UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENNIS BALL-BEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:18-CV-1364-SPM
	)	
KYLE CHANDLER,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Motion for Expenses Pursuant to This Court's Order Granting Plaintiff's Motion to Compel and Motion for Sanctions. (ECF No. 379). The motion has been fully briefed. For the following reasons, the motion will be granted.

I. BACKGROUND

On October 12, 2023, pursuant to a motion to compel filed by Plaintiff, the Court entered an order requiring Defendant to produce, *inter alia*, all documents from the six-box set of FIU Paper Files that discuss or relate to the shooting of Mansur Ball-Bey and all documents from the FIU Computer Records that discuss or relate to the shooting of Mansur Ball-Bey.[1] (ECF No. 360). On December 27, 2023, Plaintiff filed a Motion to Compel and Motion for Sanctions under Fed. R. Civ. P. 37(b)(2), asserting that defense counsel had failed to timely produce any of the documents ordered by the Court; that the documents that were eventually produced in late

[1] In the motion to compel, Plaintiff also sought production of documents that would have been relevant to the then-pending claims against the City of St. Louis. However, before ruling on the motion to compel, on the Court entered summary judgment in favor of the City. (ECF No. 348). Thus, in the October 12 order, the Court only compelled production of documents relevant to the claims against Kyle Chandler, and did not compel production of documents relevant only to the claims against the City.

November did not appear to actually be responsive to the Court's order; that none of the documents produced appeared to be scanned documents of paper files, suggesting that the paper files may not have been reviewed at all; and that many of the digital files produced appeared to have been corrupted and could not be opened by Plaintiff's counsel. (ECF No. 363). Plaintiff also stated that Mr. Lawrence Pratt (counsel for Defendant) failed to respond to multiple emails from Plaintiff's counsel about the production, represented to Plaintiff's counsel in a phone call that the documents would be produced by a particular date and then did not produce documents by that date; scheduled a phone call to discuss issues with the production and then did not answer the phone at the scheduled time; and failed to offer any substantive answers to Plaintiff's questions regarding the production. In the motion to compel and for sanctions, Plaintiff requested full production of all six boxes of paper files from the FIU Audit, full production of the corrupted files produced from the FIU Audit computer records, and attorney's fees for time expended by Plaintiff's counsel in attempting to obtain the documents ordered to be produced by the Court. in researching and drafting the motion.

On January 8, 2024, Defendant filed his response, signed by attorneys Brandon Laird and Rebecca Vossmeyer. (ECF No. 372). Defense counsel apologized to the Court and to Plaintiff's counsel for these errors and deficiencies and attributed them principally to Mr. Pratt, who was lead counsel for Defendant at the time when the documents should have been produced and who left the St. Louis City Counselor's Office on January 2, 2024.[2] Defendant stated that the FIU Paper Files had been reviewed by Sergeant Tonya Porter, who pulled the responsive documents and provided them to a paralegal, and that the paralegal had then provided them only to Mr. Pratt, who

[2] On January 9, 2024, Mr. Pratt moved to withdraw as counsel for Defendant in this case. That motion is still pending.

was lead counsel and the most senior attorney on the case.[3] Defendant states that after Plaintiff's counsel complained that the records had not been produced to Plaintiff, Mr. Pratt represented to Mr. Laird, Ms. Vossmeyer, and Deputy City Counselor Andrew Wheaton that all responsive documents had been produced. He continued to represent that all responsive documents had been produced in telephone conversations after his departure from the office on January 2. On January 8 (Mr. Laird's first day back in the office after being out of the country), Mr. Laird and Ms. Vossmeyer discovered that the paper files identified by Sgt. Porter did not appear to have been produced. They produced those records to Plaintiff the same day. As to the digital files, Defendant indicated that he would produce the emails in their native form as soon as possible. Defendant argued that the Court should not require production of the full paper files because it would be onerous and because the responsive documents had already been produced. Defendant also argued that the Court should decline to sanction Defendant, noting that Mr. Laird and Ms. Vossmeyer acted to remedy the problems as soon as they were discovered.

