

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLIAMS, TEXAS
COMMISSIONER OF EDUCATION, *et al.*,

Defendants

Consolidated Case:

FORT BEND INDEPENDENT SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLIAMS, TEXAS
COMMISSIONER OF EDUCATION, *et al.*,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**ISD PLAINTIFFS' JOINT REPLY TO DEFENDANTS' SECOND AMENDED
RESPONSE TO PLAINTIFFS' AND INTERVENORS' REQUESTS FOR ATTORNEYS'
FEES AND OBJECTIONS TO DEFENDANTS' REQUEST FOR ATTORNEYS' FEES**

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiffs Fort Bend ISD, *et al.*, ("FBISD Plaintiffs"), Calhoun County ISD, *et al.*, ("CCISD Plaintiffs"), Texas Taxpayer & Student Fairness Coalition, *et al.*, ("TTSEFC Plaintiffs"), and Edgewood ISD, *et al.*, ("Edgewood Plaintiffs") (collectively, the "ISD Plaintiffs") file this Reply to Defendants' Second Amended Response to Plaintiffs' and Intervenors' Request for Attorneys' Fees ("State's Response") and Objections to Defendants' Fee Request and respectfully request to Court to award the full amount of attorneys' fees requested by the ISD Plaintiffs and deny the Defendants' request.

I. INTRODUCTION

The ISD Plaintiffs seek declarations under the Uniform Declaratory Judgment Act that the State's school finance system violates article VII, section 1, including which clause/constitutional standard is violated. Specifically, the FBISD Plaintiffs, the CCISD Plaintiffs, the TTSFC Plaintiffs, and the Edgewood Plaintiffs all seek declarations that the system is not adequately funded and *therefore* fails to suitably provide the resources necessary for a general diffusion of knowledge. *See* FBISD Plaintiffs' Fifth Amended Petition at ¶ 155 [*hereinafter* FBISD Petition]; CCISD Plaintiffs' First Amended Petition at ¶ 58 [*hereinafter* CCISD Petition]; TTSFC Plaintiffs' Corrected Seventh Amended Original Petition and Request for Declaratory Judgment at ¶ 67 [*hereinafter* TTSFC Petition]; *see also* CCISD Petition at ¶ 60 (requesting declaration that school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to a tax ratification election); Edgewood Plaintiffs' Second Amended Petition at ¶¶ 84, 91 [*hereinafter* Edgewood Petition] (requesting declaration that system is inadequate and unsuitable for low income and English Language Learner students). In the alternative, the FBISD Plaintiffs and CCISD Plaintiffs seek declarations that the system was inadequate as to their plaintiff districts. FBISD Petition at ¶ 156, CCISD Petition at ¶ 59. In addition, the FBISD Plaintiffs, TTSFC Plaintiffs, and Edgewood Plaintiffs seek declarations that the system is inefficient and inequitable because it does not provide substantially equal access to funds up to the level of a general diffusion of knowledge. *See* FBISD Petition at ¶ 158; TTSFC Petition at ¶ 67; Edgewood Petition at ¶ 91 (seeking declaration that system is financially and quantitatively inefficient). The Edgewood Plaintiffs further seek a declaration that the equalization provisions, including the cap on tax rates and recapture, remain essential components of a school finance

system so long as the Legislature continues to rely on local property values. *See* Edgewood Petition at ¶ 93 (seeking declaration that tax cap and recapture are necessary elements of efficient system).

Each of the ISD Plaintiffs also seek declarations that the school finance system prevents districts from exercising meaningful discretion in setting their tax rates, and therefore violates article VIII, section 1-e. *See* FBISD Petition at ¶ 161; CCISD Petition at ¶ 62; TTSFC Petition at ¶ 67; *see also* Edgewood Petition at ¶¶ 87, 92 (seeking a declaration that low-wealth districts, including the Edgewood Districts, have been forced to tax at or near the \$1.17 cap and have no meaningful discretion). Here again, the FBISD Plaintiffs and CCISD Plaintiffs also seek, in the alternative, declarations that their plaintiff districts had lost meaningful discretion in setting tax rates in violation of article VIII, section 1-e. FBISD Petition at ¶ 162; CCISD at ¶ 63.

The Court orally ruled in the ISD Plaintiffs' favor—including an oral pronouncement of each of the requested declarations—on February 4, 2012. *See* 2/04 Tr. at 159-62.¹

The ISD Plaintiffs submitted attorneys fee requests, including affidavits and supporting documentation, on or before March 5, 2013, in accordance with the Court's deadline.

In the State's Second Amended Response, filed March 21, 2013, Defendants argue that the "redundant remedies" doctrine compels the Court to deny Plaintiffs' fee requests. In the alternative, Defendants argue that the fee requests should be denied or reduced because the Plaintiffs' fee requests include time that Defendants view as unreasonable or not necessary to the litigation. Finally, Defendants argue that equity and justice require that the State, the non-prevailing party on all of the claims brought by the ISD Plaintiffs, be reimbursed for its fees

¹ The ISD Plaintiffs have cited to the final transcripts as follows: "RR(volume):(page)." However, many final transcripts are not yet available. Where daily transcripts were available, the ISD Plaintiffs cited those transcripts as "(Month)/(date) Tr. at (page)" (e.g., 1/16 Tr. at 14).

instead of, or as an offset to, the ISD Plaintiffs' fee requests. For the reasons detailed below, each of these arguments fail, and equity and justice demand that the ISD Plaintiffs be reimbursed for the full amount of their fee requests, the entirety of which are reasonable and necessary.

II. ARGUMENT

A. **The Texas Supreme Court and the Third Court of Appeals repeatedly have held that the UDJA is the appropriate vehicle for asserting constitutional challenges and that attorneys' fees can be awarded to the challengers.**

The State first claims that the ISD Plaintiffs should have brought their claims directly under the Texas Constitution and therefore are not entitled to an award of fees under the Uniform Declaratory Judgment Act (UDJA).²

Prior litigation in this very subject area cuts against the State's argument. In the first school finance case, the Texas Supreme Court upheld the award of attorneys' fees to plaintiffs who successfully challenged the constitutionality of the State's school finance system under article VII, section 1 through a declaratory judgment action in *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391, 392, 398 (Tex. 1989) ("*Edgewood I*"). In the most recent school finance case, the Third Court of Appeals upheld this Court's award of attorneys' fees to plaintiffs who had successfully challenged the constitutionality of the State's school finance system under article VII, section 1-e through a declaratory judgment action in *Neeley v. West Orange-Cove Independent School District*, 228 S.W.3d 864 (Tex. App.—Austin 2007, pet. denied).³

² TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.001-37.011.

³ The Austin Court of Appeals did not address the question of whether the West Orange-Cove Plaintiffs' request for declaratory relief under the UDJA was redundant, because it held that the State had waived this argument. 228 S.W.3d at 867-68.

On numerous occasions, the Third Court of Appeals has concluded that the UDJA is the appropriate vehicle for challenging the constitutionality of statutes and has determined that attorneys' fees can be awarded to the challengers. *See, e.g., Local Neon Co. v. Strayhorn*, No. 03-04-00261-CV, 2005 WL 1412171, at *8 (Tex. App.—Austin June 16, 2005, no pet.) (mem. op.) (finding that plaintiffs should be allowed to proceed with challenge to constitutionality of various tax code statutes and rules through a declaratory judgment action, and that plaintiffs could seek attorneys' fees in connection with claims); *State v. Anderson Courier Serv.*, 222 S.W.3d 62, 66-67 (Tex. App.—Austin 2005, pet. filed) (in successful declaratory judgment action challenging the constitutionality of statute, plaintiffs could have obtained attorneys' fees had they not waived their request for fees); *Hays Cnty. v. Hays Cnty. Water Planning P'ship*, 106 S.W.3d 349, 362-63 (Tex. App.—Austin 2003, no pet.) (affirming declaration that commissioners' court violated article V, section 18 of Texas Constitution and affirming trial court's award of attorneys' fees); *Bullock v. Regular Veterans Ass'n of U.S. Post No. 76*, 806 S.W.2d 311, 316 (Tex. App.—Austin 1991, no writ) (affirming declaration that Bingo Enabling Act was unconstitutional and trial court's award of attorneys' fees); *see also Democracy Coal. v. City of Austin*, 141 S.W.3d 232, 296 (Tex. App.—Austin 2004, no pet.) (holding that “declaratory judgments act may be used to clarify constitutional imperatives.”)⁴

The appellate courts have consistently concluded that the UDJA can be utilized for constitutional challenges even where the constitutional provision being invoked is self-executing and provides an independent cause of action. *See City of Arlington v. Randall*, 301 S.W.3d 896,

⁴ *See also Texas Water Comm'n v. Lindsey*, 850 S.W.2d 183, 188 (Tex. App.—Beaumont 1992, no pet.) (“Here, if we understand appellees’ requested relief, appellees are attacking the constitutionality of the legislation itself. We believe this to be a primary purpose for the enactment of the Uniform Declaratory Judgment Act.”) (citing and quoting TEX. CIV. PRAC. & REM. CODE ANN. § 37.004).

