

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LIZZETTA McCONNELL,)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 16-00002-WS-N
)	
USA HEALTHCARE)	
MANAGEMENT, LLC,)	
Defendant.)	

ORDER

In accordance with the undersigned’s order entered March 7, 2017 (Doc. 48), Defendant USA Healthcare Management (“USA HM”) timely filed a motion for an award of reasonable expenses under Federal Rules of Civil Procedure 16(f)(2), 37(a)(5)(A), and 37(b)(2)(C) (Doc. 49). The Court has referred the motion to the undersigned Magistrate Judge for appropriate action under 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and S.D. Ala. GenLR 72(a). *See* S.D. Ala. GenLR 72(b); (3/22/2017 electronic reference). Though given the opportunity, Plaintiff Lizzetta McConnell has filed no response to the motion, which is now under submission. (*See* Doc. 50).

After McConnell failed to serve responses to USA HM’s discovery requests in accordance with the Federal Rules of Civil Procedure and the Court’s scheduling order, USA HM filed a motion to compel those responses under Rule 37(a). (Doc. 43). After McConnell failed to respond to the motion to compel, the Court granted the motion and set a deadline for McConnell to comply. (Doc. 45). That deadline came and went with no activity from McConnell, and USA HM subsequently moved

to dismiss as a sanction for McConnell's failure to comply with the Court's order. (Doc. 46). Adopting the recommendation of the undersigned, the Court granted the motion and dismissed this action. (Docs. 51, 52). USA HM has requested attorneys' fees totaling \$1,720.00 as "reasonable expenses" under Federal Rules of Civil Procedure 16(f)(2), 37(a)(5)(A), and 37(b)(2)(C) in connection with bringing the two motions. Per the motion and attached declaration, the requested attorneys' fees are for 10.4 hours of work expended by USA HM's counsel of record, Windy Bitzer and Edward Rowe, in bringing the two motions. Bitzer, a Member of the law firm Hand Arendall with 18 years of experience, spent 1.4 hours on the motions at a billing rate of \$200/hour. Rowe, a Hand Arendall Associate with four years of experience, spent 9 hours on the motions at a billing rate of \$160/hour.

Having reviewed the request for attorneys' fees under the applicable standards, *see, e.g., Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1298–304 (11th Cir. 1988); *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994) (per curiam), the undersigned finds the billing rates charged to be reasonable. As for the number of hours expended in bringing the two motions, the undersigned will deduct those hours spent conferring with McConnell prior to bringing the motion to compel, consisting of 0.1 hours by Bitzer and 1.8 hours by Rowe.¹ The undersigned finds the remaining hours expended (1.3 by Bitzer, 7.2 by Rowe) to be reasonable. This results in a "lodestar" award of \$1,412.00 in reasonable expenses.

McConnell, though given an opportunity to be heard, has not attempted to

¹ *See* Fed. R. Civ. P. 37(a)(5) (providing for movant's reasonable expenses "incurred in **making** the motion" (emphasis added)).

argue that USA HM should not be awarded reasonable expenses because it filed its motion to compel “before attempting in good faith to obtain the disclosure or discovery without court action[,]” Fed. R. Civ. P. 37(a)(5)(A)(i), because her failures to act were “substantially justified[,] or [because]other circumstances make an award of expenses unjust[,]” Fed. R. Civ. P. 16(f)(2), 37(a)(5)(A)(ii)-(iii), 37(b)(2)(C), and the undersigned finds no reason to disallow reasonable expenses *sua sponte* for any of those reasons, or to reduce the “lodestar” amount calculated. Accordingly, it is **ORDERED** that USA HM’s motion for an award of reasonable expenses under Federal Rules of Civil Procedure 16(f)(2), 37(a)(5)(A), and 37(b)(2)(C) (Doc. 49) is **GRANTED in part** and **DENIED in part**. Plaintiff Lizzetta McConnell is **ORDERED** pay Defendant USA Healthcare Management **\$1,412.00**.

The Clerk of Court is **DIRECTED** to send copies of this Order to the Plaintiff via email at lizzetta.mcconnell@yahoo.com and via standard first-class U.S. mail at her address of record.

DONE and **ORDERED** this the 23rd day of May 2017.

/s/ Katherine P. Nelson
KATHERINE P. NELSON
UNITED STATES MAGISTRATE JUDGE