IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

VINCENT BALDERRAMA,	:	
	:	
Plaintiff,	:	
	:	Case No. 390843-V
v.	:	
	:	
LOCKHEED MARTIN, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Pending before the court is plaintiff Vincent Balderrama's petition for award of attorney's fees and costs under Md. Code Ann., State Gov't, §20-1202(d) and Md. Rule 2-703. The defendant Lockheed Martin ("Lockheed") opposes the petition. Initially, plaintiff requested $274,513.50 in attorney's fees[1] and $55,932.11 in costs for a total of $330,445.61 in fees and costs. These amounts represented fees and costs incurred until March 24, 2015. In his reply memorandum, the plaintiff requested post-judgment fees of $25,475.00 and costs of $4,364.87, for a total of $360,285.48 in fees and costs. On May 20, 2015, the court held an evidentiary hearing on the plaintiff's petition. For the reasons discussed below, the plaintiff's petition will be granted.

I.

Factual Background

The plaintiff in this case is Vincent Balderrama, a 58-year-old male of Mexican-American descent, born in Arizona, who worked at Lockheed for almost ten years. Prior to joining Lockheed, the plaintiff had graduated from the United States Naval Academy, and served

[1] This amount represents the fee amount after counsel for the plaintiff reduced in their discretion $10,573 from the legal bill.

as a Marine Corps helicopter pilot. In total, the plaintiff served twenty-eight years in the Marine Corps.

When the plaintiff first joined Lockheed, he was hired as a Business Development Manager, and was responsible for Ground Based Radar Business Development. He also worked on a corporate program to produce a new radar system for the Marine Corps. The plaintiff was then transferred to the position of Deputy Capture Manager for the same corporate radar program. Thereafter, the plaintiff was selected for a position in Owego, NY, where he worked on developing new business regarding helicopter sales to foreign countries. In 2010, the plaintiff relocated to Crystal City, Virginia in order to be closer to clients such as the United States Navy and the Marine Corps.

The plaintiff consistently received positive performance reviews from his supervisors throughout the years until February 2013, when his supervisor, Doug Laurendeau, issued, for the first time, a negative performance review for the year 2012. That year was also when the plaintiff had been able to secure, as part of a team, the sale of nine MH-60 helicopters to the Danish Navy. This transaction represented the only foreign sale of helicopters by Lockheed to a foreign client that year. The negative performance review, however, placed the plaintiff in the bottom ten percent of all Lockheed employees.

A month after he received his 2012 performance review, the plaintiff submitted a sixteen page rebuttal to Cindy Gadra in the Human Resources department. The plaintiff stated, among other things, that he believed his supervisor's comments showed prejudice because the supervisor did not apply the performance metrics evenly among all employees. In May 2013, the plaintiff further appealed his performance review to Melanie Parker, the Director of Human

Resources. Ms. Parker ultimately dismissed his appeal in July 2013, without conducting an investigation.

On October 2013, Mr. Laurendeau placed the plaintiff on a performance improvement plan, reciting that it was due to the plaintiff's poor performance during the preceding months. Approximately two weeks later, Lockheed announced it was laying off six hundred employees. On November 6, 2013, Mr. Laurendeau informed the plaintiff that he had been selected to be laid off. Lockheed terminated the plaintiff on November 20, 2013.

At a hearing on February 27, 2015, the court granted summary judgment against the plaintiff as to his claim of national origin and ancestry discrimination under Montgomery County Code, §27-19. On March 9, 2015, the case proceeded to trial solely on the plaintiff's retaliation claim. After a one-week jury trial, the jury returned a verdict in the plaintiff's favor for $830,000.

On April 13, 2015, the plaintiff filed his petition for fees and costs. On May 20, 2015, the court held an evidentiary hearing, and after hearing testimony and argument, took the matter under advisement. The court's decision regarding the plaintiff's petition is set forth below.

II.

