

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 3707

VITAFORM, INC. d/b/a BODY
AFTER BABY,

Plaintiff,

v.

AEROFLOW, INC. and MOTIF
MEDICAL, LLC,

Defendants.

**ORDER ON DEFENDANTS'
SUPPLEMENTAL FEE APPLICATION**

1. **THIS MATTER** is before the Court upon Defendants Aeroflow, Inc. (“Aeroflow”) and Motif Medical, LLC’s (“Motif Medical”; each a “Defendant” and together, “Defendants”) supplemental fee application (the “Fee Application”),¹ filed on 27 November 2023 in the above-captioned case.

2. Having considered the Fee Application, the related briefs, the materials offered in support of and in opposition to the Fee Application, and other appropriate matters of record, the Court hereby **GRANTS in part and DENIES in part** the Fee Application, **ENTERS** the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, and **ORDERS** relief as set forth below.

¹ (Defs.’ Suppl. Mem. Regarding Att’ys’ Fees and Costs [hereinafter the “Fee Application”], ECF No. 205.)

I.

FINDINGS OF FACT²

3. On 9 November 2023, the Court granted in part and denied in part Defendants' Motion for Attorneys' Fees (the "Motion")³ in the above-captioned case (the "Fee Order").⁴

4. In the Fee Order, the Court awarded Defendants a portion of their requested attorneys' fees as follows:

Defendants shall be awarded their attorneys' fees incurred in connection with (i) prosecuting their Motion for Summary Judgment, under 15 U.S.C. § 1117(a), N.C.G.S. § 75-16.1 to the extent Plaintiff's UDTPA claim was based on the Lanham Act, and N.C.G.S. § 6-21.5 and (ii) defending against Plaintiff's Further Counterclaims, under N.C.G.S. § 6-21.5. Defendants shall also be awarded their incurred costs to this same extent under N.C.G.S. § 6-20, subject to the limitations imposed by N.C.G.S. § 7A-305(d).⁵

5. The Court established a schedule in the Fee Order for the briefing and the presentation of evidence on Defendants' Fee Application.⁶ Defendants timely filed the Fee Application on 27 November 2023. Plaintiff filed its opposition to Defendants' Fee Application on 11 December 2023,⁷ and Defendants filed their reply on 21

² Any Findings of Fact that are more appropriately deemed Conclusions of Law are incorporated by reference into the Court's Conclusions of Law.

³ (Defs.' Mot. Att'ys' Fees [hereinafter "Motion"], ECF No. 194.) The Motion was filed on 19 May 2023.

⁴ (Order and Op. Defs.' Mot. Att'ys' Fees [hereinafter "Fee Order"], ECF No. 204; *Vitaform, Inc. v. Aeroflow, Inc.*, 2023 NCBC LEXIS 141, at *33 (N.C. Super. Ct. Nov. 9, 2023).)

⁵ (Fee Order ¶ 63(a).)

⁶ (Fee Order ¶¶ 63(c)–(e).)

⁷ (Pl.'s Resp. Defs.' Suppl. Mem. Regarding Att'ys' Fees and Costs, ECF No. 206.)

December 2023.⁸ On 22 January 2024, the Court directed Defendants to provide additional information to clarify and explain certain information in the Fee Application.⁹ Defendants timely complied with the Court's order on 26 January 2024 (the "Supplemental Filing").¹⁰

6. Defendants support their Fee Application with billing records documenting all tasks and time worked for which Defendants seek attorneys' fees (the "Billing Statement(s)").¹¹ The Billing Statements comprise two sets of invoices, one for Aeroflow and one for Motif Medical. Each Billing Statement is highlighted to identify the time for which a fee award is sought and contains the date of the hours billed, the attorney or paralegal who conducted the respective task, a brief description of the task, the hours spent on the task, the rate charged for the task, and the total amount charged. The two Billing Statements reflect identical time entries and charges to each Defendant and include time worked between 1 April 2021 and 20 May 2022.¹²

⁸ (Defs.' Reply Suppl. Suppl. Mem. Regarding Att'ys' Fees and Costs [hereinafter "Defs.' Reply"], ECF No. 207.)

