

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

DARREN WEBB

PLAINTIFF

v.

4:08CV00191-WRW

U.S. FOOD SERVICE

DEFENDANT

ORDER

Pending is Plaintiff's Motion for Attorneys Fees and Costs (Doc. No. 38). Defendant has responded.¹ Also pending is Defendant's Motion to Strike or in the Alternative Defendant's Motion Opposing Plaintiff's Notice of Filing Exhibits Seeking Attorney's Fees and Costs (Doc. No. 43).

A March 9, 2009, Order denied both Plaintiff's and Defendant's motions for summary judgment, and remanded the case to Defendant and the claims administrator.² Because Plaintiff's motion for summary judgment was denied, and there was no ruling that I consider made Plaintiff a prevailing party,³ Plaintiff's Motion (Doc. No. 38) is DENIED without prejudice. Defendant's Motion to Strike (Doc. No. 43) is DENIED as moot.

IT IS SO ORDERED this 31st day of March, 2009.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

¹Doc. No. 41.

²Doc. No. 37.

³*Starr v. Metro Sys., Inc.*, 461 F.3d 1036, 1040-41 (8th Cir. 2006) (citing *Martin v. Arkansas Blue Cross & Blue Shield*, 299 F.3d 966, 972 (8th Cir. 2002)).