General Legal Principles

Generally, Maryland adheres to the common law or the American rule, which provides that each party to a case is responsible for its own attorney's fees, regardless of the outcome. *Friolo v. Frankel*, 403 Md. 443, 456 (2008) (*Friolo III*). However, a statutory obligation to pay an opponent's attorney's fees is a well settled exception to this rule. *Id.* Whether to allow attorney's fees is a discretionary decision and the court is to exercise this discretion broadly in favor of allowing a reasonable fee. *Friolo v. Frankel*, 373 Md. 501, 512-515 (2003) (hereinafter

"*Friolo I*"); *see also Hensley v. Eckerhart*, 461 U.S. 424, 429 433 (1983) (in civil rights cases "a prevailing plaintiff 'should ordinarily recover attorney's fees unless special circumstances exist which would render such an award unjust.'")

In *Friolo I*, the Court of Appeals held that the lodestar approach ordinarily was the appropriate method to determine reasonable attorney's fees requested under fee-shifting statutes.[2] *Friolo*, 373 Md. at 504-05. This approach starts by multiplying the reasonable number of hours incurred by the attorney by a reasonable hourly rate. *Hensley*, 461 U.S. at 433. This calculation provides an initial objective basis on which to make an assessment of the fair value of the lawyer's services. *Friolo*, 373 Md. at 523-24.

However, in *Friolo I*, the court observed that the lodestar approach was broader than simply multiplying hours spent times an hourly rate, since the trial court must also determine whether an adjustment to the fee request is warranted. *Id.* at 505. A downward adjustment is warranted, for example, when there is inadequate documentation of hours, and work that is duplicative, excessive, unnecessary, or unsuccessful. *Id.* at 523-24, 528-29. The level of a litigant's success also provides a basis to adjust the fee award upward or downward. If a litigant succeeded only in part, two questions need to be addressed: (1) whether the litigant failed to prevail on claims that were unrelated to the claims upon which he or she succeeded; and (2) whether the litigant achieved a level of success that makes the hours reasonably expended a satisfactory basis for a fee award. *Id.* at 524 (citing *Hensley*, 461 U.S. at 434). If the successful and unsuccessful claims are unrelated, no fee may be awarded for services on the unsuccessful claim. *Id.*

However, when the plaintiff's lawsuit has a common core of facts or related legal theories, it is difficult to parse the hours on a claim-by-claim basis because, ordinarily, counsel's

[2] The parties in this case are in general agreement that the Court must employ the lodestar approach.

time would have been expended in any event towards the overall litigation. *Ochse v. Henry*, 216 Md. App. 439, 461 (2014). In this circumstance, the court should regard the claims as related when determining the fee award. *Friolo*, 373 Md. at 524.

If the court determines that a litigant has obtained excellent results, his attorney should recover the full fee, which would normally encompass all hours reasonably expended on the case. *See Hyundai Motor America v. Alley*, 183 Md. App. 261, 277 (2008) (citing *Friolo*, 373 Md. at 524-25). If the court finds that the litigant obtained exceptional success, even an enhanced award may be justified. *Id.* On the other hand, if the court determines that the litigant achieved only partial or limited success, a downward adjustment may be necessary even if the claims were "interrelated, non-frivolous and made in good faith." *Friolo*, 373 Md. at 525. What the court should not do, however, is use a strict "proportionality test" to test the reasonableness of the fee request. *Stevenson v. Branch Banking and Trust Corp.*, 159 Md. App. 620, 666 (2004).

The fee amount may also be adjusted, upward or downward, after a consideration of the twelve factors[3] first articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *Friolo*, 373 Md. at 523-24. An edited version of those factors is found in footnote 2 of the Court of Appeals' opinion in *Friolo I*:

> (1) The time and labor required (the judge should weigh the hours claimed against his or her own knowledge, experience and expertise and, if more than one attorney is involved, scrutinize the possibility of duplication);
>
> (2) The novelty and difficulty of the question (cases of first impression generally require more time and effort);
>
> (3) The skill required to perform the legal service properly;
>
> (4) The preclusion of other employment by the attorney due to acceptance of the case;

[3] The twelve *Johnson* factors are the same factors codified under the new Maryland Rule 2-703, which applies predominantly to actions in which attorney's fees are allowed by statute. *See* Md. Rule 2-703(f)(3).