⁹ (Order Suppl. Information Defs.' Mot. Att'ys' Fees [hereinafter "Supplemental Fee Order"], ECF No. 208.)

¹⁰ (Defs.' Suppl. Filing Mot. Att'ys' Fees [hereinafter "Defs.' Suppl. Filing"], ECF No. 209.) In the Supplemental Fee Order, the Court permitted Plaintiff an opportunity to respond to Defendants' Supplemental Filing no later than 2 February 2024, but Plaintiff chose not to respond.

¹¹ (*See* Defs.' Suppl. Filing Ex. 1, Suppl. Aff. Hayley R. Wells, dated 26 January 2024 [hereinafter "Wells Aff."], Ex. B [hereinafter "Billing Statements"], ECF No. 209.1.)

¹² (*See* Fee Application Ex. A, Aff. Joseph A. Schouten, dated 27 November 2023, ¶¶ 15, 20–22 [hereinafter "Schouten Aff."], ECF No. 205.1; Wells Aff. ¶¶ 11–12; Defs.' Suppl. Filing 3.)

7. The Fee Application 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 Fee Application and thus decides this matter without a hearing. *See* Business Court Rule 7.4 (“The Court may rule on a motion without a hearing.”).

II.

CONCLUSIONS OF LAW¹³

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. Priv. Diagnostic Clinic*, 146 N.C. App. 658, 672 (2001). When attorneys’ fees are awarded as a sanction, there must be “findings to explain . . . how the court arrived at” the awarded amount. *Dunn v. Canoy*, 180 N.C. App. 30, 50 (2006).

9. An award of expenses, including attorneys’ fees, must be reasonable and should be limited to those fees and expenses incurred as a result of the sanctioned party’s improper conduct. *See, e.g., Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 112, at *7 (N.C. Super. Ct. Dec. 15, 2021). 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 Lab’ys, Inc. v. Kuykendall*, 335 N.C. 183, 195 (1993) (cleaned up).

¹³ Any Conclusions of Law that are more appropriately deemed Findings of Fact are incorporated by reference into the Findings of Fact set forth above.

10. The amount of attorneys' fees to be awarded is left to the trial 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 (2008). A trial court will only be held to have abused its discretion "where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *E. Brooks Wilkins Fam. Med., P.A. v. WakeMed*, 244 N.C. App. 567, 578 (2016) (quoting *Couch*, 146 N.C. App. at 667–68).

11. 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 (2011).

12. "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.

See, e.g., N.C. Rev. R. Prof. Conduct 1.5(a); *Ehrenhaus*, 216 N.C. App. at 96–98.

A. Reasonableness of Rates

13. The Court first considers the reasonableness of the hourly rates sought by Defendants' counsel and support staff, all of whom work at Ward and Smith, P.A. in

either Raleigh or Asheville. Those rates are: (i) \$400 for Joseph A. Schouten (“Schouten”), a partner with nearly twenty years’ experience; (ii) \$350 for Haley Roper Wells (“Wells”), a partner with fifteen years’ experience;¹⁴ (iii) \$325 for Mary V. Cavanagh (“Cavanagh”), a partner with over thirty years’ experience; (iv) \$235 (in 2021) and \$265 (in 2022) for Jordan M. Spanner (“Spanner”), an associate with approximately five years’ experience; (v) \$195 for Vicki L. Spillane (“Spillane”), an e-discovery and litigation support specialist with over twenty years’ experience, and (vi) \$185 (in 2021) and \$190 (in 2022) for Elizabeth A. Stallings (“Stallings”), a paralegal with approximately thirty years’ experience.¹⁵

14. Plaintiff supports the reasonableness of these requested rates with affidavit testimony from Schouten,¹⁶ Wells,¹⁷ and Jennifer K. Van Zant (“Van Zant”),¹⁸ an experienced and well-regarded attorney with Brooks, Pierce, McLendon, Humphrey & Leonard, LLP in Greensboro, North Carolina, who practices complex business litigation throughout North Carolina and specifically in the North Carolina Business

¹⁴ While Defendants appear to have sought a \$400 hourly rate for Wells in the Fee Application, *see* Schouten Aff. ¶ 9, Exhibits B and C to their Supplemental Filing make clear that Defendants seek an hourly rate for Wells of \$350, which is the rate she charged to Defendants for the time for which Defendants seek recovery in the Fee Application. (*See* Billing Statements; Wells Aff. Ex. C [hereinafter “Billing Summary”].)

¹⁵ (*See* Schouten Aff. ¶¶ 6–13; Wells Aff. ¶¶ 5–10, Exs. B, C.)

¹⁶ (*See* Schouten Aff.)

¹⁷ (*See* Wells Aff.)

¹⁸ (Defs.’ Mem. Law Supp. Mot. Att’ys’ Fees Ex. B, Aff. Jennifer K. Van Zant, dated 18 May 2023 [hereinafter “Van Zant Aff.”], ECF No. 195.2.)

Court.¹⁹ Van Zant also chaired the North Carolina Business Court Rules Advisory Committee. Van Zant avers that the hourly rates charged by Plaintiff's attorneys and paralegal are "within the range of prevailing hourly rates in North Carolina for similar services by lawyers of comparable skill, experience, and reputation for complex business litigation."²⁰

15. Plaintiff does not object to the hourly rates Defendants' attorneys have charged. In addition, the Court notes that it awarded attorneys' fees to Defendants earlier in this litigation, concluding that the following hourly rates were "reasonable, clearly not excessive, and within those customarily charged in this locality for similar legal services": (i) \$400 for Schouten, (ii) \$350 for Wells, (iii) \$235 for Spanner, and (iv) \$185 for Stallings. *See Vitaform, Inc.*, 2021 NCBC LEXIS 112, at *13.

16. Based on Defendants' counsel's affidavits, Van Zant's affidavit, the previous holdings of North Carolina state and federal courts, and this Court's knowledge of the hourly rates of local attorneys providing similar services in Buncombe County and in the North Carolina Business Court, the Court concludes that Defendants' attorneys' and support staff rates are reasonable, clearly not excessive, and within those "customarily charged in [Buncombe County and in cases in the North Carolina Business Court] for similar legal services." N.C. Rev. R. Prof. Conduct 1.5(a)(3).

¹⁹ (Van Zant Aff. ¶ 3.)

²⁰ (Van Zant Aff. ¶ 14.)

17. Accordingly, the Court will, in the exercise of its discretion, award fees in this Order based on the following hourly rates: (i) \$400 for Schouten, (ii) \$350 for Wells, (iii) \$325 for Cavanagh, (iv) \$235 for Spanner in 2021 and \$265 for Spanner in 2022, (v) \$195 for Spillane, and (vi) \$185 for Stallings in 2021 and \$190 for Stallings in 2022. *See, e.g., Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 69, at *21–23 (N.C. Super. Ct. July 6, 2018) (holding hourly rates charged in a Business Court case in Buncombe County of \$230 to \$405 for attorneys and \$150 to \$250 for paralegals and support staff to be reasonable); *see also, e.g., Simpson v. Simpson*, 209 N.C. App. 320, 328 (2011) (recognizing that, in awarding attorneys’ fees, a trial court may “take judicial notice of the customary hourly rates of local attorneys performing the same services and having the same experience”).²¹

B. Time and Labor Expended by Defendants’ Counsel

18. The Court next evaluates the time and labor expended by Defendants’ counsel. *See* N.C. Rev. R. Prof. Conduct 1.5(a)(1).