The Court held a hearing on Plaintiff's motion to compel and motion for sanctions on January 10, 2024. At the hearing, Plaintiff's counsel expressed concern that it appeared that the paper files had still never been reviewed by an attorney for responsive documents. Plaintiff also expressed concern that given the differences between the documents produced in November and those produced in January, it was unclear how responsiveness had been determined. Plaintiff

[3] In support of these statements, Defendant submitted an affidavit from Sergeant Tonya Porter stating that there were two sets of boxes of FIU Paper Files (a five-box set maintained by Police Legal and a six-box set maintained by Lieutenant Colonel Michael Sack), that the FIU Paper Files contained in the two sets of boxes were the same and duplicative of one another, that she located and pulled all files within the five boxes of FIU Paper Files maintained by Police Legal that discussed or related to the shooting of Mansur Ball-Bey or the investigation of the shooting, and that she provided those files to a paralegal.

argued that given the inconsistencies in production and the lack of clarity regarding who reviewed the documents, who determined which documents were responsive, and how the determination of responsiveness was made, the appropriate remedy was production of the full boxes of paper files. Defense counsel (Mr. Laird) acknowledged at the hearing that no lawyer had gone through the boxes of paper files to find responsive documents. Defense counsel also acknowledged that he had not gone through the documents in the set five boxes and the set six boxes to ensure that the two sets were completely duplicative, though he pointed to Sgt. Porter's affidavit stating that they were duplicative. Defense counsel argued that it would be burdensome for Defendant to scan and produce several full boxes of documents in PDF form but indicated that it would take less time to make the boxes available to Plaintiff's counsel to review.

On the question of sanctions, Defense counsel was apologetic and acknowledged that it would be fair to allow Plaintiff to recover expenses from November 10 (the day Mr. Pratt indicated he would produce responsive documents) through the date of the hearing. *See* Hrg. Trans., ECF No. 378, at 28:12-22. He also indicated that he would have no argument with an award of fees for the time for Plaintiff's counsel to go through the boxes page by page. *Id.* at 29:4-14. Mr. Laird also requested that to the extent the Court was going to impose sanctions on individual attorneys, no sanctions be imposed against Ms. Vossmeyer, who had been the furthest removed from the case of any of the three attorneys. *Id.* at 31:21-25, 32:2-4.

Following the hearing, the Court entered an order denying Plaintiff's request that Defendant scan and produce all the FIU Paper Files but granting Plaintiff's alternative request that Defendant to make all eleven boxes of FIU Paper Files available for Plaintiff's counsel's review so Plaintiff's counsel could flag those documents whose production was required by the October 12 Order. (ECF No. 376). The Court also ordered production of responsive emails in their narrative

format. The Court also granted Plaintiff's motion for sanctions and stated that "Defendant's attorneys of record are ordered to pay Plaintiff's reasonable attorney's fees and costs associated with attempting to obtain the documents covered by the Court's October 12, 2023, order, beginning on November 10, 2023, and ending with Plaintiff's counsel's completion of the review of the eleven boxes of paper files." Order, ECF No. 376, at 2. The Court gave the parties deadlines for briefing the question of the amount of attorney's fees and stated that "[i]f Defendant's attorneys want the sanctions to be apportioned among the attorneys of record, they must make that request in their response and must include authority in support of that request in their response." *Id.* Plaintiff has now filed a motion for expenses, documenting the fees requested, and Defendant has filed a response arguing that the fees sought should be reduced and imposed only on Mr. Pratt and/or the City.

II. LEGAL STANDARDS

Under Rule 37(b)(2), "If a party . . . . fails to obey an order to provide or permit discovery," the court "must order the disobedient party, 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. Civ. P. 37(b)(2)(A), (C). The purposes of sanctions under Rule 37 are "to deter abuse and compensate the opposing party for all expenses, whenever incurred, that would not have been sustained had the opponent conducted itself properly." *Johnson Int'l Co. v. Jackson Nat'l Life Ins. Co.*, 19 F.3d 431, 439 n.10 (8th Cir. 1994) (internal quotation marks omitted). "In order to impose sanctions under Rule 37, there must be an order compelling discovery, a willful violation of that order, and prejudice to the other party." *Mems v. City of St. Paul, Dep't of Fire & Safety Servs.*, 327 F.3d 771, 779 (8th Cir. 2003) (quotation marks omitted).

"To calculate attorney's fees, courts typically begin by using the lodestar method, which multiplies the number of hours reasonably expended by reasonable hourly rates." *Starks v. St. Louis Cnty.*, No. 4:21-CV-435 RLW, 2023 WL 2682003, at *2 (E.D. Mo. Mar. 29, 2023) (using lodestar method to calculate award of attorney's fees under Rule 37) (quoting *Bryant v. Jeffrey Sand Co.*, 919 F.3d 520, 529 (8th Cir. 2019)). "Courts may consider a number of factors in determining a reasonable attorney's fee, including the time and labor required to litigate the case, the novelty and difficulty of the questions involved, the skill required to perform the services properly, customary fees, the results obtained, and awards in similar cases." *Starks*, 2023 WL 2682003, at *2 (citing *McDonald v. Armontrout*, 860 F.2d 1456, 1459 & n.4 (8th Cir. 1988)). Courts may also "rely on their own experience and knowledge of prevailing market rates." *Id.* (quoting *Bryan*t, 919 F.3d at 529).

III. DISCUSSION

The Court has already found that Plaintiff is entitled to attorney's fees under Rule 37(b)(2)(C). Based on the events forth above, there was a court order compelling discovery, a willful failure to comply with that order, and prejudice to Plaintiff, who was obligated to spend many hours attempting to obtain the documents ordered to be produced and whose case has been delayed by the failure to produce the documents. The questions currently before the Court are the specific amount of the fees to be awarded and the specific actors who should be required to pay the fees.

In his request for fees, Plaintiff seeks payment of $18,490 in attorneys' fees. Pl.'s Motion for Expenses, ECF No. 379. Plaintiff filed an affidavit containing an itemized description of the 35 hours of attorney work performed between November 10, 2023, and completion of the review of the paper files: 4.7 hours spent attempting to resolve the discovery failures discussed above,

14.8 hours spent preparing motion for sanctions and preparing for and attending the hearing on the motion for sanctions, and 15.5 hours spent reviewing the eleven boxes of FIU Paper files on January 16, 2024. Plaintiff seeks hourly rates of $450 per hour for John Waldron, who was admitted to practice law in 2017 (and who performed most of the work at issue); $450 per hour for Jermaine Wooten, was admitted to practice law in 2007; $650 per hour for Javad Khazaeli, who was admitted to practice law in 2002; and $650 per hour for James Wyrsch, who was admitted to practice law in 2001. Plaintiff submitted argument, cases, and secondary sources in support of the hourly rates charged by Plaintiff's attorneys.

In his opposition, Defendant does not dispute that he failed to comply with the Court's October 12 order, does not argue that the failure was substantially justified, and does not argue that it would be unjust to impose sanctions. Defendant also does not challenge the hourly rate sought by any of the attorneys, the request for compensation for the 4.7 hours spent attempting to resolve the discovery failures discussed above, or the request for compensation for the 14.8 hours spent preparing motion for sanctions and preparing for and attending the hearing on the motion for sanctions. For the reasons stated in Plaintiff's motion, based on the Court's experience, and in the absence of any opposition from Defendant, the Court find the hourly rates sought by Plaintiff's counsel to be reasonable. *See, e.g., Gerling v. Waite*, No. 4:17-CV-02702 JAR, 2022 WL 558083, at *2 (E.D. Mo. Feb. 24, 2022) (finding similar hourly rates reasonable for civil rights attorneys who had similar levels of experience as Plaintiff's attorneys). The Court also finds that the 4.7 hours spent attempting to resolve the discovery failures discussed above and the 14.8 hours spent preparing motion for sanctions and preparing for and attending the hearing on the motion for sanctions were "reasonable expenses . . . caused by" Defendant's failure to comply with this Court's October 12 discovery order and are properly awarded under Fed. R. Civ. P. 37(b)(2)(C).

Defendant makes two challenges to Plaintiff's fee requests. First, Defendant argues that the Court should not award fees for the full 15.5 hours spent reviewing the eleven boxes of FIU Paper files because those fees were not reasonable expenses. Second, Defendant argues that sanctions should be imposed against only the City of St. Louis and/or Mr. Pratt and not against Defendant's other attorneys. The Court will address each argument in turn.

A. Fees for review of FIU Paper Files

The Court first considers Defendant's argument that the Court should not award fees for the full 15.5 hours spent reviewing the eleven boxes of FIU Paper files. Defendant argues that these fees should be reduced because the review was conducted only because Plaintiff's counsel did not trust the representations of Sgt. Porter, who stated that no additional documents relating to the Ball-Bey shooting existed in those boxes beyond what had already been produced. Defendant notes that during the inspection, Plaintiff's attorneys only copied two additional documents, both of which had previously been produced by the City. Defendant argues that "[t]he results of the inspection were consistent with the statements provided by Sgt. Tanya Porter," Def.'s Resp. to Pl.'s Mot., ECF No. 383, at 2, who had personal knowledge of the contents of the documents and who submitted an affidavit regarding her review of those documents in response to Plaintiff's motion to compel.

Defendant's argument is unpersuasive. At the hearing, Defendant's counsel acknowledged that no attorney for Defendant had ever reviewed the paper files in the boxes. The purportedly responsive documents Defendant produced in November and the purportedly responsive documents Defendant had produced in January were different, raising serious questions about how responsiveness was being assessed by Defendant. Additionally, Mr. Pratt, the attorney who apparently oversaw the review of the paper files by others, failed to provide substantive responses

to Plaintiff's counsel when asked about the deficient and inconsistent production, and he repeatedly made false representations to Plaintiff's counsel and to his own co-counsel regarding whether the responsive paper files had been fully produced. Given these facts, Plaintiff's counsel was not obligated to trust the representation of non-attorney Sgt. Porter that all responsive documents had been produced. The Court also notes that at least one statement in Sgt. Porter's affidavit appears to have been incorrect: Sgt. Porter stated that the set of five paper boxes and the set of six paper boxes were the same and duplicative, but Plaintiff states that close examination "revealed that some documents were present in one set of boxes and not in the other set." *See* Pl.'s Mem. Supp., ECF No. 380, at 1. Under the circumstances presented here, it was entirely reasonable for Plaintiff's attorneys to believe they needed to review all eleven boxes of paper files to ensure that all responsive documents had been obtained.

Defendant also argues that it was not reasonable for three attorneys to conduct this review. Whether it was reasonable for three attorneys to spend (in total) 15.5 attorney hours conducting this review presents a somewhat close call. However, in light of the Plaintiff's counsel's representation that nearly all of the eleven boxes were full and that the documents in the two sets of boxes were not completely identical, the Court concludes that the number of hours was reasonable.

Having found both the hourly rate and the number of hours worked by each attorney reasonable, the Court will grant Plaintiff's request for an award of $18,490.00 in fees.

B. Persons to Be Sanctioned

The Court next considers the question of which party or attorneys should be sanctioned. Defendant argues that sanctions should be imposed only against either Mr. Pratt, whose conduct was the cause of the failure warranting sanctions, or against the City. Defendant argues that

sanctions should not be imposed against Plaintiff's other attorneys because they did not engage in misconduct.

As discussed above, under Rule 37(b)(2)(C), "If a party . . . . fails to obey an order to provide or permit discovery," the court "must order the disobedient party, 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. Civ. P. 37(b)(2)(C). The party who failed to obey the Court's October 12 order is Defendant Chandler. Although responsibility for the failure to comply appears to rest with Chandler's counsel, that alone does not bar imposition of sanctions against him. *See Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 596 (8th Cir. 2001) ("It is a well-established principle in this Circuit that a party may be held responsible for the actions of its counsel. It is of no consequence when the abuses are perpetrated by counsel, rather than the client.") (internal citation omitted). However, Plaintiff did not specifically ask for sanctions against Defendant Chandler in his motion for sanctions, in his memorandum in support of that motion, or at the hearing on the motion,[4] and no party has briefed or argued the question of whether sanctions against Chandler would be appropriate. Under the circumstances, the Court will not impose sanctions against Chandler.

Both parties have suggested that the Court may impose sanctions against the City. *See* Pl.'s Mem. Supp. Mot. to Compel, ECF No. 364, at 8; Def.s' Resp. to Pl.'s Mot. for Atty. Fees, ECF No. 383, at 1. The Court does not find any basis in the language of Rule 37(b)(2) for imposing sanctions against the City. The City is not currently a party, nor was the City a party at the time the conduct giving rise to the motion for sanctions occurred. The City was dismissed from this

[4] At the hearing, when the Court asked for clarification on who Plaintiff was seeking sanctions against, Plaintiff's counsel responded, "counsel for the defendant." Mot. Hrg. Trans., ECF No. 378, 8:21-24. *See also id.* at 9:5-8.

case on September 12, 2023, and the motion at issue seeks sanctions for noncompliance with an order that was entered on October 12, 2023.

The Court next turns to the question of whether it should order "the attorney[s] advising" Defendant Chandler to pay the attorney's fees at issue. At the time of the noncompliance, Plaintiff had three attorneys: Mr. Pratt, Mr. Laird, and Ms. Vossmeyer. However, it is clear from the record that the only attorney responsible for the failure to comply with the October 12 order is Mr. Pratt. He was the most senior attorney on the case, he was handing the production of documents, he failed to produce the documents as ordered by the Court, he repeatedly failed to respond to Plaintiff's counsel's attempts to address that failure, and he repeatedly represented to his co-counsel that the relevant documents had been produced when they had not. Mr. Laird and Ms. Vossmeyer, as the less senior attorneys on the case, reasonably relied on the repeated representations of the senior attorney that these documents had been produced. Significantly, once they discovered that those representations were incorrect, they acted diligently and promptly to remedy the situation. The Court finds that it would be unjust to sanction them under the circumstances. The Court finds that Mr. Pratt is responsible for paying Plaintiff's reasonable attorney's fees; Mr. Laird and Ms. Vossmeyer are not. *Cf. Kyros L. P.C. v. World Wrestling Ent., Inc.*, 78 F.4th 532, 546 (2d Cir. 2023) ("Both logic and the text of Rule 37(b)(2)(C) dictate that a court may impose sanctions in a targeted way against the actors whom it identifies as responsible for misconduct, whether those be parties, their attorneys, or both.").

IV. CONCLUSION

For all of the above reasons,

IT IS HEREBY ORDERED that Plaintiff's Motion for Expenses Pursuant to This Court's Order Granting Plaintiff's Motion to Compel and Motion for Sanctions (ECF No. 379) is **GRANTED**.

IT IS FURTHER ORDERED that attorney Lawrence Pratt shall pay $18,490 in attorneys' fees to Plaintiff.

SHIRLEY PADMORE MENSAH
UNITED STATES MAGISTRATE JUDGE

Dated this 25th day of June, 2024.