(5) The customary fee for similar work in the community;

(6) Whether the fee is fixed or contingent (fee agreed to by the client is helpful in demonstrating attorney's fee expectations, litigant should not be awarded fee greater than that he is contractually bound to pay);

(7) Time limitations imposed by the client or circumstances (whether this was priority work);

(8) The amount involved and the results obtained (the court should consider the amount of damages awarded, but also whether the decision corrects across the board discrimination affecting a large class of employees);

(9) Experience, reputation and ability of the attorneys;

(10) Undesirability of the case (the effect on the lawyer in the community for having agreed to take an unpopular case);

(11) Nature and length of professional relationship with the client; and

(12) Awards in similar cases.

The lodestar approach does not conflict with the eight factor test set forth in Rule 1.5(a) of the Maryland Lawyers' Rules of Professional Conduct, which mandates that a lawyer's fees must be reasonable. *Id.* at 527-529. In fact, when determining the reasonableness of the fee request under a statute, Maryland courts apply the factors under Rule 1.5(a), which are similar to the *Johnson* factors. *See Hyundai Motor America*, 183 Md. at 276; *Friolo*, 373 Md. at 505. The factors under Rule 1.5(a) include:

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

(2) the likelihood that acceptance of the employment will preclude other employment of the lawyer;

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

However, the *Friolo I* court acknowledged that where Rule 1.5(a) limits what an attorney can recover (e.g., it is a violation of the rule for the attorney's stake in the result to exceed the client's stake), this kind of limit "may well clash with the public policy behind statutory fee-shifting provisions" which is to incentivize individuals to hire private counsel even if it is to seek relatively small amounts. *Friolo*, 373 Md. at 528. Therefore, the *Friolo I* court advised that when determining the reasonableness of the fee, courts should keep in mind the legislative intent behind fee shifting statutes, which is "to enable private parties to obtain legal help in seeking redress for injuries resulting from the actual or threatened violation of specific . . . laws," and to allow plaintiffs "to engage a lawyer based on the statutory assurance that he will be paid a reasonable fee." *Id.* at 526.

There is no dispute that fee applicant has the burden of proof. The party seeking fees bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. *Hensely*, 461 U.S. at 437. The party requesting fees should exercise "billing judgment" with respect to hours worked, and should maintain billing time records so that the reviewing court can identify distinct claims. *Id.* Counsel seeking fees is not required to record in great detail how each minute of his time was expended, but should at least identify the subject matter of his time expenditures. *Id.* at n. 12.

III.

Entitlement to Attorney's Fees and Costs

The plaintiff claims he is entitled to attorney's fees and costs under Md. Code Ann., State Gov't, §20-1202(d) and Md. Rule 2-703. Section 20-1202(d), a remedial statute, provides:

> In a civil action under this section, the court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

Lodestar Calculation

The plaintiff has met his burden of proof in this case. In support of his fee request, the court finds that the plaintiff has submitted itemized billing statements from counsel showing a detailed description of the nature of the work performed, the timekeeper, the timekeeper's hourly rate, the amount of time expended, the date on which the work was performed, and the amount actually charged. The court has reviewed every legal memoranda, exhibit, and affidavit submitted by the parties. The court finds the information submitted by the plaintiff to be detailed and informative. As part of his petition, the plaintiff submitted: (a) billing statements itemizing the legal fees incurred, (b) billing statements itemizing the costs incurred, (c) a declaration of Michael L. Rowan, the plaintiff's expert, in support of the plaintiff's fee request, (d) a declaration of Thomas J. Gagliardo, an employment law attorney, supporting the reasonableness of the plaintiff's fee request, (e) a declaration of Adam Augustine Carter, the plaintiff's counsel, in support of the fee request, and (f) evidence of the settlement discussions between the parties.

Time and labor required

The defendant forced this case to go to trial. At least on four different occasions, counsel for the plaintiff made settlement offers to the defendant: the first for $700,000, the second for $699,000, the third for $400,000, and the fourth for $450,000. The defendant responded with

unrealistic counter-offers: the first for $1,000, and the second for $50,000. The defendant drove this case to trial by failing to engage in meaningful settlement discussions.

Further, this case was intensely litigated from both sides from the moment the complaint was filed. The parties engaged in extensive and substantial discovery and investigation, which included the review of 251,072 pages of documents. The parties litigated discovery disputes through the defendant's motion for a protective order, and the plaintiff's motion to compel, on which the court held a hearing. The court also held hearings on the defendant's motions to file certain motions under seal, and a defendant's motions in limine. The parties also litigated a heavily briefed motion for summary judgment filed by the defendant. Even after the court granted summary judgment in favor of the defendant as to the discrimination claim, the case proceeded to a five-day jury trial on the remaining retaliation claim.

In the brief submitted to the court opposing the plaintiff's fee petition, the defendant did not specifically challenge the amount of time the plaintiff's counsel employed on the case. However, at the hearing on May 20, 2015, the defendant challenged the time required to litigate this case through the testimony of the defendant's expert, Barton Moorstein, an expert whom the defendant disclosed to the plaintiff only two days before the May 20th hearing.

Mr. Moorstein is an attorney who has been practicing law in Montgomery County for at approximately 33 years. He has a civil litigation practice of two attorneys, and does not have an office in the District of Columbia, where the plaintiff's counsel's firm (The Employment Law Group) is located. Mr. Moorstein opined that the 30-35 hours the plaintiff's counsel spent drafting the complaint was unreasonable, and that instead 10 hours would have been more appropriate for this task. Similarly, Mr. Moorstein opined that the 64 hours the plaintiff's counsel spent responding to the defendant's motion for summary judgment was unreasonable

and that instead, 30-35 hours would have been more appropriate for this task. Mr. Moorstein also opined that the 135 hours the plaintiff's counsel spent on trial preparation during the eight days before trial was unreasonable, and that instead, 5-7 hours per day would have been more appropriate. Mr. Moorstein opined that spending 17-18 hours per day during the trial week was unreasonable, and that 10-12 hours would have been reasonable.[4] Mr. Moorstein also testified that billing at $520 per hour for the 5th day of trial, when the jury was deliberating, was unreasonable. Mr. Moorstein further opined that the amount of time the plaintiff's counsel spent preparing the fee petition was unreasonable.

The court does not find Mr. Moorstein's testimony to be persuasive. *Walker v. Grow*, 170 Md. App. 255, 275 (2006) ("Even if a witness is qualified as an expert, the fact finder need not accept the expert's opinion. . . . The trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced.") The court finds, however, that the declaration of Michael L. Rowan, dated April 8, 2015, is reliable and credible. Mr. Rowan, who was retained as the plaintiff's expert, has been in private practice at Quinn & McAuliffe since 1995, and has direct experience with fee litigation in complex litigation cases. Mr. Rowan opined that the hours spent on this case, after reducing $10,573 in the exercise of sound billing judgment, were reasonable and appropriate in this kind of complex litigation.

Hourly Rates

In support of his fee request, the plaintiff points to the declaration of Mr. Rowan, who opined that the rates in this case were reasonable and consistent with the prevailing market rates for complex civil litigation in Montgomery County.

[4] The court disagrees with the opinion that the trial days were excessively long. Trial days were long in this case because this court made the parties try a two-week trial in one week.

In its opposition, the defendant argues that the plaintiff's hourly rates are unreasonable because: (a) it includes fees for non-lawyers (law clerks), (b) reliance on the *Laffey* Matrix is misplaced because this matrix applies to hourly rates in Washington, D.C. instead of Montgomery County, where this case was litigated, (c) the plaintiff's reliance on the declaration of Michael Rowan and Thomas J. Gagliardo is misplaced since these two experts were not aware that Maryland courts have rejected the *Laffey* Matrix for guidance on rates outside of Washington, D.C., and these two experts failed to cite any case law supporting their positions that the *Laffey* Matrix applies in this case. Instead, the defendant proposes that this Court should cap the plaintiff's fees based on Section 3 of Appendix B of the Local Rules for the District of Maryland ("Appendix B"). The defendant then proposes that based on Appendix B, the plaintiff's legal fees request should be reduced by $38,990.21.

In his reply, the plaintiff argues that: (a) across-the-board reduction in fees, as the defendant proposes, is an inappropriate response to a fee petition, (b) this Court is not bound by Appendix B, which offers guidance to federal courts in Maryland, (c) Mr. Rowan is familiar with the market for attorney's fees in Montgomery County since this is where he litigates, and (d) paralegal and law clerk fees are not barred by *Friolo I*, and are allowed under Md. Code Ann., State Gov't, §20-1202(d).

The court finds that the fees for non-lawyers (law clerks) are reasonable and recoverable. The defendant cites to *Sterling v. Atl. Auto. Corp.*, No. 235718, 2005 WL 914348 (Md. Cir. Ct. Feb. 17, 2005), where the court determined that under *Friolo I*, in a retaliation case, the plaintiff could not recover legal fees for non-lawyers. *Sterling v. Atl. Auto. Corp.*, No. 235718, 2005 WL 914348, at *8 (Md. Cir. Ct. Feb. 17, 2005). This court disagrees with the approach taken in *Sterling* regarding fees for non-lawyers. In *Friolo I*, the court excluded fees for non-lawyers

because under the Wage and Hour Law and the Payment Law, only reasonable "counsel fees" were recoverable. *Friolo I*, 373 Md. at 530. In support of this decision, the *Friolo I* court pointed to the legislative history behind the wage statute, which demonstrated that a request was made to allow paralegal fees and it was rejected.

Friolo I's exclusion of fees for work performed by law clerks is not controlling here because the plaintiff is not seeking attorney's fees under the Wage and Hour Law and Payment Law. The defendant has failed to cite any binding case law or persuasive legislative history supporting the proposition that under Md. Code Ann., State Gov't, §20-1202(d) and Md. Rule 2-703, fees for law clerks cannot be awarded. The court is persuaded that in this case, the fees for the work performed by the law clerks are recoverable because the law clerks engaged in tasks traditionally performed by an attorney. "Fees for work performed by paralegals are generally recoverable, but only 'to the extent they reflect tasks traditionally performed by an attorney and for which the attorney would customarily charge the client.'" *Kabore v. Anchor Staffing, Inc.*, No. L–10–3204, 2012 WL 5077636, at *4 (D. Md. Oct. 17, 2012) (citing to *Hyatt v. Barnhart*, 315 F.3d 239, 255 (4th Cir. 2002)). In this case, the law clerks performed legal work, as opposed to purely clerical work, for which an attorney would customarily charge the client.[5] As a result, the fees charged for the work performed by the law clerks, at a rate of $150 per hour, are recoverable.

Both sides have argued whether the *Laffey* Matrix, maintained by the U.S. Attorney for the District of Columbia, applies in this case. The court finds that the *Laffey* Matrix is neither binding nor persuasive authority in this case. In *Friolo I*, the Court of Appeals declared that

[5] For example, James Crosland, a full-time litigation law clerk at the Employment Law Group, on February 6, 2014, billed time for the work he performed drafting the complaint. On February 3, 2015, Mr. Crosland billed time for the work he performed drafting jury instructions. On February 4, 2014, Mr. Crosland billed time for the work he performed drafting the pre-trial statement.

Maryland courts were not bound to any matrix "adopted by out-of-State courts or agencies." *Friolo*, 373 Md. at 530. Instead, Maryland courts "must be guided by the nature of [the] case and the relevant issues it present[s] and by the rates or other fee arrangements common in the community for similar kinds of cases." *Id.*

This court also concludes that the federal District Court of Maryland fee schedule, found in Appendix B of the Local Rules for the District of Maryland, is not persuasive in this case. That schedule was last modified in 2008 and is based largely on rates then charged in Baltimore. In addition, federal judges and magistrate judges do not invariable follow this fee schedule in complex cases such as this one.

In this case, the court will determine, based on all the relevant evidence as well as the court's experience in similar cases, the reasonableness of the hourly rates.[6] As former Judge Joseph Murphy has stated, along with other competent evidence, "the chancellor may rely on his own knowledge and experience in appraising the value of an attorney's services." *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 121 Md. App. 100, 121 (1998) (quoting *Foster v. Foster*, 33 Md. App. 73, 77 (1976)). The court finds that the relevant legal community in this case is the Washington, D.C. metropolitan area, which includes northern Virginia, Washington D.C., and Montgomery County. The court finds that based on the hourly rates charged in the Washington, D.C. metropolitan area, the rates charged here for partners, associates, and law clerks were reasonable.

This court recently had occasion to consider the question of reasonable hourly rates in complex cases. In *Lyon Villa Venetia LLC, et al v. CSSE Mortgage LLC, et al*, 2015 MDBT 1 (Feb. 19, 2015) (contractual fee-shifting case), this court found that discounted blended rates of

[6] At the hearing on May 20, 2015, the defendant agreed that the court could consider its knowledge of similar cases when evaluating the reasonableness of the fees and costs.

$600 per hour for partners and $500 per hour for associates were reasonable. Similarly, in *White Flint Express Realty Limited Partnership LLLP v. Bainbridge St. Elmo Bethesda Apartments, LLC*, 2014 MDBT 1 (April 3, 2014) (contractual fee-shifting case), this court found that rates of $725 per hour and $625 per hour for partners were reasonable, and that $495 per hour and $485 per hour for senior associates were reasonable. In this case, the hourly rates charged for partners and associates are lower than what this court has found reasonable in *Lyon Villa Venetia* and *White Flint*. The hourly rates charged in this case were as follows: $520 per hour for Adam Carter (Principal and Lead Counsel), $460 per hour for R. Scott Oswald (Managing Principal) and Nicolas Woodfield (Principal), and $255 per hour for associates.

In reaching the conclusion that the hourly rates charged here are reasonable, the court also considers for guidance, that the federal courts in the Eastern District of Virginia, in complex civil cases, have found hourly rates for partners between $685 - $625 and hourly rates for associates of $525 - $495 to be reasonable. *See, e.g., Taylor v. Republic Services, Inc.*, No. 1:12-CV-00523-GBL, 2014 WL 325169, at *5-6 (E.D. Va. Jan. 29, 2014); *Tech Systems, Inc. V. Lovelen Pyles*, No. 1:12.CV-374, 2013 WL 4033650, at *7 (E.D. Va. Aug. 6, 2013) ($475 held to be reasonable hourly rate for partner work); *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10-cv-00502 (E.D. Va. August 24, 2011). *See also SunTrust Mortg., Inc. v. AIG United Guar. Corp.*, 933 F. Supp. 2d 762, 773-74 (E.D. Va. 2013) ($695 held to be a reasonable rate for partner work in the Richmond, Virginia area).

This court's experience for a decade in complex cases in Montgomery County, including in employment discrimination cases, confirms that experienced lawyers handling similar complex legal matters in this court routinely charge hourly rates akin to those charged by the plaintiff's firm. The court also finds that the plaintiff's counsel appropriately employed more

junior attorneys, including law clerks, with a lower billing rate, to assist lead counsel during the litigation. For all these reasons, the court is persuaded that the hourly rates charged in this case are reasonable.

Adjustments

After determining that under the lodestar approach, the time spent by the plaintiff's counsel and the hourly rate charged are reasonable, the court must consider whether any adjustments are necessary to the fee request. As set forth below, after considering the relevant factors, the court has determined that no upward or downward adjustment is merited.

The plaintiff achieved excellent results

The plaintiff contends that he is the prevailing party because he obtained an $830,000 verdict in his favor, which was almost the full amount of damages the plaintiff asked the jury to award him. The defendant's position is that the plaintiff only achieved partial or limited success because the plaintiff only succeeded as to the retaliation claim because the discrimination claim was dismissed on summary judgment. In addition, the defendant contends that the retaliation and discrimination claims are unrelated because they do not involve a common core of facts or related legal theories. Accordingly, the defendant contends that the plaintiff's fee petition should be limited to the work performed on the retaliation claim. The defendant then suggests that the fees the plaintiff incurred before the grant of summary judgment on the discrimination claim should be cut in half to represent the limited success on the claims pursued. Alternatively, the defendant proposes that even if these two claims are related, a reduction of at least 10% is warranted to account for the plaintiff's limited success. In his reply, the plaintiff's position is that that the national origin discrimination and retaliation claims are inextricably intertwined.

The court agrees with the plaintiff that he was completely successful at trial. Under the common core of facts doctrine, derived from *Hensley*, the court can award full compensatory fees where an attorney may not have prevailed on each and every claim or defense but still has achieved excellent results. *Ochse v. Henry*, 216 Md. App. 439, 459-460 (2014) (citing *Friolo I*, 373 Md. at 522-25). "The doctrine removes the requirement of allocation and treats as one claims that are based on a common core of facts or related legal theories." *Id.* at 459. In this case, the discrimination and retaliation claims were based on a common core of facts. Under the discrimination claim, the plaintiff alleged that the defendant issued a negative performance review in 2012 because of the plaintiff's national origin. Under the retaliation claim, the plaintiff alleged that the defendant fired him in 2013 because he engaged in protected activity when he challenged the 2012 negative performance review.

