson in Woods's pretermination letter (the "workplace violence" episode), a reasonable jury could find that it was also a pretext to terminate Woods for her protected activities given that: Stayton was not terminated despite her seemingly equal, if not greater, culpability in the altercation (Def. Ex. SS); Stayton's prior disciplinary record included similar behavior of using threatening language and near physical violence against a coworker (ECF 143 Tr. Vol. III at 60-65); and, Stayton was one of the coworkers reported by Woods (and therefore, part of and protected by the "buddy system).[13]

Given this and the other evidence presented by Woods at trial, including the temporal proximity (one day) between the airing of the KSDK report and her termination, a reasonable jury could make credibility determinations and resolve factual disputes of pretext in favor of Woods, not Wilson. Although Wilson argues that Stayton and Woods were not sufficiently similar to support a conclusion that he terminated Woods because of her protected activity, it was for the jury to determine whether "the lack of consequences for others' policy violations" was

[13] Wilson's argument that he did not personally handle Stayton's disciplinary hearing misses the point – as the head of the Division of Streets, he could have done so if he wanted. That he opted to do so only *once* during his tenure – in Woods's case – only strengthens, not weakens, Woods's evidence of pretextual retaliation, particularly since he allowed Flake (himself part of the "buddy system") to discipline Stayton.

indirect evidence that Wilson targeted Woods because she spoke out about illegal activities at the tow lot. *See Gruttemeyer v. Transit Authority, of the City of Omaha*, 31 F.4th 638, 648 (8th Cir. 2022).

The jury heard evidence of the animosity exhibited toward Woods by those in the "buddy system" and the close relationship between Flake, Young, Waelterman, and Wilson. Evidence of retaliatory animus "among individuals with influence over decisionmaking" can be sufficient for a reasonable jury to conclude that retaliation was a motivating factor in Woods's termination. *See Gruttemeyer*, 31 F.4th at 648.

Viewing the evidence in the light most favorable to the jury's verdict, the record reasonably supports a conclusion that Woods's protected activity was a motivating favor in Wilson's decision to terminate her, and that Wilson would not have made the same decision absent her protected activity. The jury heard conflicting testimony and found Woods's evidence more persuasive, and the Court will not reweigh the evidence. *See Gruttemeyer*, 31 F.4th at 648. Sufficient evidence supports the jury's verdict, and Wilson is not entitled to judgment as a matter of law on this basis.

Wilson is Not Entitled to Qualified Immunity

Wilson next argues that he is entitled to qualified immunity[14] because "his action in terminating Woods was reasonable, and there is no clearly established law that would instruct Wilson that he was permitted only to suspend or admonish Woods for her misconduct, but not to terminate her." ECF 148 at 8. This argument ignores the jury's finding that Wilson did not terminate Woods for her misconduct, but rather because she exercised her protected first amendment right to report illegal activities of her coworkers at the tow lot.

"No right is more clearly established than freedom of speech and speech alleging illegal misconduct by public officials occupies the highest rung of First Amendment hierarchy." *Hall v. Mo. Highway & Transp. Comm'n*, 235 F.3d 1065, 1068 (8th Cir. 2000) (cleaned up). "It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech." *Rankin v. McPherson*, 483 U.S. 378, 383 (1987). The law is also clearly established that the disclosure of potential illegal

[14] As a government official, Wilson is entitled to qualified immunity unless: (1) his conduct violated a constitutional right, and (2) that right was clearly established. *Williams v. Mannis*, 889 F.3d 926, 931 (8th Cir. 2018). A right is "clearly established" when "the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* (cleaned up). "Although [the United States Supreme] Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. The inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 7-8 (2021) (cleaned up).

conduct of public employees is a matter of public concern. *See Sexton v. Martin*, 210 F.3d 905, 911 (8th Cir. 2000). Woods's "right to be free from retaliation for protected speech was clearly established." *Noon v. City of Platte Woods, Missouri*, 94 F.4th 759, 767 (8th Cir. 2024). Thus, Wilson cannot reasonably say he did not understand that terminating Woods for engaging in protected speech violated her first amendment rights. After all, "a reasonably competent public official should know the law governing his conduct." *Id.* at 766-67 (cleaned up). Because a reasonable official would have understood that he could not fire Woods for talking to her supervisors, the Mayor's Office, the Comptroller, and the press about illegal activities in the tow office, Wilson is not entitled to qualified immunity on plaintiff's first amendment retaliation claim.

Wilson argues that he was entitled to fire Woods because her fight with Stayton "disrupted the office."[15] Wilson refers here to the so-called *Pickering* balancing test, which requires a court to decide whether the speech at issue had an adverse impact on the efficiency of the tow lot's operations. *See Noon*, 94 F.4th at 765. But to trigger the Pickering balancing test, "a public employer must, with specificity, demonstrate the *speech at issue* created workplace disharmony, impeded the plaintiff's performance or impaired working relationships." *Id.*

[15] The evidence showed that the tow lot was a disruptive place to work generally, irrespective of the fight.