²¹ Defendants’ requested hourly rates are also well within the range of those this Court has found reasonable for complex business litigation in North Carolina. *See, e.g., Woodcock v. Cumberland Cnty. Hosp. Sys.*, 2023 NCBC LEXIS 54, at *11 (N.C. Super. Ct. Apr. 3, 2023) (approving hourly rates of \$600 and \$550 for partners and \$375 and \$325 for associates); *Bank of Am., N.A. v. Klaussner Furniture Indus., Inc.*, 2023 NCBC LEXIS 168, at *9–10 (N.C. Super Ct. Dec. 15, 2023) (approving hourly rates between \$600 and \$700 for partners, \$350 and \$500 for associates, and \$265 for paralegals); *Chambers v. Moses H. Cone Mem’l Hosp.*, 2022 NCBC LEXIS 122, at *14 (N.C. Super. Ct. Oct. 19, 2022) (noting that “numerous recent decisions have determined that typical fees charged in North Carolina for handling complex commercial litigation exceed \$250 and often range as high as \$550 per hour.”); *W&W Partners, Inc. v. Ferrell Land Co.*, 2020 NCBC LEXIS 35, at *10 (N.C. Super. Ct. Mar. 23, 2020) (finding attorney hourly rate of \$526.50 reasonable); *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 58, at *19–20, 32–36 (N.C. Super. Ct. Sept. 5, 2019) (finding attorney hourly rates between \$250 and \$450 reasonable); *Bradshaw v. Maiden*, 2018 NCBC LEXIS 98, at *12–13 (N.C. Super. Ct. Sept. 20, 2018) (finding attorney hourly rate of \$450 reasonable).

19. Defendants, collectively, seek to recover \$191,763.00 in attorneys' fees arising from 589.6 hours of attorney and support staff time incurred between 1 April 2021 and 20 May 2022 in prosecuting their Motion for Summary Judgment²² and in defending against Plaintiff's Further Counterclaims²³ as follows: (i) 206.2 hours for Schouten (\$82,480.00); (ii) 108 hours for Wells (\$37,800.00); (iii) 160.6 hours for Spanner (\$40,603.00);²⁴ (iv) 67 hours for Cavanagh (\$21,775.00); (v) 32 hours for Stallings (\$6,024.00);²⁵ and (vi) 15.8 hours for Spillane (\$3,081.00).²⁶

20. Plaintiff argues that the attorneys' fees Defendants request should be substantially reduced on the following grounds: (i) that there is no common nucleus of operative fact between the reverse passing off claims and all other claims, (ii) that no fees should be awarded for the majority of claims that survived Defendants' Motion for Summary Judgment, (iii) that Defendants' block-billed time entries should be reduced to reflect only the time spent in the prosecution of their Motion for Summary Judgment, (iv) that Defendants should not be awarded fees for time Defendants excluded from the Motion for Attorneys' Fees as filed in May 2023, and (v) that

²² (Defs.' Mot. Summ. J., ECF No. 122.)

²³ (See Pl.'s Answer Countercls., Defenses, and Further Countercls., ECF No. 106.)

²⁴ Defendants seek an award for 65.2 hours that Spanner incurred at an hourly rate of \$235 (\$15,332.00) and 95.4 hours that Spanner incurred at an hourly rate of \$265 (\$25,281.00).

²⁵ Defendants seek an award for 11.2 hours that Stallings incurred at an hourly rate of \$185 (\$2,072.00) and 20.8 hours that Stallings incurred at an hourly rate of \$190 (\$3,952.00).

²⁶ (See Billing Statements; Billing Summary.) As noted, Defendants submitted identical billing statements to Aeroflow and Motif Medical, each statement reflecting one-half of the total time charged for each billing period. Thus, Aeroflow and Motif Medical each seek a fee award of \$95,881.50, which together constitutes a total fee award sought of \$191,763.00.

Defendants should not be awarded fees for time spent in preparing a motion for sanctions that was never filed.²⁷ The Court addresses each of Plaintiff's contentions in turn.

21. As an initial matter, Defendants' first two arguments ask the Court to reconsider its earlier conclusion in the Fee Order—which was reached after “thorough and careful review”—that:

Defendants' efforts in successfully obtaining summary judgment on Plaintiff's Lanham Act claim focused on the litigation as a whole and that all claims in the litigation were inextricably interwoven and arose from a common nucleus of operative fact. As a result, the Court will, in the exercise of its discretion, require Plaintiff to pay all of Defendants' attorneys' fees incurred in connection with prosecuting Defendants' Motion for Summary Judgment.²⁸

The Court finds Plaintiff's arguments for reconsideration without merit and will reject Plaintiff's request that the Court alter its earlier conclusion.

22. The Court also rejects Plaintiff's contention that Defendants should not be able to recover for time they initially excluded from their Motion given the Court's express direction in the Fee Order that Defendants were entitled to recover all of their attorneys' fees incurred in connection with both the prosecution of their Motion for Summary Judgment and the defense of the Further Counterclaims and the Court's express invitation for supplemental briefing and evidence in light of the Court's Fee Order determinations.

²⁷ (*See* Defs.' Br. 3–9.)

²⁸ (Fee Order ¶ 42.)

23. The same is true for the time Defendants spent in preparing a sanctions motion relating to Plaintiff's Further Counterclaims. The Fee Order expressly permitted recovery of Defendants' "attorneys' fees incurred in defending against and moving to dismiss" those claims,²⁹ and the Billing Statements show that Defendants incurred significant time in preparing the sanctions motion prior to Plaintiff's belated dismissal of the Further Counterclaims. As Defendants correctly note, "Had [Plaintiff] never filed the Further Counterclaims—or had it voluntarily dismissed them when Defendants' first notified [Plaintiff] of their deficiencies—Defendants would not have incurred those fees."³⁰ Accordingly, the Court rejects Plaintiff's contention that Defendants should not be awarded fees for the time they incurred in preparing the unfiled sanctions motion.

24. Plaintiff's complaint about Defendants' block-billing, however, has merit. Many of Defendants' time entries aggregate multiple tasks without providing the hours expended for each separate task. Since some of these time entries include both compensable and non-compensable time under the Fee Order, the Court will estimate the hours expended for each separate compensable task in these block-billing entries in the reasonable exercise of the Court's discretion. *See, e.g., Bucci v. Burns*, 2022 NCBC LEXIS 137, at *15 (N.C. Super. Ct. Nov. 17, 2022) ("[W]hen aggregated invoices are the only evidence available, the Court has ample discretion to estimate a reasonable number of hours for relevant matters and dock the requested fees

²⁹ (Fee Order ¶ 61.)

³⁰ (Defs.' Reply 5.)

accordingly.”) (citing *Ekren v. K&E Real Est. Invs., LLC*, 2014 NCBC LEXIS 57, at *17–18 (N.C. Super. Ct. Nov. 10, 2014)); see also, e.g., *Jaramillo v. County of Orange*, 200 Cal.App.4th 811, 830 (Cal. Ct. App. 2011) (“[B]lock billing is not objectionable ‘per se,’ though it may increase the risk that the trial court, in reasonable exercise of its discretion, will discount a fee request.”); see *Dixon v. Astrue*, 2008 U.S. Dist. LEXIS 9903, at *11 (E.D.N.C., Feb. 8, 2008) (“Time sheets accompanying both motions fail to itemize time entries by task, but instead lump multiple tasks together. This block billing precludes the court from determining that all of the amounts claimed . . . are both compensable and reasonable.”) (cleaned up).

25. The Court has carefully reviewed the Billing Statements and, in the exercise of its discretion, estimates the time spent by each timekeeper on tasks related to Defendants’ Motion for Summary Judgment and in defending against Plaintiff’s Further Counterclaims is as follows: (i) 166.8 hours for Schouten,³¹ (ii) 95.2 hours for

³¹ The Court’s adjustments to Schouten’s block-billing entries on each Defendant’s Billing Statements are as follows: 5/11/21 (allow 1.0 hour of 3.5 hours billed); 5/27/21 (.6 of 1.2); 6/1/21 (.6 of 1.1); 6/3/21 (.3 of .6); 6/4/21 (.5 of .7); 6/9/21 (.3 of .8); 6/11/21 (.3 of 1.1); 6/17/21 (.4 of 1.0); 6/18/21 (.3 of .8); 6/23/21 (.3 of 1.3); 6/28/21 (.2 of .4); 6/29/21 (.4 of 1.2); 8/11/21 (.4 of 1.0); 8/24/21 (.4 of 1.5); 8/26/21 (.3 of .7); 9/2/21 (1.0 of 1.4); 9/22/21 (.3 of .9); 9/23/21 (.2 of .7); 10/29/21 (.1 of .4); 11/11/21 (.4 of .5); 11/29/21 (.5 of 3.1); 12/13/21 (1.0 of 1.8); 12/30/21 (.2 of .6); 1/6/22 (2.0 of 3.2); 1/24/22 (1.2 of 1.7); 1/26/22 (1.0 of 1.9); and 1/28/22 (1.2 of 2.2). The Court therefore will permit Defendants to recover 30.8 hours (15.4 hours for each Defendant) of Defendants’ requested 70.6 hours (35.3 hours for each Defendant) for these block-billed time entries.

Wells,³² (iii) 67 hours for Cavanagh, (iv) 152 hours for Spanner,³³ (v) 27.6 hours for Stallings,³⁴ and (v) 15.8 hours for Spillane.

26. The Court has carefully reviewed Defendants' Billing Statements, and except as adjusted to account for block-billing, the Court concludes, in the exercise of its discretion, that no other adjustments to Defendants' requested attorneys' fees are necessary or appropriate and that the time Defendants' attorneys and paralegals spent in connection with the prosecution of the Motion for Summary Judgment and the defense of the Further Counterclaims was reasonable under the circumstances and should be awarded.

27. The Court thus finds, in the exercise of its discretion, that Defendants should be awarded reasonable attorneys' fees for 524 hours of attorney and paralegal time spent in connection with prosecuting Defendants' Motion for Summary Judgment and in defending against Plaintiff's Further Counterclaims in the total amount of \$168,528.00 as follows: 166.4 hours for Schouten (\$66,560.00); 95.2 hours

³² The Court's adjustments to Wells' block-billing entries are as follows: 6/23/21 (allow .3 hours of 1.1 hours billed); 7/7/21 (.5 of 1.5); 8/24/21 (.5 of 1.7); 11/3/21 (1.4 of 1.6); 11/12/21 (.1 of .2); 11/15/21 (.2 of .3); 11/16/21 (.6 of .9); 11/17/21 (1.2 of 2.4); 11/18/21 (.5 of .7); 11/19/21 (.7 of .9); 12/13/21 (.5 of 1.2); 12/14/21 (.4 of .7); and 12/22/21 (.3 of .4). The Court therefore will permit Defendants to recover 14.4 hours (7.2 hours for each Defendant) of Defendants' requested 27.2 hours (13.6 hours for each Defendant) for these block-billed time entries.

³³ The Court's adjustments to Spanner's block-billing entries are as follows: 6/1/21 (allow 2.1 hours of 2.9 hours billed); 6/2/21 (.6 of 1.1); 6/15/21 (.9 of 1.8); 6/21/21 (.5 of 1.6); 12/2/21 (.1 of .3); 12/13/21 (.3 of .5); and 12/14/21 (.5 of 1.1). The Court therefore will permit Defendants to recover 10 hours (5 hours for each Defendant) of Defendants' requested 18.6 hours (9.3 hours for each Defendant) for these block-billed time entries.

³⁴ The Court's adjustments to Stallings' block-billing entries are as follows: 11/17/21 (allow 1.0 hours of 1.7 hours billed); 11/23/21 (1.0 of 2.1); and 11/24/21 (.5 of .9). The Court therefore will permit Defendants to recover 5 hours (2.5 hours for each Defendant) of Defendants' requested 9.4 hours (4.7 hours for each Defendant) for these block-billed time entries.

for Wells (\$33,320.00); 67 hours for Cavanagh (\$21,775.00); 152 hours for Spanner (\$38,582.00);³⁵ 27.6 hours for Stallings (\$5,210.00);³⁶ and 15.8 hours for Spillane (\$3,081.00). Defendants have not sought costs in light of the Court’s determinations in the Fee Order, so this Order shall not consider or award costs.

C. Remaining N.C. Rev. R. Prof. Conduct 1.5 Factors

28. 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 awarded hereunder.

29. As to that portion of N.C. Rev. R. Prof. Conduct 1.5(a)’s first factor considering “the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly,” the Court finds that the work required in connection with prosecuting Defendants’ Motion for Summary Judgment and in defending against Plaintiff’s Further Counterclaims was challenging and required a high degree of skill, experience, and specialized knowledge. Accordingly, this factor weighs in favor of the attorneys’ fees awarded hereunder.

30. Considering N.C. Rev. R. Prof. Conduct 1.5(a)’s seventh factor—“the experience, reputation, and ability of the lawyer or lawyers performing the

³⁵ After accounting for block-billing adjustments, all of which were for time incurred in 2021 when Spanner’s hourly rate was \$235, the Court allows 56.6 hours of Spanner’s time at her hourly rate of \$235 (\$13,301.00) and 95.4 hours of her time at her hourly rate of \$265 (\$25,281.00).

³⁶ After accounting for block-billing adjustments, all of which were for time incurred in 2021 when Stallings’ hourly rate was \$185, the Court allows 6.8 hours of Stallings’ time at her hourly rate of \$185 (\$1,258.00) and 20.8 hours of her time at her hourly rate of \$190 (\$3,952.00).

services”—the Court finds that Defendants’ attorneys have significant experience in complex business litigation matters and have shown great ability in prosecuting Defendants’ Motion for Summary Judgment and in defending against Plaintiff’s Further Counterclaims. The Court concludes that this factor also weighs in favor of the Court’s award of attorneys’ fees hereunder.

31. Finally, the Court has considered the remaining factors of N.C. Rev. R. Prof. Conduct 1.5(a) and finds that the attorneys’ fees awarded hereunder are reasonable in light of these factors as well. In particular, the fourth factor—“the amount involved and the results obtained”—favors the award of attorneys’ fees hereunder because Defendants were able to obtain the dismissal or substantial narrowing of Plaintiff’s claims through prosecuting Defendants’ Motion for Summary Judgment and in defending against the Further Counterclaims.

32. Accordingly, based on the above, the Court concludes, in the exercise of its discretion, that Plaintiff should pay Defendant Aeroflow reasonable attorneys’ fees in the total amount of \$84,264.00 and Defendant Motif Medical reasonable attorneys’ fees in the total amount of \$84,264.00 (for a total attorney fee award to Defendants, collectively, of \$168,528.00).

33. In addition, Defendants seek the Court’s clarification that the Fee Order did not impair Defendants’ ability to recover costs under Rule 41(d) of the North Carolina Rules of Civil Procedure. To the extent clarification is necessary, the Court observes that the Fee Order resolved Defendants’ request for attorneys’ fees and costs under 15 U.S.C. § 1117(a), N.C.G.S. § 66-154(d), N.C.G.S. § 6-21(12), N.C.G.S. § 75-16.1,

N.C.G.S. § 6-21.5, and N.C.G.S. § 6-20 and did not address, consider, or impair Defendants' right to pursue relief under Rule 41(d). Although Plaintiff challenges in its opposition brief certain costs Defendants may seek to recover under N.C.G.S. § 7A-305(d), Defendants have not moved to recover these costs at this time. As a result, Defendants' entitlement to the costs Plaintiff challenges is not presently before the Court for adjudication, and the Court therefore rejects Plaintiff's arguments as premature.

III.

CONCLUSION

34. **WHEREFORE**, the Court, for the foregoing reasons and in the exercise of the Court's discretion, hereby **GRANTS in part** and **DENIES in part** Defendants' Fee Application as more particularly set forth above and **ORDERS** Plaintiff to pay Defendant Aeroflow's reasonable attorneys' fees in the total amount of \$84,264.00 and Defendant Motif Medical's reasonable attorneys' fees in the total amount of \$84,264.00, each payment to be made no later than 6 March 2024.

SO ORDERED, this the 5th day of February, 2024.

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