The one case the defendant cites, *Creech v. Rumsfeld*, Civ. No. 8:03-cv-03150-AW (D. Md. Dec. 23, 2005), to support its position that the discrimination and retaliation claims are not related, is distinguishable. In *Creech*, the plaintiff filed both a discrimination and a retaliation claim against her employer. The court dismissed the retaliation claim on summary judgment. In its ruling on the plaintiff's motion for an award of attorney's fees, the court reasoned that the discrimination and retaliation claims were not related because the discrimination or hostile environment claim was concerned with the "long-term, severe and pervasive hostile climate" created by the plaintiff's co-worker, while the retaliation claim was concerned with the plaintiff's employer's conduct after the plaintiff filed her EEO complaint. Slip Op. at 5.

While in *Creech* the facts underlying the discrimination and retaliation claims were distinct, in this case they are not. In this case, the plaintiff's evidence related to his performance and the treatment by his supervisors before and after he engaged in protected activity, was

important to the discrimination and retaliation claims. Although the plaintiff was not successful on the discrimination claim, the retaliation and discrimination claims are based on a common core of facts that makes it difficult to divide the hours on a claim-by-claim basis. The claims therefore, are related for purposes of the fee award. The plaintiff here obtained excellent results and is entitled to recover the entire fee award, which encompasses all hours reasonably expended on the case.

Factors under Johnson and Rule 1.5(a)

The court will limit its discussion of the factors under *Johnson* and Rule 1.5(a) to those the court has not already considered.

The novelty and difficulty of the question

The court finds that the discrimination and retaliation claims did not present particularly difficult legal questions. However, the court finds that the fact-intensive nature of these claims did require the parties to engage in extensive investigation and discovery in a relatively short span of time. The court is persuaded that the nature of the claims made this a complex case, and that this factor supports the court's complete award of the plaintiff's legal fees.

The skill required to perform the legal service properly

The court finds that this complex employment case, which went to trial rapidly, and which required extensive discovery and contested dispositive motions, also required very skilled employment lawyers in order for the plaintiff to succeed. The court finds that the plaintiff's counsel in this case was very well prepared, meticulous, and diligent. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

The preclusion of other employment by the attorney due to acceptance of the case

The court finds that if the plaintiff's counsel had not pursued the plaintiff's case, counsel could have been litigating other employment cases. The defendant has not articulated its position as to how this factor affects the plaintiff's fee request. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

Whether the fee is fixed or contingent

The court finds that the plaintiff agreed to pay a fee calculated on an hourly basis. Although the terms of a fee agreement between a lawyer and his client "cannot absolve the [c]ourt of its duty to determine a reasonable fee; on the other hand, an arm's length agreement, particularly with a sophisticated client, as in this instance, can provide an initial "rough cut" of a commercially reasonable fee." *Wisconsin Inv. Bd. v. Bartlett*, 2002 WL 568417, at *6 (Del Ch., April 9, 2002) (Chandler, C), *aff'd*, 808 A.2d 1205 (Del. 2002); *see Danenberg*, 58 A.3d 991, 997 (Del Ch., 2012) (quoting *Bartlett*, 2002 WL 568417, at *6). The court finds that the plaintiff paid all fees and costs incurred in this case, and that counsel expects to reimburse the plaintiff if the fee request is granted. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

Time limitations imposed by the client or circumstances (whether this was priority work)

The court finds that this case was priority work for everyone involved, and especially for the plaintiff who tried to settle this case and did not receive serious counter-offers from the defendant. This case was filed on May 23, 2014 and was tried less than a year later. The court finds that the plaintiff's counsel prioritized this case in a cost-efficient manner. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

The amount involved and the results obtained

The court finds that the jury awarded the plaintiff $830,000 in economic damages, which was very close to the amount the plaintiff requested the jury to award him. The court finds that this significant jury verdict provides an incentive to the defendant to revise its policies and actions at the workplace. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

Experience, reputation and ability of the attorneys

The court finds that the plaintiff's counsel were experienced employment lawyers who had extensive experience litigating employment discrimination cases and pursuing appeals. The defendant has not challenged the plaintiff's counsel's skills. The court is persuaded that this factor supports the court's complete award of the plaintiff's legal fees.

