

STATE OF NORTH CAROLINA  
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18 CVS 1064

RED VALVE, INC., and  
HILLENBRAND, INC.,

Plaintiffs,

v.

TITAN VALVE, INC.; BEN PAYNE;  
FABIAN AEDO ORTIZ; GREG  
FARRIS; and JOHN DOES 1-10,

Defendants.

**ORDER ON PLAINTIFFS' PETITION  
FOR REASONABLE EXPENSES**

1. **THIS MATTER** is before the Court upon Plaintiffs' Petition for Reasonable Expenses (the "Petition") in the above-captioned case.

2. On January 11, 2019, the Court granted Plaintiffs' Motion for Sanctions under North Carolina Rule of Civil Procedure 37(b), concluding that "Defendants failed to comply with the Expedited Discovery Order by withholding responsive documents [(the "Withheld Documents")] and concealing material, adverse evidence" (the "Sanctions Order"). *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 5, at \*30 (N.C. Super. Ct. Jan. 11, 2019). The Court awarded Plaintiffs their reasonable expenses, including attorneys' fees, incurred for the tasks specified in the Sanctions Order. *Id.* at 30–31. The Court authorized Plaintiffs to file a petition for payment of those expenses, together with supporting materials, and set a briefing schedule, which was modified by later Court order. *Id.* at \*34.

3. Plaintiffs filed their Petition on January 29, 2019. The Petition consists of a brief, an affidavit of Plaintiffs' counsel, and a statement of fees and expenses in the form of a spreadsheet documenting all tasks and times for which Plaintiffs request attorneys' fees and expenses (the "Spreadsheet"). (Pls.' Pet. Reasonable Expenses, ECF No. 149; Chesson Aff. ¶ 4, ECF No. 149.1; Chesson Aff. Ex. 1 [hereinafter "Spreadsheet"], ECF No. 149.1.) Plaintiffs' Spreadsheet separates Plaintiffs' counsel's work into categories and contains the date of the hours billed, the attorney, paralegal, or document management specialist who conducted the respective task, a brief description of the task, the hours spent on the task, the rate charged for that task, and the total amount charged. In sum, Plaintiffs request \$126,692.50 in attorneys' fees for an asserted 423.1 hours of work performed by Plaintiffs' counsel, paralegals, and document management specialists. (Spreadsheet at 35.)

4. In response to the Petition, Defendants contend that Plaintiffs' requested fees are excessive, duplicative, rely on overly vague descriptions, and "are not limited to the issues addressed in the Motion for Sanctions." (Defs.' Resp. Opp'n Pls.' Fee Pet. 1 [hereinafter "Defs.' Resp."], ECF No. 158.) Defendants submitted an annotated fee schedule objecting to and adjusting Plaintiffs' billing entries in the Spreadsheet. (Defs.' Resp. Ex A [hereinafter "Defs.' Annotated Spreadsheet"], ECF No. 158.1.) Defendants argue that the award for attorneys' fees should be reduced to no more than \$73,023.75. (Defs.' Resp. 1.)

5. The Petition has been fully briefed and is ripe for determination. The Court concludes, in the exercise of its discretion, that a hearing would not assist the Court

in ruling on the Petition and thus decides this matter without a hearing. *See* BCR 7.4 (“The Court may rule on a motion without a hearing.”). After considering the Petition, the parties’ briefs in support of and in opposition to the Petition, and other relevant matters of record, the Court hereby **ENTERS** the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, and **ORDERS** as follows.

6. In North Carolina, attorneys’ fees are only recoverable “if such a recovery is expressly authorized by statute.” *Robinson v. Robinson*, 210 N.C. App. 319, 336, 707 S.E.2d 785, 797 (2011) (quotation marks omitted). Rule 37(b)(2) authorizes an award of attorneys’ fees, in addition to other possible sanctions, when a party “fails to obey an order to provide or permit discovery.” N.C. R. Civ. P. 37(b)(2). In such circumstances, “the court shall require the party failing to obey the order to pay the reasonable expenses, including attorneys’ fees, caused by the failure, unless the court finds that the failure was substantially justified.” *Id.*

7. A trial court’s determination as to the amount of attorneys’ fees to be awarded is left to the court’s discretion and “will not be disturbed without a showing of manifest abuse of [that] discretion.” *Bryson v. Cort*, 193 N.C. App. 532, 540, 668 S.E.2d 84, 89 (2008). The trial court “may also in its discretion consider and make findings on the services expended by paralegals . . . if, in [the trial court’s opinion], it is reasonable to do so.” *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 195, 437 S.E.2d 374, 382 (1993) (alteration in original) (internal quotation marks omitted).

8. Generally, an award of attorneys’ fees requires “that the trial court enter findings of fact as to the time and labor expended, skill required, customary fee for

like work, and experience or ability of the attorney based on competent evidence.” *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 672, 554 S.E.2d 356, 366 (2001). When attorneys’ fees are awarded as a sanction, there must be “findings to explain . . . the appropriateness of the sanction and, if it involves a monetary amount, how the court arrived at that figure.” *Dunn v. Canoy*, 180 N.C. App. 30, 50, 636 S.E.2d 243, 255–56 (2006).

9. Rule 37(b)(2) requires that the Court’s award of expenses, including attorneys’ fees, be reasonable. N.C. R. Civ. P. 37(b)(2). The reasonableness of attorneys’ fees in this State “is governed by the factors found in Rule 1.5 of the Revised Rules of Professional Conduct of the North Carolina State Bar.” *Ehrenhaus v. Baker*, 216 N.C. App. 59, 96, 717 S.E.2d 9, 33 (2011).

10. “The factors to be considered in determining whether a fee is clearly excessive” under Rule 1.5(a) of the Revised Rules of Professional Conduct include:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

N.C. Rev. R. Prof. Conduct 1.5(a).

A. Reasonableness of Rates

11. The Court first analyzes the reasonableness of the hourly rates charged by Plaintiffs' attorneys, paralegal, and document management specialists. Plaintiffs' counsel charged at the following hourly rates: (i) \$450 for David Allen ("Allen"), a partner with approximately thirty-nine years' experience; (ii) \$350 for Benjamin Chesson ("Chesson") and Julia Hartley ("Hartley"), partners with approximately nine and thirteen years' experience, respectively; (iii) \$250 for Anna Majestro ("Majestro"), an associate who has been a member of the North Carolina State Bar since 2016, and Ariel Harris ("Harris"), an associate who has been a member of the North Carolina State Bar since 2013; (iv) \$195 for Bobbie Kullman ("Kullman"), a paralegal with fifteen years' experience; and (v) between \$160 and \$215 for four document management specialists with unspecified qualifications and experience. (Chesson Aff. ¶¶ 3–4.) Plaintiffs' counsel avers that "the hourly rate for each attorney, paralegal, and document management specialist in this case is common and reasonable for an individual of similar skill level in Charlotte, North Carolina." (Chesson Aff. ¶ 5.)

12. "This Court has previously surveyed North Carolina cases and 'conclude[ed] that a typical and customary hourly rate charged in North Carolina for complex commercial litigation . . . ranges from \$250 to \$475.'" *Bradshaw v. Maiden*, 2018 NCBC LEXIS 98, at \*12 (N.C. Super. Ct. Sept. 20, 2018) (quoting *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC LEXIS 91, at \*46–47 (N.C. Super. Ct. Nov. 22,

2016)); see *In re Krispy Kreme Doughnuts, Inc., S'holder Litig.*, 2018 NCBC LEXIS 61, at \*21 (N.C. Super. Ct. June 20, 2018) (concluding \$300 per hour was “well within the standard range” for complex civil litigation); *Corwin v. British Am. Tobacco PLC*, 2016 NCBC LEXIS 14, at \*15 (N.C. Super. Ct. Feb. 17, 2016) (finding an average hourly rate of \$325.04 reasonable); *In re Pike Corp. S'holder Litig.*, 2015 NCBC LEXIS 95, at \*22–23 (N.C. Super. Ct. Oct. 8, 2015) (noting hourly rates of \$550, \$375, and \$250 “are within, but at the higher end of, the range that this Court has found to be reasonable for complex business litigation in North Carolina”); *In re PokerTek Merger Litig.*, 2015 NCBC LEXIS 10, at \*23–24 (N.C. Super. Ct. July 6, 2015) (concluding rates “in the range of \$250–\$450 per hour” were “reasonable and clearly not excessive”). The Court takes judicial notice of such holdings and of the customary hourly rates of local attorneys of the same experience providing similar services in the Charlotte, North Carolina area. See *Simpson v. Simpson*, 209 N.C. App. 320, 328, 703 S.E.2d 890, 895 (2011).

13. Defendants do not object to the hourly rates Plaintiffs’ attorneys have charged. Based on Plaintiffs’ counsel’s affidavit, the previous holdings of this Court, and the Court’s knowledge of the hourly rates of local attorneys providing similar services in this locality, the Court finds that Plaintiffs’ attorneys’ rates are reasonable and are “customarily charged in [this] locality for similar legal services.” N.C. Rev. R. Prof. Conduct 1.5(a)(3).

14. Defendants do, however, object to the hourly rates charged for the services of Plaintiffs’ paralegal and document management specialists. Defendants

specifically contend that the paralegal and document management specialists' rates are excessive and that Plaintiffs have failed to offer sufficient evidentiary support to justify the asserted rates. The Court agrees.

15. As to Plaintiffs' paralegal, Kullman, the Court finds that the requested hourly rate of \$195 is excessive in light of the scant evidence Plaintiffs offer in support of such a rate. While Plaintiffs' counsel avers that Kullman has fifteen years' experience and "is experienced in commercial litigation," (Chesson Aff. ¶ 4(e)), this Court and others have regularly awarded significantly lesser amounts for paralegal services, see *Triplett v. N.C. Dep't of Pub. Safety*, No. 5:15-CV-00075-RLV-DCK, 2017 U.S. Dist. LEXIS 142088, at \*7 (W.D.N.C. Aug. 31, 2017) ("Based on this Court's experience, a rate of \$135.00 per hour is consistent with the market rate in Charlotte."); *SilverDeer St. John Equity Partners I LLC v. Kopelman*, No. 5:11-CV-00095-JG, 2012 U.S. Dist. LEXIS 166849, at \*6 (E.D.N.C. Nov. 21, 2012) (reducing paralegal hourly rates ranging between \$230 and \$260 down to \$100); *Irwin Indus. Tool Co. v. Worthington Cylinders Wis., LLC*, 747 F. Supp. 2d 568, 594–95 (W.D.N.C. 2010) (reducing paralegal hourly rates that ranged from \$176 to \$234 down to \$75); *In re Gunboat Int'l, Ltd.*, No. 15-06271-5-DMW, 2016 Bankr. LEXIS 2935, at \*38 (Bankr. E.D.N.C. Aug. 10, 2016) (finding reasonable paralegal hourly rates between \$95 and \$135 given the complexity of the case); *In re Steel Network, Inc.*, Nos. 09-81230, 09-81231, 2011 Bankr. LEXIS 3418, at \*34 (Bankr. M.D.N.C. June 27, 2011) ("The usual hourly rate for paralegals in this District is \$110 absent a showing of specialized experience or skill or performance of services beyond that ordinarily

provided by paralegals.”); *Se. Air Charter, Inc. v. Stroud*, 2015 NCBC LEXIS 82, at \*6–7 (N.C. Super. Ct. Aug. 17, 2015) (finding paralegal rates between \$100 and \$125 per hour to be reasonable and appropriate). *But see Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 69, at \*21 (N.C. Super. Ct. July 6, 2018) (awarding hourly rates between \$150 and \$250 for support staff and paralegals where fee petition were supported by an affidavit from an outside attorney and were not objected to by sanctioned party). Because Plaintiffs have failed to provide sufficient evidence to support a paralegal rate of \$195 per hour in this market, but in recognition of Kullman’s fifteen years of paralegal experience, the Court, in the exercise of its discretion, will reduce Kullman’s hourly rate from \$195 to \$150.

