

COMMONWEALTH OF KENTUCKY
 FAYETTE CIRCUIT COURT - DIVISION IV
 CIVIL ACTION No. 18-CI-00103

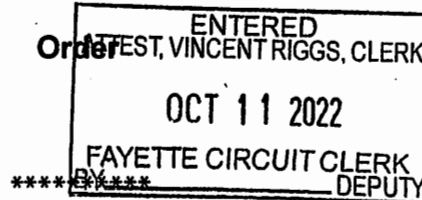
SERGIO L. MELGAR

PLAINTIFF

vs.

UNIVERSITY OF KENTUCKY

DEFENDANT



This matter came on for hearing on Friday, July 8, 2022, regarding *Plaintiff's Motion for Award of Attorney's Fees and Litigation Costs* and defendant's *Motion for Judgment or New Trial*. Jon B. Allison and Robert L. Abell appeared for plaintiff; Joshua M. Salsburey and Jessica R. Stigall appeared for defendant. Subsequent to the hearing, the plaintiff submitted *Plaintiff Sergio L. Melgar's Supplement to Motion for Award of Attorneys' Fees and Litigation Costs* and defendant responded, *University of Kentucky's Response to Plaintiff's Supplement to Motion for Fees and Costs*.

The Court having reviewed the parties' filings, heard argument from counsel and being otherwise adequately and sufficiently advised, it is hereby **Ordered and Adjudged** as follows:

1. Defendant's *Motion for Judgment or New Trial* is **overruled**.

With respect to defendant's motion pursuant to CR 50.02, the Court finds that plaintiff met his *prima facie* case for retaliation. With respect to defendant's motion pursuant to CR 59.01 and 59.05, the Court finds that, under the facts of the case, the cases cited by defendant do not apply and defendant did not impose restrictions on the severance benefits at issue.

2. *Plaintiff's Motion for Award of Attorney's Fees and Litigation.*

Costs is **sustained**, subject to the parameters set out below. The Court has considered the entire litigation and the "lodestar" factors as adopted in *Meyers v. Chapman Printing*, 840 S.W.2d 814, 826 (Ky. 1992), including the claims on which Plaintiff was successful and unsuccessful, the time and effort expended and the degree of the overall success of Plaintiff, including the ultimate jury determination and award. The Court finds as follows as to this motion:

(a) Except for time billed for settlement and mediation efforts, the attorney, paralegal and law clerk time prior to April 20, 2017, as reflected on Ex. B to plaintiff's motion, is not compensable as the Court finds that those claims and proceedings were not related sufficiently to the claim on which plaintiff prevailed at trial.

(b) Except for time billed for litigating defendant's motion to dismiss plaintiff's contract claim in Franklin Circuit Court (Civil Action No. 17-CI-792), the attorney, paralegal and law clerk time beginning on April 20, 2017, as reflected on Ex. B to plaintiff's motion, is compensable as the Court finds the quantity of time expended reasonable and, while plaintiff was unsuccessful on the discrimination claim, the retaliation claim on which plaintiff prevailed and the discrimination claim were sufficiently related and intertwined to render this time properly compensable.

(c) The Court finds that an enhanced hourly rate of \$400 is reasonable and appropriate for both Jon B. Allison and Robert L. Abell given consideration of the "lodestar" factors adopted in *Meyers v. Chapman Printing, supra*, and

plaintiff's extraordinary success at trial. *Lohman v. Duryea Borough*, 574 F.3d 163, 169 (3rd Cir. 2009).

(d) The Court finds that the hourly rates set forth on the attachments to plaintiff's motion for the attorneys, paralegals and law clerks are reasonable and appropriate.


(e) The Court finds that the plaintiff's litigation costs and expenses totaling \$4,841.25 are reasonable and appropriate.

Accordingly, it is **Ordered and Adjudged** that plaintiff Sergio L. Melgar shall recover from the defendant University of Kentucky attorneys' fees in the amount of \$277,836.50 and litigation costs of \$4841.65.

There being no just cause for delay this is a final and appealable order.

This 7th day of October, 2022.


Hon. Julie M. Goodman
Judge, Fayette Circuit Court

/S/ JULIE MUTH GOODMAN
A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
BY:  DEPUTY

Attest:

/s/ Robert L. Abell
Counsel for Plaintiff

/s/ Joshua M. Salsburey (by RLA)
Counsel for Defendant


Certification of Clerk

It is hereby certified pursuant to CR 77.04 that a true copy of the foregoing Order was mailed, postage prepaid, this 11th day of October, 2022, to the following:

Joshua M. Salsburey
Sturgill Turner Barker & Maloney PLLC
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Lexington, KY 40507

Jon B. Allison
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Robert L. Abell
120 N. Upper St.
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Fayette Circuit Clerk