

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
21ST JUDICIAL CIRCUIT
STATE OF MISSOURI**

THE STATE OF MISSOURI ex rel.
ANDREW BAILEY, ATTORNEY GENERAL

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

The State of Missouri, by and through Andrew Bailey in his official capacity as Attorney General of Missouri, petitions this Court under section 213.126, RSMo, for injunctive relief against Defendant International Business Machines Corporation (“IBM”) for violating Missouri law. In support, Plaintiff states the following:

INTRODUCTION

1. IBM gives its executives two choices: discriminate or lose your job.
2. IBM uses its “diversity modifier” to shackle executive compensation to meeting race-, color-, national origin-, sex-, and ancestry-based employment quotas.
3. If an IBM executive meets the quotas, IBM gives them the carrot: a plus on their bonus.
4. But if he or she fails to meet it, IBM swings the stick: they lose part of their bonus and, eventually, their job.

5. Racial quotas violate chapter 213 of the Revised Statutes of Missouri, which protects applicants and employees from unlawful, discriminatory practices.

6. “[R]acial discrimination [is] invidious in all contexts” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) (*SFFA*) (quoting *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991)).

7. “[O]utright racial balancing’ is ‘patently unconstitutional.” *SFFA*, 600 U.S. at 223 (quoting *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013)). It is also a violation of Missouri law.

8. So no one, not even IBM, can lawfully “desire ‘some specified percentage of a particular group merely because of its race or ethnic origin.” *SFFA*, 600 U.S. at 211 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 329–30 (2003)).

9. But that is what IBM has done and will keep doing.

10. As IBM’s CEO admitted, IBM’s quotas are to “get to the representational demographics of the underlying populations. . . . So, for blacks, we should try to get towards 13 point something percent. On Hispanics, you got to get into the mid teens. On gender, okay, we are somewhere in the mid 30s, I think, for all of IBM. But I think if I notice right, the representational is 50.” Video (attached as Exhibit A) [8:47–9:13]; Transcript (attached as Exhibit B) ¶ 10.

11. IBM has made clear its goals of using discriminatory and insufficiently-tailored means to bring about discriminatory and unjustifiable ends.

12. Plaintiff, the State of Missouri, brings this action put an end to IBM's unlawful practices which have affected, are affecting, and, unless stopped, will harm Missourians.

PARTIES

A. Plaintiff

13. Plaintiff, the State of Missouri, is a sovereign State of the United States of America.

14. Andrew Bailey is the 44th Attorney General of the State of Missouri.

15. The Attorney General is authorized to bring actions on behalf of Missouri that are “necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.” § 27.060, RSMo.

16. The Attorney General also has express authority to bring this action under section 213.126, RSMo.

17. The Attorney General sues to vindicate Missouri's sovereign and quasi-sovereign interest in enforcing the laws of Missouri and ensuring the fundamental rights of Missouri citizens to be not subjects of individual or systemic discrimination.

B. Defendant

18. IBM is a publicly traded corporation.¹

¹ <https://www.ibm.com/investor/help/general-faqs>

19. IBM is “a globally integrated enterprise, [which] operates in more than 175 countries.” IBM 2023 Annual Report (attached as Exhibit C), p. 13; IBM’s 2023 ESG Report (attached as Exhibit D), p. 23; IBM’s 2022 ESG Report (attached as Exhibit E), pp. 12, 22.

20. IBM “is one of the largest technology and consulting companies in the world.”²

21. In 2023 alone, IBM generated around 62 billion U.S. dollars in revenue. Ex. C p. 65.

22. Also in 2023, IBM employed around 282 thousand people worldwide. Ex. C p. 15.

23. Since 1988 and to this day, IBM’s registered agent in Missouri is CT Corporation System with its address at 120 South Central Avenue, Clayton, Missouri.³

24. IBM maintains offices at 555 Maryville University Drive in St. Louis, Missouri, 63141⁴ and 325 James S. McDonnell Blvd. in Hazelwood, Missouri, 63042.⁵

² Petroc Taylor, *IBM number of employees worldwide from 2000 to 2023*, STATISTA (Mar. 14, 2024), <https://www.statista.com/statistics/265007/number-of-employees-at-ibm-since-2000/>

³ <https://bsd.sos.mo.gov/Common/CorrespondenceItemViewHandler.ashx?IsTIFF=true&fileDocumentid=10789751&version=1>

⁴ <https://ibm-zcouncil.com/venues/ibm-office-st-louis/>

⁵ <https://ibm-zcouncil.com/venues/ibm-office-hazelwood-mo/>

25. Since 1934⁶ and to this day, IBM conducts and transacts business and makes contracts within the State of Missouri. It currently does so under charter number F00007243.⁷

26. IBM was required to acquire such charter in the form of a certificate of authority from the Secretary of State. § 351.572.1, RSMo.

27. IBM, with such certificate of authority, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character. § 351.582.2, RSMo.

28. IBM advertises employment positions located in at least Jefferson City and St. Louis, Missouri. IBM Mainframe Architect Position - US (attached as Exhibit H), p. 1.

29. In making employment decisions, IBM uses a “diversity modifier”—a standard requiring IBM to obtain certain quotas based on race, color, national origin, sex, or ancestry.

30. Since 2020, IBM has considered employment applications from persons who applied to perform work for IBM intended to have effects in Missouri. For example, IBM has considered applications from Missouri residents for work to be performed at offices in Missouri. *See, e.g.*, Ex. H.

⁶ <https://bsd.sos.mo.gov/Common/CorrespondenceItemViewHandler.ashx?IsTIFF=true&fileDocumentid=10788136&version=1>

⁷ <https://bsd.sos.mo.gov/BusinessEntity/BusinessEntityDetail.aspx?ID=465470&page=beSearch>

31. Plaintiff incorporates into each allegation regarding applicants that, at all times relevant and material to the allegations herein, *e.g.*, when [1] applicants applied to work for IBM or [2] IBM failed or refused to hire said applicants, said applicants resided in Missouri or applied to perform work intended to have effects in Missouri.

32. Since 2020, IBM has employed employees, officers, or agents who lived or worked for IBM in Missouri or performed work for IBM intended to have effects in Missouri.

33. Plaintiff incorporates into each allegation regarding said employees, officers, or agents that, at all times relevant and material to the allegations herein, *e.g.*, when said persons: [1] were subject to meeting or exceeding IBM's "diversity modifier" expectations; [2] complained of or opposed IBM's "diversity modifier"; [3] suffered adverse employment actions; [4] reviewed applicant information or interviewed such applicants; or [5] failed or refused to hire such applicants, said persons resided or worked for IBM in Missouri or performed work for IBM intended to have direct or indirect effects in Missouri, in whole or in part.

34. Upon information and belief, IBM will employ individuals whom will live or work for IBM in Missouri or will perform work for IBM intended to have direct or indirect effects in Missouri, in whole or in part.

35. Plaintiff incorporates into each allegation regarding said prospective or future employees, officers, or agents that, at all times relevant and material to the allegations herein, *e.g.*, when said employees: [1] apply to work for IBM; [2] are

subject to meeting or exceeding IBM’s “diversity modifier” expectations; [3] complain of or oppose IBM’s “diversity modifier”; or [4] suffer adverse employment actions, said persons will reside or work for IBM in Missouri or perform work for IBM intended to have direct or indirect effects in Missouri, in whole or in part.

JURISDICTION AND VENUE

36. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

37. This Court has subject-matter jurisdiction and statutory authority. Mo. Const. art. V, § 14(a); §§ 213.055, 213.126, 526.010–.040, RSMo.

38. The Attorney General brings this action in his official capacity, not in a personal capacity as one “claiming to be aggrieved by an unlawful discriminatory practice.” § 213.075.1, RSMo.

39. It is, thus, not a jurisdictional condition precedent that he “make, sign, and file with the commission a verified complaint in writing” before “filing a civil action under” chapter 213. § 213.075.1, RSMo.

40. This Court has personal jurisdiction over IBM, as a corporation that transacts business within Missouri, contracts within the state, and maintains a certificate of authority within the state. § 506.500.1(1)–(2), RSMo; *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 592 U.S. 351 (2021); § 351.582.2, RSMo; *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023).

41. Venue is proper in this Court. § 508.010.2(1), RSMo.

BACKGROUND FACTUAL ALLEGATIONS

42. As a corporation, IBM is a “person.” § 213.010(15), RSMo.

43. IBM is “engaged in an industry affecting commerce who has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.” § 213.010(8), RSMo.

44. Therefore, IBM is an “employer” under Missouri law. § 213.010(8), RSMo.

45. Missouri law prohibits IBM from engaging in unlawful employment practices. §§ 213.055, .070, .126, RSMo.

A. IBM’s Candid Admissions of its Quota System

46. On December 11, 2023, a video featuring IBM’s Chief Executive Officer and Board Chairman, Arvind Krishna, current chairman and former Chief Executive Officer of Red Hat,⁸ Paul Cormier, and Senior Director of Corporate Communications of Red Hat, Allison Showalter, was released on X.⁹

47. Upon information and belief, the video accurately portrays a time in 2021 when Krishna, IBM’s CEO, responded to questions from Showalter about IBM’s efforts to promote recruiting members of only some, but not all, minority groups for employment.

48. In the leaked footage, Showalter states, “[o]ur last question is about diversity, equity, and inclusion,” and offers the following: “IBM highlights their

⁸ IBM acquired Red Hat in 2019. *IBM Closes Landmark Acquisition of Red Hat for \$34 Billion; Defines Open, Hybrid Cloud Future*, RED HAT (July 9, 2019), <https://www.redhat.com/en/about/press-releases/ibm-closes-landmark-acquisition-red-hat-34-billion-defines-open-hybrid-cloud-future>.

⁹ James O’Keefe (@JamesOKeefeIII), X (Dec. 11, 2023, 6:47 PM), <https://twitter.com/JamesOKeefeIII/status/1734374423124176944?s=20>.

progress in promoting and recruiting underrepresented minorities in executive roles and holding executives accountable for DE&I goals. At Red Hat, executive representation is dismal and there is no accountability for DEI work. Why do you not hold Paul [Cormier] to the same standards for diverse staffing and leadership as IBM does?” Ex. A [7:07–:30]; Ex. B ¶¶ 1–3.

49. Krishna disputed the premise of the question, noting “very clearly” that IBM has quotas for race-based hiring: “I expect at the executive level, so that that is not just my directs, but all executives in the company, have to move forward by 1% on both underrepresented minorities.” Ex. A [7:31–54]; Ex. B. ¶ 4.

50. Moving forward by 1% meant pushing the workforce closer to the quota goal of representational demographics.

51. Krishna then explained how IBM ties progress on quota metrics to executive compensation: To receive a “plus” on one’s bonus from IBM, the employee, officer, or agent must increase the preferred racial “underrepresented” or gender demographics by one percent each year. Ex. A [8:04–:14]; Ex. B ¶ 7.

52. But if such workforce demographic percentage drops, Krishna warned, the employee, officer, or agent will “lose part of” his or her bonus. Ex. A [8:04–:14]; Ex. B. ¶ 7.

53. As such, tying the quota system to bonus compensation serves not as a mere incentive to reach preferred demographics, but also as a cudgel against those who do not fall in line.

54. Krishna also recognized that obtaining these quotas would necessarily mean fewer opportunities for other groups not considered “underrepresented minorities” by IBM.

55. By “underrepresented minorities,” Krishna meant women and black and Hispanic individuals. Ex. A [7:54–8:04, 8:47–9:23]; Ex. B. ¶¶ 5–7, 10; see Ex. D p. 31 (“underrepresented minority (URM) groups (specifically, Black and Hispanic”).

56. Krishna emphasized that “Asians in the US are not an underrepresented minority in a tech company. However others are. Ditto on gender diversity.” Ex. A [7:54–8:04]; Ex. B. ¶¶ 5–6.

57. IBM’s hiring standards and “process rests on the pernicious stereotype that ‘a black [or Hispanic employee] can usually bring something that a white [or Asian] person cannot offer.’” *Students for Fair Admissions*, 600 U.S. at 220.

58. Then-CEO, Cormier, of IBM’s subsidiary Red Hat—who answered directly to Krishna—“candid[ly]” admitted that “multiple leaders over the last year plus . . . because they weren’t willing to live up to the standards that” were in place, were “held accountable . . . to the point that they’re no longer” employed. Ex. A [10:10–:30]; Ex. B ¶ 13.

59. Upon information and belief, several of IBM’s employees, officers, and agents have lost their employment with IBM, suffered a negative change in employment status, or otherwise suffered an adverse employment action at the hands of IBM because they, too, either defiantly or otherwise, failed to meet or exceed IBM’s annual “diversity modifier” quota.

60. Cormier then warned, “[w]e’re going to hold, we are continuing to hold and going to hold even more of our executives accountable for all of this and they will have metrics around this.” Ex. A [11:33–:42]; Ex. B ¶ 17.

61. IBM’s goal is to “to get to the representational demographics of the underlying populations.” Ex. A [8:47–:53]; Ex. B ¶ 10.

62. At the time of the video, IBM sought “blacks” to make up at least 13% of its workforce, “Hispanics” to make up at least “the mid teens,” and women to make up at least “slightly over 50[%].” Ex. A [8:47–9:24].

63. IBM is engaging in the “patently” unlawful act of “outright racial balancing,” *SFFA*, 600 U.S. at 223 (brackets accepted and internal citation omitted), which is unlawful not only under the U.S. Constitution, but also under Missouri statutory law.

B. IBM’s Quota-Based Compensation & Employment System

64. In the leaked video, IBM’s CEO candidly admitted more information—at least regarding specific percentages IBM has in mind—about IBM’s “diversity modifier” than the company has offered in its public-facing documents. *Compare* Ex. A [8:21–9:23] *and* Ex. B ¶¶ 9–10 (giving specific percentages IBM seeks to attain) *with, e.g.*, Ex. C p. 16 ¶ 1 (mentioning the “diversity modifier” but not specifying at what percentage IBM will no longer use it) *and* Ex. D p. 31 (saying IBM will “close the gap” without specifying when it will deem the gap closed).

65. Simply put, IBM subjects or conditions the bonus pay and employment status of executive employees upon meeting or exceeding IBM’s annual expectations

for increasing—and not losing—percentages of certain race, color, and sex demographics of IBM’s workforce toward the ultimate goal of racial and sex quotas.

66. IBM’s “Annual Incentive Program include a diversity modifier as part of [its] executive compensation plan.” Ex. D p. 31; Ex. E pp. 7, 28.

67. IBM asserts that it uses this “diversity modifier” so that its “workforce . . . represents [its] clients and the world.” Ex. D p. 31; Ex. F p. 26 (“Our goal is to continue to close the gap across all representation categories to better reflect the communities in which IBMers *live and work . . .*” (emphasis added)); Ex. C p. 16 (“Our executive annual incentive program includes a diversity modifier that affirms our commitment to diverse representation in our workforce *that reflects the labor pool demographics of the communities in which we operate.*” (emphasis added)); *see also*, e.g., IBM’s 2020 Annual Report (attached as Exhibit G), p. 29 (“We are also focused on meeting or exceeding the diversity of skilled talent in the labor market, for every underrepresented group, and at every level of our company.”).

68. IBM embeds its “diversity modifier” expectations “deep[] into the organization.” Ex. A [8:19–:22]; Ex. B ¶ 8; Ex. G p. 29 (“We are also focused on meeting or exceeding the diversity of skilled talent in the labor market, for every underrepresented group, *and at every level of our company.*”) (emphasis added).

69. IBM’s employment race and sex makeup does not currently reflect the percentages it wishes it had.

70. In other words, IBM believes it employs too few of members of some races, colors, national origin, or ancestry—black and Hispanic persons—and too

many members of other races, colors, national origin, or ancestry—white and Asian persons.

71. Similarly, IBM believes it employs too few of members of one sex—females—and too many members of the other sex—males.

72. But IBM had and has only a finite number of employment positions in Missouri or for work intended to have direct or indirect effects in Missouri at any given time.

73. If IBM employs members of one race or sex for a position, then IBM has that many positions fewer to fill with members of another race or sex.

74. Through the use of its “diversity modifier,” IBM seeks to unfairly change the balance in favor of some races, colors, national origins, ancestries, and one sex but not the others.

75. IBM’s hiring is, thus, “zero-sum” because “[a] benefit provided to some applicants [and employees] but not to others necessarily advantages the former group at the expense of the latter.” *SFFA*, 600 U.S. at 218–19.

C. The Attorney General has reasonable cause to believe IBM has violated, is violating, and will continue to violate Missouri law.

76. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

77. The Attorney General “may bring a civil action in any appropriate state court by filing with it a complaint setting forth the facts and requesting such preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to

ensure the full enjoyment of the rights granted by” chapter 213 whenever the Attorney General “has a reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by” chapter 213. § 213.126.1, RSMo.

78. Because of IBM’s actions, the Attorney General has a reasonable cause to believe that IBM is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by chapter 213.

79. The Attorney General may bring such an action also when the Attorney General “has a reasonable cause to believe . . . any group of persons has been denied any of the rights granted by” chapter 213, “and such denial raises an issue of general public importance.” § 213.126.1, RSMo.

80. In light of IBM’s actions and statements, the Attorney General has reasonable cause to believe groups of persons have been denied rights granted by chapter 213, and such denial raises an issue of general public importance.

1. Group 1: Former or Current Employees, Officers, or Agents IBM Subjected to its “Diversity Modifier” Policy

81. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

82. The Attorney General has reasonable cause to believe those affected by IBM’s patterns or practices of resistance to the full enjoyment, and the denial, of any of the rights granted by chapter 213 include at least Group 1, *i.e.*, former or current employees, officers, or agents of IBM.

83. IBM subjected or conditioned their compensation or employment upon meeting or exceeding IBM’s yearly quota requirements.

84. Upon information and belief, certain former and current employees, officers, or agents in Group 1 did not meet or exceed IBM's expectations.

85. For that reason, upon information and belief, IBM took adverse employment actions against these individuals, including decreased compensation, placement on a "Performance Improvement Plan" (PIP), or termination of employment.

86. In addition, IBM unlawfully directed some individuals to deny others the full enjoyment of their rights under Missouri law vis-à-vis IBM's "diversity modifier," or else face adverse employment actions.

87. The Attorney General has reasonable cause to believe IBM has denied the persons of Group 1 their rights granted by chapter 213, and the denial of Group 1's rights raises an issue of general public importance.

2. Group 2: Applicants or Prospective Employees, Officers, or Agents IBM Actually or Attempted to, Directly or Indirectly, Discriminate Against

88. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

89. The Attorney General has reasonable cause to believe those affected by IBM's patterns or practices of resistance to the full enjoyment, and the denial, of any of the rights granted by chapter 213 include also at least Group 2, *i.e.*, applicants or prospective employees, officers, or agents living in or interested in working in Missouri at the time they applied for employment with IBM.

90. For persons not falling into the categories that IBM believed were "underrepresented" in their "diversity modifier," IBM subjected them to an uneven

playing field by making it more difficult to obtain employment solely on the basis of race, color, national origin, sex, or ancestry.

91. Upon information and belief, IBM failed or refused, and will fail or refuse, to hire applicants or prospective employees, officers, or agents because of the applicants' race, color, national origin, sex, or ancestry.

92. The Attorney General has reasonable cause to believe IBM has denied the persons of Group 2 their rights granted by chapter 213, and the denial of Group 2's rights raises an issue of general public importance.

COUNT I
ACTUAL OR ATTEMPTED INCITING, COMPELLING, OR COERCING
UNLAWFUL DISCRIMINATORY PRACTICES
§§ 213.070.1(1), .126.1, RSMo

93. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

94. It is an unlawful discriminatory practice for an employer to actually—or even attempt—to aid, abet, incite, compel, or coerce the commission of acts prohibited under chapter 213. § 213.070.1(1), RSMo.

95. Section 213.070.1(1) guarantees then- or now-current employees the right to be protected from employers actually or attempting to incite, compel, or coerce them to engage in unlawful discriminatory practices.

96. Section 213.070.1(1) also guarantees applicants or prospective employees the right to be protected from the actual or attempted incited, compelled, or coerced unlawful discriminatory practices.

97. Violating section 213.070.1(1) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies

rights granted by chapter 213, and such denial raises an issue of general public importance.

98. IBM's "diversity modifier" quota affects or jeopardizes the bonus pay or compensation or employment status of IBM's employees, officers, or agents.

99. Those persons can obtain their bonus pay and maintain their employment status with IBM only if they meet or exceed IBM's "diversity modifier" quota expectations.

100. Worse yet, a person who fails to meet IBM's "diversity modifier" quota expectation, risks *losing* at least part of their bonus or suffering other adverse employment actions.

101. Throughout the year, those employees, officers, or agents who participate in the hiring process are forced by IBM to make hiring decisions primarily, that is, motivationally, because of an applicant's race, color, national origin, sex, or ancestry.

102. This is especially so when the date will soon arrive or has arrived when those employees, officers, or agents must meet or exceed IBM's "diversity modifier" expectations for the annual assessment or fiscal year.

103. IBM's "diversity modifier," in and of itself, forces those employees, officers, and agents to choose between receiving pay and subjecting applicants to unlawful discrimination.

104. IBM's "diversity modifier" attempts to incite, compel, or coerce unlawful discriminatory practices in and of itself.

105. IBM's "diversity modifier" actually incites, compels, or coerces unlawful discriminatory practices.

106. IBM has violated, is in violation of, and will continue to violate section 213.070.1(1), RSMo, so long as the "diversity modifier" is in effect.

107. IBM is engaged in the pattern or practice of violating section 213.070.1(1), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, RSMo, has denied the rights of Groups 1 and 2 described above granted by chapter 213, RSMo, and the denial of such rights raises an issue of general public importance.

COUNT II
ACTUAL OR ATTEMPTED AIDING OR ABETTING
UNLAWFUL DISCRIMINATORY PRACTICES
§§ 213.070.1(1), .126.1, RSMo

108. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

109. It is an unlawful discriminatory practice for an employer to actually or even just attempt to aid or abet the commission of acts prohibited under chapter 213. § 213.070.1(1), RSMo.

110. Section 213.070.1(1) guarantees applicants or prospective employees the right to be protected from the actual or attempted aided, abetted, incited, compelled, or coerced unlawful discriminatory practices.

111. Section 213.070.1(1) also guarantees then- or now-current employees the right to be protected from employers actually or attempting to incite, compel, or coerce them to engage in unlawful discriminatory practices.

112. Violating section 213.070.1(1) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

113. Upon information and belief, IBM actually or attempted to aid or abet the commission of acts prohibited under chapter 213 vis-à-vis conditioning the amount of an employee's, officer's, or agent's pay or employment with IBM to their hiring of, or lack thereof, a certain number or percentage of employees with a particular race, color, sex, national origin, or ancestry. *See, e.g.*, Ex. D p. 7 ("Annual Incentive Program for executives includes a modifier to *drive accountability* in improving executive diversity representation." (emphasis added)); Ex. E p. 7 (same).

114. IBM has violated and is in violation of section 213.070.1(1), RSMo.

115. IBM is engaged in the pattern or practice section 213.070.1(1), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, has denied the rights of Groups 1 and 2 described above granted by chapter 213, and the denial of such rights raises an issue of general public importance.

COUNT III
UNLAWFULLY LIMITING, SEGREGATING, OR CLASSIFYING
EMPLOYMENT APPLICANTS
§§ 213.055.1(1)(b), .126.1, RSMo.

116. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

117. It is an unlawful discriminatory practice for an employer to limit, segregate, or classify its employees or its employment applicants in any way which would deprive or tend to deprive any individual of employment opportunities or

otherwise adversely affect his or her status as an employee, because of such individual's race, color, national origin, sex, or ancestry. § 213.055.1(1)(b), RSMo.

118. Violating section 213.055.1(1)(b) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

119. IBM inquires about the race, color, national origin, sex, or ancestry of its employees and employment applicants.

120. On information and belief, IBM makes such inquiries because of IBM's "diversity modifier" quota.

121. IBM limits, segregates, or classifies its employees or its employment applicants because of such employees' or applicants' race, color, national origin, sex, or ancestry through its "diversity modifier."

122. The limits, segregations, or classifications deprives or tends to deprive the individuals of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, national origin, sex, or ancestry.

123. IBM uses its "diversity modifier" to force the hiring of members of certain races, colors, national origins, sexes, or ancestries instead of members of other races, colors, national origins, sexes, or ancestries.

124. IBM has violated, is in violation of, and will continue to violate section 213.055.1(1)(b), RSMo, so long as the "diversity modifier" is in effect.

125. IBM is engaged in a pattern or practice of violating section 213.055.1(1)(b), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, RSMo, has denied the rights of Groups 1 & 2 described above granted by chapter 213, RSMo, and the denial of such rights raises an issue of general public importance.

**COUNT IV
UNLAWFUL PRINTING OR CIRCULATION
§§ 213.055.1(3), .126.1, RSMo**

126. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

127. It is an unlawful employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement or publication which expresses, directly or indirectly, any limitation, specification, or discrimination, because of race, color, national origin, sex, or ancestry. § 213.055.1(3), RSMo.

128. Violating section 213.055.1(3) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

129. IBM has stated, advertised, or publicized its expectations regarding its “diversity modifier.”

130. IBM’s “diversity modifier” expectations express, directly or indirectly, a limitation, specification, or discrimination.

131. IBM’s “diversity modifier” is employed to seek ends because of race, color, national origin, sex, or ancestry.

132. IBM printed or circulated or caused to be printed or circulated its “diversity modifier” expectations, or information related thereto, to IBM’s employees, officers, or agents.

133. When it did so, IBM subjected or conditioned at least part of the bonus pay or compensation or employment of those persons upon their ability to meet or exceed IBM’s “diversity modifier” quota expectations.

134. Upon information and belief, IBM will continue to print or circulate or cause to be printed or circulated its “diversity modifier,” or information related thereto, to IBM’s future employees, officers, or agents.

135. Upon information and belief, when it does, IBM will subject or condition at least part of the bonus pay or compensation or employment of those persons upon said their ability to meet or exceed IBM’s “diversity modifier” expectations.

136. IBM has violated, is in violation of, and will violate section 213.055.1(3), RSMo.

137. IBM is engaged in a pattern or practice of violating 213.055.1(3), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, RSMo, has denied the rights of Group 1 described above granted by chapter 213, RSMo, and the denial of such rights raises an issue of general public importance.

COUNT V
UNLAWFUL EMPLOYMENT INQUIRY
§§ 213.055.1(3), .126.1, RSMo

138. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

139. It is an unlawful employment practice for any employer to make any inquiry in connection with prospective employment, which expresses, directly or

indirectly, any limitation, specification, or discrimination, because of race, color, national origin, sex, or ancestry. § 213.055.1(3), RSMo.

140. Violating section 213.055.1(3) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

141. IBM inquires the race, color, national origin, sex, or ancestry of its applicants in connection with prospective employment because of IBM's "diversity modifier."

142. Especially when considered in conjunction with IBM's publicly available statements explaining their "diversity modifier," IBM's inquiry expresses, directly or indirectly, a limitation, specification, or discrimination because of race, color, national origin, sex, or ancestry.

143. IBM has violated, is in violation of, and will continue violate section 213.055.1(3), RSMo. as long as the "diversity modifier" is in effect.

144. IBM is engaged in the pattern or practice of violating section 213.055.1(3), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, RSMo, has denied the rights of Group 2 described above granted by chapter 213, RSMo, and the denial of such rights raises an issue of general public importance.

COUNT VI
UNLAWFUL EMPLOYMENT APPLICATION FORM
§§ 213.055.1(3), .126.1, RSMo

145. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

146. It is an unlawful employment practice for any employer to use any form of application for employment which expresses, directly or indirectly, any limitation, specification, or discrimination, because of race, color, national origin, sex, or ancestry. § 213.055.1(3), RSMo.

147. Violating section 213.055.1(3) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

148. On information and belief, IBM uses a form of application for employment which asks its applicants to disclose or “self-identify” his or her race, color, national origin, sex, or ancestry.

149. On information and belief, IBM uses this form for purposes of effectuating the “diversity modifier.”

150. The referenced form expresses, directly or indirectly, a limitation, specification, or discrimination because of race, color, national origin, sex, or ancestry.

151. IBM has violated, is in violation of, and will violate section 213.055.1(3), RSMo.

152. IBM is engaged in a pattern or practice violating section 213.055.1(3), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, RSMo, has denied the rights of Group 2 described above granted by chapter 213, RSMo, and the denial of such rights raises an issue of general public importance.

COUNT VII
UNLAWFULLY FAILING OR REFUSING TO HIRE INDIVIDUALS
§§ 213.055.1(1)(a), .126.1, RSMo

153. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

154. It is an unlawful discriminatory practice for an employer to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, national origin, sex, or ancestry. § 213.055.1(1)(a), RSMo.

155. Section 213.055.1(1)(a) guarantees applicants and prospective employees the right to be free from discrimination against him or her with respect to his or her compensation, terms, conditions, or privileges of employment, because of his or her race, color, national origin, sex, or ancestry.

156. Violating section 213.055.1(1)(a) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

157. IBM had and has only a finite number of employment positions in Missouri or for work intended to have direct or indirect effects in Missouri at any given time.

158. In this regard, IBM's hiring is "zero-sum" because "[a] benefit provided to some applicants [and employees] but not to others necessarily advantages the former group at the expense of the latter." *SFFA*, 600 U.S. at 218–19.

159. Members of Group 2 (Applicants 1) have applied for employment with IBM since IBM began utilizing “diversity modifier.”

160. Upon information and belief, IBM, including through employees, officers, or agents responsible for hiring decisions (Hiring Agents), failed or refused to hire Applicants 1.

161. Upon information and belief, the pay or employment of the Hiring Agents was subject to or conditioned upon meeting or exceeding IBM’s “diversity modifier” expectations.

162. Upon information and belief, the Hiring Agents failed or refused to hire Applicants 1 because hiring Applicants 1 would not further the Hiring Agents efforts to meet or exceed IBM’s “diversity modifier” expectations.

163. Upon information and belief, the Hiring Agents instead hired other employees, officers, or agents of IBM (Applicants 2).

164. Upon information and belief, IBM, including through Hiring Agents, hired Applicants 2 because it would help the Hiring Agents meet or exceed IBM’s “diversity modifier” expectations.

165. Upon information and belief, the Hiring Agents who hired Applicants 2 but failed or refused to hire Applicants 1 did so because they intended to obtain their bonuses, or at least not lose part of it, vis-à-vis meeting or exceeding the IBM’s “diversity modifier” expectations.

166. IBM has violated, is in violation of, and will continue to violate section 213.055.1(1)(a), RSMo, so long as the “diversity modified” is in effect.

167. IBM is engaged in a pattern or practice of 213.055.1(1)(a), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, has denied the rights of Group 2 described above granted by chapter 213, and the denial of such rights raises an issue of general public importance.

COUNT VIII
RETALIATION OR DISCRIMINATION FOR OPPOSING
IBM'S UNLAWFUL DISCRIMINATORY PRACTICES
§§ 213.070.1(2), .126.1, RSMo

168. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

169. It is an unlawful discriminatory practice for an employer to retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by chapter 213. § 213.070.1(2), RSMo.

170. Section 213.070.1(2) guarantees employees the right to be free from retaliation, discrimination, or other adverse employment actions from his or her employer because said employees complained of or otherwise opposed practices prohibited by chapter 213.

171. Violating section 213.070.1(2) is an unlawful employment practice in resistance to the full enjoyment of the rights granted by chapter 213, which denies rights granted by chapter 213, and such denial raises an issue of general public importance.

172. Upon information and belief, members of Group 1 complained of or otherwise opposed IBM's "diversity modifier."

173. Upon information and belief, IBM caused said members to suffer adverse employment actions, including, but not limited to, losing a bonus or regular pay or compensation (in whole or part), being placed on a “Performance Improvement Plan” (PIP), or having their employment terminated from IBM because they complained of, or otherwise opposed, IBM’s “diversity modifier,” *i.e.*, their complaint or opposition actually played a role in and had a determinative influence on IBM’s adverse employment action.

174. In other words, IBM retaliated or discriminated in a manner against members of Group 1 because such members opposed IBM’s practice prohibited by chapter 213.

175. IBM has violated, is in violation of, and will continue to violate section 213.070.1(2), RSMo, so long as the “diversity modifier” is in effect.

176. IBM is engaged in a pattern or practice of violating section 213.070.1(2), RSMo, which is in resistance to the full enjoyment of the rights granted by chapter 213, has denied the rights of Group 1 described above granted by chapter 213, and the denial of such rights raises an issue of general public importance.

NEED FOR INJUNCTIVE RELIEF

177. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

178. This Court is authorized to grant injunctive relief under Missouri law. §§ 213.126.1, 526.010–.040, RSMo; Rule 92.01.

179. IBM still conditions the bonus pay or compensation or employment of its employees, officers, or agents on their ability to meet or exceed IBM’s “diversity modifier” expectations.¹⁰

180. IBM will continue to condition the pay or employment of said persons’ ability to meet or exceed IBM’s “diversity modifier” expectations. *See, e.g.*, Ex. D p. 7 (“The executive incentive program will continue to include a modifier and our goal remains to improve executive representation in these areas.”); Ex. E p. 7

181. Upon information and belief, IBM has never stated or promised to terminate using its “diversity modifier” when some rough percentage of various groups are employed by IBM.

182. IBM may claim that, at some point in the far off future, it may no longer need to have specific numbers in mind. *See, e.g.*, Ex. F p. 26 (“Our goal is to continue to close the gap across all representation categories to better reflect the communities in which IBMers live and work”)

183. But, because populations—local and global—continually fluctuate and migrate, IBM’s “diversity modifier” will effectively ensure that race, color, sex, national origin, or ancestry will remain a bedrock consideration to its hiring and firing decisions and that the ultimate goal of eliminating race, color, sex, national origin, or ancestry as criteria will never be achieved.

¹⁰ Carla Grant Pickens, *Upholding the Values of Diversity, Equity and Inclusion*, IBM (Apr. 12, 2022), <https://www.ibm.com/blog/diversity-equity-inclusion/>; Obed Louissaint, *Diversity and Equity Are More Than Buzzwords – This is how IBM focuses on Equitable Impact*, IBM (Apr. 12, 2022), <https://www.ibm.com/blog/equitable-impact/>.

A. Irreparable Harm

184. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

185. An action under Section 213.126 is a statutory action, not a traditional equitable proceeding.

186. Section 213.126 contains no requirement that the Attorney General show irreparable harm or injury.

187. Irreparable harm will occur absent this Court granting Plaintiff's requested injunctive relief.

B. No Adequate Legal Remedy

188. Plaintiff re-alleges all the above paragraphs as if fully set out herein.

189. Section 213.126 contains no requirement that the Attorney General show the inadequacy of legal remedies.

190. Section 213.126 does not explicitly allow monetary remedies. *Compare* § 213.126 with § 213.111.2 (permitting, among other forms of relief, "actual and punitive damages," "court costs and reasonable attorney fees").

191. Section 213.126 cannot provide adequate compensation for IBM's improper conduct.

192. The Attorney General need not show an inadequacy of legal remedies.

193. Plaintiff has no adequate remedy at law absent this Court granting Plaintiff's requested injunctive relief.

PRAYER FOR RELIEF

Plaintiff respectfully requests this Court to:

1. Permanently enjoin IBM and all its employees, officers, and agents from using IBM's "diversity modifier" quotas with respect to:
 - a. The compensation and employment status of any employees, officers, or agents of IBM whom either live or work in Missouri or perform work intended to have direct and indirect effects in Missouri;
 - b. The prospective employment of applicants whom live, will live, work, or will work for IBM in Missouri or perform or will perform work for IBM intended to have direct or indirect effects in Missouri; and
 - c. Employment actions related to IBM's employees, officers, or agents whom live or work for IBM in Missouri or perform work for IBM intended to have direct or indirect effects in Missouri;
2. Grant the relief the Attorney General deems necessary to ensure the full enjoyment of the rights granted by chapter 213, § 213.126.1, RSMo; and
3. Grant any further relief the Court deems just and proper.

Dated: June 20, 2024

Respectfully submitted,

ANDREW BAILEY
ATTORNEY GENERAL

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on June 20, 2024, the foregoing was filed: [1] electronically through the Court's electronic filing system to be served electronically on all parties and counsel of record; and [2] by serving a copy in the manner provided for service of summons in Rule 54.13.

/s/ Caleb Rutledge