16. As to Plaintiffs’ four document management specialists, Plaintiffs seek to recover rates between \$160 and \$215 per hour. In support of these rates, Plaintiffs’ counsel avers only that the document management specialists “have assisted in the forensic analysis and comparison of Defendants’ documents production,” that “[t]hey are experts in their field,” and that their hourly rates are “reasonable, customary, and well within the standard range for similarly situated document management experts litigating complex commercial litigation in North Carolina.” (Chesson Aff. ¶ 4(f).) Plaintiffs do not, however, identify the qualifications or experience of any of the document management specialists or provide any explanation for their varying hourly rates. The Court, therefore, in the exercise of its discretion and based on its knowledge of the hourly rates of document management specialists providing similar



services in this locality, will reduce each document management specialist's rate to \$125 per hour.

B. Time and Labor Expended

17. The Court next evaluates the time and labor expended by Plaintiffs' counsel. See N.C. Rev. R. Prof. Conduct 1.5(a)(1). The Court considers this factor in light of the Court's conclusion in the Sanctions Order that Plaintiffs are entitled to their reasonable expenses, including reasonable attorneys' fees, incurred in "(i) prosecuting the Motion for Sanctions and (ii) seeking and obtaining the Withheld Documents, including expenses incurred in identifying documents responsive to the Expedited Discovery Order, sending deficiency letters, engaging in meet and confer discussions, and complying with the BCR 10.9 process." *Red Valve, Inc.*, 2019 NCBC LEXIS 5, at \*33–34.

18. Plaintiffs' Spreadsheet separates Plaintiffs' counsel's billing entries into the following six task categories: (i) sending deficiency letters, (ii) engaging in meet and confers, (iii) complying with the BCR 10.9 process, (iv) participating in the file path review, (v) identifying documents responsive to the Expedited Discovery Order, and (vi) prosecuting the Motion for Sanctions. Defendants contend that much of the time logged on Plaintiffs' Spreadsheet should be adjusted because (i) entries are for tasks outside the scope of the Sanctions Order, (ii) entries are inconsistent with and unsupported by other billing entries, (iii) the descriptions for certain entries are insufficient and/or unreliable, and (iv) the descriptions for certain entries are vague and do not enable Defendants and the Court to determine whether the task is within

the scope of the Sanctions Order and/or whether the time spent on the task was reasonable. (Defs.' Annotated Spreadsheet 1.)

19. The Court agrees with certain of Defendants' objections, as described below. Except as to those billing entries identified and adjusted below, however, the Court finds that that the time entries identified on Plaintiffs' Spreadsheet are reasonable and within the scope of the Sanctions Order.

1. Deficiency Letters

20. Plaintiffs request a total of 43.7 hours of compensable work for sending three deficiency letters to Defendants. (Spreadsheet 1–3; Chesson Aff. ¶ 8.) Plaintiffs contend that the work involved in sending the deficiency letters, including formulating Plaintiffs' position, sending follow-up e-mails, conducting research, and analyzing topics addressed in the letter, were necessary to seek and obtain the Withheld Documents. (Chesson Aff. ¶ 8.) Defendants respond by arguing that many of these billing entries contain vague descriptions, are excessive, are inconsistent with other entries, and/or are outside the scope of the Sanctions Order. (Defs.' Annotated Spreadsheet 2–3.) Defendants propose the total hours for this task be adjusted to 23.5. (Defs.' Annotated Spreadsheet 3.)

21. The Court, in its discretion, will adjust the billing entries for this task as follows:

- a. Allen's September 11, 2018 entry for "[c]orrespondence with defense counsel regarding discovery deficiencies" (0.4 hours) will be reduced to 0.2 hours because the entry is not well-explained or documented;

- b. Majestro's billing entries for deficiency letter preparation between September 28, 2018 and October 3, 2018 will be reduced by 50% (i.e., from 4.4 to 2.2 hours), as the total number of hours billed for the task was excessive; and
- c. Hartley's billing entries on September 28, 2018 and October 3, 2018 (totaling 1.2 hours) will be disallowed, as the number of attorneys working on the task was excessive in light of the complexity of the matter.

22. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 40.1 hours of compensable time (totaling \$12,562.50) for sending the deficiency letters is fair and reasonable in the circumstances of this case.

## 2. Meet-and-Confer Sessions

23. Plaintiffs request a total of 25.5 hours of compensable work for engaging in six meet-and-confer sessions that related, in part, to Defendants' deficient productions under the Expedited Discovery Order and/or Plaintiffs' Motion for Sanctions. (Spreadsheet 4–6; Chesson Aff. ¶ 9.)<sup>1</sup> Defendants respond that several of the billing entries for this task are excessive and/or are outside the scope of the Sanctions Order. (Defs.' Annotated Spreadsheet 4–5.) Defendants propose the total hours for this task be adjusted to 13.7. (Defs.' Annotated Spreadsheet 5.)

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<sup>1</sup> Plaintiffs' counsel avers that Plaintiffs "segmented out the portion of those meet-and-confers unrelated to Defendants' Expedited Production or Plaintiffs' Motion for Sanctions" and "included only fees related to Defendants' Expedited Production or Plaintiffs' Motion for Sanctions." (Chesson Aff. ¶ 9.)

24. The Court, in the exercise of its discretion, will reduce by 50% Allen's time entries on October 11, 2018, October 12, 2018, and October 19, 2018 (i.e., from 3 hours to 1.5 hours), as these entries are not supported by sufficient explanation or documentation. Plaintiffs have failed to provide sufficient evidence to support their contention that these entries, documented only by generalized "block billing" entries, were necessary and appropriate.

25. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 24 hours of compensable time (totaling \$8,230.00) for engaging in six meet-and-confer sessions is fair and reasonable in the circumstances of this case.

### 3. BCR 10.9 Process

26. Plaintiffs request a total of 56 hours of compensable time in initiating and complying with the BCR 10.9 process. (Spreadsheet 6–9; Chesson Aff. ¶ 10.) This time included serving two BCR 10.9 submissions, engaging in four BCR 10.9 conferences, and "researching and analyzing topics addressed in each letter and formulating Plaintiffs' position articulated in each letter." (Chesson Aff. ¶ 10.) Defendants object to many of the billing entries associated with these tasks, arguing that entries are excessive, outside the scope of the Sanctions Order, and/or seek noncompensable time. (Defs.' Annotated Spreadsheet 5–7.) Defendants propose the total hours for this task be adjusted to 43.3. (Defs.' Annotated Spreadsheet 7.)

27. The Court, in the exercise of its discretion, will adjust the billing entries for these tasks as follows:

- a. Hartill's October 17, 2018 (1.8 hours) and October 18, 2018 (0.2 hours) time entries will be disallowed because the number of persons involved in completing these tasks is excessive;
- b. Hartley's October 24, 2018 time entries with the descriptions "[p]repare for hearing on second 10.9 expedited Discovery dispute" (0.5 hours) and "[a]nalysis of hearing on discovery issues" (0.8 hours) will be disallowed because the addition of a third partner to perform these tasks, particularly one who did not attend or participate in the October 24, 2018 hearing, is excessive;
- c. Kullman's October 24, 2018 time entry with the description "[p]repare for hearing on second 10.9 expedited Discovery dispute" (0.9 hours) will be disallowed because the number of persons involved in completing this task is excessive; and
- d. Majestro's October 31, 2018 time entry (0.7 hours) will be disallowed, as Plaintiffs concede that the entry was erroneously included and not properly recoverable.

28. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 51.1 hours of compensable time (totaling \$16,705.00) for complying with the BCR 10.9 process is fair and reasonable in the circumstances of this case.

#### 4. File Path Reviews

29. Plaintiffs request a total of 57 hours of compensable time for “reviewing file path names to identify responsive documents Defendants should have included” in compliance with the Expedited Discovery Order. (Chesson Aff. ¶ 11; *see* Spreadsheet 9–14.) In response, Defendants contend that many of the time entries for this task contain vague descriptions, are inconsistent with other time entries, and/or are excessive. (Defs.’ Annotated Spreadsheet 7–10.) Defendants propose the total hours for this task be adjusted to 30.4. (Defs.’ Annotated Spreadsheet 10.)

