

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LiiON, LLC,

Plaintiff,

v.

VERTIV GROUP
CORPORATION et al.,

Defendants.

Case No. 18-cv-6133

Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

On July 6, 2020, the magistrate judge issued an order awarding fees to Vertiv Group Corp. (Vertiv) in the amount of \$57,026.70 based on discovery violations by Plaintiff. (Dkt. 385). Vertiv has filed an objection to the amount of the fee award. (Dkt. 387). For the following reasons, this Court adopts in part and rejects in part the magistrate judge's fee award.

A. Background

LiiON, LLC (LiiON) alleges in its Second Amended Complaint that it supplies “customers with innovative stored energy solutions designed for data center, telecom, uninterruptable power system, and cable and wind/solar applications.” (Dkt. 135, Sec. Am. Compl. ¶ 2.) LiiON developed proprietary algorithms for controlling lithium-ion systems, (*Id.* ¶¶ 40-41), and around 2014, entered into a joint venture with Defendants so that LiiON's technology could be integrated into battery cabinets. (*Id.* ¶¶ 60–67.) According to LiiON, Defendants misappropriated its trade secrets,

including “methods, software systems, and components operating together to form the basis of LiiON’s lithium-ion smart solutions,” and divulged them to third parties, including Samsung. (*Id.* ¶¶ 100–109.) That conduct was a violation of the parties’ mutual nondisclosure agreement. (*Id.* ¶¶ 176–79.) In response to the lawsuit, Vertiv alleges LiiON breached a contract related to purchase orders for lithium-ion battery cabinets, breached the implied covenant of good faith and fair dealing, and tortiously interfered with business relationships. (Dkt. 38, Counterclaims ¶¶ 37–79.)

B. Discovery disputes

The magistrate judge has presided over the contentious discovery since November 2018. (Dkt. 26). During discovery, the parties filed a total of nine (9) motions to compel and Vertiv filed an additional two (2) motions to enforce. On February 28, 2020, the magistrate judge issued a twenty-five (25) page Report and Recommendation granting in part and denying in part Vertiv’s Motion for Discovery Sanctions. (Dkt. 367).¹

In summary, the magistrate judge found that LiiON’s failure to seek documents from Hoffman, Corcoran, Hankin, Kostan, Sosin, Hehn and Gray sanctionable. The Court rejected Vertiv’s remaining arguments regarding document gathering and production. (Dkt. 367 at 5–10). While the magistrate judge rejected several allegations that LiiON made misrepresentations in certain interrogatory and document request responses, he did find that LiiON made misrepresentations in

¹ Neither party objected to these findings, and the Court adopted them on May 8, 2020. (Dkt. 374).

responding to document requests for communications with third parties. (*Id.* at 10–15). Finally, the Court considered Vertiv’s argument that LiiON failed to properly complete the corporate disclosures required by Federal Rule of Civil Procedure 7.1 and Local Rule 3.2. After a thorough review of the record, the Court determined there was no discovery violation. (Dkt. 367 at 15–19).

In fashioning a sanction, the Court correctly noted that the “guiding principal in this task is proportionality.” (Dkt. 367 at 19, *citing Goss Graphics Sys., Inc. v. DEV Indus., Inc.*, 267 F.3d 624, 627 (7th Cir. 2001)). The Court noted that it need not impose the “least drastic sanctions” but should assign a sanction that reflects the severity of the misconduct. (*Id.* at 19–20, *citing Rice v. City of Chi.*, 333 F.3d 780, 784 (7th Cir. 2003)). The Court recommended, in pertinent part:

a monetary sanction in the amount of half the reasonable fees Defendants incurred in deposing the seven witnesses from whom LiiON neglected to collect documents, given that their depositions presumably could have been more efficient and productive had LiiON gathered relevant documents from them in discovery. [. . .] [and] a sanction in the form of half the reasonable fees Defendants incurred in filing this motion.

Id., at 23.

On June 5, 2020, Vertiv filed its petition for fees pursuant to the magistrate judge’s order (Dkt. 379).² In total, Vertiv requested \$139,370.89. Supported by billing records, this was the one-half of the mount paid by Vertiv for the tasks outlined in the magistrate judge’s Order. LiiON responded, objecting to the number of attorneys

² Vertiv filed a corrected petition for fees later that same day. (Dkt. 380).

billing on assignments, the billing rates of those attorneys and the hours spent. (Dkt. 384). The magistrate judge awarded \$57,026.70. (Dkt. 385).

C. Standard of Review

Federal Rule of Civil Procedure 72 governs this Court's review of rulings by magistrate judges. For non-dispositive matters, the District Court may only reverse a magistrate judge's order when the order is "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a).

In addition to this deferential standard, the Court is also mindful that the magistrate judge has considerable discretion in establishing the appropriate amount of a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 639 (7th Cir. 2011); *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 551 (7th Cir. 1999). The Seventh Circuit has consistently noted that "[b]y virtue of its familiarity with the litigation," the District Court is in the best position to determine the number of hours reasonably expended. *Seventh Ave., Inc. v. Shaf Int'l, Inc.*, 909 F.3d 878, 881 (7th Cir. 2018) (citing *McNabola v. Chicago Transit Auth.*, 10 F.3d 501, 519 (7th Cir. 1993)).

To determine "a reasonable attorney's fee," the Seventh Circuit has instructed that "the district court must make that assessment, at least initially, based on a calculation of the 'lodestar'—the hours reasonably expended multiplied by the reasonable hourly rate—and nothing else." *Johnson v. GDF, Inc.*, 668 F.3d 927, 929 (7th Cir. 2012) (citing *Pickett*, 664 F.3d at 639). Vertiv is correct that there "is a strong

presumption that the lodestar calculation yields a reasonable attorneys' fee award." *Pickett*, 664 F.3d at 639. However, it is equally true that once the Court has established an attorney's appropriate hourly rate, it next assesses the attorneys' time entries and should "exclude hours that are 'excessive, redundant or otherwise unnecessary.'" *Small*, 264 F.3d at 708 (quoting *Hensley*, 461 U.S. at 434). What qualifies as a "reasonable" use of a lawyer's time "is a highly contextual and fact specific enterprise," and the court has "wide latitude" in awarding attorneys' fees. *Sottoriva v. Claps*, 617 F.3d 971, 975 (7th Cir. 2010) (internal quotation marks omitted). The Seventh Circuit has observed, "[t]here is no one correct formula for determining a fee award." *Tomazzoli v. Sheedy*, 804 F.2d 93, 97 (7th Cir. 1986). However, a Court may not arbitrarily cut a fee request; "a concise but clear explanation of its reasons for any reduction" is required. *Id.* (internal quotation omitted).

D. Depositions

The magistrate judge undoubtedly thoroughly reviewed the parties' submissions regarding depositions. He determined the attorneys that conducted each deposition and the amount of time each deposition lasted by reviewing Vertiv's timesheets. Although he did not say so specifically, he then determined that the time spent preparing for each deposition was unreasonable. For instance, with respect to the Corcoran deposition, it is clear the magistrate judge reviewed the time records and the parties' arguments and found 65 hours excessive for a 6 ½ hour deposition. As LiiON notes "even after Mr. Bedell, Mr. Walsh and Ms. Watson Moss had

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.