Undesirability of the case

The court finds that the attorneys who litigated this case, and lead counsel in particular, did not suffer any adverse reaction from the community for agreeing to take this case. The court finds that this factor plays a neutral role when determining whether to award the plaintiff's legal fee request.

Nature and length of professional relationship with the client

The court finds that the plaintiff established a professional relation with his counsel as of December 10, 2013 when the engagement letter was signed. The court finds that this factor plays a neutral role when determining whether to award the plaintiff's legal fee request.

Awards in similar cases.

The court finds that the parties have not presented any persuasive evidence as to fee awards in similar cases. The court finds that this factor plays a neutral role when determining whether to award the plaintiff's legal fee request.

Costs

The plaintiff contends he is entitled to costs under Md. Code Ann., State Gov't, §20-1202(d), which provides for the award of reasonable expert witness fees and costs. As part of the costs incurred, the plaintiff is also requesting investigatory fees, and the fees incurred for the courtroom technology.

In its opposition, the defendant contends that the majority of the plaintiff's costs are not recoverable. The defendant argues that as stated in the Maryland Rules Commentary, the court should exclude the post-judgment recovery of costs for depositions or expert witness fees. The defendant further argues that the plaintiff has failed to provide sufficient detail to support why the costs incurred for the private investigator, courtroom technology or legal research, should be awarded. The defendant ultimately argues that the plaintiff's recoverable costs are limited to $7,150.99 and that therefore, $48,781.12 are not recoverable.

Under Md. Code Ann., State Gov't, §20-1202(d), "the court may award the prevailing party . . . expert witness fees, and costs." It is established that the party that is "entitled to recover attorney's fees [is] also entitled to recover reasonable litigation-related expenses as part of their overall award." *Kabore v. Anchor Staffing, Inc.*, No. L–10–3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012). Such costs may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Id.* (citing *Spell v. McDaniel,* 852 F.2d 762, 771 (4th Cir. 1988)). For

example, a prevailing party may recover costs for "necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying." *Id.* (citing *Andrade v. Aerotek, Inc.*, 852 F.Supp.2d 637, 644 (D. Md. 2012)).

The plaintiff is the prevailing party in this case and is entitled to recover reasonable costs. The court agrees, however, that the costs the plaintiff incurred for the private investigator in the amount of $371 are not recoverable. From the evidence the court has considered, it is unclear what counsel used the private investigator for. As to the post-judgment costs, the defendant has failed to cite any binding case law that prohibits the award of post-judgment costs for depositions or expert witness fees. The case that is cited in the excerpt from the Maryland Rules Commentary, *Bahena v. Foster*, 164 Md. App. 275 (2005) is not persuasive and does not apply here. *Bahena* held that "costs" under Md. Rule 2-603, "do not include either attorneys' fees or expert witness fees." *Bahena*, 164 Md. at 291. In *Bahena*, the court also denied costs under Md. Rule 1-341. *Id.* at 291-92. In this case, the plaintiff is not requesting costs under Md. Rule 2-603 or Md. Rule 1-341, therefore, *Bahena* cannot limit the costs the plaintiff can recover.

The court finds that the fees incurred for the courtroom technology are recoverable. The technology the plaintiff used was helpful and persuasive to the jury. The plaintiff effectively used the courtroom technology to impeach the defendant's witnesses and to show the jury the timeline of the events in this case. Presenting this case to the jury required showing them numerous documents, and the courtroom technology allowed the plaintiff to do this effectively and in an organized and cost-efficient manner.

The court finds that in support of his request for costs, the plaintiff has submitted a detailed billing statement listing the costs by date, the description, and the amount paid. The

court finds that the plaintiff has provided sufficient evidence of the costs reasonably incurred to litigate this case.

IV.

Conclusion

For the reasons set forth above, the plaintiff is awarded $299,988.50 in reasonable legal fees and $59,925.98 in costs and expenses. It is SO ORDERED this 12th day of June, 2015.

Ronald B. Rubin, Judge