30. The Court, in the exercise of its discretion, will reduce by 50% Hartley’s July 25, 2018, July 26, 2018, and September 14, 2018 time entries (i.e., from 2.6 to 1.3 hours), as these entries are not supported by sufficient explanation or documentation. Plaintiffs have failed to provide sufficient evidence to support their contention that these entries, documented only by generalized “block billing” entries, were necessary and appropriate.

31. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 55.7 hours of compensable time (totaling \$17,135.00) for reviewing file path information is fair and reasonable in the circumstances of this case.

#### 5. Document Production Review

32. Plaintiffs request a total of 59.8 hours of compensable time for the time spent “identifying responsive documents Defendants should have included” in compliance with the Expedited Discovery Order. (Chesson Aff. ¶ 12; *see* Spreadsheet 14–18.)

Defendants object to many of the time entries for this task, arguing that the descriptions are vague and that Plaintiffs “would have had to review [the] October productions regardless of any violation related to Expedited Discovery.” (Defs.’ Annotated Spreadsheet 10–13.) Defendants propose the total hours for this task be adjusted to 45.3. (Defs.’ Annotated Spreadsheet 13.)

33. The Court, in the exercise of its discretion, will adjust the billing entries for this task for the reasons described below as follows:

- a. Hartill’s October 22, 2018 (two entries) and October 25, 2018 time entries (totaling 1.4 hours) will be disallowed because the number of persons performing this task and the total time spent by those persons are excessive;
- b. Smith’s October 25, 2018 and October 26, 2018 time entries (totaling 0.7 hours) will be disallowed because the number of persons performing this task and the total time spent by those persons are excessive;
- c. Bentley’s October 25, 2018 time entry (0.2 hours) will be disallowed because the number of persons performing this task and the total time spent by those persons are excessive; and
- d. Hartley’s October 29, 2018 time entry (0.5 hours) will be disallowed because the number of persons performing this task and the total time spent by those persons are excessive.

34. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 57 hours of compensable time

(totaling \$13,175.00) for reviewing document productions is fair and reasonable in the circumstances of this case.

#### 6. Prosecuting Motion for Sanctions

35. Plaintiffs request a total of 181.1 hours of compensable time for prosecuting the Motions for Sanctions. (Chesson Aff. ¶ 13; Spreadsheet 18–23.) In particular, Plaintiffs seek (i) 69.4 hours for time entries with the description “[d]raft Motion for Sanctions,”<sup>2</sup> (ii) 5.7 hours for time entries with the description “[d]raft Supplemental Brief in Support of Motion for Sanctions,” and (iii) 39.5 hours for time entries with the description “[d]raft Reply to Motion for Sanctions.” (Spreadsheet 18–22.) Defendants contend that the billing entries associated with drafting the Motion for Sanctions filings are excessive when considered in the aggregate. (Defs.’ Annotated Spreadsheet 13–16.)

36. The Court finds, in the exercise of its discretion, that the number of timekeepers and the total amount of time spent preparing those filings are excessive and will adjust the billing entries as follows:

- a. Chesson’s time entries associated with drafting the Reply shall be reduced from 16.3 hours to 12 hours;
- b. Majestro’s time entries associated with drafting the Motion for Sanctions shall be reduced from 42 hours to 25 hours, and Majestro’s time entries associated with drafting the Reply shall be reduced from 17.5 hours to 12 hours;

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<sup>2</sup> The boilerplate language “[d]raft Motion for Sanctions” was used to reflect time spent drafting the Motion for Sanctions itself as well as Plaintiffs’ brief in support.



- c. Hartley's time entries associated with drafting the Motion for Sanctions (3.4 hours) and Hartley's time entries associated with drafting the Reply (1 hour) shall be disallowed;
- d. Hartill's time entries associated with drafting the Motion for Sanctions (1.1 hours) and Hartill's time entries associated with drafting the Reply (0.4 hours) shall be disallowed; and
- e. Bentley's time entry associated with drafting the Motion for Sanctions (0.7 hours) shall be disallowed.

37. Plaintiffs also request 35.3 hours of compensable time under the description “[p]repare for [Motion for Sanctions] hearing.” (Spreadsheet 22–23.) Defendants respond that these entries are excessive “given the total number of hours purportedly incurred to ‘Prepare for hearing.’” (Defs.’ Annotated Spreadsheet 16–17.) Defendants also challenge inclusion of the hearing preparation entries from timekeepers who did not argue the Motion for Sanctions at the hearing.

38. The Court finds, in its discretion, that the number of timekeepers and the total amount of time spent preparing for the hearing on the Motion for Sanctions are excessive and will adjust the billing entries as follows:

- a. Majestro's time entries associated with hearing preparation shall be reduced from 8.1 hours to 5 hours;
- b. Chesson's time entries associated with hearing preparation shall be reduced from 23.4 hours to 20 hours; and

c. Allen's time entries associated with hearing preparation shall be reduced from 4.8 hours to 2.5 hours.

39. After making these adjustments and the rate adjustments discussed above, the Court finds, in the exercise of its discretion, that 139.2 hours of compensable time (totaling \$40,860.00) for prosecuting the Motion for Sanctions is fair and reasonable in the circumstances of this case.

C. Remaining Rule 1.5 Factors

40. The Court finds that the remaining factors set forth in Rule 1.5(a) of the Revised Rules of Professional Conduct merit the award of attorneys' fees ordered herein.

41. As to the portion of Rule 1.5(a)'s first factor relating to "the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly," the Court finds that Plaintiffs' counsel's work was challenging and required a high degree of skill and experience. Identifying documents responsive to the Expedited Discovery Order (i.e., the Withheld Documents), seeking and obtaining those documents, and building a case for sanctions based upon Defendants' conduct required experience and specialized knowledge.

42. With regard to Rule 1.5(a)'s fourth factor, the "amount involved and the results obtained," while Plaintiffs' overall success in this litigation remains to be seen, Plaintiffs were successful with respect to their goals in seeking and obtaining the Withheld Documents and in bringing the Motion for Sanctions. In the Sanctions Order, the Court found that "Defendants failed to comply with the Expedited

Discovery Order by withholding responsive documents and concealing material, adverse evidence.” *Red Valve, Inc.*, 2019 NCBC LEXIS 5, at \*30. Based on Plaintiffs’ evidence, the Court also found that Defendants’ discovery misconduct warranted forensic discovery of Defendants’ data sources and devices. *Id.* at \*20–21. The Court thus concludes that this factor weighs in favor of the Court’s award of attorneys’ fees.

43. Considering Revised Rule of Professional Conduct 1.5(a)’s seventh factor, “the experience, reputation, and ability of the lawyer or lawyers performing the services,” the Court finds that the attorney-timekeepers who billed Plaintiffs in relation to this matter have significant experience in complex business litigation. These attorneys have proven themselves very able in this litigation while handling complicated legal questions and a large universe of discoverable documents. The Court concludes that this factor weighs in favor of the award of attorneys’ fees ordered herein.

44. Finally, the Court has considered the remaining factors of Revised Rule of Professional Conduct 1.5(a)—to the extent they can be applied to an award of attorneys’ fees in the context of discovery sanctions—and finds that the attorneys’ fees awarded herein are reasonable in light of these factors as well.

45. Therefore, after making the above-described adjustments to Plaintiffs’ submitted statement of fees and expenses, the Court concludes that Plaintiffs shall be awarded attorneys’ fees and expenses for total compensable time of 367.1 hours in the reasonable, total amount of \$108,667.50 pursuant to Rule 37(b)(2).

46. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** Defendants to pay Plaintiffs' reasonable expenses, including attorneys' fees, in the amount of \$108,667.50 within forty-five (45) days after the entry of this Order.

**SO ORDERED**, this the 19th day of March, 2019.

/s/Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge