

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17-CVS-9998

W&W PARTNERS, INC. and
CHASE PROPERTIES, INC.,

Plaintiffs,

v.

FERRELL LAND COMPANY, LLC;
FERRELL INVESTMENTS
LIMITED PARTNERSHIP; DAVID
S. FERRELL; and LUANNE
FERRELL ADAMS,

Defendants.

**ORDER ON DEFENDANTS'
APPLICATION FOR ATTORNEYS'
FEES AND COSTS, AND
DEFENDANTS' APPLICATION AND
SUPPLEMENTAL APPLICATION
FOR COSTS**

THIS MATTER comes before the Court on Defendants' Application for Attorneys' Fees and Costs ("Appl. Fees," ECF No. 135), Application for Costs ("Appl. Costs," ECF No. 146), and Supplemental Application for Costs ("Supp. Appl. Costs," ECF No. 149) (collectively, "Defendants' Applications for Fees and Costs"). In support of Defendants' Applications for Fees and Costs, Defendants filed with the Court a Brief in Support of Application for Costs and Supplemental Application for Costs (ECF No. 150), a Reply Brief in Support of Application for Costs and Supplemental Application for Costs (ECF No. 152), the Affidavit of A. Lee Hogewood in Support of Application for Attorneys' Fees and Costs (ECF No. 135.1), a chart entitled "Confidential Attorney Fee Market Data" (ECF No. 146.2 [SEALED]), and a Civil Bill of Costs (ECF No. 146.1). In addition, Defendants' counsel submitted invoices in support of their application for attorneys' fees to the Court via email for *in camera* review.

In response, Plaintiffs filed a Response Brief in Opposition to Defendants' Application for Costs (ECF No. 147), and a Response Brief in Opposition to Defendants' Supplemental Application for Costs (ECF No. 151). Defendants' Applications for Fees and Costs are now fully briefed and ripe for determination.

THE COURT, having reviewed the Defendants' Applications for Fees and Costs, the affidavit and invoices filed by Defendants in support of the Applications for Fees and Costs, the briefs filed in support of and in opposition to the Applications for Fees and Costs, the applicable law, and other appropriate matters of record, FINDS and CONCLUDES that the Defendants' Applications for Fees and Costs should be GRANTED, in part, and DENIED, in part, in the manner and for the reasons set forth below.

I. BACKGROUND

1. The Court herein recites only the facts necessary for determination of the Motion. The Court's prior Orders and Opinions contain a more comprehensive and thorough factual and procedural background regarding the dispute. (*E.g.*, ECF Nos. 65, 123, 128.)

2. On December 6, 2019, the Court entered an Order on Defendants' Motion for an Award of Attorneys' Fees and Motion to Strike. ("Attorneys' Fees Order," ECF No. 128); *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2019 NCBC LEXIS 104 (N.C. Super. Ct. Dec. 6, 2019). In the Attorneys' Fees Order, the Court granted Defendants' request for an award of attorneys' fees under N.C.G.S. § 75-16.1 for fees incurred defending against Plaintiffs' claim for violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 (the "UDTPA Claim") as

initially filed, and under N.C.G.S. § 6-21.5 for “fees incurred defending against Plaintiffs’ reassertion of the UDTPA Claim in their Motion for Leave,” and directed Defendants to submit an application for the attorneys’ fees. (*Id.* at p. 18–19; 2019 NCBC LEXIS 104, at *21–23.)

3. On January 6, 2020, Defendants filed the Appl. Fees. In the Appl. Fees, Defendants seek an award of \$227,269.06 in attorneys’ fees.¹ Plaintiffs did not file a response to the Appl. Fees, claiming that “[s]ince Defendants’ Attorney Fee Application, (ECF No. 135), was submitted solely in response to the Court’s Order and since the Court ordered that Defendants’ counsel’s invoices be submitted solely for *in camera* review, Plaintiffs did not believe the Court desired (or would permit) a response from Plaintiffs” (ECF No. 151, at p. 2 n.1.)

4. On February 7, 2020, Defendants filed the Appl. Costs seeking an award of costs pursuant to North Carolina Rule of Civil Procedure 41(d) (hereinafter “Rules”) and N.C.G.S. § 7A-305. (ECF No. 146.) The Appl. Costs attached a detailed Civil Bill of Costs (ECF No. 146.1) that listed the following costs sought by Defendants:

Superior Court Filing Fee	\$200.00
Business Court Designation Fee	\$1,100.00
Discovery Depositions	\$10,226.92
Transcripts of Court Proceedings	\$600.00
Mediator’s Fee	\$1,547.68

¹ A review of the spreadsheets provided by Plaintiffs reveals that this figure includes, apparently inadvertently, \$6,089.90 in copying and miscellaneous expenses. Subtracting these costs, the total fees sought appears to be \$221,179.16. Hereinafter, the Court refers only to Plaintiffs’ total requested attorneys’ fees of \$221,179.16.

Fees charged by Expert Witnesses	\$32,105.25
Fees paid to jury consultant	\$55,537.40

5. Plaintiffs filed a response objecting to Defendants’ requested costs for expert witnesses for time charged other than their time spent providing testimony at deposition, and for the costs for the jury consultant’s fees. (ECF No. 147.)

6. On February 20, 2020, Defendants filed the Supp. Appl. Costs. (ECF No. 149.) In the Supp. Appl. Costs, Defendants requested again an award of attorneys’ fees in the amount of \$221,179.16 but requested that the attorneys’ fees be taxed as costs pursuant to N.C.G.S. § 7A-305.

7. On February 26, 2020, Plaintiffs filed their response in opposition to Defendants’ Supplemental Application for Costs. (ECF No. 151.) Plaintiffs contend that the amount of fees requested by Defendants is “patently unreasonable” and that several categories of fees are not recoverable under an award of fees pursuant to N.C.G.S. § 75-16.1.

II. ANALYSIS

8. Rule 41(d) provides that “[a] plaintiff who dismisses an action or claim under section (a) of this rule [i.e., files a voluntary dismissal] shall be taxed with the costs of the action” “[T]he ‘costs’ to be taxed under . . . Rule 41(d) against a plaintiff who dismisses an action under . . . Rule 41(a), means the costs recoverable in civil actions as delineated in [N.C.G.S.] § 7A-305(d).” *PharmaResearch Corp. v. Mash*, 163 N.C. App. 419, 428, 594 S.E.2d 148, 154 (2004) (quoting *Sealey v. Grine*, 115 N.C. App. 343, 347, 444 S.E.2d 632, 635 (1994)); *City of Charlotte v. McNeely*, 281 N.C. 684, 691, 190 S.E.2d 179, 185 (1972). Moreover, “[t]he expenses set forth in

[N.C.G.S. § 7A-305(d)] are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to [N.C.G.S. § 6-20]." N.C.G.S. § 7A-305(d). Thus, the court is without authority to order reimbursement for expenses as part of the "costs" unless such expenses are specifically listed in N.C.G.S. § 7A-305(d)(1)–(12). *PharmaResearch Corp.*, 163 N.C. App. at 428–29, 594 S.E.2d at 154 (holding that "expenses not listed as costs in the North Carolina General Statutes will not be accommodated").

A. *Non-Attorneys' Fees Costs*

9. Defendants seek an award of the following costs that are expressly provided for by N.C.G.S. § 7A-305(d): mediator's fees in the amount of \$1,547.68, § 7A-305(d)(7); fees for taking depositions and the costs of deposition transcripts in the amount of \$10,226.92, § 7A-305(d)(10); and fees for designating the case to the North Carolina Business Court in the amount of \$1,100.00, § 7A-305(d)(12). All of these costs are properly awarded pursuant to N.C.G.S. § 7A-305(d). Accordingly, in its discretion, the request for these costs should be GRANTED, and the Court awards to Defendants for these costs the sum amount of \$12,874.60 to be taxed to Plaintiffs.

10. Defendants also seek as costs an award of \$200.00 for Superior Court filing and administrative fees apparently incurred in filing the counterclaims that they raised in the case. (ECF No. 146.1, at p. 1.) These filings fees are not provided for in § 7A-305(d), and the Court is without authority to award these fees. *Priest v. Safety-Kleen Sys.*, 191 N.C. App. 341, 344, 663 S.E.2d 351, 353 (2008) ("Filing fees are not an enumerated cost under section 305(d)."). Therefore, in its discretion, the

Court denies Defendants' application for an award of costs for Superior Court filing and administrative fees and the request for these costs should be DENIED.

11. Defendants also seek an award of costs for expert witness fees in the amount of \$32,105.25 pursuant to N.C.G.S. § 7A-305(d)(11).² Section 7A-305(d)(11) provides that a party may recover costs for “[r]easonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.” Defendants have not provided to the Court the invoices prepared by the experts describing their respective activities or their hourly rates, nor have they described or categorized those activities. Defendants also have not provided how much time the experts spent providing testimony in deposition nor the hourly rate or total amount charged by the experts for such testimony. Instead, they have provided a summary prepared by Defendants' counsel that contains only the date of the expert's invoice and the total amount charged by the expert in that invoice. (ECF No. 146.2.) Therefore, in its discretion, the Court denies Defendants' application for an award of costs for expert witness fees and the request for those costs should be DENIED.

12. Defendants seek an award of \$55,537.40 for fees Defendants paid to a jury consultant. These fees are not recoverable as costs under N.C.G.S. § 7A-305(d). Therefore, in the Court's discretion, Defendants' application for an award of costs for fees Defendants paid to a jury consultant should be DENIED.

² The expert fees were incurred by Lacy Reaves (\$21,945.00) and Cherry Bekaert, LLP (\$10,160.25).

13. Defendants seek an award for the cost of transcripts of hearings held by the Court during this action obtained by Defendants in the amount of \$600.00. These fees are not recoverable as costs under N.C.G.S. § 7A-305(d). Therefore, in the Court's discretion, Defendants' application for an award of costs for the cost of transcripts of hearings held by the Court during this action obtained by Defendants should be DENIED.

B. Attorneys' Fees

14. Finally, Defendants request an award of costs for attorneys' fees as provided for by N.C.G.S. § 7A-305(d)(3) and by N.C.G.S. § 75-16.1(2) in the amount of \$221,179.16. In support of the request for attorneys' fees, Defendants filed an affidavit and other evidence.

15. It is well established in North Carolina that an award of attorneys' fees requires the trial court to make "findings of fact as to the time and labor expended, the skill required, the customary fee for like work, and the experience or ability of the attorney." *WFC Lynnwood I LLC v. Lee of Raleigh, Inc.*, 259 N.C. App. 925, 933, 817 S.E.2d 437, 444 (2018); *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 672, 554 S.E.2d 356, 366 (2001) (same); *Preiss v. Wine & Design Franchise, LLC*, 2018 NCBC LEXIS 247, at *7–8 (N.C. Super. Ct. July 19, 2018), *aff'd*, 372 N.C. 65, 824 S.E.2d 850 (2019). Such findings must be "based on competent evidence." *Couch*, 146 N.C. App. at 672, 554 S.E.2d at 366. The amount of attorneys' fees to be awarded is within the Court's discretion. *See Bryson v. Cort*, 193 N.C. App. 532, 540, 668 S.E.2d 84, 89 (2008).

i. Skill required, customary fee for like work, and the experience or ability of the attorneys

16. Based on the relative complexity of the factual and legal issues raised by the UDTPA Claim in this case (*see* ECF No. 135, at ¶ 25), the Court is satisfied that a relatively high level of skill in business law matters of this type was required to represent Defendants.

17. Defendants have provided evidence that the attorneys and paralegals who provided professional services in this matter were experienced and able with regard to the complex business issues involved in this case. (ECF No. 135, at ¶¶ 16–24; ECF 135.1, at ¶¶ 4–6 and Exhibit.) Plaintiffs do not contend otherwise. The Court finds that the professionals who billed for services related to this matter were appropriately experienced and able in complex business issues.

18. Defendants also have provided evidence that the hourly rates charged by Defendants' counsel for those services were within the range of customary fees charged for like work in the Wake County area. (ECF No. 135, at ¶¶ 26–29; ECF No. 135.2 [SEALED].) Plaintiffs do not challenge the rates charged by Defendants' counsel. The Court finds that the rates charged by Defendants' counsel are reasonable for like work within the Wake County area.

ii. Time and labor expended

19. The Court next turns to the question of the time and labor expended by Defendants' counsel for which it seeks attorneys' fees. "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This lodestar method requires exclusion of hours not reasonably expended, including hours that

are excessive, redundant, or otherwise unnecessary.” *Ekren v. K&E Real Estate Invs., LLC*, 2014 NCBC LEXIS 57, at *16–17 (N.C. Super. Ct. Nov. 10, 2014) (quotations and citations omitted); *Out of the Box Developers, LLC v. Doan Law, LLP*, 2014 NCBC LEXIS 39, at *52 (N.C. Super. Ct. Aug. 29, 2014) (“Before determining the hours to include in the lodestar calculation, the court . . . should exclude from this initial fee calculation hours that were not reasonably expended, including hours that are excessive, redundant, or otherwise unnecessary. It follows that the court should, where possible, exclude time spent on matters not directly related to claims on which the prevailing party succeeded.”) (internal citation and quotation marks omitted). “The party seeking attorneys’ fees has the burden of proving that the . . . hours worked are reasonable.” *Supler v. FKAACS, Inc.*, NO. 5:11-CV-229-FL, 2013 U.S. Dist. LEXIS 178101, at *8 (E.D.N.C. Dec. 19, 2013) (citing *E. Associated Coal Corp. v. Dir., Office of Workers’ Comp. Programs*, 724 F.3d 561, 569 (4th Cir. 2013)).

20. Defendants seek an award of fees as follows for services provided by Defendants’ counsel:

Name	Role	Hourly Rate Charged	Total Time Billed (hours)	Total Fees Billed
Lee Hogewood	Attorney (Partner)	\$526.50	302	\$105,763.22
Matt Houston	Attorney (Associate)	\$157.50 (from 2016–2018) \$275 (in 2019)	433	\$81,027.38
Mike King	Attorney (Partner)	\$330.00	58.2	\$13,413.60
Margaret Westbrook	Attorney (Partner)	\$405.00	24.1	\$5,205.00

Jim Joyce	Attorney (Counsel)	\$234.00	56.3	\$10,973.76
Emily Mather	Attorney (Associate)	\$180.00	16.2	\$2,815.00
Petal Munroe Reddick	Attorney (Associate)	\$180.00	7.8	\$982.80
Max Isaacson	Attorney (Associate)	\$198.00	3.2	\$443.52
Carolyn Hall	Paralegal	\$216.00	2.6	\$436.08
James Greene	Paralegal	\$198.00	0.6	\$118.80
TOTALS			904	\$221,179.16

(ECF No. 135, at pp. 13–14.)

21. In support of the request for fees, Defendants submitted for *in camera* review the following materials: (i) the invoices actually submitted to their clients with the entries for which reimbursement is sought highlighted, and showing any adjustments made by Defendants’ counsel to the hours incurred; and (ii) a spreadsheet containing only the time entries, hourly rates, and the professional fees for which reimbursement is sought.³ The invoices are not task-billed, as requested by the Court, but instead are block-billed because this was the only format required by Defendants’ counsel’s clients. (ECF No. 135, at p. 14–15.) Defendants’ counsel undertook a review of the invoices and attempted to separate entries reflecting services provided relevant to the defense of the UDTPA Claim and put those in the

³ The spreadsheet contains approximately 600 separate lines of daily time entries consisting of thousands of individual tasks.

spreadsheet. (ECF No. 135.1, at ¶¶ 21–23, 26.) However, the entries in the spreadsheet remain, in many instances, block-billed with multiple tasks recited in a single day’s time entry with the corresponding number of hours expended on all tasks within the block. While submitting block-billed task entries in support of a motion for attorneys’ fees is not prohibited, *see, e.g., Ekren*, 2014 NCBC LEXIS 57, at *17, in this case it makes difficult the Court’s task of determining whether the fees requested are reasonable. *Dixon v. Astrue*, 5:06-CV-77-JG, 2008 U.S. Dist. LEXIS 9903, at *10 (E.D.N.C. Feb. 8, 2008) (The “fail[ure] to itemize time entries by task, but instead lump multiple tasks together . . . precludes the court from determining that all of the amounts claimed by plaintiff are both compensable and reasonable.”) Therefore, the Court has necessarily applied its discretion to determining the number of hours expended on particular tasks and in adjusting those entries.

22. Defendants contend that their request for fees can be considered by various self-defined “phases” of work performed by Defendants’ counsel during the course of this lawsuit as follows:

- a. *Pre-Litigation*, including factual and legal research and communications with opposing counsel (December 29, 2016 through August 17, 2017);
- b. *Initial Pleadings and Motions*, through entry of the Dismissal Order (August 18, 2017 through May 22, 2018);
- c. *Analysis and Other Tasks Related to Fee Motion and Motions to Strike* (sporadic between May 23, 2018, and July 3, 2019);
- d. *Mediation Preparation and Mediation* (Late July 2018 - August 23, 2018);

- e. *Preparation of Response to Motion for Leave to Amend Complaint* (March 1, 2019 - April 22, 2019); and
- f. *Preparation of Fee Application* (December 7, 2019 - December 31, 2019). January time has not been included in the request.

(ECF No. 135, at pp. 2–3 (emphasis in original).) Defendants do not include in any of the phases work performed from August 24, 2018 through February 28, 2019. Nevertheless, entries for tasks for that time period are included in the Appl. Fees, and the Court will consider such entries in determining its award.

23. Preliminarily, the Court must address the temporal scope of Defendants’ request for attorneys’ fees. In the Attorneys’ Fees Order, the Court granted Defendants their “fees incurred defending against the UDTPA Claim as initially filed” and “fees incurred defending against Plaintiffs’ reassertion of the UDTPA Claim in their Motion for Leave.” (ECF No. 128, at p. 18); 2019 NCBC LEXIS 104, at *21–22. Plaintiffs first notified Defendants that they intended to pursue the UDTPA Claim on December 29, 2016. (ECF No. 135.1, at ¶ 8.) Defendants’ counsel thereafter corresponded with Plaintiffs’ counsel regarding the UDTPA Claim and performed other services necessary to assessing the viability and strength of the threatened claim. (*Id.*; Letters between counsel, ECF Nos. 114.3–114.12.) Plaintiffs filed the lawsuit on August 18, 2017. On May 22, 2018, the Court granted Defendants’ motion, dismissing the UDTPA Claim with prejudice and eliminating the UDTPA Claim from the case. (Order and Opinion on Defendants’ Motion to Dismiss, ECF No. 65); *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2018 NCBC LEXIS 52 (N.C. Super. Ct. May 22, 2018).

24. Discovery in this matter closed on January 30, 2019. Not until March 1, 2019 did Plaintiffs file the motion to amend to attempt to revive the UDTPA Claim. (“Motion to Amend Second Amended Complaint,” ECF No. 91.) On April 23, 2019, the Court issued its Order Denying Plaintiffs’ Motion to Amend Second Amended Complaint. (“Order Denying Amendment,” ECF No. 108.) On December 30, 2019, Plaintiffs filed a voluntary dismissal without prejudice of the remaining claims. (ECF No. 129.)

25. Despite this timeline, Defendants seek attorneys’ fees for work performed from December 30, 2016 through December 31, 2019. In doing so, Defendants overreach. Once the UDTPA Claim was dismissed with prejudice on May 22, 2018, Defendants’ counsel had no justification for performing any services for Defendants related to “defending against the UDTPA Claim as initially filed.” Similarly, while Defendants properly performed services “defending against Plaintiffs’ reassertion of the UDTPA Claim in their Motion for Leave” between March 1, 2019 and April 23, 2019, any fees incurred after the Court issued the Order Denying Amendment on April 23, 2019 must be closely scrutinized.

26. In addition, before undertaking review of the time and labor expended by Defendants’ counsel, the Court must address a few of the arguments raised by Plaintiffs generally regarding Defendants’ requested attorneys’ fees. Plaintiffs contend that Defendants are entitled to fees only for work directly and unmistakably undertaken in defense of the UDTPA Claim. (ECF No. 151, at p. 4.) Defendants respond that fees can be awarded for work generally performed in defense of all of Plaintiffs’ claims where that work is “inextricably intertwined” with work performed

in defense of the UDTPA Claim. (ECF No. 152, at p. 2); *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. 449, 467, 553 S.E.2d 431, 443 (2001) (“[W]here all of plaintiff’s claims arise from the same nucleus of operative facts and each claim was ‘inextricably interwoven’ with the other claims, apportionment of fees is unnecessary.”) (citation omitted). In determining whether claims are “inextricably interwoven,” courts apply “the reasonable relation test: ‘reasonableness, not arbitrary classification of attorney activity, is the key factor under all our attorneys’ fees statutes’ in awarding fees for attorney activity” *Id.* (citation omitted); *see also Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 14 CVS 1783, 2018 NCBC LEXIS 69, at *12 (N.C. Super. Ct. July 6, 2018) (finding that party was entitled to fees on all claims where “the time spent on all of these claims overlapped with Insight’s recoverable claim and request for relief and arose from a common nucleus of law or fact shared with Insight’s recoverable claim and request for relief”).

27. Plaintiffs also argue that Defendants cannot recover attorneys’ fees for work performed prior to the date that Plaintiffs filed the lawsuit because before that time the UDTPA Claim was not a “suit” or “action” within the meaning of N.C.G.S. § 75-16.1. (ECF No. 151, at p. 5.) The Court disagrees. Plaintiffs do not provide citation to any authority supporting their interpretation of “suit” or “action” under N.C.G.S. § 75-16.1. (*Id.*) It is undisputed that Plaintiffs first threatened suit on the UDTPA Claim on December 29, 2016, and Defendants performed certain services in responding to Plaintiffs’ counsel and preparing for defense of the potential claim. Defendants seek fees only for services performed on and after December 30, 2016.

28. The Court will now analyze hours expended and corresponding fees charged by Defendants' counsel to determine if they were necessary and reasonable to the defense of the UDTPA Claim and response to the Plaintiffs' motion to amend. First, as discussed above, the Court has thoroughly reviewed the tasks performed, time expended, and fees incurred for work performed by Defendants' counsel from the time the Court dismissed the UDTPA Claim on May 22, 2018 through the day prior to Plaintiffs' filing of the Motion to Amend Second Amended Complaint, February 28, 2019, and finds, in its discretion, that the fees associated with those tasks were not reasonably incurred defending against the UDTPA Claim as initially filed, nor in response to Plaintiffs' motion to amend, and cannot be taxed as costs to Plaintiffs. During this period, the UPTPA Claim was not part of the case nor was it likely to be a claim in the case again. Defendants could not reasonably have provided professional services in defense of the UDTPA Claim. Accordingly, the Appl. Fees is DENIED as to fees incurred by Defendants' counsel from May 23, 2018 through February 28, 2019 in the amount of \$50,302.54.

29. With regard to the time period following the Court's Order Denying Amendment on April 23, 2019, the Defendants seek attorneys' fees of \$54,681.65 for professional service billed by 5 timekeepers. Defendants claim the time for this period was incurred in preparing the motion for attorneys' fees and App. Fees. All of the time billed for the period after April 23, 2019 is block-billed. The Court's informal review of the tasks performed during this time period reveals approximately 7 separate time entries drafting and revising the motion for attorneys' fees; 14 entries for drafting and revising the brief in support of fees; 16 entries for legal research and

analysis; 5 entries for preparing the fees affidavit and 6 entries for preparing exhibits; 7 entries for reviewing Plaintiffs' response to the motion for attorneys' fees; 11 entries for preparation of a reply brief; 16 entries for preparation of a motion to strike affidavits filed by Plaintiffs; and 12 entries for preparing a brief in support of the motion to strike. Most of these entries are contained within block-billed time entries and do not specify the specific amount of time spent on any individual task.

30. The Court's informal review of the entries also reveals that the following timekeepers charged for the following numbers of hours for the period from April 24, 2019 through December 31, 2019: L. Hogewood – 52.7 hours; M.T. Houston – 85.8; J.L. Joyce – 35.0; M. King – 7.8; and M. Westbrook – 0.8.

31. While the Court's ability to determine exactly how much time was spent by each of these timekeepers is limited by the block-billing, the Court concludes that the total number of hours expended on tasks in pursuit of Defendants' attorneys' fees is excessive under the facts and circumstances in this case. Accordingly, in its discretion, the Court reduces the hours expended by the timekeepers for the period April 24, 2019 through December 31, 2019 for which the Court will award fees as follows: L. Hogewood – 46.0 hours; M.T. Houston – 68.0; J.L. Joyce – 30.0; M. King – 6.0; and M. Westbrook – 0.8 (no change). Using the hourly rates charged by the timekeepers during this period, this results in a reduction in the requested fees for April 24, 2019 through December 31, 2019 of \$10,186.55.

32. Accordingly, the Appl. Fees as to fees incurred by Defendants' counsel from April 24, 2019 through December 31, 2019 is GRANTED, in part, and DENIED,

in part, and the Court awards Defendants attorneys' fees for this period in the amount of \$44,495.10.

33. Finally, as to the periods December 30, 2016 through May 22, 2018, the period of time during which Defendants were defending the original UDTPA Claim, and March 1, 2019 through April 23, 2019, the period spent responding to Plaintiffs' motion to amend, Defendants seek fees of \$116,194.97 for approximately 450 hours of professional services. The Court has reviewed the time entries for these periods and finds them to generally reflect work that was necessary to, and reasonably incurred in, defense of the UPTPA Claim.

34. Accordingly, the Appl. Fees as to fees incurred by Defendants' counsel for the periods December 30, 2016 through May 22, 2018 and March 1, 2019 through April 23, 2019, is GRANTED, and the Court awards Defendants attorneys' fees for this period in the amount of \$116,194.97.

III. CONCLUSION

In summary, the Court CONCLUDES, in its discretion, that Defendants' Applications for Fees and Costs should be GRANTED, in part, and DENIED, in part.

THEREFORE, IT IS ORDERED that Defendants' Appl. Fees and Costs is GRANTED, in part, and DENIED, in part, and the Court hereby ORDERS Plaintiffs to pay Defendants:

- (1) for attorneys' fees incurred, the total amount of \$160,690.07; and
- (2) for other costs incurred, the total amount of \$12,874.60.

SO ORDERED, this the 23rd day of March, 2020.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases