



Dated: July 08, 2021
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Carnita Faye Atwater
Debtor

Case No. 20-22880
Chapter 7

Scott B. Peatross
Plaintiff,
v.
Carnita Faye Atwater,
Defendant.

Adv. Pro. 20-00131

Scott B. Peatross
Plaintiff,
v.
Carnita Faye Atwater,
Defendant.

Adv. Pro. 20-00133

MEMORANDUM OPINION AND ORDER APPROVING
REQUESTED ATTORNEY'S FEES AND EXPENSES

This Court has entered two prior Orders (“Prior Orders”) awarding reasonable attorney’s fees and expenses to Plaintiff in an amount to be determined after submission of affidavits from Plaintiff’s attorney (“Affidavits”) itemizing his fees and expenses incurred in prosecuting two motions to compel Defendant’s compliance with discovery (“the Motions”), and after Defendant was given an opportunity to challenge the Affidavits. *See* Order Granting in Part Motion to Compel Defendant to Answer Interrogatories, to Compel Defendant to Answer Requests for Production and Produce Documents Requested Therein, and Awarding Attorney Fees and Expenses and/or Other Sanctions [DE 33 in A.P. 20-00131 and DE 36 in A.P. 20-00133] and Order Compelling Defendant to Comply with Prior Order Requiring Her to Answer Completely All Interrogatories and Requests for Production and to Produce All Documents Requested Therein and Awarding Plaintiff His Reasonable Attorney Fees and Expenses [DE 56 in A.P. 20-00131 and DE 58 in A.P. 20-00133].

Defendant filed Responses in objection (“Responses”) [DE 38 and DE 59 in A.P. 20-00131 and DE 41 and DE 61 in A.P. 20-00133] to each of Mr. Matthews’ Affidavits [DE 37 and DE 57 in A.P. 20-00131 and DE 40 and DE 59 in A.P. 20-00133], and hearings were held May 4, 2021 and June 1, 2021, at which time the Court took these contested matters under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). This Court has both the statutory and constitutional authority to hear and determine these matters subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This memorandum of decision constitutes the Court’s findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52, made applicable to these contested matters by FED. R. BANKR. P. 9104 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the docket, the submitted materials, considered statements of

counsel, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court finds that the fees and expenses set forth in Mr. Matthews' Affidavits are reasonable, and accordingly, are approved pursuant to the Court's Prior Orders awarding Plaintiff his attorney's fees and expenses incurred in prosecuting the Motions to compel discovery. *See* Motions [DE 25 and DE 45 in A.P. 20-00131 and DE 27 and DE 46 in A.P. 20-00133].

**DISCUSSION OF BACKGROUND FACTS AND
INFORMATION AND PROCEDURAL HISTORY OF THIS CASE**

In keeping with the Court's Prior Orders awarding attorney's fees and expenses to Plaintiff, the Court herein examines Mr. Matthews' fee and expense Affidavits in light of the Responses filed and objections raised by the Defendant. The first Affidavit [DE 37, Exh. A in A.P. 20-00131 and DE 40, Exh. A in A.P. 20-00133] filed by Mr. Matthews pursuant to the Court's Order Granting in Part Motion to Compel Defendant to Answer Interrogatories, to Compel Defendant to Answer Requests for Production and Produce Documents Requested Therein, and Awarding Attorney Fees and Expenses and/or Other Sanctions [DE 33 in A.P. 20-00131 and DE 36 in A.P. 20-00133], sets forth time entries evidencing 36.30 hours expended at Mr. Matthews' hourly rate of \$365, resulting in fees of \$13,249.50, plus \$22.60 for photocopy expenses, bringing the total amount requested to \$13,272.10 for prosecution of the Plaintiff's first Motion to Compel [DE 25 in A.P. 20-00131 and DE 27 in A.P. 20-00133].

In addition to Mr. Matthews' time and expense entries, the Affidavit asserts that Mr. Matthews earned a bachelor's degree from Duke University in 1974 and a juris doctorate degree from Vanderbilt University law school in 1977. He has over 40 years of practice experience in Memphis, Tennessee, with his primary practice focused on bankruptcy law. [DE 37 in A.P. 20-

00131 and DE 40 in A.P. 20-00133, ¶ 10]. In fact, Mr. Matthews has held a board certification in both Business Bankruptcy Law and Consumer Bankruptcy Law since 1999. *Id.*

The Affidavit also speaks to the complexity of this litigation, citing:

(a) the magnitude (approximately \$2.5 million) of Plaintiff's claim against Defendant; (b) the fact that the subjects of the motion . . . are three lengthy discovery requests filed in two adversary proceedings; (c) the fact that when [he] filed Plaintiff's Motion to Compel, Defendant had not served any discovery responses, but after the Motion to Compel and for Sanctions were filed, Defendant served and filed discovery responses that were incomplete, evasive, and otherwise deficient; (d) Defendant did not file an objection to Plaintiff's motion prior to the deadline in the "negative notice order" . . . or subsequently, so [Mr. Matthews] drafted and uploaded a lengthy proposed order; and (e) when a hearing was set anyway, it was necessary for [him] to draft and file a memorandum supplementing Plaintiff's Motion to Compel and for Sanctions to describe in detail the deficiencies of the discovery responses served and filed by Defendant after said motion was filed.

Id. at ¶ 7. Mr. Matthews also attests that his time entries are accurate, and the time expended on each task was necessary and reasonable in connection with his first Motion. *Id.*

Defendant responded [DE 38 in A.P. 20-00131 and DE 41 in A.P. 20-00133] to Mr. Matthews' Affidavit, admitting that Mr. Matthews' hourly rate is not "unreasonable . . . for lawyers in this jurisdiction with comparable education and experience." *Id.* at page 1. There is also no objection to the expenses claimed. *Id.* Defendant contends, however, that of the 36.30 hours billed, "at least 24.90 hours were overbilled, considering [Mr. Matthews'] education, training and experience," and that "much of the time billed was unnecessary and redundant." *Id.* at page 2. Specifically, Defendant objects to the following entries detailed on Mr. Matthews' time sheet related to the Motion: "Research for Motion (1.60 hours), Work on Motion (3.20 hours), Drafting Motion (2.8 hours), Finalize and file Motion (1.80 hours), and Draft and upload Order (2.90 hours)." *Id.* Defendant explains:

It is difficult to believe that an attorney with Mr. Matthews' education, training and forty years of experience practicing law would require 12.30 hours to accomplish the tasks detailed in the time sheet attached to the affidavit as Exhibit "A." Furthermore, Defendant would assert that much of the drafting could have been accomplished by an experience paralegal at, presumably, a much lower hourly rate.

Id. In addition, Defendant also raises an objection to the amount of time devoted to Mr. Matthews' memorandum filed in support of his Motion, pointing specifically to time entries for "Work on memorandum (4.50 hours), Drafting memorandum (3.90 hours), Finish and file memorandum (.80 hours), Drafting order (1.80 hours), and Drafting affidavit (1.60 hours)," and further contending that "Twelve and six-tenths (12.60) hours for drafting the listed documents is clearly excessive. Furthermore, the Memorandum was unnecessary and did little to further Plaintiff's position in this matter." *Id.*

On the heels of the Court's first Prior Order [DE 33 in A.P. 20-00131 and DE 36 in A.P. 20-00133], Plaintiff filed a second Motion to Compel Defendant to comply with his discovery requests [DE 45 in A.P. 20-00131 and DE 46 in A.P. 20-00133], again seeking an award of his attorney's fees and expenses incurred in prosecuting the second Motion. The Court then entered its second Order Compelling Defendant to comply with Plaintiff's discovery requests [DE 56 in A.P. 20-00131 and DE 58 in A.P. 20-00133], and awarding Plaintiff his reasonable attorney's fees and expenses. Pursuant to the second Order, Mr. Matthews filed his second Affidavit evidencing a total of 27.80 hours directed toward the second Motion at his hourly rate of \$365 per hour, resulting in a fee of \$10,147. Mr. Matthews also claims expenses of \$10.95 for photocopies, which brings his total bill for the second Motion to \$10,157.95. [DE 57, Exh. A in A.P. 20-00131 and DE 59, Exh. A in A.P. 20-00133]. In addition to his time sheet and Mr. Matthews' credentials,

the Affidavit also declares that problematic circumstances contributed to the generation of his legal fees, including:

(a) the magnitude (approximately \$2.5 million) of Plaintiff's claim against Defendant; (b) the fact that the subjects of Plaintiff's Second Motion to Compel are three lengthy discovery requests filed in two adversary proceedings; (c) the fact that after the Court entered the Order Granting Plaintiff's First Motion to Compel, Defendant did not comply or even attempt to comply with said Order but took the unsupportable and now discredited position that she "had nothing to add;" (e) the Clerk's Office filed a "negative notice order" (Dkt. 47 in A.P. 20-00131 and Dkt. 48 in A.P. 20-00133), providing that if Defendant did not file an objection to Plaintiff's Second Motion to Compel by April 27, 2021, Plaintiff should submit an Order granting said Motion and no hearing would be held; (f) because Defendant did not object before or after said deadline, [Mr. Matthews] drafted and filed a Notice of Compliance with L.B.R. 9013-1 and drafted and uploaded a proposed Order; (g) nevertheless, a hearing was held on May 4, 2021; (h) during the conference between counsel in anticipation of the filing of Plaintiff's Second Motion to Compel, Defendant's attorney advised Plaintiff's attorney that Defendant "had nothing to add" to Defendant's prior, deficient responses to Interrogatories and Requests for Production; and (i) in order to refute that contention by Defendant, [Mr. Matthews] listened to the recording of Defendant's 341 meeting and thus was able to confirm and establish that Defendant provided information during her 341 meeting that she should have provided in response to Plaintiff's Interrogatories and Requests for Production but did not.

Id. at ¶ 6. Defendant filed a Response in objection to the Affidavit, again admitting that Mr. Matthews' hourly rate "is not . . . unreasonable," but arguing that "the majority of the 27.80 total hours detailed in Mr. Matthews' time sheet were overbilled, considering his education, training and experience," and "much of the time billed was unnecessary and redundant." [DE 59 in A.P. 20-00131 and DE 61 in A.P. 20-00133].

Both parties appeared and argued their positions at the Court's hearings on both of Mr. Matthews' Affidavits and the Defendant's Responses in opposition to the time expended. It is

against this factual backdrop that the Court now considers the reasonableness of Mr. Matthews' requested fees and expenses.

LAW AND ANALYSIS

In its Prior Orders, the Court awarded sanctions against Defendant in the form of Plaintiff's attorney's fees and expenses pursuant to FED. R. CIV. P. 37, made applicable to this bankruptcy case by FED. R. BANKR. P. 7037, which states, in pertinent part:

(a) Motion for an Order Compelling Disclosure or Discovery.

...

(3) Specific Motions.

...

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. . .

(4) Evasive or Incomplete Disclosure, Answer or Response. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer or respond.

(5) Payment of Expenses; Protective Orders.

(A) If the Motion is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted – or if the disclosure or requested discovery is provided after the motion was filed – the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's *reasonable expenses incurred in making the motion, including attorney's fees.* . . .

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

...

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i) – (vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the *reasonable expenses, including attorney's fees,* caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

FED. R. BANKR. P. 7037(a)(3)(B), (a)(4), (a)(5)(A), and (d)(3) (emphasis added). The only issue before the Court is whether the asserted fees and expenses are reasonable.

It is well established within the Sixth Circuit that the reasonableness of attorney's fees and expenses is determined by a lodestar analysis. *Ellison v. Balinski*, 625 F.3d 953, 960 (6th Cir. 2010) (citation omitted); *Boddy v. United States Bankr. Ct., Western Dist. of Kentucky (In re Boddy)*, 950 F.2d 334, 338 (6th Cir. 1991) ("At a minimum . . . the bankruptcy courts must expressly calculate the lodestar amount when determining reasonable attorney's fees."). "Whether to award fees and, if so, the reasonable amount of the fees are issues committed to the sound discretion of the trial court." *In re Scarlett Hotels, LLC*, 392 B.R. 698, 700 (B.A.P. 6th Cir. 2008) (citation omitted). The burden of proof rests on the applicant to justify the fees requested. *In re New Boston Coke Corp.*, 299 B.R. 432, 438 (Bankr. E.D. Mich. 2003) (citations omitted).

The first step in the lodestar analysis is to determine a reasonable hourly rate. *In re Williams*, 357 B.R. 434, 438-9 (B.A.P. 6th Cir. 2007) (citations omitted). However, Mr. Matthews' hourly rate is not in dispute in this case, nor are his claimed expenses. The Court must therefore consider the reasonableness of the hours expended, *Id.* at 439 (citation omitted), and then calculate the lodestar amount by "multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended." *In re Boddy*, 950 F.2d at 337 (citations omitted). The *Boddy* Court went on to note that "[t]he bankruptcy court also may exercise its discretion to consider other factors such as the novelty and difficulty of the issues, the special skills of counsel, the results obtained, and whether the fee awarded is commensurate with fees for similar professional services in non-bankruptcy cases in the local area." *Id.* at 338 (citations omitted).

Guided by the relevant factors set forth by the Sixth Circuit in the *Boddy* decision, the Court will evaluate the reasonableness of the hours expended as outlined in Mr. Matthews'

Affidavits in light of the Debtor's stated objections and the entire record in these cases, keeping in mind that "[t]he court's fundamental job is to determine whether a given legal fee – say, for taking a deposition or drafting a motion – would or would not have been incurred in the absence of the sanctioned conduct." *Goodyear Tire & Rubber Co. v. Haeger*, __ U.S. __, 137 S.Ct. 1178, 1187, 197 L.Ed.2d 585 (2017).

Regarding the first Affidavit, Defendant has raised specific objections to the amount of time expended for research and drafting of the first Motion to Compel and proposed order, work on and drafting of the memorandum in support of the Motion, drafting of the order granting the Motion, and drafting of Mr. Matthews' Affidavit setting forth his fees and expenses incurred. The Court finds Defendant's objections to these time entries to be without merit. Mr. Matthews' first Motion and memorandum in support provided the Court with background information and a thorough look into what he viewed as shortcomings in Defendant's responses to Plaintiff's discovery requests, so that the Court was well-prepared to hear argument on the disputed issues - especially in light of the fact that Defendant failed to provide any response to the Motion prior to the hearing.

The first proposed order that Mr. Matthews drafted and submitted was a result of Defendant's failure to file a response to the Motion to Compel by the bar date set forth in the Court's "negative notice" entry on the docket. *See* DE 26 in A.P. 20-00131 and DE 28 in A.P. 20-00133. Mr. Matthews stated that when the Motion was nevertheless set for hearing, he then decided it would be prudent to submit a detailed memorandum in support of the Motion. The Court finds Mr. Matthews' actions in this regard to be reasonable under the circumstances.

The Court has reviewed Mr. Matthews' time entries along with the pleadings at issue, and the Court finds that Mr. Matthews' hours expended on the tasks detailed in his time sheet are

reasonable for an attorney with Mr. Matthews' experience and skill. His efforts helped to produce the result he was seeking for his client to move this case forward to trial. The Court also notes for purposes of the lodestar analysis that the parties to this dispute have a long and litigious history, and the issues presented by these adversary proceedings are difficult and complex. For these reasons, the Court hereby awards to Plaintiff, to be paid by Defendant, attorney's fees and expenses in the amount of \$13,373.10 for Mr. Matthews' fees and expenses incurred in prosecution of Plaintiff's first Motion to compel discovery.

Defendant's objections to Mr. Matthews' second Affidavit are less specific, asserting only that Mr. Matthews "overbilled, considering his education, training and experience" and that "much of the time billed was unnecessary and redundant." [DE 59 in A.P. 20-00131 and DE 61 in A.P. 20-00133, page 2]. For the same reasons stated above regarding the first Affidavit, the Court finds that Mr. Matthews' hours expended on the tasks detailed in his time sheet attached to his second Affidavit are reasonable under the circumstances, and hereby awards to Plaintiff, to be paid by Defendant, attorney's fees and expenses in the amount of \$10,157.95 for fees and expenses incurred in prosecution of Plaintiff's second Motion to compel.

In reviewing a fee request pursuant to FED. R. BANKR. P. 7037, the Court's sole inquiry is whether the requested fees and expenses are *reasonable*. Black's Law Dictionary defines "reasonable" as "[f]air, proper, or moderate under the circumstances; sensible . . . [a]ccording to reason. . . ." BLACK'S LAW DICTIONARY (11th ed. 2019). Mr. Matthews has met this basic burden and the Court's scrutiny will delve no deeper.¹

¹ The Court does note that it inquired as to Mr. Matthews' time entry regarding his review of the Debtor's 341 meeting. The Court finds that Mr. Matthews' time spent listening to the 341 meeting was reasonable (and necessary) given the purported inconsistencies between Defendant's responses during her 341 meeting and the pending discovery.

CONCLUSION

The Court seeks to remind the Defendant that “full disclosure and cooperation are expected when the party’s goal is discharge of a debt. Discharge is not a right but a privilege. It would be unjust to compel [Plaintiff] to bear the expense of pursuing documents and responses that arguably should have been made available by [Defendant] in [her] initial disclosures without the need for a request.” *Sharp v. Sharp (In re Sharp)*, No. 12-26412-L, Adv. Proc. No. 18-00193, 2019 WL 7602209 at *19 (Bankr. W.D. Tenn. June 27, 2019) (internal citations omitted).

For the reasons set forth above, sanctions are hereby awarded against Defendant in favor of Plaintiff in the amounts of \$13,373.10 and \$10,157.95, with post-judgment interest as provided in 28 U.S.C. § 1961 until paid in full. *See* 28 U.S.C. § 1961 and www.federalreserve.gov/releases/h15/ (visited July 8, 2021).

cc:

Plaintiff Scott B. Peatross
Mr. Paul A. Matthews, Attorney for Plaintiff
Defendant Carnita Faye Atwater
Mr. James D. Gentry, Attorney for Defendant
Chapter 7 Trustee
United States Trustee