(cleaned up). This argument is unavailing here as the speech at issue is Woods's reporting of the illegal sale or transfer of vehicles, *not* the fight. There was no evidence or argument that Woods's reports of illegal activities ever "disrupted the office," so the *Pickering* balancing test does not apply.[16] *See Mayfield v. Rademan Miller*, 2023 WL 3136990, at *3 (W.D. Mo. April 27, 2023) (denying qualified immunity on renewed motion for judgment as a matter of law in first amendment retaliation case; *Pickering* test did not apply because defendants never argued that protected speech was basis for termination).

Wilson asserts that "employees who engage in protected activity under the First Amendment are not thereafter forever immunized against the foreseeable consequences of their workplace misconduct." ECF 148 at 11. Undoubtedly so. But this general proposition has no application here given the jury's decision that Woods was terminated for speaking out about illegal activities at the tow lot.

[16] Even if the *Pickering* test did apply, the Eighth Circuit Court of Appeals has recognized that "an employee's first amendment interest is entitled to more weight where he is acting as a whistle-blower exposing government corruption." *Noon*, 94 F.4th at 765–66 (cleaned up). Thus, a "first amendment balancing test cannot be controlled by a finding that disruption has occurred where such disruption occurs because a public employee blows the whistle on the corruption of public officials." *Id.* (cleaned up). This is so because "it would be absurd to hold that the First Amendment generally authorizes corrupt officials to punish subordinates who blow the whistle simply because their speech somewhat disrupted the office." *Id.* Therefore, even if there had been evidence that Woods's speech disrupted the office, it would not be enough to sanction her termination in this case, where the jury specifically found that Woods's protected activity was the but-for cause of her termination. Moreover, this argument was never made at trial and is contrary to Wilson's theory of the case – namely, that she was fired for workplace conduct, not that she was fired because her reports of illegal activities disrupted the workplace.

Although Woods certainly could have been disciplined or even terminated for workplace misconduct, she was not. Instead, Woods was fired for exercising her protected first amendment rights. Wilson is not entitled to qualified immunity in this case.

The Issue of Punitive Damages Was Properly Submitted to the Jury

Wilson next argues that his conduct was not sufficiently egregious to justify the submission of a punitive damages instruction to the jury.

"In a § 1983 case, both compensatory and punitive damages are available upon proper proof." *Coleman v. Rahija*, 114 F.3d 778, 787 (8th Cir. 1997). Although compensatory damages are mandatory once liability is found, punitive damages are never awarded as of right. *Smith v. Wade*, 461 U.S. 30, 52 (1983). Instead, "punitive damages are awarded or rejected in a particular case at the discretion of the fact finder once sufficiently serious misconduct by the defendant is shown." *Thurairajah v. City of Fort Smith, Arkansas*, 3 F.4th 1017, 1026 (8th Cir. 2021) (cleaned up). The purpose of awarding punitive damages to a plaintiff is "to punish the defendant for his or her willful or malicious conduct and to deter others from similar behavior." *Id.* (cleaned up). "The focus, in determining the propriety of punitive damages, is on the intent of the defendant, and whether the defendant's conduct is of the sort that calls for deterrence and punishment over and above that provided by compensatory awards." *Id.* (cleaned up). "A jury may be

permitted to assess punitive damages in an action under § 1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith*, 461 U.S. at 56 (cleaned up).

Wilson argues that insufficient evidence supported the inclusion of a punitive damages instruction. The Court disagrees and finds that the record contains sufficient evidence in the form of documents and testimony, and appropriate inferences to be drawn therefrom, to support the inclusion of a punitive damages instruction. Wilson was well aware of Woods's complaints to her supervisors and City officials through communications with the Personnel Department and the Mayor's Office, and Woods reported the illegal sale and transfer of vehicles directly to Wilson in December of 2020. Pl. Ex. 17. When Woods requested a meeting to discuss her allegations with Wilson directly, he refused to meet with her but continued communicating with his fellow "buddy system" members Flake and Waelterman about her allegations. Wilson then elected to personally handle Woods's termination, and it was the only time during his entire tenure as the Director of the Department of Streets that he presided over a disciplinary hearing. Wilson was made aware of Woods's participation in the KSDK story by Woods's attorney during her pretermination hearing, and he fired her the day after it aired. There was sufficient evidence from which a reasonable

jury could evaluate Wilson's termination process and conclude that he acted with evil motive or intent or reckless or callous indifference to Woods's first amendment rights. The renewed motion for judgment as a matter of law on this ground is denied.

There Are No Evidentiary Errors Warranting a New Trial

Wilson argues that he is entitled to a new trial because Woods's pretermination hearing was played to the jury. Pl. Ex. 117, ECF 142 Tr. Vol. II at 33. Wilson claims it was irrelevant, hearsay, unfairly prejudicial, and cumulative. These arguments are meritless.

During this meeting Petruska informed Wilson of Woods's complaints of wrongdoing to her supervisors, other City officials, and the media, and as such was highly relevant to the ultimate issue in this case. That Petruska also mentioned the whistleblowing activities of others and unrelated allegations of misconduct in her presentation to Wilson does not negate the relevance of this evidence or otherwise render it inadmissible. Moreover, the pretermination hearing was not hearsay because it was not admitted for the truth of Petruska's statements but to demonstrate proof of its effect on the listener (Wilson). *See United States v. Brown*, 560 F.3d 754, 765 (8th Cir. 2009). Wilson could have, but did not, ask the Court to issue a limiting instruction to the jury about this evidence. Wilson cannot be heard now to complain that the jury may have considered properly admitted

evidence for an improper purpose when he could have mitigated any potential undue prejudice through the request of a timely limiting instruction.

Nor was this evidence any more "cumulative" than the surveillance video of the December 30, 2020 incident between Woods and Stayton, which (like the pretermination hearing) was also testified to by witnesses at trial. Despite the testimony from several witnesses about the fight, Wilson played this video repeatedly to the jury. The same evidentiary rationale applies here. As the pretermination hearing evidence was properly admitted, Wilson is not entitled to a new trial on that basis.

Wilson also complains that evidence regarding Wilson's treatment of Stayton and former tow lot employees James Mundy and Jerome Cooley should not have been admitted because they were not similarly situated to Woods. The evidence about how Stayton was treated after her fight with Woods was relevant to the issue of whether Wilson's stated reasons for terminating Woods were pretexts for retaliation. As such it was properly admitted, as was the evidence offered by Mundy and Cooley.

Mundy testified that after he pointed out improprieties in how the tow lot was being run (such as cars missing or unaccounted for and non-tow lot employees inspecting cars and office files), Wilson terminated him without explanation after his probationary period as Commissioner of the Tow Lot expired. Mundy also

testified that he issued a written reprimand to Stayton while he was her boss for yelling at him and acting aggressively towards coworkers. Pl. Ex. 83-9. In an attempted "gotcha" moment gone awry, defense counsel suggested to the jury that Woods had written the reprimand to manufacture evidence of Stayton's workplace misconduct, ECF 143 Tr. Vol. III at 41, prompting plaintiff's counsel to recall Mundy to the stand to verify that he was the author of the document and to authenticate its contents. ECF 143 Tr. Vol. III at 115-16. Mundy's testimony was therefore relevant Fed. R. Evid. 404(b) evidence about Wilson's retaliatory motive and directly refuted the inaccurate suggestion made by defense counsel about the document's authenticity and was therefore properly admitted.

Cooley also worked at the tow lot and witnessed coworkers falsifying documents and engaging in the illegal sale and transfer of vehicles. ECF 142 Tr. Vol. II at 88. When he reported the illegal activities to Waelterman, Wilson transferred him out of the tow lot to the City's refuse division. ECF 142 Tr. Vol. II at 87. Cooley went to the Comptroller's Office with Woods to report the illegal activities they both witnessed at the tow lot. ECF 143 Tr. Vol. II at 93. Cooley's testimony was therefore admissible and properly admitted as relevant Fed. R. Evid. 404(b) evidence about Wilson's retaliatory motive. He also corroborated Woods's reports of illegal activities to City Officials. Wilson's motion for a new trial based on the admission of this evidence is accordingly denied.

Woods's Reports of Illegal Activities to Her Supervisors, the Comptroller, the Mayor's Office, and the Department of Personnel Are Protected Speech

Finally, Wilson argues that he is entitled to a new trial because Woods's complaints to her supervisors and other City officials are not protected speech and were instead made as part of her official duties. They were not.

To determine whether Woods's speech is protected, the Court must first determine whether she "spoke as a citizen on a matter of public concern." *Hemminghaus v. Missouri*, 756 F.3d 1100, 1110 (8th Cir. 2014) (cleaned up). If she did not, then her claim must fail "because no protected speech is at issue." *Marlow v. City of Clarendon*, 78 F.4th 410, 418 (8th Cir. 2023) (cleaned up). If she did, then Woods's "right to comment on matters of public concern must next be balanced with the employer's interest in promoting the efficiency of the public services it performs through its employees." *Id.* (cleaned up).

For Woods to prevail on her retaliation claim, her speech cannot be made "pursuant to her official duties." *See Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (cleaned up). "Speech can be pursuant to a public employee's official job duties even though it is not required by, or included in, the employee's job description, or in response to a request by the employer." *Lyons v. Vaught*, 875 F.3d 1168, 1174 (8th Cir. 2017) (cleaned up). "The critical question is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not

whether it merely concerns those duties." *Lane v. Franks*, 573 U.S. 228 (2014) (cleaned up).

Woods's job as a clerk typist required her to dispatch tow trucks around the City and then complete the necessary paperwork to document the tow service. It did not require her to audit tow lot records or report financial improprieties or other illegal activities to her supervisors or other City Officials, and it certainly did not require her to report those activities to the media. "Speech that involves a matter of political, social or other concern to the community is of public concern." *Calvit v. Minneapolis Pub. Schs.*, 122 F.3d 1112, 1117 (8th Cir. 1997). Woods engaged in protected speech by reporting illegal activities at the tow lot to her supervisors and other City Officials and by participating in KSDK's investigation into tow lot activities. Wilson cannot insulate himself from liability simply by pointing to a City ordinance and code of conduct which generally require employees to report illegal activities to supervisors, whatever their job duties may be. Moreover, Wilson ignores that Woods also reported the illegal sale and transfer of vehicles at the tow lot to the media, an action which Wilson does not and cannot argue was not protected speech. As Woods engaged in speech protected by the First Amendment, Wilson is not entitled to a new trial on this, or any other, basis.

The jury verdict stands.

Plaintiff's Motion for Attorneys' Fees

As the prevailing plaintiff,[17] Woods seeks attorneys' fees under 42 U.S.C. § 1988 in the total amount of $263,349.50 and costs in the amount of $4,531.09. Woods was represented by three separate law firms during this case. Her first law firm, Pleban & Associates, seeks $39,651.50 in fees and expenses.[18] After the Pleban firm withdrew, Woods was represented by the Eccher Law Group, which seeks compensation for 27 hours of attorney time in the amount of $9,450.00 and mediation costs in the total amount of $1,068.75. Woods's trial counsel, the Kasper Law Firm, seeks $210,227.50 in fees and $3,060.34 in costs.

Woods contends that the reported hours reflected in her attorneys' affidavits and time records, which were derived from contemporaneous records, were reasonable and necessary to the prosecution of this lawsuit. ECF 146, 147. Wilson objects to certain aspects of the fee and cost request, contending that Woods is entitled to fees in the amount of $61,456.88 and costs in the amount of $2,512.41.

A court has discretion to award reasonable attorneys' fees to a party who prevails in a claim filed under 42 U.S. C. § 1983. *See Jenkins by Jenkins v. State of Missouri*, 127 F.3d 709, 716 (8th Cir. 1997). That discretion, however, is "narrow," as "prevailing plaintiffs should ordinarily recover fees unless special

[17] Wilson concedes that Woods is a prevailing plaintiff. ECF 151 at 1.

[18] Woods reduced this part of her request to $39,651.50 from $40,586.50 in her reply brief. ECF 153 at 5.

circumstances would make such an award unjust." *Id.* (cleaned up). The party seeking the award must submit evidence supporting the requested hours and rates, making "a good faith effort" to exclude hours that are "excessive, redundant, or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 433–34 (1983) (cleaned up). The fee applicant must also use "billing judgment" to exclude hours that would not properly be billed to a client, because time not properly billed to a client should not be paid by an adversary pursuant to statutory authority. *Id.* at 434.

To determine reasonable attorneys' fees under Section 1988, "the most useful starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433 (cleaned up). This calculation is referred to as the "lodestar approach." *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551-52 (2010). There is a strong presumption that the lodestar calculation represents a reasonable fee award. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992).

When a plaintiff has only limited success, the extent of that success "is a crucial factor in determining the proper amount of an award of attorneys' fees under 42 U.S.C. § 1988." *Hensley*, 461 U.S. at 440. The court must consider whether a plaintiff's unsuccessful claims "were unrelated to the claims on which the plaintiff succeeded" and whether "the level of success" achieved by the

plaintiff "makes the hours reasonably expended a satisfactory basis for making a fee award." *Id.* at 434 (cleaned up). When a plaintiff's claims "involve a common core of facts or are based on related legal theories, much of counsel's time will be devoted generally to the litigation as a whole." *Id.* at 435 (cleaned up). In that situation, "the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Id.*

"Where a plaintiff has obtained excellent results, her attorney should recover a fully compensatory fee, which will normally encompass all hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435 (cleaned up). This includes "time spent on related matters on which the plaintiff did not win." *Jenkins*, 127 F.3d at 716. If, however, "the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Hensley*, 461 U.S. at 440 (cleaned up).

The principle of awarding a fully compensatory fee to plaintiffs who have not prevailed on all of their asserted claims recognizes that:

> in the real world, litigation is more complex than in the movies, involving multiple claims for relief that implicate a mix of legal theories and have different merits. Some claims succeed; others fail. Some charges are frivolous; others (even if not ultimately successful) have a reasonable basis. In short, litigation is messy, and courts must deal with this untidiness in awarding fees. Given this reality, we have made clear that plaintiffs may receive fees under Section 1988 even if they are not victorious on every claim. A civil rights plaintiff who obtains meaningful relief has corrected a

> violation of federal law and, in so doing, has vindicated Congress's statutory purposes. That result is what matters. A court should compensate the plaintiff for the time the plaintiff's attorney reasonably spent in achieving the favorable outcome, even if the plaintiff failed to prevail on every contention. The fee award, of course, should not reimburse the plaintiff for work performed on claims that bore no relation to the grant of relief: Such work cannot be deemed to have been expended in pursuit of the ultimate result achieved. But the presence of these unsuccessful claims does not immunize a defendant against paying for the attorney's fees that the plaintiff reasonably incurred in remedying a breach of his civil rights.

Fox v. Vice, 563 U.S. 826, 833-34 (2011) (cleaned up). A prevailing party may also recover as part of an award under Section 1988 the party's "reasonable expenses of litigation." *SapaNajin v. Gunter*, 857 F.2d 463, 465 (8th Cir. 1988).

Wilson first argues that Woods's fee request should be reduced because she ultimately prevailed on only one claim brought against one defendant, even though she pleaded several claims, including FLMA claims, against two defendants – Wilson and the City. The Court dismissed a First Amendment retaliation claim against the City (ECF 55), a retaliation claim against Wilson in his official (as opposed to personal) capacity, a FMLA retaliation claim against the City (ECF 86), and declined to exercise supplemental jurisdiction over a claim that the City violated its Whistleblower Ordinance (ECF 26). But these dismissed claims were an overall small part of the litigation and share a common core of facts and related theories with Woods's successful First Amendment retaliation claim against Wilson. Woods's retaliation claim against Wilson was the primary focus of the litigation, and upon that claim she undoubtedly "won excellent results." *Hensley*,

461 U.S. at 435. The Court accordingly concludes that that plaintiff is entitled to a fully compensatory fee award and overrules Wilson's objection to the fee request to the extent it challenges fees sought for these intertwined but ultimately unsuccessful claims. *See Gruttemeyer*, 31 F.4th at 650 (focus is on whether facts and legal theories are related, not whether parities were the same or separate).

As for the FMLA entitlement and interference claims brought against the City, however, the Court concludes that they are unrelated to Woods's First Amendment claim because they do not depend upon the same facts or legal theories. In Woods's reply brief in support of her fee request, counsel estimates that the amount of time reasonably expended on all three FMLA claims accounted for five percent of the total fees sought by his law firm in this matter. ECF 153 at 7. Given the nature of the FMLA claims and the small amount of documents and testimony presented in support of these claims on summary judgment and at trial, the Court finds that counsel's estimate is reasonable.

The Court sustains Wilson's objection to the fee request to the extent it seeks fees for work on the two unrelated FMLA claims. In accordance with the Kasper Law Firm's estimate that its work on all three FMLA claims accounted for five percent of the total fees sought by this firm, the Court will apply a commensurate fee reduction of 3% to account for work performed by the Kasper Law Firm on the

two (out of three total) factually unrelated and ultimately unsuccessful FMLA claims.[19]

Pleban & Associates (Petruska)

Wilson argues that the fee request of Pleban & Associates should be reduced because it includes work performed by Woods's counsel (Petruska) before the City's Civil Service Commission, the police department's Internal Affairs Division, and the Civilian Oversight Board, along with time entries for corresponding with an FBI agent, reviewing Woods's grievances, applying for disability, and for withdrawing from the case.

The time Petruska spent preparing for and attending the pre-termination hearing is compensable as part of the fee award, as the pretermination hearing was played to the jury at trial, was undoubtedly useful, and the work was of a type ordinarily necessary to secure the final result obtained from the litigation. *See Webb v. Bd. of Educ. of Dyer Cnty., Tenn.*, 471 U.S. 234, 243 (1985). The same cannot be said of the time spent on work before the Civil Service Commission or in other administrative proceedings involving the police department and the Civilian Review Board, or for time spent advising Woods on how to obtain disability benefits. *See id.* at 241-43. Because § 1983 stands "as an independent avenue of

[19]Subtraction of fees for work on two out of three FMLA claims results in a fee reduction of 3 % (rounded) of the 5 % total time counsel spent on all FMLA claims. This reduction is only applied to the fees sought by the Kasper Law Firm, as the other two law firms did not advance FMLA claims on behalf of Woods.

relief" and Woods "could go straight to court to assert it," these unrelated administrative proceedings cannot be said to be part of an "action or proceeding to enforce § 1983;" as such, they are simply not compensable under § 1988. *Id.* at 241 (cleaned up).

Gruttemeyer, 31 F.4th at 650, relied upon by Woods in support of her request for fees associated with prelitigation administrative proceedings, is inapposite on this point as the fees in that case were awarded under the Americans with Disabilities Act, which "explicitly provides for an award of attorney's fees for administrative proceedings commenced pursuant to the ADA." *Id.* In the absence of such statutory authority here, Woods is not entitled to recover for administrative proceedings which preceded this litigation as part of her fee application under § 1988.

Although Wilson claims to have calculated the compensable hours for Pleban & Associates in Exhibit A to his opposition to the fee request (ECF 151-1), Wilson's calculation inexplicably excludes time entries related to the instant litigation (such as numerous client conferences and drafting the complaint), and improperly excludes time entries spent on advancing intertwined but ultimately unsuccessful arguments (such as those opposing the City's motion to dismiss), which I have already ruled is compensable time. Therefore, Wilson's calculation

of compensable time as to Pleban & Associates is rejected as underinclusive of compensable hours.

Pleban & Associates concedes it should not be compensated for time spent withdrawing from this case.

After applying the appropriate standards, the Court concludes that the following time entries should be included in Wilson's calculation of compensable time set out in ECF 151-1: 1/7/21 (the Court overrules Wilson's argument that this entry is "unrelated" to the instant litigation given the indication that the email is "regarding tow lot investigation"); 1/8/21 (telephone conferences with a client are generally compensable, and Wilson makes no argument to exclude them); 1/20/21; 2/4/21; 2/5/21; 2/12/21; 2/18/21; 2/22/21; 3/1/21 (the Court concludes it is reasonable to award fees for half the stated time given that the entry indicates Petruska discussed two issues with Woods, but only one is compensable); 3/8/21; 3/23/21; 4/8/21; 4/16/21; 4/20/21; 6/10/21; 6/23/21; 6/29/21; 6/30/21; 7/1/21; 7/2/21 (the Court concludes it is reasonable to award fees for three-quarters of the stated time given that the entry indicates Petruska performed four different tasks, but only three are compensable); 7/9/21 (the Court concludes it is reasonable to award fees for half the stated time given that the entry indicates Petruska performed two different tasks, but only one is compensable); 8/17/21; 10/26/21; and 11/17/21 (the Court concludes it is reasonable to award fees for one-third the

stated time given that the entry indicates Petruska performed three different tasks, but only one is compensable). This results in 34.25 hours of compensable time charged by Pleban & Associates.

The Court overrules Wilson's generic objection that the compensable hours should be reduced as "gross over-billing," as after review the Court believes that these hours are reasonable considering the nature and difficulty of the litigation and Petruska's representation of Woods. The Court further concludes that these time entries are compensable as sufficiently specific and an appropriate use of attorney time. Wilson offers no evidence to show the billing was not in line with the norms in the market or that the fee award (either for the work performed by Pleban & Associates or as a whole) is more than is to be expected in this type of case, so the Court overrules the objection that the full 34.25 hours of compensable time should not be included as part of the fee award.

All 34.25 hours of compensable time were billed by Petruska at the hourly rate of $550.00. Although Wilson characterizes this rate as "inflated," he has presented no evidence to contradict Woods's substantial evidence that Petruska's charged rate is reasonable and in line with prevailing market rates in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. ECF 147.

In general, "a reasonable hourly rate is the prevailing market rate, that is, the ordinary rate for similar work in the community where the case has been litigated." *Moysis v. DTG Datanet*, 278 F.3d 819, 828–29 (8th Cir. 2002) (cleaned up). In setting a reasonable hourly rate, a court may consider its own experience and knowledge of prevailing market rates, as well as the experience, skill, and expertise of the attorney seeking an award under Section 1988. *See Hanig v. Lee*, 415 F.3d 822, 825 (8th Cir. 2005) (court's own knowledge); *Hendrickson v. Branstad*, 934 F.2d 158, 164 (8th Cir. 1991) (hourly rates for a Section 1988 award should reflect counsel's skill and experience).

Woods's attorneys filed affidavits setting forth their legal education, legal experience, and other information, including rates awarded in several cases, to support their requested hourly rates. ECF 146, 147. Additionally, Woods provided an affidavit of another civil rights attorney practicing in the St. Louis area supporting the reasonableness of counsels' requested hourly rates and the reasonableness of the requested rates. ECF 147-8. Woods has also submitted evidence that the requested rate of $550 is below the average hourly rate listed in the USAO Attorney's Fees Matrix (2015-21). None of this evidence has been contested by Wilson.

Based upon a review of Woods's affidavits and evidence of market rates for attorneys performing similar work in this area and in light of the Court's own

experience and familiarity with counsel and civil rights litigation, the Court finds that the hourly rates sought by Woods's attorneys, including Petruska, are reasonable.

Accordingly, the Court concludes that Woods is entitled to $18,837.50 (34.25 hours at the rate of $550 per hour) as a reasonable attorney's fee for the services rendered by Pleban & Associates, together with the $402.00 filing fee, which has been submitted by Woods as part of the Bill of Costs and is not contested as a properly taxable cost by Wilson.

Eccher Law Firm LLC (John Eccher and Paige Sparks)

Wilson concedes that the Eccher Law Firm seeks a fee award for legal work related to the litigation, but he argues that he should not be required to pay for duplicative legal work associated with Woods's decision to change counsel twice during the case. He submits that the Eccher Law Firm's compensable work, indicated by the highlighted entries filed as ECF 151-2, amounts to $8,568.75.

Once again, Wilson has excluded relevant, compensable entries related to client communications without explanation or justification. As communication with the client is essential to representation, the Court concludes that the following entries representing emails to/from the client and the review of same should be included as part of the compensable fee in this case: 5/2/22; 4/14/22; 4/20/22; 4/19/22 (two entries); and 1/31/22. Moreover, the entries dated February 22, 2022

and February 2, 2022 describe work appearing reasonably related to the prosecution of the case and not otherwise excludable from the fee request, so the Court includes these two entries in the fee request as well. This results in an additional 0.7 hours of time billed by attorney John Eccher and 0.5 hours of time billed by attorney Paige Sparks being added to Wilson's estimate appearing at ECF 151-2.

Upon review, the Court believes that these hours are reasonable when considering the nature and difficulty of the litigation and the Eccher Law Firm's representation of Woods. The Court further concludes that these time entries are compensable as sufficiently specific and an appropriate use of attorney time.

Wilson does not contest the reasonableness of the hourly rates of $500.00 charged by Eccher and $250.00 charged by Sparks, and for the reasons set forth above the Court finds that these charged rates are reasonable and in line with prevailing market rates in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. ECF 147.

The Court overrules Wilson's suggestion to essentially cut the award in half to account for the Eccher law firm's "relatively limited involvement in this case," as there is no suggestion that the amount of hours expended was not reasonable for the tasks completed, which included the mediation of this case. Instead, the law firm's "relatively limited involvement in this case" is reflected in the relatively

small number of hours submitted as part of the compensable fee request. Wilson's argument that the fee should be reduced because Woods did not prevail on all of her claims has already been discussed and rejected above.

However, the Court agrees that Wilson should not be required to pay for duplicative work for "getting up to speed" and reviewing previous filings given Woods's voluntary decision to terminate her previous counsel. The same is true for those entries related to a review of the "attorney lien" issue, as that issue would not have arisen but for Woods's decision to hire new counsel and as such is unrelated to the prosecution of her claims. Thus, the Court agrees that those entries are properly excluded from the compensable fee award and it sustains Wilson's objection to those entries.

Accordingly, the Court finds that an additional $510 ($385 for Eccher and $125 for Sparks) should be added to Wilson's estimation of $8,568.75 as the compensable fee for the Eccher Law Firm's involvement in this case.

The Court concludes that Woods is entitled to $9,078.75 as a reasonable attorney's fee for the services rendered by the Eccher Law Firm, together with the mediation costs of $1,068.75, which Wilson does not dispute is a properly recoverable expense as part of a reasonable attorney's fee.[20]

[20] This is not a taxable cost under 28 U.S.C. § 1920. *See Brisco-Wade v. Carnahan*, 297 F.3d 781, 782 (8th Cir. 2002) (finding that district court abused its discretion in taxing mediator's fees against defendants because it is not authorized under 28 U.S.C. § 1920). It is therefore

Kasper Law Firm (Kevin Kasper, Ryan Schellert, Amanda Miller, Pamela Goyins)

Wilson's sole argument regarding the fee request for services performed by the Kasper Law Firm is that it should be substantially reduced because Woods did not succeed on all of her claims. I have already rejected that argument above, except to the extent that I concluded that the fee request of $210,227.50 should be reduced by 3 % to reflect work performed on unrelated, unsuccessful claims, resulting in a reduced amount of $203,920.67.

Upon review, the Court believes that the hours expended by the Kasper Law Firm are reasonable when considering the nature and difficulty of the litigation, the nature of its representation of Woods, which included trial, and the resulting verdict. The Court further concludes that these time entries are compensable as sufficiently specific and an appropriate use of attorney and paralegal time.

The Court further finds that the rates charged by Kasper and Schellert and the two assisting paralegals are reasonable and in line with prevailing market rates in the community for similar services by lawyers and paralegals of reasonably comparable skill, experience, and reputation. ECF 147. The Court also finds that the fee award requested by the Kasper Law Firm and the overall fee award are in line with fees awarded in other similar cases, as set forth in Woods's fee application. ECF 147.

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disallowed under the bill of costs but awarded as part of the reasonable attorney's fee.

Accordingly, the Court concludes that Woods is entitled to $203,920.67 as a reasonable attorney's fee for the services rendered by the Kasper Law Firm.

Costs

Woods also submitted a Bill of Costs seeking costs under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)(1) in the amount of $4,531,09. Wilson did not file an objection to the Bill of Costs, but in his opposition to the request for attorneys' fees he argues that Woods should not recover witness fees for George Hooker, because after an offer of proof the Court excluded him from testifying at trial. Wilson also argues that Woods should not be permitted to recover any fees associated with the collection of medical records, as they were relevant only to her unsuccessful FMLA claims. Wilson then proposes that Woods's recovery of costs be limited to $2,512.41. ECF 151. In reply, Woods requests that any costs not properly recoverable under 28 U.S.C. § 1920 be awarded as part of her reasonable attorney's fee. She also argues that her medical records are a recoverable cost because they were necessary for "potential emotional distress damages."

District courts have substantial discretion in awarding costs. *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 762 (8th Cir. 2006) (citing *Computrol, Inc. v. Newtrend, L.P.*, 203 F.3d 1064, 1072 (8th Cir. 2000)); *see also* Fed. R. Civ. P. 54(d). Although courts are limited in the types of taxable costs awarded under 28 U.S.C. § 1920, *Brisco-Wade v. Carnahan*, 297 F.3d 781, 782 (8th Cir. 2002), a

prevailing party may also recover reasonable expenses of litigation as part of a fee award under § 1988. *Gunter*, 857 F.2d at 465. Thus, the Court has discretion to recharacterize nontaxable costs as attorney's fees in consideration of a fee request. *See Johnson, Trustee of Operating Engineers Local # 49 Health and Welfare Fund v. Charps Welding & Fabricating, Inc.*, 950 F.3d 510, 528 (8th Cir. 2020).

Service of process of fees for a private process server, such as Woods used in this case, are not a recoverable cost under 28 U.S.C. § 1920. *Crues v. KFC Corp.*, 768 F.2d 230, 234 (8th Cir. 1985). However, the Court concludes that such nontaxable cost should be recharacterized and awarded as part of Woods's reasonable attorney's fee in this case. All reasonable out-of-pocket costs and expenses are recoverable as part of a Section 1988 fee award because they are part of the costs a law firm would normally charge to a fee-paying client. *See Jenkins v. Kansas City Mo. Sch. Dist.*, 525 F.3d 682, 682 n.1 (8th Cir. 2008) ("travel expenses and other out-of-pocket expenses that a law firm normally would bill to its client are more properly characterized as part of an attorney fee award" under Section 1988). Here, Wilson does not object to these fees (other than those associated with Hooker) or otherwise argue that private process server expenses are not the type normally charged to fee-paying clients, so the Court in its discretion concludes that that these costs are recoverable as a reasonable expense

of litigation and therefore part of a reasonable attorney's fee. *See Sturgill v. United Parcel Service, Inc.*, 512 F.3d 1024, 1036 (8th Cir. 2008).

Wilson does not object to the payment of witness fees claimed for Mundy and Cooley, but he does object to the payment of witness fees for Hooker, who was excluded from testifying at trial following an offer of proof by Woods. ECF 141 Tr. Vol. I at 45-56. While witness fees may not ordinarily be taxed for someone who comes to the courthouse but does not testify, *Marmo*, 457 F.3d at 763, "witness fees are allowed when it appears that a court order or some extrinsic circumstance rendered the testimony unnecessary." *Stanley v. Cottrell, Inc.*, 784 F.3d 454, 467-68 (8th Cir. 2015). Even if the witness fees for Hooker could not properly be recoverable as a cost under 28 U.S.C. § 1920 under these circumstances, the Court concludes that they are properly recoverable as part of a reasonable attorney's fee and awards the witness fees for Hooker as part of a reasonable attorney's fee.

Fees for exemplification and the costs of obtaining medical records are a taxable cost where necessarily obtained for use in the case. 28 U.S.C. § 1920(4); *Zotos v. Lindbergh Sch. Dist.*, 121 F.3d 356, 364 (8th Cir. 1997); *Jacobs v. Mercy Health*, Cause No. 4:22CV1204 AGF, 2024 WL 1619199, at *3 (E.D. Mo. Apr. 15, 2024). Wilson argues that these costs should not be recoverable because they relate only to Woods's unsuccessful FMLA claims. Woods disputes this,

contending that the medical records were sought in connection with her request for emotional distress damages on her first amendment retaliation claim. Although no medical records were presented to the jury, the Court concludes that the costs of obtaining medical records to evaluate a claim for emotional damages is a reasonable litigation expense and therefore recoverable here as part of a reasonable attorney's fee where Woods claimed emotional distress damages in connection with her first amendment claim against Wilson. *See LaRue v. Integrated Consulting & Inspection, LLC*, 2018 WL 11209989, at * 2 (E.D. Ark. Aug. 2, 2018). Wilson does not dispute that this is the type of expense normally charged to a fee-paying client, so the Court will grant Woods's request for fees associated with obtaining her medical records as part of a reasonable attorney's fee award in this case.

Wilson does not object to the request for deposition costs or copies of trial exhibits included on the Bill of Costs, and as they are properly recoverable here as taxable costs, the Court will award these taxable costs as requested.

Summary of Fees and Costs Awarded

Woods is entitled to a reasonable attorney's fee in the amount of $231,836.92 as follows: Pleban & Associates, $18,837.50; Eccher Law Firm, $9,078.75; and, Kasper Law Firm, $203,920.67. Woods is also entitled to an additional $1,836.68 as part of her reasonable attorney's fee award, which

represents the following non-taxable costs: fees for private service of summons and subpoenas, $220 (to the Kasper Law Firm); costs of obtaining medical records (line items 10-13 on ECF 145-1), $ 493.19 (to the Kasper Law Firm); mediation fees, $1,068.75 (to the Eccher Law Firm); and, Cooley witness fee, $54.74 (to the Kasper Law Firm). Together, this results in a reasonable attorney's fee award in the amount of $233,673.60.

Woods is entitled to $2,694.41 in taxable costs as follows: fees of the Clerk, $402 (to Pleban & Associates); costs of deposition transcripts (line items 2-3 on ECF 145-1), $1,964.45 (to the Kasper Law Firm); witness fees for James Mundy and Jerome Cooley (lines 4 and 6 on ECF 145-1), $98.76 (to the Kasper Law Firm); and, copies of trial exhibits (line 14 on ECF 145-1), $229.20 (to the Kasper Law Firm).

Accordingly,

IT IS HEREBY ORDERED that the renewed motion for judgment as a matter of law or, in the alternative, motion for new trial [148] is denied.

IT IS FURTHER ORDERED that the motion for attorney's fees [146] is granted in part and denied in part as set forth above as follows: Wilson shall pay Woods a reasonable attorney's fee of $233,673.60, plus post-judgment interest at the prevailing rate.

IT IS FURTHER ORDERED that the motion for Bill of Costs [145] is granted in part and denied in part as follows: the motion is granted only to the following extent, and the Clerk of Court shall tax the following $2,694.41 as costs: fees of the Clerk in the amount of $402; costs of deposition transcripts in the amount of $1,964.45; witness fees for James Mundy and Jerome Cooley in the amount of $98.76; and, copies of trial exhibits in the amount of $229.20.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of July, 2024.