

**IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

MICHELLE FOREMAN,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
<i>v.</i>	§	Case No. 23C891
	§	
DAVE ROSENBERG,	§	
	§	
<i>Defendant.</i>	§	

ORDER

This matter came before the Court for hearing on August 25, 2023, upon the Defendant’s Motion for Attorney’s Fees, Costs, and Expenses (Doc. 52) and the Defendant’s Motion for Tenn. Code Ann. § 20-17-107(a)(2) Sanctions (Doc. 54). Upon the Court’s consideration of the Defendant’s Motion for Attorney’s Fees, Costs, and Expenses (Doc. 52), the Defendant’s supporting exhibits (Collective Doc. 53), the Plaintiff’s response in opposition to the Defendant’s motion (Doc. 68), the Defendant’s reply (Doc. 77), the arguments of counsel, and the entire record, the Court FINDS and ORDERS as follows:

1. An award of reasonable attorney’s fees, costs, and expenses is mandatory under Tenn. Code Ann. § 20-17-107(a)(1).
2. The Defendant has sought an award of \$494.00 in costs and expenses, receipts for which are appended to the Defendant’s motion, and \$34,961.00 in attorney’s fees, time entries for which are appended to the Defendant’s motion. The Defendant’s request for attorney’s fees is supported by the Declaration of the Defendant’s lead counsel

and is calculated as follows:

- 82.6 hours by lead counsel Daniel A. Horwitz, billed at a rate of \$380.00/hour;
- 4.2 hours by attorney Lindsay Smith, billed at a rate of \$280.00/hour;
- 3.3 hours by attorney Melissa Dix, billed at a rate of \$260.00/hour; and
- 5.7 hours by attorney Sarah Martin, billed at a rate of \$270.00/hour.

3. Based on the Court's review of the Defendant's motion; the documentation the Defendant has submitted supporting the reasonableness of the time entries, rates, and total award claimed; and the Court's observation that additional fees and compensable time entries from additional attorneys who represented the Defendant—including during litigation in Williamson County—are not included in the Defendant's request, the Court finds that the Defendant has met his burden of establishing the reasonableness of his claimed award under Tenn. Sup. Ct. R. 8, RPC 1.5(a)(1)–(10). The Court further finds that, in opposing the Defendant's motion, the Plaintiff has not met her burden of rebuttal or submitted any evidence contesting the reasonableness of the Defendant's claimed award. Thus, for the reasons set forth in the Defendant's motion, the Court finds that the Defendant's requested attorney's fees and costs are reasonable. Accordingly, it is ORDERED that the Defendant's Motion for Attorney's Fees, Costs, and Expenses (Doc. 52) is GRANTED. Upon entry of this Order, judgment shall ENTER in favor of the Defendant, Dave Rosenberg, against the Plaintiff, Michelle Foreman, in the amount of THIRTY-FIVE THOUSAND, FOUR HUNDRED AND FIFTY-FIVE DOLLARS AND NO CENTS (\$35,455.00), which is inclusive of all compensable claims for attorney's fees, costs, and expenses incurred through August 11, 2023.

4. The Court takes notice that the Plaintiff has filed a motion to revise (Doc. 76) under Tennessee Rule of Civil Procedure 54.02(1), which is set for hearing on

September 29, 2023. The Court finds that, should it determine that the Rule 54.02 motion has merit and the Plaintiff prevails, the Court’s attorney’s fees and costs order shall necessarily be vacated. The Court further notes that Defendant’s counsel stipulated that the Court’s attorney’s fees and costs order set forth above should be vacated if the Plaintiff prevails on her Rule 54.02 motion and stipulated to the appropriateness of that remedy.

5. The Defendant has asserted that, because the information contained in Attachment B to Ex. 6 of the Defendant’s Motion for Attorney’s Fees, Costs, and Expenses is privileged, that isolated portion of his motion—and that portion alone—should be maintained by the Clerk under seal. *See* Doc. 52 at 7, n.3 (citing *Los Angeles Cty. Bd. of Supervisors v. Superior Ct.*, 386 P.3d 773, 781 (Cal. 2016) (“the information contained within certain invoices may be within the scope of the privilege. To the extent that billing information is conveyed ‘for the purpose of legal representation’—perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue—such information lies in the heartland of the attorney-client privilege.”)). Based on the confidentiality of and need to protect that attorney-client privileged information, the Court FINDS and ORDERS that Attachment B to Ex. 6 of the Defendant’s Motion for Attorney’s Fees, Costs, and Expenses—and only that document—shall be maintained by the Clerk under seal.

6. The Plaintiff’s oral motions, made during argument at the August 25, 2023 hearing, to stay a ruling on the Defendant’s Motion for Attorney’s Fees, Costs, and Expenses and to depose the Defendant’s attorneys are DENIED.

7. Also before the Court is the Defendant’s Motion for Tenn. Code Ann. § 20-17-107(a)(2) Sanctions (Doc. 54). The Court will not stay a ruling on the motion. Instead,

having considered the Parties' briefing and arguments, the Court will take the motion under advisement and issue a ruling as promptly as possible. The Court will issue a ruling by written order which the Court will prepare and send to the Parties when it is ready to rule.

IT IS SO ORDERED.

ENTERED this the ____ day of _____, 2023.

Judge Lynne T. Ingram¹
Circuit Court Judge

¹ The Judge's signature may be appended to this order upon entry via the Court's e-filing system.

APPROVED FOR ENTRY:

By: /s/ Daniel A. Horwitz
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2023, a copy of the foregoing was served via the Court's e-filing system upon:

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Counsel for the Plaintiff

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, Esq.



Case Title: FOREMAN V ROSENBERG

Case Number: 23C891

Type: ORDER- GENERAL

The foregoing is hereby ORDERED, ADJUDGED
AND DECREED:

Judge Lynne T. Ingram, Eighth Circuit