908 (Tex. App.—Ft. Worth 2009, pet. denied) (“A claimant seeking a declaratory action *must already have a cause of action* at common law or *under some* statutory or *constitutional provision.*”); *Democracy Coal.*, 141 S.W.3d at 297 (permitting declaratory judgment action despite the fact that Texas constitutional guarantees of freedom of speech and expression have been held to constitute an independent legal basis for a cause of action); *Frasier v. Yanes*, 9 S.W.3d 422, 426 (Tex. App.—Austin 1999, no pet.) (holding that plaintiffs could utilize declaratory relief to enforce their rights under article III, section 52e of the Texas Constitution, a self-executing provision that provided independent cause of action).

Indeed, were the constitutional provisions at issue not self-executing, this Court would not have subject matter jurisdiction over the claims, *see Nzeley v. West Orange-Cove Indep. Sch. Dist.*, 176 S.W.3d 746, 781-82 (Tex. 2005) (“WOC II”) and *Hendee v. Dewhurst*, 228 S.W.3d 354, 369-73 (Tex. App.—Austin 2007, pet. denied), and thus plaintiffs could not challenge them under the UDJA, which does not create or expand jurisdiction. *See, e.g., Chenault v. Philips*, 914 S.W.2d at 140, 141 (Tex. 1996) (UDJA does not grant jurisdiction, but is a procedural device for deciding cases already within a court’s jurisdiction); *City of Brownsville v. AEP Tex. Cent. Co.*, 348 S.W.3d 348, 357 (Tex. App.—Dallas 2011, no pet.) (same); *Randall*, 301 S.W.3d at 908 (same); *Frasier v. Yanes*, 9 S.W.3d at 427 (same); *Democracy Coal.*, 141 S.W.3d at 297 (same); *Reynolds v. Reynolds*, 86 S.W.3d 272, 275 (Tex. App.—Austin 2002, no pet.) (same). In other words, under the State Defendants’ construction of the duplicative remedy doctrine, all UDJA claims regarding the facial validity of any statute would be duplicative—a bazaar result

⁵ The State does not argue that the ISD Plaintiffs’ claims fall outside the scope of the UDJA statute. *See* TEX. CIV. PRAC. & REM. CODE § 37.004. Rather, it argues that because the claims could have been brought directly under the Texas Constitution, Plaintiffs improperly utilized the UDJA solely to obtain fees.

given that ascertaining the constitutional validity of a statute is one of the “primary purposes” of the UDJA. *Lindsey*, 850 S.W.2d at 188.

The State relies heavily on *MBM Financial Corporation v. Woodlands Operating Company*, 292 S.W.3d 660 (Tex. 2009). However, as the State notes in its brief, this case involved breach of contract and common-law fraud claims. *Id.* at 670; State’s Response at 6. What the State does not note is that both those claims come with their own set of standards for when attorney’s fees are granted. *See MBM Fin.*, 292 S.W.3d at 670. Specifically, the Supreme Court noted that “when a claim for declaratory relief is merely tacked onto a standard suit based on a matured breach of contract, allowing fees under Chapter 37 would frustrate the limits Chapter 38 imposes on such fee recoveries.” *Id.* In fact, *MBM Financial*’s holding is merely an application of the long recognized (and codified) rule of statutory construction that specific statutory provisions prevail over general ones. *Id.* at 670 and n.56 (citing TEX. GOV’T CODE ANN. § 311.026(b) and *Strong v. Garrett*, 224 S.W.2d 471, 475 (1949)). The cases applying *MBM Financial* similarly involve cases where a specific statute governs the claims. *See, e.g., Jackson v. State Office of Adm’n. Hearings*, 351 S.W.3d 290, 301 (Tex. 2011) (“[In *MBM Financial* w]e further explained that allowing fees under the [U]DJA would frustrate the limits imposed by the specific provisions governing attorney’s fees for breach of contract claims. The same reasoning applies here: allowing Jackson to recover attorneys’ fees under the DJA when he cannot meet the requirements for their recovery under the TPIA would frustrate the limits established by the TPIA.”); *Underwriters Lloyds of London v. Harris*, 319 S.W.3d 863, 865 (Tex. App.—Eastland 2010, no pet.) (“Because specific statutory provisions prevail over general provisions in statutory construction and the declaratory judgment claim was redundant of the breach of contract claim, the plaintiff’s right to recover attorney’s fees was defined by contract

law. Because the plaintiff could not recover its attorney's fees under section 38.001, it could not recover them under section 37.009.”); *cf. Texas Dept. of Pub. Safety v. Alexander*, 300 S.W.3d 62, 79 (Tex. App.—Austin 2009, pet. denied) (UDJA claim cannot be used to circumvent specific jurisdictional requirements of the Texas Commission on Human Rights Act).

The State's reliance on *University of Texas at Austin v. Ables*, 914 S.W.2d 712 (Tex. App.—Austin 1996, no writ) is likewise misplaced. That case involved standard age and sex discrimination claims, and contrary to the State's contention, involved no claims brought directly under the Texas Constitution. *Id.* at 714, 715 n.4. After a verdict for the plaintiffs, the trial court entered a supplemental declaration that the University had deprived one plaintiff of due process of law in violation of article I, section 19 of the Texas Constitution, and awarded all plaintiffs their attorneys' fees. *Id.* at 714 & n.2. The Third Court properly concluded that the award of fees was inappropriate under the UDJA, because the case involved straightforward employment discrimination claims, in contrast to a challenge to the constitutionality of statutes, like this case (and the other cases described above). *Id.* at 717. But even that holding is dicta, because the court previously had concluded that (1) the declaratory relief awarded was outside the pleadings, *id.* at 715 & n.4; (2) the relief was unsupported by any factual findings of the jury or the trial court, *id.* at 714-15; (3) the evidence did not show that the plaintiff was deprived of a property interest, *id.* at 716-17; (4) the plaintiff waived any right to fees by failing to submit a question on fees to the jury, *id.* at 717; and (5) the trial court improperly considered *ex parte* evidence of fees. *Id.* at 718. In light of these facts, *Ables* does not control this Court's award of fees in this case.

Nor are any of the other cases cited by the State applicable here. These cases generally prohibit a plaintiff from “gaming the system” by seeking fees through the UDJA for claims that

otherwise would not support an award of attorneys' fees. *See, e.g., City of Hous. v. Texan Land & Cattle Co.*, 138 S.W.3d 382, 392 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (plaintiffs brought a claim for inverse condemnation and then *three years later*, amended their pleadings to add an identical declaratory relief claim and a request for fees).

