

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WINE & CANVAS DEVELOPMENT LLC,)

Plaintiff,)

vs.)

THEODORE WEISSER,)

CHRISTOPHER MUYLLE,)

YN CANVAS CA, LLC doing business as)

WWW.ART-UNCORKED.COM; doing)

business as ART UNCORKED,)

WEISSER MANAGEMENT GROUP, LLC,)

ART SOCIAL, INC.,)

FITNESS FIXX SERVICE, INC.,)

Defendants.)

No. 1:11-cv-01598-TWP-DKL

**ENTRY ON DEFENDANT CHRISTOPHER MUYLLE'S
APPLICATION FOR ATTORNEY'S FEES**

This matter is before the Court on Defendant Christopher Muylle's Application for Attorney's Fees. On June 7, 2013, the Court granted Defendant's Motion to Compel and ordered it to file a submission detailing the attorney's fees incurred in association with its Motion. [Dkt. 97.] Defendant Muylle ("Muylle") filed his submission on June 21, 2013, requesting fees in the amount of \$4,050.00. [Dkt. 105.] Plaintiff filed a response on June 25, 2013. [Dkt. 109.] Muylle filed a reply on July 1, 2013. [Dkt. 110.] Based upon the following, the Court hereby sanctions Plaintiff in the amount of **\$1,815.00.**

Award of Sanctions

The decision of what constitutes an appropriate sanction rests within the sound discretion of the district court. *Cheek v. Doe*, 828 F.2d 395, 397 (7th Cir. 1987). Defendant's fee petition seeks a total award of \$4,050.50. [Dkt. 105 at 2.] Plaintiff generally argues that the requested amount is unreasonable because it exceeds the amount of expenses incurred in "making the motion" as provided by Fed. R. Civ. P. 37(a)(5). Plaintiff asserts Defendant Muylle's recovery should be limited to the April 29, 2013, entry of \$330.00 related to the drafting of the Motion to Compel. Plaintiff does not object to Defendant's counsels' requested hourly rate.

Even under Plaintiff's narrow interpretation of Rule 37(a)(5), however, Defendant Muylle is entitled to a larger fee award than the single entry reflecting preliminary drafting of the Motion. For example, on May 7 and May 8, 2013, Defendant's counsel reviewed Plaintiff's pattern of non-compliance and revised the Motion. In addition, entries from May 16 and June 4, 2013, reflect conference calls with the Court to discuss this issue. Time spent participating in discovery dispute conference calls with the Court are compensable as sanctions following a motion to compel. *Arrington v. La Rabida Children's Hosp.*, No. 06 C 5129, 2007 WL 1238998 (N.D.Ill. Apr.25, 2007).

The Court interprets Rule 37(a)(5) more broadly to include communications with opposing counsel about delinquent discovery response in an effort to informally resolve the dispute. *See Heneghan v. City of Chicago*, 2010 WL 3715142 (N.D. Ill.). Defendant Muylle repeatedly contacted Plaintiff's counsel concerning the discovery and agreed to

multiple extensions of time. Plaintiff's counsel consistently promised to provide discovery responses then failed to do so. This non-compliance necessitated additional fees for which Defendant Muylle should be compensated. While the Court finds that communication with opposing counsel concerning this dispute are compensable, Defendant should not be compensated for inter-firm communications between his attorneys or communication between himself and his counsel.

Turning to the Declaration of Carol Nemeth Joven in Support of Christopher Muylle's Application for Fees, the Court noted many entries are "block billed" -- that is, a single time entry reflects time spent on a number of different tasks without allocating the specific amount of time spent on each of the different tasks. While block billing does not provide the best possible description of attorneys' fees, it is not a prohibited practice. *Farfaras v. Citizens Bank and Trust of Chicago*, 433 F.3d 558, 569 (7th Cir. 2006). The Court reduced "block billed" entries that reflect both compensable and non-compensable activities by fifty percent. The Court also excluded duplicative entries that reflected the same tasks being performed by two attorneys such as the review of opposing counsel's emails. The Court's fee award is based upon the following entries:

DATE	TIME-KEEPER	WORK PERFORMED	HOURS BILLED	HOURS ALLOWED	AMOUNT
3-26-13	CNJ	Sent email to Adam Davis re: status of discovery. Exchanged emails with Chris Muylle re: same	.20	.10	27.50
4-3-13	CNJ	Exchanged emails with P. Adam Davis re: extension request to respond to our discovery. Sent email to R. Waicukauski re: status.	.10	.05	13.75

4-16-13	CNJ	Sent email to P. Adam Davis re: status of discovery responses. Sent email to Nancy Webb re: calendaring for motion to compel	.20	.10	27.50
4-17-13	CNJ	Reviewed email from P. Adam Davis re: discovery.	.10	.10	27.50
4-19-13	CNJ	Sent email to P. Adam Davis re: send discovery responses or will file motion to compel. Exchanged emails with client and R. Waichukauski re: same.	.20	.10	27.50
4-29-13	CNJ	Prepared draft motion to compel. Reviwed federal rules and local rules re: same. Called magistrate's office per local rules and conferred with staff. Conferred with J LaRue and Mr. Davis. Sent email to Chris Muylle re: same.	1.20	1.20 ¹	330.00
5-1-13	CNJ	Reviewed order of court on discovery conference. Exchanged several emails with P. Adam Davis and R. Waichukauski re: status of discovery. Sent emails to Chris Muylle re: same.	.20	.10	27.50
5-2-13	CNJ	Reviewed email from P. Adam Davis re: status of discovery. Sent email to R. Waichukauski and Chris Muylle re: same.	.10	.05	13.75
5-3-13	CNJ	Reviewed email from P. Adam Davis re: status of discovery. Exchanged emails with C. Muylle re: upcoming conference, status of discovery and lack of responses and possible request for fees.	.30	.15	41.25
5-6-13	CNJ	Exchanged several emails with P. Adam Davis and C. Muylle re: status of late discovery responses and intent to file motion to compel. Conferred with R. Waieukauski re: same.	.40	.20	55.00

¹ Since the majority of this entry reflects time the Court finds compensable as sanctions under this Motion, it has exercised its discretion to not apply the fifty percent reduction.

5-7-13	CNJ	Reviewed several emails from P. Adam Davis re: status of response. Conferred with Nancy Webb and R. Waicukauski re: same. Prepared updated motion to compel, exhibits, and proposed order. Reviewed emails from P. Adam Davis re: purported attached responses. Exchanged emails with client and R. Waicukauski re: same.	1.50	.75	206.25
5-8-13	CNJ	Conferred with Nancy Webb re: status of discovery issues. Reviewed email from P. Adam Davis and lengthy attachment. Analyzed potential pattern of non-compliance by Davis. Exchanged emails with C. Muylle, R. Waicukauski and N. Webb re: same.	2.20	1.10	302.50
5-16-13	CNJ	Prepared for and participated in conference call with court and counsel. Sent lengthy email to R. Waicukauski and C. Muylle summarizing conference.	1.0	.50	137.50
5-22-13	CNJ	Exchanged emails with P. Adam Davis re: deadline for response to motion to compel and “emergency” request for extension. Reviewed rules re: same. Conferred with C. Muylle and R. Waicukauski.	.50	.25	68.75 ²
5-28-13	CNJ	Reviewed email from P. Adam Davis re: discovery. Sent email to R. Waicukauski and C. Muylle re: same. Sent email to P. Adam Davis in response, requesting discovery responses. Sent email re: response to motion to compel.	.30	.15	41.25

² The Declaration incorrectly references \$55.00 as the fee amount for .50 hours billed. Based upon an hourly rate of \$275.00, the amount billed for .50 hours should be \$137.50. The Court awards fifty percent of this amount, or \$68.75 for this entry.

5-29-13	CNJ	Email to P. Adam Davis re: discovery issues (including no response to date), CMP. Exchanged emails with C. Muylle re: discovery issues. Conferred with R. Waicukauski re: same.	.30	.15	41.25
5-31-13	CNJ	Reviewed email from P. Adam Davis re: discovery responses, etc. Reviewed email from Michael Houser re: P. Adam Davis ill and sent discovery to clients.	.20	.20	27.50
6-3-13	CNJ	Reviewed file to prepare for status conference. Reviewed file re: plaintiff's pattern of non-compliance. Sent email to C. Muylle re: compliance with deadline for special damages. Prepared memo re: pattern of non-compliance. Exchanged emails with Charlie Meyer and R. Waicukauski re: status conference.	1.0	.50	137.50
6-4-13	CNJ	Conferred with R. Waicukauski re: preparation for conference. Conferred with Magistrate. Sent email to C. Muylle and R. Waicukauski re: same.	.50	.25	68.75
6-10-13	CNJ	Reviewed order from court on motion to compel. Sent email to C. Muylle re: same.	.20	.10	27.50
6-12-13	CNJ	Began to prepare draft application for fees and sent email to Naney Webb re: same and preparing draft declaration and exhibits.	.60	.30	82.50
6-17-13	CNJ	Reviewed Plaintiff's motion for extension. Exchanged emails with R. Waicukauski and C. Muylle re: same. Called and left message for P. Adam Davis and conferred with him.	.60	.30	82.50
				TOTAL	\$1,815.00

The Court issues this award against Plaintiff, Wine & Canvas Development LLC, and Plaintiff's counsel, P. Adam Davis. Plaintiff and Plaintiff's counsel will be jointly and severally liable for **\$1815.50**.

SO ORDERED.

Date: 07/31/2013

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Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana