

DJW/1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SAMUEL K. LIPARI,

Plaintiff,

CIVIL ACTION

v.

No. 07-2146-CM-DJW

U.S. BANCORP, N.A., et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on the Declaration of Defendants' counsel (doc. 127) and supporting brief (doc. 128). Those pleadings were filed by Defendants at the direction of the Court to assist the Court in determining the amount of attorney's fees and expenses to be awarded Defendants in connection with the filing of their April 22, 2008 Motion to Compel Compliance with Rule 26(a)(1) ("Motion to Compel").

I. Background Information

On July 22, 2008, the Court issued a Memorandum and Order (doc. 103) granting in part and denying in part Defendants' Motion to Compel (doc. 68). In that Order, the Court directed Plaintiff, *inter alia*, to show cause, on or before August 13, 2008, why he should not be required to pay a portion of the reasonable attorney's fees and expenses that Defendants incurred in making their Motion to Compel. Plaintiff filed no timely response to the Court's Show Cause Order.

On August 18, 2008, after receiving no response to the Show Cause Order, the Court entered an Order (doc. 115), in which the Court held that Plaintiff should be required to pay a portion of the reasonable attorney's fees and expenses that Defendants incurred in connection with their Motion

to Compel. To aid the Court in determining the proper amount of the award, Defendants were directed to file, by August 27, 2008, an affidavit itemizing the attorney's fees and expenses that they had incurred in bringing their Motion to Compel, along with a pleading setting forth any argument counsel desired to make regarding the proper amount to be apportioned. Plaintiff was directed to file a response thereto by September 10, 2008. The Court indicated that it would enter its ruling regarding the amount and time for payment of fees after considering that briefing.

On August 22, 2008, Plaintiff filed a pleading (doc. 122) objecting to the Court's August 18, 2008 Order and asserting that the Order was "void for want of jurisdiction."¹ The District Judge overruled those objections in a Memorandum and Order dated October 10, 2008 (doc. 144). The District Judge held that the August 18, 2008 Order requiring Plaintiff to pay Defendants' fees was not contrary to law.² It also rejected Plaintiff's assertion that jurisdiction was lacking.³

On August 27, 2008 Defendants' counsel filed the Declaration of one of its attorneys, Jay E. Heidrick (doc. 127), which indicates that Defendants incurred attorney's fees in the amount of \$1,395.00 in connection with the drafting of the Motion to Compel and Supporting Memorandum.⁴ The Declaration shows that Mr. Heidrick expended 6.2 hours of work in researching, drafting and filing the Motion to Compel and Supporting Memorandum, and that this work was completed at the

¹Objections to Magistrate's Orders (doc. 122) at p. 3.

²Mem. and Order (doc. 144) at p. 3.

³*Id.* at p. 4.

⁴Decl. of Jay E. Heidrick (doc. 127) at p. 1.

rate of \$225.00 per hour. The Declaration further indicates that Mr. Heidrick is a sixth-year attorney “with extensive experience in litigation and discovery practice.”⁵

Defendants filed, under seal, supporting billing records. (*See* doc. 140.) They also filed a brief (doc. 128) explaining that they are not seeking to recover the entire \$1395.00 sum, but only \$700.00. They are seeking no expenses other than their fees. Plaintiff filed no brief responding to either the Declaration or brief.

II. Analysis

Defendants are entitled to recover their attorney’s fees and expenses incurred in connection with their Motion to Compel pursuant to Federal Rule of Civil Procedure 37(a)(5)(C). That rule provides that when a motion to compel is granted in part and denied in part, a court may “apportion the reasonable expenses for the motion.”⁶

With respect to “apportioning” the reasonable expenses in this case, the Court notes that Defendants prevailed on a significant number of the issues raised in their Motion to Compel. The Motion to Compel was granted to the extent Defendants sought an order requiring Plaintiff to provide an amended Rule 26(a)(1)(A)(i) witness disclosure statement. The Motion was also granted to the extent that Plaintiff was directed to serve a supplemental Rule 26(a)(1)(A)(ii) document disclosure statement or supplemental document disclosures. The Motion was denied, however, to the extent Defendants requested an order requiring Plaintiff to remove certain documents from his document disclosures. In light of the fact that Defendants prevailed on a number of the issues raised in their Motion to Compel, the Court finds that Defendants’ request that

⁵*Id.* at p. 2.

⁶Fed. R. Civ. P. 37(a)(5)(C).

they be awarded only half of the attorney's fees they incurred in connection with the Motion to Compel to be quite reasonable.

In addition, the Court has reviewed Mr. Heidrick's Declaration and the billing records in light of the various factors set forth in Rule 1.5(a) of the Model Rules of Professional Conduct, as adopted by the Kansas Supreme Court,⁷ which are to be used in determining the reasonableness of a lawyer's fee.⁸ Taking into consideration those factors, the Court finds the total sum of \$700.00 to be reasonable and appropriate under the circumstances. Accordingly, the Court awards Defendants the sum of \$700.00. Plaintiff shall pay the sum of \$700.00 to Defendants within **twenty (20) days** of the date of filing of this Order.

IT IS THEREFORE ORDERED that pursuant to the Court's July 22, 2008 Memorandum and Order (doc. 103) and August 18, 2008 Order (doc. 115), Plaintiff shall pay the sum of \$700.00 to Defendants within **twenty (20) days** of the date of filing of this Order.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 26th day of November 2008.

s/ David J. Waxse _____
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and pro se parties

⁷See D. Kan. Rule 83.6.1(a) ("The Kansas Rules of Professional Conduct as adopted by the Supreme Court of Kansas . . . except as otherwise provided by a specific rule of this court, are adopted by this court as the applicable standards of professional conduct.").

⁸See *George v. Bd. of County Comm'rs of Franklin County*, No. 05-2515-CM-DJW, 2007 WL 1217731, at *1 (D. Kan. Apr. 24, 2007) (reviewing fee affidavit in light of the factors set forth in Model Rule of Professional Conduct 1.5(a) to determine the reasonableness of a fee request made pursuant to Fed. R. Civ. P. 37(a)).