

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

SARAH SMILEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-144 (LO/TCB)
)	
WINROCK INTERNATIONAL INSTITUTE)	
FOR AGRICULTURAL DEVELOPMENT,)	
)	
Defendant.)	
)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff Sarah Smiley’s (“Plaintiff”) Revised Declaration of Fees and Costs (Dkt. 55). For the reasons articulated below, Plaintiff’s fee petition is granted in full.

I. BACKGROUND

Plaintiff filed her initial motion to compel on September 11, 2020 and supplemental motion to compel on October 2, 2020 seeking to compel Defendant to fully respond to her document requests. (Dkts. 22, 30.) The undersigned granted Plaintiff’s motion and supplemental motion on October 7, 2020 and ordered Defendant to retain an IT vendor within ten (10) days of the Order. (Dkt. 33.) Although Plaintiff had requested attorneys’ fees and costs, the undersigned did not award any at that time. Pursuant to the Order, Defendant filed a status report on October 19, 2020 confirming that it had obtained an IT vendor to assist in discovery. (Dkt. 34.) Plaintiff then filed her own status report on October 23, 2020 alleging that Defendant had not yet fulfilled its discovery obligations. (Dkt. 35.)

Subsequently, Plaintiff filed her Motion for Sanctions and Spoliation of Evidence on

November 6, 2020 alleging that Defendant had failed to properly preserve cell phone records vital to this case. (Dkt. 36.) At a hearing in which counsel for both parties were present, the undersigned continued Plaintiff's motion to the following week in order to give Defendant yet another chance to fulfill its discovery obligations. (Dkt. 42.) After the November 20, 2020 hearing, at which Defendant had an additional opportunity to persuade the Court that sanctions were not warranted, the undersigned issued an Order granting Plaintiff's Motion for Sanctions and Spoliation of Evidence and stated that Plaintiff was "entitled to a spoliation instruction to be given to the jury" at trial. (Dkt. 48.) Although Plaintiff had again requested attorneys' fees and costs, the undersigned did not address them at that juncture.

Finally, Plaintiff filed her Motion to for Leave to File Fee Petition on November 25, 2020 requesting attorneys' fees and costs for her motion to compel, supplemental motion to compel, and motion for sanctions. (Dkt. 49.) Defendant filed an opposition on December 2, 2020, in which Defendant objected to the imposition of attorneys' fees and costs but did not contest the reasonableness of Plaintiff's proposed fees and costs. (Dkt. 51.) The undersigned granted the motion after a hearing on December 4, 2020, at which Defendant again did not dispute Plaintiff's proposed fees and costs. (Dkt. 54.) That same afternoon, Plaintiff filed the instant Revised Declaration of Fees and Costs. (Dkt. 55.)

II. ANALYSIS

In granting an award of attorneys' fees, the court must determine the lodestar figure by multiplying the reasonable number of expended hours times the reasonable rate. *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009); *Grissom v. Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). Deciding what is "reasonable" is within the district court's discretion, but must be guided by the following twelve factors:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Robinson, 560 F.3d at 243-44. The Court finds that the first and fifth factors are those most pertinent here.

First, the Court will address the time and labor expended on the matter. Attorneys at Bernabei & Kabat PLLC represent Plaintiff and spent a total of 67.45 hours preparing the discovery motions in this matter. (Dkt. 55, "Kabat Decl." ¶ 12.) A breakdown of the hours and attorneys' fees is as follows:

Attorney or Staff	Hours	Hourly Fee	Total Sum
Alan R. Kabat	20.3	\$621.00	\$12,606.30
Lynne Bernabei	7	\$665.00	\$4,655.00
Kristen Sinisi	13.1	\$452.00	\$5,921.20
Devin Wrigley	27.05	\$380.00	\$10,279.00
TOTAL	67.45	-	\$33,461.50

(*Id.* ¶¶ 8-12.)¹

The Court has reviewed the billing entries for this matter. (*See id.*, Attachment A.) Upon review, the billing entries and work performed are entirely reasonable. The work included (1) drafting and revising the motion for sanctions and spoliation of evidence and memorandum and reply in support thereof; (2) reviewing Defendant's oppositions; (3) preparing for the motions hearings; (4) drafting and revising Plaintiff's supplemental motion; and (5) corresponding with the client regarding these motions. (*Id.*) These actions are precisely what the Court expects

¹ N.B. the total sums in this chart vary slightly from those in Plaintiff's declaration (Dkt. 55) because of Plaintiff's multiplication error in calculating Mr. Kabat's total sum.

counsel to undertake in the process of filing a motion to compel and presenting relevant updates to the Court.

Next, the fifth factor requires the Court to look at customary fees in like work. To aid in this analysis, the Court considers the *Vienna Metro* matrix, which this Court has consistently used in determining customary rates for Northern Virginia attorneys. *JK Moving & Storage, Inc. v. Winmar Constr., Inc.*, No. 1:17-cv-1213 (CMH/TCB), 2018 WL 4365573, at *3 (E.D. Va. June 20, 2018) (citing *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10-cv-502, Dkt. 263 (E.D. Va. Aug. 24, 2011)). The *Vienna Metro* matrix provides for fees as follows:

Years' Experience	Hourly Rate
20+ years (Ms. Bernabei, Mr. Kabat)	\$505-820
8-10 years (Ms. Sinisi)	\$465-640
4-7 years (Ms. Wrigley)	\$350-600

Id.

Here, comparing the attorneys' relevant billing rates \$621.00 (Mr. Kabat), \$665.00 (Ms. Bernabei), \$452.00 (Ms. Sinisi), and \$380.00 (Ms. Wrigley) per hour, respectively – to the above fee estimations, the attorneys' billing rates sit either below or at the lower end of each range. Moreover, as Mr. Kabat submits in his declaration, and the Court agrees, the hourly rates Bernabei & Kabat charged in this matter are reasonable.

Finally, the undersigned finds Plaintiff's submitted costs to be reasonable. Plaintiff claims she incurred a total of \$790.09 in costs, which include: (1) \$56.62 for delivery of courtesy copies of the motion for sanctions; (2) \$13.00 for photocopies in producing the courtesy copies; (3) \$637.04 for Westlaw research for the motion for sanctions; and (4) \$83.43 in round-trip transportation to and from the courthouse for the November 13 and November 20, 2020 hearings. (Kabat Decl. ¶ 14, Attachments B-D.)

In sum, upon consideration of the relevant factors, the Court finds that Plaintiff's fee

submission of \$33,461.50 in attorneys' fees and \$790.09 in costs is reasonable and will accordingly award it in full.

III. ORDER

It is hereby ORDERED that Plaintiff's Revised Declaration of Fees and Costs (Dkt. 55) is GRANTED. Defendant shall pay Plaintiff's reasonable fees of \$34,251.59 within twenty (20) days of the date of this Order.

ENTERED this 8th day of December, 2020.

A handwritten signature in black ink, appearing to be 'TCB', written over a horizontal line. To the right of the signature is the text '/s/'.

THERESA CARROLL BUCHANAN
UNITED STATES MAGISTRATE JUDGE

Alexandria, Virginia