Here, it is clear that the ISD Plaintiffs had no such intent to “game the system.” The Plaintiffs do not merely seek declarations of specific facts that would establish other statutory or common-law claims, *see MBM Fin.*, 292 S.W.3d at 670 (plaintiffs sought declarations regarding specific facts relevant to breach of contract claim) and *AVE, Inc. v. Comal Cnty.*, No. 03-05-00183-CV, 2008 WL 2065857 at *5-6 (Tex. App.—Austin May 14, 2008, no pet.) (mem. op.) (UDJA counterclaim redundant and attorneys' fees not allowed *because* county sought declaration *only* that plaintiff's actions violated local order (an action governed by TEX. LOCAL GOV'T CODE ANN. § 243.010) and *did not* seek declaration that the ordinance was constitutional), nor do they seek declarations solely about how the statute impacts them specifically. *See Kuntz v. Khan*, No. 05-10-00160-CV, 2011 WL 182882 (Tex. App.—Austin Jan. 21, 2011, no pet.) (plaintiff not entitled to fees under UDJA because, “[a]lthough she presents several constitutional arguments as to how the Department's actions affect her individually, she makes no broad constitutional challenge to the entire statutory scheme”). Rather, the ISD Plaintiffs seek broad declarations that the statutory structure of the school finance system is unconstitutional. FBISD Petition at ¶¶ 155-56, 158-59, 161-62; CCISD Petition at ¶¶ 58-59, 62-63; TTSFC Petition at ¶ 67; Edgewood Petition at ¶¶ 90-93; *see also Hot-Hed, Inc. v. Safehouse Habitats (Scotland), Ltd.*, 333 S.W.3d 719, 728 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (UDJA claim not redundant where it “constituted more than a request that the trial court repeat a factual finding”). Such a declaration is consistent with the

historical precedent of how school finance has been previously litigated⁶ and with the purpose and intent of the UDJA.⁷ *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004; *see also Democracy Coal.*, 141 S.W.3d at 296; *Lindsey*, 850 S.W.2d at 188.

In light of these circumstances, the State's argument that the ISD Plaintiffs utilized the UDJA in an attempt to "game the system" in order to obtain attorneys' fees is unpersuasive and incorrect.

B. The ISD Plaintiffs requested reimbursement of fees in amounts that are reasonable, necessary, and just.

The State argues, in the alternative, that even if attorneys' fees are permitted in this case under the UDJA, the Court should reduce the fees sought by each ISD Plaintiff to account for unreasonable, unnecessary, or unrecoverable time worked on the case. However, each of the ISD Plaintiffs submitted reasonable requests and supporting documentation that already reflected reduced hours to eliminate redundant or excess hours and reduced hourly rates for many of the attorneys involved. *See* Affidavit of Kevin T. O'Hanlon at ¶¶ 12-13 and Ex. B; Affidavit of George W. Bramblett at ¶¶ 12-13 and Ex. B; Affidavit of Richard E. Gray, III at ¶ 6 and Exs. F-G; Amended Affidavit of David G. Hinojosa, ¶¶ 21(d) – (g).⁸ Defendants do not submit any

⁶ *See, e.g., Edgewood I*, 777 S.W.2d at 392, 398. Other litigants have brought challenges under article VIII, section 1-e through the UDJA as well. *See Texas Mun. League Intergovernmental Risk Pool v. Texas Workers' Comp. Comm'n*, 74 S.W.3d 377, 387-88 (Tex. 2002) (a plaintiff insurance fund utilized the UDJA to challenge various Labor Code statutes as being in violation of article VIII, section 1-e).

⁷ In fact, the practice of using the UDJA to challenge the facial validity of statutes is so central to the act's purpose that the Texas Supreme Court recently needed to respond to an (erroneous) argument by the Texas Lottery Commission that it "does not waive immunity because it applies only to suits involving constitutional invalidation and not to those involving statutory interpretation." *Texas Lottery Com'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 634 (Tex. 2010).

⁸ The ISD Plaintiffs cite several Affidavits throughout the remainder of this reply. The Affidavit of Kevin T. O'Hanlon was filed on 3/5/2013 with the FBISD Plaintiffs' Notice of Filing. The Affidavits of George W. Bramblett and John Turner are included as attachments 1 and 2, respectively, to the CCISD Plaintiffs' Notice of Filing of Affidavits in Support of Attorneys' Fees, which was filed on March 5, 2013. The Affidavit of Richard E. Gray, III was filed on February 28, 2013 with the TTSFC Plaintiffs' Notice of Filing. The Affidavit of Mary T.

competing evidence challenging the reasonableness of the ISD Plaintiffs' fee requests, and in fact, bolster the reasonableness of each of the ISD Plaintiffs' fee requests with their own fee request, wherein Defendants seek to recover almost \$2.3 million for work performed by twenty-five different lawyers and ten legal assistants. This exceeds, and in some cases doubles, the amount sought by any ISD Plaintiff. The question of whether it is equitable and just to award any or all of the ISD Plaintiffs' reasonable and necessary fees "is a matter committed to the trial court's sound discretion." *Ridge Oil Co., Inc. v. Guinn Investments*, 148 S.W.3d 143, 161, 162 (Tex. 2004). The following addresses the primary objections raised by the State against all ISD Plaintiffs' fee requests.

1. Participation by more than one attorney at trial or other important case events for a plaintiff group was both reasonable and necessary.

The State argues that each ISD Plaintiff should recover attorney fees for only a single attorney during trial and for a total of only seven hours for each day of trial. State's Response at 11. Not only do Defendants fail to cite any authority for this proposition, but such a limitation is neither equitable nor just. First, the State's own trial strategy and conduct demonstrates the necessity and reasonableness of participation by more than one attorney at trial for the ISD Plaintiffs. The State always had more than one attorney, and often more than two or three attorneys, participating at trial. Because the State's own fee request does not include detailed time records that demonstrate the daily work performed by its attorneys, it is impossible to determine precisely the number of attorneys or hours for which the State seeks to recover fees for

Henderson was filed on March 5, 2013 with the Defendants' Notice of Affidavit Regarding Attorney's Fees and Costs. The Amended Affidavit of David G. Hinojosa and the Amended Affidavit of Roger L. Rice are attached are being filed today, March 28, 2013, with the Edgewood Plaintiffs' Notice of Filing of the Amended Affidavits. The original affidavits by Mr. Hinojosa and Mr. Rice were filed with the Court on March 5, 2013 with the Edgewood Plaintiffs' Notices of Filing.

trial activities (or any other case activities, for that matter). However, the sheer size of the State's fee request (\$2.3 million), as well as the total number of hours (12,077) worked by the State's twenty-five lawyers, indicates that the State is seeking to recover for the work of more than one attorney at trial each day.

Moreover, the participation by more than one attorney for each plaintiff group at trial was entirely reasonable and necessary, given the circumstances of the case. Because of the complexity of the issues and number of witnesses and exhibits in the case, it was reasonable for a lead attorney to be supported by another attorney in presenting or cross-examining a witness, for example. Also, it was the practice of the ISD Plaintiffs as well as the State to have different attorneys take the lead on different witnesses which, again, was entirely reasonable and necessary given the compressed time frame for this case from start to finish. Because more than one witness testified on most days during the trial, it was reasonable and necessary for more than one attorney for each group to be at trial to present or cross examine witnesses.

Moreover, attorneys not actively involved in presenting or cross examining a witness at any given time were not sitting idle. With real time trial transcripts and the electronic access to trial exhibits, attorneys were able to perform other necessary casework while at trial, including preparations for upcoming witnesses and updates and revisions to proposed findings of fact and conclusions of law.

The State's seven hour limit is also unreasonable. Although actual testimony time may have in fact been seven hours or less on most trial days, this does not account for preparation and follow-up work that was performed before and after trial each day, as well as during lunch in many cases. Once again, although the State has not provided daily time records to support its

own fee request, it is most assuredly the case that the State's lawyers worked more than the seven hours per day that the Court was officially in session during the trial.

2. The ISD Plaintiffs needed to be actively involved in the Intervenor and Charter School Plaintiffs' claims in order to prosecute and defend their own claims.

The State claims that none of the ISD Plaintiffs should recover any fees for work related to the Intervenor or Charter School Plaintiff claims. However, based on the Court's rulings, the Intervenor and Charter School Plaintiffs were fully participating parties in this case and at trial. The participation of these groups in this case was based, at least in part, on the overlap and close relationship between their claims and those of the ISD Plaintiffs. *See* Order Granting Agreed and Unopposed Motion to Consolidate for Filing Purposes, Discovery, and Trial Dated April 2, 2012; Order Granting Agreed and Unopposed Motion to Consolidate for Filing Purposes, Discovery, and Trial Dated August 10, 2012. The Intervenor and Charter School Plaintiffs' cases in chief lasted eight days, and each of those parties questioned witnesses and introduced evidence during the ISD Plaintiffs' cases as well as the State's case. It is simply nonsensical to suggest that the ISD Plaintiffs could have or should have refrained from any involvement or activity during the Intervenor and Charter School Plaintiff cases. The ISD Plaintiffs' supporting affidavits demonstrate the necessity of involvement during these portions of the trial, and the State has not provided any evidence to the contrary. *See* Affidavit of Kevin T. O'Hanlon at ¶ 17; Affidavit of John W. Turner at ¶ 11; Amended Affidavit of David G. Hinojosa at ¶ 32.

The trial record demonstrates the reasonableness and necessity of the ISD's participation in the Intervenor and Charter School Plaintiffs' portion of the trial. First, the State repeatedly attempted to use Intervenor and Charter School Plaintiff witnesses to elicit testimony to support the State's defense and to attack the ISD Plaintiffs' claims. For example, the State tried to use

testimony and exhibits from Intervenor witness Eric Hanushek to attack Plaintiffs' witnesses and to bolster its position regarding the alleged lack of relationship between resources and student performance. *See, e.g.*, 1/16 Tr. at 82-88 (eliciting criticism of Plaintiffs' expert); 88-90 (eliciting criticism of class-size research relied on by Plaintiffs' witnesses); 108-10 (eliciting criticism of superintendent testimony); *see also* 1/15 Tr. at 123-24 (eliciting testimony from Intervenor expert Paul Hill regarding whether school districts can prove need for additional resources). The State similarly used Charter School witness Craig Wood, an expert for the State in *WOC II*, to bolster its position regarding the correlation between money and spending, *see* 1/30 Tr. at 88-89, and to reinforce its position regarding the purported evidentiary standard for facilities claims. *Id.* at 93. The State also regularly defended against the intervenors' claims that state mandates create "inefficiencies" by attempting to elicit testimony from Intervenor witnesses to the effect that any "inefficiencies" were the result of "discretionary" acts on the part of the school districts. *See, e.g.* 1/15 Tr. at 113-23.

Second, the ISD plaintiffs were able to use Intervenor and Charter School Plaintiff witnesses to obtain testimony favorable to their claims. *See, e.g.* 1/17 at 90-92 (McAdams testimony regarding increasing costs faced by districts), 139-41 (Hammond testimony regarding extent of current crisis facing Texas).

Finally, the ISD Plaintiffs' affidavits and time records demonstrate that they exercised proper judgment and restraint by limiting the number of attorneys involved for each group in the later days of the trial. *See* Affidavit of Kevin T. O'Hanlon at Ex. B, p. 38-39; Affidavit of George W. Bramblett at Ex. B, p. 105-08; Affidavit of Richard E. Gray, III at Ex. F, Invoice # 4278, p. 7-13; Amended Affidavit of David G. Hinojosa at Ex. A (noting fewer Edgewood ISD attorneys attending trial for dates of Intervenor and Charter School Plaintiffs' testimony)

3. Travel was reasonable given the nature of the case.

It is not unusual for attorneys to charge for time spent traveling on business and to recoup the out-of-pocket costs incurred in such travel. Whether to reduce costs for travel, and if so by how much, is within the sound discretion of the court. *See, e.g., Watkins v. Fordice*, 7 F.3d 453, 459 (5th Cir. 1993) (abuse of discretion standard applied). The State argues that the ISD Plaintiffs should not recover fees for any travel time because each plaintiff group could have filed a lawsuit somewhere other than Austin. Presumably, the State is suggesting that each ISD Plaintiff should have filed its own lawsuit in the city of its lawyers' primary offices, resulting in separate lawsuits in Houston, Dallas, San Antonio, and Austin. Of course, had the ISD Plaintiffs actually done this, the State certainly would have moved to consolidate the lawsuits and transfer venue to Austin under section 15.002 of the Texas Civil Practices and Remedies Code. Even if the parties had jointly filed a single lawsuit in one of the other cities above, that hardly would have decreased the need for attorneys from other locations including, of course, the State's lawyers, to travel to Houston, Dallas or San Antonio. There is a reason that every other school finance case has been tried in Travis County—it is centrally located, the home of the primary offices of the State and its lawyers, and its courts are well prepared to handle the legislative and constitutional issues central to school finance litigation. The State's argument that travel could have been minimized by holding this trial elsewhere is simply untenable.

Moreover, the State's own position in this very case was that most, if not all, case activities should take place in Austin. For example, the State's position was that depositions should take place in Austin, even for witnesses not from Austin, and absent agreement otherwise the State generally noticed depositions for Travis County. *See, e.g., Defendants' Deposition Notices for Sconzo, Bamberg, Hanks, Ponce, Williams, and Limon*, attached hereto as Exhibit A. Further, when depositions were held outside of Austin, the State similarly objected to

compensating for travel time to the other cities, even when a firm had no attorneys in the city where the deposition was held. *See, e.g.*, State's Response at Ex. A, p. 8, 13, 27, 64. Moreover, during the most active time during discovery, multiple depositions occurred on the same day. For example, three depositions were held on September 12, September 18, September 21, September 25, and September 26, and four depositions were held on September 5 and September 27. On several other days, two depositions were held at the same time, or were held while Court was in session. As such, the State's suggestion that Austin depositions should simply have been staffed by Austin lawyers was simply not an option in this case.

4. The complexity, breadth, and unique aspects of this case support the award of ISD Plaintiffs' fee requests.

The State suggests that the experience of some ISD Plaintiff attorneys in past school finance litigation somehow militates against the requested fees, without explaining the manner or amount by which the fee requests should be impacted. The State asserts that the "facts and law relevant to this case are neither new nor novel to these lawyers." *See* State's Response at 11. However, in its own fee request, the State takes exactly the opposition position, stating:

Although this case is similar in many regards to previous school finance litigation, it is also unique in that the facts and circumstances differ from those in previous challenges to the constitutionality of the school finance system because legislative policy changes made since the earlier school finance cases. The parties advanced many new legal and factual theories, and this case dealt with unique claims concerning inefficiencies and inequities related to charter schools in the State. As a result, Counsel spent considerable time and resources adequately researching and responding to Plaintiffs and Intervenors' claims.

Affidavit of Mary T. Henderson at ¶ 9.

The ISD Plaintiffs' supporting affidavits demonstrate that, in reality, while there certainly is overlap with and similarity to past school finance cases, this case was more broad and far-reaching than any of the prior school finance cases. With 45 trial days over a three-

month period, approximately 80 live witnesses, more than 5,500 admitted exhibits, and trial completed in slightly over a year from the filing of the ISD Plaintiffs' lawsuits, it is little surprise that extraordinary effort on the part of many lawyers for all of the parties in this case was necessary and reasonable. As the Court stated on February 4, 2013, "I don't believe that there's ever been a more expeditious trial of a school finance case anywhere in the United States than what has occurred here." 2/4 Tr. at 89.

5. A review of certain specific objections lodged by the Defendants to the ISD Plaintiffs' fee requests illustrates that the State's objections are not reasonable or meritorious.

a. Reply to objections to CCISD Plaintiffs' Requests

The CCISD Plaintiffs provided testimony from two experts about the reasonableness and necessity of their attorneys' fees. *See generally* Affidavit of George W. Bramblett; Affidavit of John W. Turner. The State has not offered any expert testimony to rebut these expert opinions, but has objected to some of the fees the CCISD Plaintiffs seek. The State's opposition to the CCISD Plaintiffs' fee request lacks merit for each of the reasons outlined above, and for the following specific reasons.

First, the CCISD Plaintiffs have not requested fees for any duplicative work. Each attorney representing the CCISD Plaintiffs played a unique and necessary role in this litigation, even at times when more than one attorney attended the same day of trial or participated in the same meeting or phone call. The State objects to attorneys' fees incurred on days in which appellate partner Mark Trachtenberg and trial partner John Turner both attended trial. But both attorneys' presence was necessary at trial each day they attended because of the distinct role that each played in the litigation. Mr. Trachtenberg served as lead counsel for the CCISD Plaintiffs and was the only attorney representing any of the ISD Plaintiffs' groups who focuses his practice

on appellate law. Affidavit of George W. Bramblett at ¶ 10. He also took the lead to prepare the findings of fact and conclusions of law requested by the Court. *Id.* Mr. Turner examined many of the witnesses on behalf of the CCISD Plaintiffs and, as the time entries reflect, contributed significantly to the overall strategy of the case. Therefore, it was often necessary for both attorneys to attend trial to participate in the proceedings and to stay apprised of the evidence entering the record.

The State improperly objects to fees incurred on days in which other attorneys' presence was also necessary at trial. For example, the State objects to time entries by Mr. Turner and associate Adam Sencenbaugh on a day in which Mr. Sencenbaugh attended trial to present an expert on pre-K, and Mr. Turner presented a summary of evidence on the transition from TAKS to STAAR. State's Response at Ex. A, p. 40 (11/6/12 entry); *see also* Affidavit of George W. Bramblett at Ex. B, p. 65. Counsel for the CCISD Plaintiffs have already reduced the billing statements for redundant hours. Affidavit of George W. Bramblett at ¶ 13. None of the fees that the CCISD Plaintiffs seek result from duplicative efforts.

The CCISD Plaintiffs also incurred reasonable and necessary fees to defend against the Intervenor's and Charter School Plaintiffs' claims. The State has objected to fees that the CCISD Plaintiffs incurred in connection with testimony of witnesses, such as Dr. Eric Hanushek, that the State attempted to use to support its case. *See, e.g.*, State's Response at Ex. A, pp. 44-47. The State even objected to the time the CCISD Plaintiffs spent preparing a motion and arguments challenging the State's right to ask Dr. Hanushek friendly questions on cross examination. *Id.* at Ex. A, pp. 45-46. These fees were both reasonable and necessary to defend against the State's claims.

In addition, the CCISD Plaintiffs have already reduced their requested fees by five percent to account for any fees related to the Intervenor's and Charter School Plaintiffs' claims that may not be recoverable. Affidavit of John W. Turner at ¶ 10. The CCISD Plaintiffs provided expert testimony that most, if not all, of the fees incurred in connection with the Intervenor's and Charter School Plaintiffs' claims were recoverable, and that the five percent reduction was sufficient to offset any fees related to the Intervenor's or Charter School Plaintiffs' claims that might not be recoverable. *Id.* The State has altogether failed to address this reduction or to explain why it is insufficient.

The CCISD Plaintiffs' attorneys' fees related to travel were also reasonable and necessary. This lawsuit was necessarily filed in Austin as discussed above, and the CCISD Plaintiffs reasonably staffed this lawsuit with several lawyers who reside outside of Austin. This case involved clients and witnesses from across the State, and therefore travel was a necessary expense of the litigation. Considering the expertise of the counsel and the statewide nature of the claims, the CCISD Plaintiffs reasonably selected counsel from various parts of the state.

Mr. Trachtenberg serves as lead counsel for the CCISD Plaintiffs and offers unique school finance expertise, having represented a group of plaintiffs in the last school finance litigation. *See id.* at Ex. B, p. 126 of PDF. Mr. Trachtenberg resides in the Houston area, *see id.*, which required him to travel to depositions, trial, hearings, and other meetings outside the Houston area. The State's objections to Mr. Trachtenberg's travel time is unfounded.

Several other attorneys representing the CCISD Plaintiffs reside in the Dallas area. *See id.* at Ex. B, pp. 131, 135, 139 of PDF. Many of the depositions in this case took place in Dallas, and the attorneys living in this area were able to take or defend depositions and prepare witnesses for depositions without incurring any travel time. *See, e.g.*, Affidavit of George W. Bramblett at

Ex. B, pp. 33-34 (8/13/12 and 8/15/12 entries), 46-48 (9/17/12 - 9/19/12 and 9/21/12 entries). One attorney for the CCISD Plaintiffs resides in Austin, *see* Affidavit of John W. Turner at Ex. B, p. 137 of PDF, and handled a number of the depositions taking place in or near Austin. *See, e.g.,* Affidavit of George W. Bramblett at Ex. B, pp. 45-46 (9/17/12 - 9/18/12 entries).

The State also objects to three categories of fees as “not billable” – (1) fees related to public relations and media outreach, (2) fees incurred to select potential plaintiffs, and (3) fees incurred as a result of travel to trial. The CCISD Plaintiffs reasonably include expenses related to contact with the media, as the case was closely followed in the media and the attorneys were an appropriate source of information for media representatives. The CCISD Plaintiffs also necessarily incurred attorneys’ fees to select the six named plaintiffs in this litigation in order to ensure that the named plaintiffs were representative of districts across the state. Selection of school districts to serve as named plaintiffs, among the 88 districts represented by Haynes and Boone, served to reduce cost and expense, not to increase it. Finally, the State has objected to some (but not all) of the CCISD Plaintiffs’ counsel’s travel time as “not billable.” State’s Response at Ex. A, pp. 40-44. For the reasons discussed above, the CCISD Plaintiffs reasonably and necessarily incurred fees related to travel.

The Court should find that all of the fees requested by the CCISD Plaintiffs are both reasonable and necessary.

b. Reply to objections to TTSFC Plaintiffs’ Requests

The State’s opposition to the TTSFC Plaintiffs’ fee request lacks merit for each of the reasons outlined above, and for the following specific reasons. First, in addition to presenting the adequacy and lack of meaningful discretion tax claims, TTSFC presented evidence and witnesses to support its claim that the disparities between tax effort and yield had reached a level

in which the financial inefficiency of the system violated art. VII, §1. This claim required mastery and organization of complex financial data and required the involvement of more than one attorney.

Exhibit A to the State's Response is set up to show an objection to all the time on a particular day when by asterisk the State explains it is only objecting to a portion of the time. This approach results in an overstatement of their objection. For example, the State objects to the "travel to State Law Library to get 2nd article" in TBH's time (10/26). Ex. A to State's Response at 22. The time entry on this date for TBH shows that she also "review[ed] an article by A. Kaufman on History of Edgewood and Fundamental Rights under Texas Constitution; . . . create[d a] list of WOC II witnesses; [and] review[ed] portions of WOC II transcript." In context, the ten minutes of travel to the State Law Library is a minuscule portion of the three hours billed. The State follows this same technique in its objections to more than one attorney⁹ attending trial resulting in objections that are more form than substance. For example, the State objects to the time entries of 1/7/13 for RGIV, REG, and TBH as duplicative, without noting that, while attending trial, RGIV prepared for the cross-examination of Lisa Dawn-Fisher and reviewed the power point to be used in her cross and that TBH, while attending trial, prepared for the cross of the State's witness, L. Roska and edited the Findings of Fact and Conclusions of Law. This pattern of multi-tasking is present throughout the time entries for the TTSEC plaintiffs.

⁹ As noted above the complexity of the case, the number of witness and the voluminous documents required that lead counsel be supported by at least one other attorney. Each of the TTSEC attorneys played a unique and necessary role in the trial of this matter. RGIV had the special responsibility throughout the case to deal with all electronic evidence necessitating that he understand the flow of testimony, and TBH shared witness responsibility with REG, prepared superintendent testimony, and had the greatest familiarity with the discovery obtained by the State. TBH is also board-certified in appellate law and will be active in any appeal of the court's judgment.

Defendants' objections to TTSFC's fee request are flawed throughout. Their first objection to a 10/23/01 entry by RGIV objects to an entry that is not in TTSFC's fee request and is, in fact, for an impossible date.¹⁰ It is difficult to understand why the State would object to entries on 12/13, 16, 23 and 24 of 2012 reviewing Dr. Baker's writings for potential cross-examination areas. Such use of time is certainly pertinent to putting on the case. B. Lesley was indeed withdrawn by TTSFC as a witness, but her deposition was taken, and could have been used by the State, so any entries preparing Ms. Lesley or reading materials she shared for the cross of other witnesses is billable. (TBH, 12/8/11, 1/9/12.) The State objects to time claimed by TBH to review questionnaires filled out by potential plaintiff districts which certainly falls in the area of witness preparation. (1/12/12.)

As Mr. Gray explained in his affidavit "the preparation of this case for trial involved, among other things, meetings and interviews with scores of witnesses and client employees; the review, analysis, and production of an extremely large volume of client documents; the review and analysis of an extremely large volume of documents produced by the State Defendants; the review and analysis of many expert reports; the assistance of numerous expert witnesses, written discovery, and depositions of more than 90 factual and expert witnesses. The trial lasted 45 days during which 80 witnesses testified in person and more than 5,500 exhibits were admitted into evidence. The trial was conducted in a "paperless" fashion, which meant that thousands of documents had to be imaged, managed, and presented electronically at trial. The trial was "fast tracked" which necessitated multiple attorneys' involvement and the involvement of legal assistants." Nevertheless, Mr. Gray testified that he

¹⁰ The State correctly notes that the entry for REG on 8/9/10 is duplicative.

reduced the fee request by 5% to more than cover any time that was spent on the prosecution of the claims for which the TTSFC either nonsuited or did not prevail on, any non-recoverable time and further to cover any potential duplication of effort. For the reasons stated here in, the Court should find that all of the fees requested by the TTSFC Plaintiffs are both reasonable and necessary.

c. Reply to objections to FBISD Plaintiffs' Requests

The State's specific objections to the FBISD Plaintiffs' fee requests fall into the categories discussed in subsections one through three above and, as such, the objections are without merit for the reasons outlined in those sections. In addition, the FBISD plaintiffs would point the Court to the following objections, which illustrate the unreasonableness of the State's objections:

The State often objects to hours as "non-billable" even when the description reveals work that was clearly necessary for litigation. For example, the State has objected to time spent preparing proposed findings of fact and conclusions of law or preparing a motion that was filed and argued before this Court as "non-billable." *See, e.g.,* Ex. A to State's Response at 6, 15.

In addition, the State objects to any entry where time spent preparing and attending trial were combined into a single entry that was more than the hours the State deems reasonable as "non-billable." *See, e.g., id.* at 15. This, combined with the objection to the other attorneys' presence at trial as duplicative, means that the State has objected to paying for virtually all of the time spent in trial by any of the attorneys for the FBISD Plaintiffs. *Id.* at 14-20. In addition, while the FBISD Plaintiffs maintain that the presence of more than one attorney at trial and other important case events was reasonable and necessary, and not duplicative, for the reasons outlined above, they also observe that the State regularly truncated descriptions in its objections, so as to

make it appear as if an attorney billed only for attending trial, when in fact the attorney noted the additional reasonable and necessary work the attorney was doing – before, during, and after trial. *Compare, e.g., id.* at 15 (10/31 entry for Thompson, 11/7 entry for McIntush) *with* Ex. B to Affidavit of Kevin T. O’Hanlon (same).

d. Reply to objections to Edgewood Plaintiffs’ Requests

Defendants' specific objections to the Edgewood Plaintiffs’ request for attorneys’ fees are overreaching, misleading, unfounded and legally unsupported by the record. In addition to the reasons stated above, Defendants’ objections fail for the following reasons.

First, regarding Defendants’ complaint that travel was unnecessary because Plaintiffs could have retained local counsel in Austin, the Edgewood Plaintiffs’ non-profit counsel attempted to retain local pro bono counsel as co-counsel to reduce counsel’s travel time but was unsuccessful due to the enormity of both the cost and time commitment of this case. *See* Supplemental Affidavit of David Hinojosa, Ex. 2 at ¶ 3. Edgewood Plaintiffs include low-wealth school districts and four parents of low income and English Language Learner children, and therefore, their retained counsel, MALDEF, did not charge for their legal services. *See* Amended Affidavit of David G. Hinojosa at ¶ 18. There are very few non-profit civil rights legal organizations like MALDEF or private law firms that can be persuaded to represent the plaintiffs, and MALDEF is the only non-profit civil rights legal organization in Texas that pursues these types of cases. *See* Ex. 2 at ¶ 2. In fact, the only pro bono counsel Edgewood Plaintiffs were able to retain were two lawyers from a non-profit legal organization in Boston, Massachusetts, META, and two lawyers from a New York-based law firm, Fried Frank, LLP, and who contributed part-time. *Id.* at ¶ 3. Because of the extensive discovery propounded by Defendants on the Edgewood Plaintiffs, the voluminous documents produced by Defendants in

response to Plaintiffs' request, the multiple depositions set in one day and on consecutive days both before and during trial, the complex and numerous factual and legal issues presented by seven different parties—among other reasons— it was necessary for Plaintiffs' retained non-profit counsel, MALDEF, to seek assistance from other counsel. *Id.* Defendants provide no sound explanation or legal authority as to why Edgewood Plaintiffs should be penalized for securing out-of-town nonprofit and pro bono counsel, because this case was brought in Travis County, a convenient venue for Defendants.

Furthermore, Defendants wrongly aver that “[a]ll parties seek compensation for travel time and bill their regular hourly rate for that time.” State’s Response at 10. Edgewood Plaintiffs’ lead counsel billed only for one-half of the rate and such time, although compensable, was not duplicated for the attorneys when traveling together. *See* Amended Affidavit of David G. Hinojosa at ¶ 21(f). Edgewood Plaintiffs’ co-counsel, META, billed at the regular rate for travel related to the presentation and defense of the expert witnesses they were assigned but billed mostly for only one-half (one-way) of the total travel time. *See* Ex. 3, Affidavit of Roger L. Rice at ¶ 2.

Defendants also take issue with a number of Edgewood’s tasks they deem as “not billable.” For example, they list twelve telephone conferences between Edgewood Plaintiffs’ co-counsel Roger Rice and lead-counsel David Hinojosa. *See* State’s Response, Ex. A at 50-51. As Mr. Rice explains in his second affidavit, these conferences, which totaled fewer than six hours, were among a much larger number of conferences between the two attorneys discussing trial strategy, discovery, witness preparation and other aspects of the case. *See* Ex. 3 at ¶ 1. The vast majority of these compensable conferences were not claimed by either counsel in the exercise of billing judgment. *Id.* Other tasks attacked by Defendants as “not billable,” without citation to

legal authority, are equally without merit, such as: Defendants' objection to counsel's phone calls with, and investigation of, potential experts and review of contract with experts (*see* State's Resp., Ex. A at 50, "5/2/12 and 5/15/12 Rice"); meetings and correspondence with clients (*see id.* at 62, various entries by Hinojosa); conferences regarding experts and expert reports and drafting deposition preparation outlines (*see id.* at 63-64, various entries by Hinojosa). These are all compensable, reasonable and necessary tasks to conduct the litigation at issue.

Defendants further aver that Edgewood Plaintiffs' counsel performed duplicative work but these objections are also unfounded. As stated earlier, and as reflected by Defendants' own fee application and conduct, in a case this large and complex, it is reasonable and necessary for more than one counsel for each plaintiff group to attend trial. *See also* Ex. 2 at ¶ 7. In addition, Edgewood Plaintiffs did not have access to real-time transcripts and one attorney was often assigned to drafting notes in order to update the findings of fact as required by the Court. *Id.* One attorney was also required oftentimes to operate the computer for the paperless trial and this attorney often collaborated with the attorney presenting or cross-examining the witnesses. *Id.* In addition, Edgewood Plaintiffs' attorneys often collaborated during trial on cross-issues between witnesses presented by other parties and often worked simultaneously during the day on other trial work, such as future cross-examinations. *Id.* Defendants further overreach by objecting to some hours as "duplicative" where Edgewood Plaintiffs' attorneys attended trial and cross-examined and/or presented witnesses on direct on the same day. *See, e.g.,* State's Response at 66 (10/24/12, Bono Direct of Limon); 67 (11/5/12, Hinojosa Cross of Pierce); 68 (11/6/12, Bono Direct of Barnett and 11/7/12, Bono Cross of Duncombe); 69 (11/14/12, Bono Direct of Belfield and 11/20/12, Hinojosa Direct of Cortez); 70 (11/26/12, Bono Cross of Carstarphen; 11/29/12, Hinojosa Cross of Kallison and Direct of Aguilar-Diaz, and Bono Direct of Cervantes); 79

(2/4/12, Hinojosa Trial-- despite Mr. Hinojosa having presented closing arguments that day on behalf of the Edgewood Plaintiffs); *compare also* Amended Affidavit of David G. Hinojosa at ¶ 8 (describing appearance of numerous defense counsel in court each day of trial).

The 7.5 hours billed for many days of trial by Edgewood Plaintiffs is also accurate and reasonable. Edgewood Plaintiffs did not have the benefit of 25 attorneys and a fleet of support staff, as Defendants did, and instead relied on a smaller, dedicated team that was often required to multitask and utilize every minute to accomplish litigation tasks. Oftentimes, counsel for Edgewood Plaintiffs arrived 15-25 minutes early before trial and continued to work during that time in preparation for trial. In addition, counsel often continued trial work during lunch and after the close of the day in court. *See id.* at ¶ 6. Furthermore, Defendants' representation that Edgewood Plaintiffs billed excessively because some of the same issues and witnesses were present in a recent Colorado school finance case that they litigated is also wholly unsupported and misleading. As stated above, Defendants have already acknowledged the novelty and complexity of this case in their affidavit in support of their fee request. Moreover, the Colorado case was vastly different in many of the legal and factual issues at issue here, ranging from entirely different school finance systems to vastly different curriculum, testing and accountability standards to different legal claims and evidentiary standards, not to mention substantially fewer affected school districts. *See id.* at ¶ 5. Only one witness, Dr. Steven Barnett, testified in the Colorado case for the plaintiffs represented by MALDEF and in this case. *Id.* Edgewood Plaintiffs also already discounted many hours related to "learning curve" issues for attorneys who were new to Texas school finance (*see* Amended Affidavit of David G. Hinojosa at ¶ 21(e)), and Defendants do not appear to challenge directly any of the hours submitted by Edgewood Plaintiffs' counsel on the grounds that such was excessive or unnecessary due to the prior

experience of the attorneys in the Colorado litigation. *See* State's Response, Ex. A at 50-52 and 63-79.

Finally, regarding Defendants' claims that attorneys' fees related to Charter and Intervenor claims were unreasonable, the Edgewood Plaintiffs raised unique claims pertaining to the equitable and adequate availability of resources in property-poor school districts, particularly those with substantial numbers of ELL and low income students. Ex. 2 at ¶ 10-11. It would have been irresponsible and unethical for Edgewood Plaintiffs' counsel to simply have ignored analyzing the implications of what the Charter School Plaintiffs were presenting through their lengthy exhibits and testimony that might directly have had an impact on those claims. *Id.* at ¶ 10. In addition, Edgewood Plaintiffs were instrumental in defeating Intervenors' claims that resources were not the issue, but instead, other statutory reforms were needed to address the deficiencies in the system, such as eliminating the class size cap for grades K-4, teacher certification requirements, and bilingual education. *Id.* at ¶ 11. Assuming equitable and adequate resources are available, these types of statutory requirements benefit low income and ELL students and eliminating them would only harm the students. *Id.* at ¶ 11. Accordingly, Edgewood Plaintiffs took the lead on many of the Charter and Intervenor witnesses and either helped eliminate them from the witness lists or limited their testimony, and, at times, used their testimony to bolster Edgewood Plaintiffs' claims. *Id.* at ¶ 11.

In the exercise of billing judgment, Edgewood Plaintiffs' counsel did not seek fees for otherwise compensable time amounting to several thousand dollars and further deducted an additional 5% from the total fee and cost request. *See* Amended Affidavit of David G. Hinojosa at ¶¶ 21(d)-(g). If anything, in light of the necessary work performed with the manpower

available, Edgewood Plaintiffs under-billed the case, but are content with being awarded the fees and costs requested in their affidavits.

e. Summary

This case involves a statute that expressly permits recovery of reasonable and necessary costs and attorneys' fees. TEX. CIV. PRAC. & REM. CODE § 37.009. The costs in question are reasonable in amount and were necessarily incurred by the attorneys in prosecuting the UDJA action. Thus, the costs are recoverable.

C. Equity and justice require that the full amount of attorneys' fees requested by the ISD Plaintiffs be awarded and that the Defendants' request be denied.

The ISD Plaintiffs are the prevailing party on each of their claims. Indeed, this is the fourth school finance trial in twenty-five years—and the second in the last decade—in which Plaintiff school districts have prevailed on a claim that the school finance system violates one or more sections of the Texas Constitution. *See generally, Edgewood I*, 777 S.W.2d 391; *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992); *WOC II*, 176 S.W.3d 746. The evidence presented at trial and from the State's own witnesses made it clear that the State has made no effort to ascertain the cost of meeting its rising standards. *See* 1/8 Tr. at 69-71, 123-24, 137, 192-95; 1/9 Tr. at 19-20, 174-77; 12/10 Tr. at 126-27; 12/11 Tr. at 163-65, 175; 1/7 Tr. at 154-56; 1/10 Tr. at 81, 185-86; RR17:37. The State has not complied with its constitutional duty and statutory duty to determine the costs of the formulas in 15 years, and has rarely taken action to change the formulas when it has completed the studies. *See* RR10:154-55 (referencing Ex. 6352 at 9); Ex. 1328 at 6-12. Instead, the State has cut education funding by over \$5 billion and allowed per-student spending, adjusted for inflation, to fall \$800 below 2003-

04 levels, while at the same time drastically increasing standards. *See* Ex. 6322, Moak Report, at 47-48; RR6:200-02 (referencing Ex. 6349 at 43). The State has also allowed the gaps in funding to increase to levels not seen since before 1993. *See* RR23:24-31.

The ISD Plaintiffs acknowledge that the prevailing party is not automatically entitled, as a matter of law, to attorneys' fees. However, here the prior school finance cases and the evidence in this one reveal a pattern wherein the State repeatedly chooses to bury its head in the sand—refusing to calculate the cost of meeting its own standards so that it does not “have” to fund them—until ordered by the courts, under threat of an injunction that would shut down the public schools of this state, to comply with the clearly established constitutional standards. This unfortunate pattern makes the awarding of fees to the prevailing ISD Plaintiffs' more than equitable and just.

For the same reasons, Defendants' request for attorneys' fees should be denied. It would be inequitable and unjust to take resources from the very school districts which do not have enough resources to provide a general diffusion of knowledge to their school children and which have no meaningful discretion left over their local tax rates to pay the fees of the Defendants, who did not prevail on any of the claims asserted by the ISD Plaintiffs.

D. Defendants Failed to Establish That Their Request for Attorneys' Fees is Reasonable and Necessary.

The Court must make a factual determination regarding the reasonableness and necessity of Defendants' fee request. *See Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998).

Because the State includes no description whatsoever of the activities performed, there is no way for the Court to determine factually whether its request is reasonable and necessary. *See generally* Affidavit of Mary T. Henderson at Ex. A. The State's request for attorneys' fees includes only lump sum amounts for its attorneys. *See generally* Affidavit of Mary T.

Henderson at Ex. A. Similarly, the State provides no explanation of the columns and categories of charges contained in its Exhibit B, nor how it relates to the rates listed in its affidavit. *Compare* Affidavit of Mary T. Henderson at ¶ 11 with Ex. A. There is thus no way for the parties to make itemized objections in the same manner as the State has done in response to Plaintiffs and Intervenors' requests, and it is therefore impossible for the Court to discern what time was duplicative or unnecessary.¹¹

Defendants have also failed to establish how they were prevailing parties in this case, for what claims they seek reimbursement, or why reimbursement of their fees related to the claims on which they did not prevail is nonetheless allegedly equitable and just. *See Hagedorn v. Tisdale*, 73 S.W.3d 341, 353 (Tex. App.—Amarillo 2002, no pet.) (holding that court may consider relative success of parties when determining fees). To the extent that Defendants assert that they are entitled to reimbursement for prevailing against the Charter and Intervenor claims, they fail to establish that they segregated their fees appropriately. *See generally* Affidavit of Mary T. Henderson & Ex. A; *see also Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 313 (Tex. 2006) (holding that when a party is entitled to attorneys' fees from the adverse party on one cause of action but not another, the party claiming fees must segregate the recoverable fees). Because the segregation test is focused on which legal services were necessary for each claim, it is impossible to make a proper evaluation based on Defendants' fee affidavit. *See Varner v. Cardenas*, 218 S.W.3d 68, 69 (Tex. 2007).

¹¹ This level of detail is especially essential to make a reasonableness determination in this case, where there were as often as many as seven of Defendants' attorneys attending court on any given day of trial, and often multiple attorneys attending depositions and hearings related to this case.

In addition, in order to demonstrate reasonableness, a party should demonstrate the experience, reputation, and ability of the attorney performing the services. Tex. Disc. R. Prof'l Conduct 1.04(b)(7); *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818-19 (Tex. 1997). The State has only provided information regarding the qualifications and experience levels of three of the twenty-five attorneys¹² for whom it is claiming fees, and did not provide information regarding the experience levels of at least three attorneys for whom the State seeks reimbursement for more than 1,000 hours of work in this case. See *id.* at 12.

Further, the State provides no explanation of the columns and categories of charges contained in Exhibit A to its Notice of Affidavit Regarding Attorney's Fees and Costs, nor how it relates to the rates listed in its affidavit. Compare Affidavit of Mary T. Henderson at ¶ 11 with Ex. A.

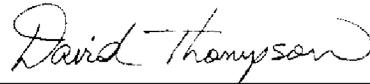
CONCLUSION

For the foregoing reasons, the ISD Plaintiffs respectfully request that the Court grant the full amount of attorneys' fees requested by the ISD Plaintiffs and deny the Defendants' request for attorneys' fees.

¹² In fact, at least one of the individuals listed by the State as an attorney is a legal assistant, not a licensed attorney. See Affidavit of Mary T. Henderson at ¶ 11. While the ISD Plaintiffs are certain this was an unintentional mistake on the part of Defendants, it was only caught through the independent knowledge of Plaintiffs' attorneys—knowledge which does not extend to all of the individuals for whom the State seeks reimbursement. Further, if the same mistake led Defendants to calculate this individual's fees at the rate listed in the affidavit, they are inadvertently charging almost twice as much for the work of this individual as for the work of the State's other legal assistants. *Id.* While the numerical amount of this mistake is relatively minuscule compared to the amount of fees requested by the State, it illustrates the problems that result from the State's failure to adequately support and document its attorneys' fee request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded on this 28th day of March, 2013 to counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure, as follows:

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THE TEXAS TAXPAYER & STUDENT §
FAIRNESS COALITION, et al; §
CALHOUN COUNTY ISD, et al; §
EDGEWOOD ISD, et al; §
FORT BEND ISD, et al. §
Plaintiffs §

IN THE DISTRICT COURT

JOYCE COLEMAN, et al §
Intervenors §

vs. §

200th JUDICIAL DISTRICT

ROBERT SCOTT, COMMISSIONER §
OF EDUCATION, IN HIS OFFICIAL §
CAPACITY; SUSAN COMBS, §
TEXAS COMPTROLLER OF PUBLIC §
ACCOUNTS, IN HER OFFICIAL §
CAPACITY; TEXAS STATE BOARD §
OF EDUCATION, §
Defendants. §

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: DR. GUY SCONZO, Superintendent of Humble Independent School District, by and through their attorney of record, David Thompson, Phoenix Tower, Suite 2000, 3200 Southwest Freeway, Houston, TX 77027

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of DR. GUY SCONZO, Superintendent of Humble ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.



The Superintendent's deposition will be taken on August 22, 2012 starting at 9:00 a.m. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

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Attorneys for Defendants

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing document has been sent by electronic transmission, facsimile or First Class Mail on July 26, 2012 to the following:

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Assistant Attorney General

THE TEXAS TAXPAYER & STUDENT §
FAIRNESS COALITION, et al; §
CALHOUN COUNTY ISD, et al; §
EDGEWOOD ISD, et al; §
FORT BEND ISD, et al. §
Plaintiffs §

IN THE DISTRICT COURT

JOYCE COLEMAN, et al §
Intervenors §

vs. §

200th JUDICIAL DISTRICT

ROBERT SCOTT, COMMISSIONER §
OF EDUCATION, IN HIS OFFICIAL §
CAPACITY; SUSAN COMBS, §
TEXAS COMPTROLLER OF PUBLIC §
ACCOUNTS, IN HER OFFICIAL §
CAPACITY; TEXAS STATE BOARD §
OF EDUCATION, §
Defendants. §

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: Dr. WANDA BAMBERG, Superintendent of Aldine Independent School District, by and through their attorney of record, Rick Gray & Toni Hunter, Gray & Becker, GRAY & BECKER, 900 West Ave., Austin, TX 78701

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of DR. WANDA BAMBERG Superintendent of Aldine ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.

The Superintendent's deposition will be taken on September 19, 2012 starting at 9:00 a.m. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

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THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al.

Plaintiffs

JOYCE COLEMAN, et al

Intervenors

vs.

ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,
Defendants.

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: DR. JEFFREY HANKS, Superintendent of Weatherford Independent School District, by and through their attorney of record, David Thompson, Phoenix Tower, Suite 2000, 3200 Southwest Freeway, Houston, TX 77027

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of DR. JEFFREY HANKS, Superintendent of Weatherford ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.

The Superintendent's deposition will be taken on September 4, 2012 starting at 9:00 a.m. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

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Assistant Attorney General

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al.

Plaintiffs

JOYCE COLEMAN, et al

Intervenors

vs.

ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,
Defendants.

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: DR. JAMES J. PONCE, Superintendent of McAllen Independent School District, by and through their attorney of record, David G. Hinojosa 110 Broadway, Ste 300, San Antonio, TX 78205

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of DR. JAMES J. PONCE Superintendent of McAllen ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.

The Superintendent's deposition will be taken on September 5, 2012 starting at 9:00 .am. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

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Assistant Attorney General

THE TEXAS TAXPAYER & STUDENT §
FAIRNESS COALITION, et al; §
CALHOUN COUNTY ISD, et al; §
EDGEWOOD ISD, et al; §
FORT BEND ISD, et al. §
Plaintiffs §

IN THE DISTRICT COURT

JOYCE COLEMAN, et al §
Intervenors §

vs. §

200th JUDICIAL DISTRICT

ROBERT SCOTT, COMMISSIONER §
OF EDUCATION, IN HIS OFFICIAL §
CAPACITY; SUSAN COMBS, §
TEXAS COMPTROLLER OF PUBLIC §
ACCOUNTS, IN HER OFFICIAL §
CAPACITY; TEXAS STATE BOARD §
OF EDUCATION, §
Defendants. §

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: TODD WILLIAMS, Superintendent of Kaufman Independent School District, by and through their attorney of record, Rick Gray & Toni Hunter, Gray & Becker, GRAY & BECKER, 900 West Ave., Austin, TX 78701

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of TODD WILLIAMS, Superintendent of Kaufman ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.

The Superintendent's deposition will be taken on September 6, 2012 starting at 9:00 a.m. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

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THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al.
Plaintiffs

IN THE DISTRICT COURT

JOYCE COLEMAN, et al
Intervenors

vs.

200th JUDICIAL DISTRICT

ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,
Defendants.

TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF DEPOSITION

TO: ANTONIO LIMON, SUPERINTENDENT of San Benito Independent School District, by and through their attorney of record, David G. Hinojosa 110 Broadway, Ste 300, San Antonio, TX 78205

TAKE NOTICE that under Texas Rule of Civil Procedure 199.2, Defendants Robert Scott, Commissioner of Education, in his Official Capacity, Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity will conduct the deposition by oral examination of ANTONIO LIMON Superintendent of San Benito ISD under oath. Said deposition, answers, and documentation obtained during the same may be read and used as evidence in the trial of said cause in accordance with the Texas Rules of Civil Procedure.

The Superintendent's deposition will be taken on the September 12, 2012 starting at 9:00 a.m. at the office of the Attorney General of Texas, 300 W. 15th, Austin, 11th Floor and will be recorded stenographically until completed.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

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First Assistant Attorney General

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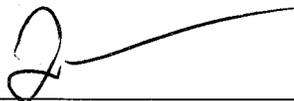
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